

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.3221/MB-IV/2019

Under Section 9 of the IBC, 2016

In the matter of

National Engineering Industries Limited

[CIN: U29130WB1946PLC013643]

...Operational Creditor

v/s.

Windals Auto Private Limited

[CIN: U50101MH1990PTC056302]

...Corporate Debtor

Order Delivered on:02.08.2021

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mrs. Suchitra Kanuparthi
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Mr. Umang Mehta i/b Taurus Legal,
Advocate.

For the Respondent : None

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **National Engineering Industries Limited**, a Leading Manufacturer (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Windals Auto**

Private Limited (“the Corporate Debtor”), [CIN: U50101MH1990PTC056302].

2. The Corporate Debtor is a company incorporated on 23.04.1990 under the Companies Act, 1956, as a private company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U50101MH1990PTC056302. Its registered office is at Unit No.5/B, 5th Floor, Goldline Business Centre, Near Chincholi Fire Brigade, Link Road, Malad (W) Mumbai, Maharashtra-400064. Therefore, this Bench has jurisdiction to deal with the present petition.
3. The present petition was filed on 28.08.2019 by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Rs.1,44,83,328.30/- (Rupees one crore forty-four lakh eighty-three thousand three hundred twenty-eight and thirty paise only) as the principal amount and interest at the rate of 18% p.a. of Rs.84,28,870.18. The date of default is 23.03.2019.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor is a Company incorporated under the provisions of the Companies Act, 1956 and continuing as such under the Companies Act, 2013. The Operational Creditor is engaged in the manufacture and sale of bearings of different types.
 - b) The Corporate Debtor approached the Operational Creditor, in or around 2015, for supply of bearings of different types to the Corporate Debtor. Pursuant thereto, from 17th September 2015 to 23rd January, 2017, the Operational Creditor supplied bearings of different types to the Corporate Debtor and raised a total of 104 invoices, aggregating to a value of Rs. 1,45,75,610/- (Rupees one crore forty-five lakh seventy-five thousand six

hundred and ten only). The copies of invoices are annexed as Exhibit 'B' of the Petition.

- c) In spite of the Operational Creditor having supplied the goods as per the instructions of the Corporate Debtor, the Corporate Debtor committed default in payment of the amounts due against the invoices raised by the Operational Creditor.
- d) In light of the outstanding debt, the Corporate Debtor and the Operational Creditor held a joint meeting on 12th November 2016, the minutes whereof were signed by both parties as a Memorandum of Agreement. A copy of the minutes of meeting is annexed as Exhibit 'C' of the Petition. The outstanding debt was reconciled by the parties at the said meeting and both the parties acknowledged the liability of the Corporate Debtor to pay an outstanding amount of Rs. 2,28,91,714/- (Rupees two crore twenty-eight lakh ninety-one thousand seven hundred and fourteen only) to the Operational Creditor inclusive of interest. However, the Corporate Debtor had requested the Operational Creditor to provide at a discount of Rs. 3,21,974/- (Rupees three lakh twenty-one thousand nine hundred seventy-four only) by rounding off the actual amount of Operational Debt to Rs. 2,25,00,000 (Rupees two crore twenty-five lakh only). The said rounded off amount of Debt was accepted by the Operational Creditor subject to the condition that the Corporate Debtor will give a concrete scheme of the payment of the Debt and will strictly adhere to the scheme and will not commit any default in payment of the debt amount in future and continue to pay debt as per the proposed scheme of payment. The Corporate Debtor proposed a scheme/plan towards payment of the Operational Debt of Rs. 2,25,00,000/- (Rupees two crore twenty-five lakh only) due, which was accepted by the Operational Creditor and was accordingly recorded in

the minutes of the said meeting as the Schedule of Payments beginning from November 2016, where under the Corporate Debtor undertook to make part payments per week in such a manner that the complete debt will be paid to the Operational Creditor by October 2017.

- e) However, in spite of the agreement between the Operational Creditor and Corporate Debtor, the Corporate Debtor could only repay an amount of Rs. 52,73,000/- (Rupees fifty-two lakh seventy-three thousand only) towards the outstanding debt to the Operational Creditor till 11th July 2017, following which the Corporate Debtor stopped making any payment to the Operational Creditor.
- f) The Corporate Debtor and Operational Creditor again held a joint meeting on 13th September 2017 at the office of the Corporate Debtor in Mumbai, the minutes whereof were signed by both Operational Creditor and the Corporate Debtor, to discuss the regularization of the payment by the Corporate Debtor. A copy of the minutes of meeting is annexed as Exhibit 'D' of the Petition. At the said meeting, it was agreed by the Corporate Debtor that it would repay an amount of Rs. 1,72,27,000/- (Rupees one crore seventy-two lakh twenty-seven thousand only) to the Operational Creditor in part payments of Rs. 45,27,000/- (Rupees forty-five lakh seventy-seven thousand only) by December 2017, and the balance amount of approximately Rs. 1,27,00,000/- (Rupees one crore twenty-seven lakh only) would be repaid in the following six months in instalments. To that end, a second schedule of payment was agreed to by the Operational Creditor and the Corporate Debtor.
- g) The Corporate Debtor made an aggregate payment of Rs. 84,23,000/- (Rupees eighty-four lakh, twenty-three thousand only) under the two schedules of payments agreed between the Operational Creditor and the

Corporate Debtor out of the aggregate outstanding amount of Rs. 2,25,00,000/- (Rupees two crore twenty-five lakh only) as agreed at the meeting dated 12th November, 2016. However, the Corporate Debtor stopped making payments to the Operational Creditor since 23rd March 2019. A copy of the ledger accounts showing the payments received from the Corporate Debtor for the period from 1st November 2016 to 31st March 2019 is annexed as Exhibit-'E' of the Petition.

- h) On 27th May 2019, the Operational Creditor through its Advocate issued a Demand Notice to the Corporate Debtor in accordance with Form 3 read with Rule 5(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ("Rules") read with Section 8 of the Insolvency and Bankruptcy Code, 2016 ("Code"). The Demand Notice is annexed as Exhibit 'F-1' of the Petition. Vide the said Demand Notice, the Operational Creditor claimed an outstanding amount of Rs. 2,29,12,198/- (Rupees two crore twenty-nine lakh twelve thousand one hundred ninety-eight only) (comprising the principal amount of Rs. 1,44,83,328/- and interest of Rs. 84,28,870/- calculated @18% per annum from 17th September 2015 till 31st May 2019).
- i) However, the Corporate Debtor replied to the said Demand Notice vide its letter dated 2nd July 2019, wherein the Corporate Debtor made several false and frivolous allegations and denied the outstanding amount due relying on vague and evasive averments. A copy of the Reply to the said Demand Notice is attached as Exhibit 'G' of the Petition.
5. The Operational Creditor has submitted the brief written submissions as follows:
- a) The matter was listed on 10.03.2021, when it was extensively argued by the Operational Creditor in furtherance of which, the Bench was pleased

to adjourn the matter on 27.04.2021 for orders. In the meantime, the Bench also sought a clarification from the Operational Creditor in respect of the applicability of section 18 of the Limitation Act, 1963 in matter pertaining to IBC, 2016.

b) Section 18 of the Limitation Act, 1963 is incorporated as follows:

Effect of acknowledgment in writing.—(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

c) The issue of applicability of section 18 of the Limitation Act, 1963 on proceedings under the Code has been fairly well settled by the Hon'ble Supreme Court in ***Laxmi Pat Surana V. Union Bank of India & Anr. [Civil Appeal No. 2730 of 2020]***. The brief facts of the said case are more particularly mentioned herein under:

i) Union Bank of India being the Financial Creditor extended credit facilities to Mahaveer Construction, a proprietary firm which was guaranteed by one Surana Metals Limited, being the Corporate Debtor. The date of default was 30.01.2010, whereas, the Financial Creditor filed an application under section 7 of the IBC against Surana Metals Limited (as the Corporate Debtor in respect of the corporate guarantee given by it) before the Hon'ble NCLT on 13.02.2019. by virtue of the letter of Guarantee acknowledged by the Corporate Debtor. The Corporate Debtor time and again acknowledged its debts as on 16.09.2010,

03.10.2012, 27.05.2015, 24.10.2016. Furthermore, the said debt was also acknowledged by the Principal borrower as on 27.05.2015 and 08.12.2018.

- ii) The Hon'ble NCLT was of the view that a fresh period of limitation is required to be computed from the date of acknowledgment of debt by the principal borrower from time to time and in view thereof, the application was admitted by the NCLT. An appeal was filed against order of admission before the Hon'ble NCLAT wherein the Hon'ble NCLAT reiterated the view of the Hon'ble NCLT and the appeal against the order of admission was dismissed by the NCLAT. The order of NCLAT was thereafter challenged in appeal before the Supreme Court.
 - iii) The Supreme Court reiterated the view as laid down by the Hon'ble NCLT and the Hon'ble NCLAT and held that the intent of the IBC was not to reopen or revive time-barred debts. Accordingly, the Court held that there is no reason to exclude the effect of section 18 to the proceeding initiated under the IBC.
- d) Furthermore, the said issue has been also clarified by the Hon'ble NCLAT in **M.M. Ramachandran V. South Indian Bank Ltd. & Ors. [Company Appeal (AT) (Insolvency) No. 1509 of 2019]** and is further confirmed by the Hon'ble Supreme Court in **Civil Appeal No. 2951 of 2020**. The brief facts of the said case are more particularly set out as under:
- i) In the said case, the account of the Corporate Debtor was marked as a Non-Performing Asset (NPA) on 13.12.2015. the Financial Creditor, being a Bank, filed an application under section 7 of the Code on 10.04.2019 i.e. much beyond the period

of 3 years. The NCLT admitted the said Petition, passed an order of moratorium, and appointed an Insolvency Resolution Professional (IRP).

- ii) The promoter of the Corporate Debtor, M.M. Ramachandran, then preferred an appeal against the order of the Hon'ble NCLT, by way of which he had challenged the initiation of the Corporate Insolvency Resolution Process (CIRP) and contested that the same was barred under law as the limitation period of the default was beyond the period of limitation of three years.
- iii) In the regard, the Financial Creditor relied on an email received by the Corporate Debtor on 02.05.2016 followed by a letter received by the Corporate Debtor on 30.05.2016 which clearly acknowledged the dues to the Operational Creditor and thereby sought the benefit of section 18 of the Limitation Act, 1963 and claimed that a fresh period of limitation shall be computed from the date of acknowledgement of the letter. In accordance thereto, the Operational Creditor claimed that the said Petition was very well filed within the period of limitation.
- iv) The question that arose before the Hon'ble NCLAT was whether the said application under section 7 was barred by limitation and as to whether the Financial Creditor is entitled to take the benefit of section 18 of Limitation Act under the provision of the Code.
- v) The NCLAT on the basis of the email and the letter, accepted the arguments of the application of section 18 of the Limitation Act to the facts and circumstances of the case and dismissed the appeal of M.M. Ramachandran.

- vi) The said order passed by the Hon'ble NCLAT was challenged by M.M. Ramachandran before the Hon'ble Supreme Court as well. However, the Hon'ble Supreme Court did not find merit in the contentions raised by M.M. Ramachandran and accordingly dismissed the said appeal.
- e) Even in the present case, certain invoices were raised by the Petitioner which pertain to the year 2015-2016. However, the Corporate Debtor has admitted its liabilities in minutes of the meeting dated 12.11.2016 and 13.09.2017 wherein it was resolved that the debt of the Corporate Debtor shall be reconciled. The said minutes were duly signed by the Operational Creditor as well as the Corporate Debtor and in pursuance thereto the Corporate Debtor also made certain payments towards the reconciled outstanding dues till 23.03.2019. In view of the aforesaid, it can be established that the said liabilities have been time and again acknowledged by the Corporate Debtor before the expiry of the period of limitation in respect of each and every invoice. Hence, a fresh limitation period can be computed in respect of each and every invoice, from the date of such acknowledgement of liabilities in a manner as contemplated under section 18(1) of the limitation act, 1963.
- f) Hence, in view of the position of law as reiterated in the above referred judgments, the Operational Creditor can avail the benefit of section 18(1) of the Limitation Act and hence a fresh period of limitation shall be computed from the date of admission of the liabilities made in the said minutes of the meeting and the payments made in pursuance thereto.
6. The Operational Creditor had served a Demand Notice in Form 3 dated 27.05.2019 to the Corporate Debtor which is placed at pp.223-244 as Exhibit 'F' of the Petition in terms of section 8 of the IBC. The said Demand Notice

was served on the Corporate Debtor. The Corporate Debtor has replied to the Demand Notice denying the liability to pay.

7. The Operational Creditor has also submitted the Ledger Accounts of Corporate Debtor for period of 01.11.2016 to 31.03.2019 which is placed at pp.218-222 as Exhibit 'E' of the Petition.
8. Invoices have been placed on record at pp.24-215 as Exhibit 'B' of the Petition. The total debt due and payable to the Operational Creditor is Rs.2,29,12,198.48/- (Rupees two crore twenty-nine lakh twelve thousand one hundred ninety-eight and forty-eight paise only), as mentioned at p.5 of the Petition.

Findings:

9. We have heard the arguments of Learned Counsel for Operational Creditor and perused the records.
10. On 10.03.2021, during the course of arguments the Bench asked the Ld. Counsel for the Operational Creditor that how section 18 of Limitation Act, 1963 is applicable to get the Petition well within the period of limitation as some of the invoices pertain to the year 2015 and 2016 and the Petition was filed on 28.08.2019. However, the Operational Creditor has filed its written submissions to answer the query raised by the Bench whereby it is submitted that the Corporate Debtor has admitted its liabilities in the minutes of meeting dated 12.09.2016 and 13.09.2017 whereby it was resolved that the debts of the Corporate Debtor shall be reconciled. The said minutes of the meeting was signed by both Operational Creditor and Corporate Debtor. The Corporate Debtor chose not to appear on the date of final hearing in the matter.

11. Further, in pursuance to the above submissions the Corporate Debtor also made certain payment towards the reconciled outstanding dues till 23.03.2019. In view of the aforesaid it is established that the outstanding was acknowledged and accepted by the Corporate Debtor and this itself shows that the Petition is filed well within the period of limitation.
12. It is also observed by the Bench that on 24.09.2019, 15.10.2019, 06.11.2019 and 28.11.2019 the Corporate Debtor appeared but failed to file reply in the matter. On 28.11.2019, the Corporate Debtor filed Affidavit whereby it was submitted that the settlement talks were going on and time was sought to file consent terms. Despite several opportunities being granted, the Corporate Debtor neither appeared nor filed reply/consent terms in rebuttal. Therefore, there is no reason to disbelieve the contentions raised by the Operational Creditor and hence, the matter was proceeded ex-parte.
13. It is also noticed from the petition that-
 - a) There is unequivocal admission of liability on the part of the Corporate Debtor in the minutes of meeting dated 12.11.2016 and 13.09.2017 between Operational Creditor and Corporate Debtor which is placed at p.216 and p.217 as Exhibit 'C' and 'D' respectively;
 - b) The date of default is 23.03.2019.
14. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of rupees one lakh stipulated under section 4(1) of the IBC. Therefore, the debt and default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this Petition and orders initiation of CIRP against the Corporate Debtor.

15. The Operational Creditor has proposed Mr. Arun Bagaria as Interim Resolution Professional (IRP) in the matter.
16. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing **CP(IB) 3221/MB-IV/2019** filed by **National Engineering Industries Limited**, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Windals Auto Private Limited** [CIN U50101MH1990PTC056302], the Corporate Debtor, is **admitted**.
 - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
 - (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
 - (ii) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

- (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (c) Notwithstanding the above, during the period of moratorium,-
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
 - (ii) That the provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Arun Bagaria, registration No. IBBI/IPA-002/IP-N00278/2017-18/10836, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.

- (g) During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- (j) A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

Rajesh Sharma
Member (Technical)

02.08.2021

Sd/-

Suchitra Kanuparthi
Member (Judicial)