

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

SPECIAL BENCH (URGENT HEARINGS THROUGH VIDEO CONFERENCE)
PRESENT: HON'BLE SHRI RATAKONDA MURALI— MEMBER JUDICIAL 1
HON'BLE SHRI VEERA BRAHMA RAO AREKAPUDI—MEMBER TECHNICAL
ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 25.08.2020 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No. 604/2020 in CP (IB) No. 585/9/HDB/HDB/2018
NAME OF THE COMPANY	Sheetal Shipping & Metal Processor Pvt Ltd
NAME OF THE PETITIONER(S)	Om Shiv Shakthi Iron Industries (P) Ltd
NAME OF THE RESPONDENT(S)	Sheetal Shipping & Metal Processor Pvt Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Order is passed in IA No.604 of 2020 vide separate order. The application is dismissed. Order

Order is passed in CP (IB) No.585/9/ HDB/ 2018 vide separate order. The petition is admitted and IA No.726 of 2019 is dismissed.


**MEMBER
(TECHNICAL)**


**MEMBER
(JUDICIAL)**

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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH -1**

CP (IB) No. 585/9/HDB/2018

*Petition under Section 9 of IBC, r/w Rule 6 of Insolvency &
Bankruptcy (Application to Adjudicating Authority) Rules, 2016*

In the matter of

M/s Om Shiv Shakti Iron Industries (P) Ltd
6-3-674/4, Flat No. 402
Shaheen Apartments, Panjagutta
Hyderabad – 500082

...Petitioner/
Operational Creditor

VERSUS

M/s Sheetal Shipping & Metal Processor Pvt Ltd
5-5-103 to 105/6, Meher Complex, 1st Floor
Pan Bazar, Ranigunj
Secunderabad – 500003

...Respondent/
Corporate Debtor

Date of order: 25.08.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Appearance:

For Petitioner: Dr. S.V. Ramakrishna, Advocate

For Respondent: Shri N. Vinesh Raj, Advocate

Heard on: 20.07.2020, 28.07.2020 and 17.08.2020

PER: SHRI RATAKONDA MURALI
MEMBER (JUDICIAL)

JUDGEMENT

1. The Petitioner M/s Om Shiv Shakti Iron Industries Pvt Limited (hereinafter referred as Petitioner/ Operational Creditor) has filed the present petition against M/s. Sheetal Shipping & Metal Processor Pvt Ltd (hereinafter referred as Respondent/ Corporate Debtor) to trigger CIRP. It is alleged by the Petitioner that the Corporate Debtor had defaulted in paying of Rs. 2,03,26,888/- (Rupees Two crores Three Lakhs Twenty Six Thousand Eight Hundred and Eighty Eight only which includes interest @ 18% per annum and debit notes as on 31.05.2018. The debt arose due to failure of making payment towards consideration for supplying goods to the Respondent. Hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

AVERMENTS:

2. The averments apropos to the petition in brief are that the Operational Creditor is a private limited Company incorporated under the Companies Act, 1956 which is engaged in manufacture and supply of sponge iron to various Metal/Iron/Steel manufacturers. The Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 which is engaged in the

manufacture of various kinds of steel products. During the course of business, the Operational Creditor supplied sponge iron material to the Corporate Debtor and various invoices were raised. But Corporate Debtor failed to make payment to the tune of Rs. 2,03,26,888/- which is allegedly under default with effect from 16.08.2018. It is averred that Corporate Debtor vide email dated 30.11.2017 has categorically admitted the debt due to operational Creditor to the tune of Rs. 92,21,586.33 as on 12.07.2017. Having failed to service the debt payable to Operational Creditor even after repeated requests, a demand notice dated 27.06.2018 along with computation sheet was served upon the Corporate Debtor by the Petitioner demanding payment of Rs. 2,04,26,888/- which includes interest as on 31.05.2018 plus further interest thereon @ 18% per annum till the date of actual realization. Since there was no reply from the Corporate Debtor, the Operational Creditor filed this petition seeking initiation of Corporate Insolvency Resolution Process (CIRP) on 11.09.2018. A sum of Rs. 1,00,000/- towards part payment of debt was received on 25.07.2018 by the Petitioner from the Corporate Debtor after receipt of Demand Notice by it. The Petitioner has also filed certificate u/s 9 (3) © of IBC issued by Lakshmi Vilas Bank, Ameerpet Branch, Hyderabad to the effect that no amount was received from the Corporate Debtor.

COUNTER:

3. Counter is filed by the Corporate Debtor / Respondent herein refuting the averments made by the Petitioner. The Corporate Debtor did not dispute having business relations with Operational Creditor and its sister concerns i.e. Vishnu Industries Private Limited and Shubham Transoceanic Private Limited and admitted having received raw materials i.e. Iron Steel from the Operational

Creditor. Immediately on receipt of Demand Notice from the Operational Creditor, the Corporate Debtor contacted the Operational Creditor and settled the issues between them by executing Memorandum of Understanding dated 25.07.2018 and paid balance amount of Rs. 1,00,000/- on 25.07.2018 towards full and final settlement and stated that Operational Creditor promised to withdraw the demand notice served on it. As per its statement of account as on 25.07.2018 the balance against Operational Creditor is "nil" and as such it is contended that there is no amount due to Operational Creditor. It is further the case of Corporate Debtor that it raised debit notes amounting to Rs. 91,21,586/- towards defective and bad supply of goods which were acknowledged by the Operational Creditor on 25.07.2018 and that the said entries of the debit notes are recorded in the ledger account of the Corporate Debtor Company. After adjusting the debit notes, the balance amount due to Operational Creditor was Rs. 1,00,000/- as on 25.07.2018 which was paid to the Operational Creditor on receipt of demand notice i.e. on 25.07.2018. The Corporate Debtor contends that there was no agreement for payment of interest component @ 24% per annum as recorded in the books of account / balance sheet of Operational Creditor that are filed with Registrar of Companies. The ledger accounts filed by the Operational Creditor along with the petition are all stated to be forged / fabricated documents. It is alleged that this Petition is not maintainable as the invoices filed by the Petitioner goes to show that claim is time barred. The Corporate Debtor further denies having admitted the alleged default vide its email dated 30.11.2017 referred to by the Operational Creditor. According to the Corporate Debtor the email dated 30.11.2017 is alleged to be fabricated by the Operational

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Creditor and further pleaded this Tribunal to send the documents to FSL for examination to prove its authenticity. The Corporate Debtor had many times protested against defective supply of materials and denies the contention of Petitioner that it owes a sum of Rs. 92,21,586.33. The Corporate Debtor submits that it is operational creditor through its sister concern M/s Vishnu Industries (P) Ltd and M/s Shubham Transoceanic Private Limited had remitted an amount of Rs. 25,00,000/- and Rs 36,00,000/- on 20.08.2016, 06.10.2016 and 24.06.2016 till 08.07.2016 respectively to the Corporate Debtor. Had there been any debt due by the Corporate Debtor, the Operational Creditor would not have paid/ remitted these amounts. The Operational Creditor is said to have even returned to the Corporate Debtor the security cheques given by it towards advance payment. The contention of the Corporate Debtor is that this Tribunal is not the appropriate forum to adjudicate this matter and that the Operational Creditor has to approach a different forum in case of any grievance. The Corporate Debtor also took objection of filing this petition by an unauthorized person by name Mr. Jitender Kumar on behalf of Operational creditor that too without a proper resolution. All fabricated and forged documents filed along with the Petition filed by the Operational Creditor are all insufficiently stamped which is against Section 35 of the Indian Stamp Act. Further Corporate Debtor had sought direction to the Petitioner to produce all the original documents. The Corporate Debtor alleged that Petitioner has not furnished certificate from the appropriate bank as required under the provisions of Section 9 (3) (c) of IBC and urged this Tribunal to reject the petition.



4. **REJOINDER**

Rejoinder is filed by Petitioner refuting the contentions raised by the Corporate Debtor. The averments in rejoinder, inter-alia, in brief are that the Corporate Debtor took nearly nine months to file its counter only with an intention to buy time for fudging and fabricating the documents. The alleged Memorandum of Understanding dated 25.07.2018 is fake and fabricated and denies the contention of the Corporate Debtor that only Rs. 1,00,000/- was due that was paid subsequently. The allegation against Corporate Debtor is that during the hearings it had repeatedly admitted that the matter is "settled". The Petitioner pointed out various irregularities/ discrepancies in the documents as described at point No. 4.3 (i) to (ix) of the Rejoinder. The sister concerns i.e. Vishnu Industries Pvt Ltd and Shubham Transoceanic Pvt Ltd has no relevance to the present case. In the ledger account of the Corporate Debtor as on 12.07.2017, the credit balance against the Petitioner Company is shown as Rs. 92,21,586 after deducting Rs. 7,27,120/- towards material supplied from 01.04.2017 to 31.03.2018. Thereafter Rs. 1,00,000/- was paid to the Operational Creditor on 25.07.2018 which is only a part payment and not full and final settlement of the defaulted amount as contended by the Corporate Debtor. The Corporate Debtor had indulged in creation of 53 debit notes all dated 25.07.2018 which are shown in the alleged ledger for the period from 01.04.2018 to 31.03.2019 with fictitious rubber stamp of "Receiver" of Operational Creditor but without name and designation of the alleged "Receiver". Having admitted remittance / payment of Rs.1,00,000/- on 25.07.2018, the Petitioner reiterates that the claim is within limitation. The Corporate Debtor has not produced original documents as demanded for in IA 726/2019





before this Tribunal by raising untenable excuses. It is reiterated by the Petitioner that there is no dispute prior to the issuance of demand notice, no alleged settlement based on the fake MoU dated 25.07.2018 and that the petition is within limitation and thus urged this Tribunal to admit the petition.

5. **DISCUSSION**

- 5.1 We have heard the Counsel for Operational Creditor and Counsel for Corporate Debtor. Both sides filed written submissions. Points urged in the written submissions will be dealt in the course of the order.
- 5.2 The Learned Counsel for Operational Creditor would contend that Operational Creditor supplied raw material "sponge iron" to the Corporate Debtor as per its requirement from time to time under various invoices, way bills and debit notes. The Learned Counsel for Operational Creditor further contended that the Corporate Debtor vide its email dated 30.11.2017 had clearly admitted that an amount of Rs. 92,21,586.33 was payable to the Operational Creditor as on 12.07.2017. The Corporate Debtor sent email dated 30.11.2017 along with attachment which is ledger account for the period from 01.04.2013 to 29.11.2017. Thus, the Learned Counsel for Operational would contend Corporate Debtor categorically admitted the liability to pay the operational debt to the Operational Creditor.
- 5.3 The Learned Counsel would contend as Corporate Debtor committed default in paying the outstanding balance, it had sent Demand Notice in Form-3 & 4 under Rule 5 (1) (a) of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with invoices, way bills and ledger account dated 27.06.2018. The Learned Counsel would contend, the Corporate Debtor made a part payment of Rs. 1 lakh to the Operational





Creditor on 25.07.2018. The Learned Counsel contended that the Operational debt due by the Corporate Debtor as on 16.08.2018 was Rs. 2,03,26,888/- and that there was no reply to the demand notice and there was no pre-existing dispute. The Learned Counsel contended that the Corporate Debtor for the first time through counter alleged that there were debit notes against the supplies received from the Operational Creditor and that there was a Memorandum of Understanding dated 25.07.2018 where under there was adjustment of account and balance of Rs. 1 lakh was paid to the Operational Creditor and that there was no debt due. The Learned Counsel contended, the MoU is forged and fabricated. There was no such MoU as contended by the Corporate Debtor. The debit notes dated 25.07.2018 were all created and further alleged service of debit notes on the Operational Creditor are all fabricated and forged. The Learned Counsel contended, the Corporate Debtor in order to avoid the debt, has created and forged all these documents and as such these documents cannot be given any importance.

5.4 The Learned Counsel further contended, at the first instance when the matter came up for admission before the Tribunal, the Corporate Debtor took time on the ground of settlement and matter was adjourned from time to time to enable the Corporate Debtor to go for settlement. However, the Corporate Debtor, instead of complying its commitment has filed a counter as if there was MoU and raising of debit notes etc. Thus, the intention of the Corporate Debtor is very clear that it wanted to create forged and fabricated documents. The Learned Counsel contended that it is a fit matter for admission.

5.5 On the other hand the Learned Counsel for Corporate Debtor would contend that the present claim is barred by

limitation as amount stated to have been due by the Corporate Debtor to the Operational Creditor in respect of invoices is for the period from 27.07.2014 to 20.10.2014. The Learned Counsel contended, if at all Corporate Debtor was liable to pay in respect of the invoices raised in 2014, then how did Operational Creditor issued demand notice for the first time on 27.06.2018 which is beyond limitation. The Counsel contended, the Corporate Debtor continue to raise issues with Operational creditor regarding supplying of inferior quality of goods but Operational Creditor on the other hand postponed looking into the issues. Hence, there was no occasion to raise any dispute. The Counsel contended when there is no contract to pay interest, then how Operational Creditor is entitled to claim interest. The Learned Counsel contended the interest is shown as "nil" in the financial statements filed with RoC by the Operational Creditor. The Learned Counsel questioned the operational creditor for claiming interest when there is no agreement vis-a-vis to pay interest.

- 5.6 The Learned Counsel contended, the Operational Creditor being a party to MoU is falsely disputing the document on the ground it is forged and fabricated in order to contend that operational debt was pending for discharge. The Learned Counsel contended, after receiving demand notice, there was negotiations and discussions between the Operational Creditor and Corporate debtor. As a result of which, operational creditor agreed to deduct the amount covered under the debit notes raised for supplying inferior quality goods and finally Operational Creditor promised to withdraw all the proceedings including demand notice. The Learned Counsel contended, there is nothing wrong in raising all the debit notes on a single day. The Learned Counsel contended that the MoU is

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binding on the Operational Creditor, in which event there is no operational debt due by Corporate Debtor to Operational creditor. The Learned Counsel heavily relied on MoU and contended that there was no operational debt committed default by the Corporate Debtor and ultimately prayed for rejection of the Petition.

5.7 The Learned Counsel for Corporate Debtor through memo dated 02.03.2020 filed various debit notes dated 25.07.2018.

6. CITATIONS/ JUDGEMENTS RELIED BY THE PARTIES

6.1 The Learned Counsel for Operational Creditor has relied on the decisions cited below.

- i) Hon'ble Apex Court judgement reported in MANU/SC/0020/2016 in the matter of Sciemed Overseas Inc Vs BOC India Limited and ors.
- ii) Hon'ble Apex Court judgement reported in MANU/SC/0495/2005 in the matter of Bhaurao Dagdu Paralkar Vs State of Maharashtra and Ors.

6.2 Similarly, the Learned Counsel for Corporate Debtor also relied on the following decision:-

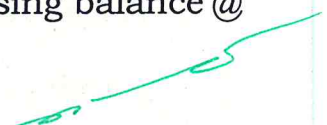
Sl.No.	Judgement delivered by	Judgement reported in	Parties to the Judgement
1	Hon'ble High Court of Telangana & A.P	2019(1) ALD 88	Tadikamalla Kasi Rathnam Setty vs Tadikamalla Kasi Viswanadham and Ors
2	Hon'ble High Court of Telangana & A.P	2017(2) ALD 368	P. Padmanabhaiah vs G. Srinivasa Rao
3	Hon'ble High Court of Telangana & A.P	2017(4) ALD	Palle Chakrapani Vs M. Prathap Reddy
4	Hon'ble High Court of Telangana & A.P	2012 3 ALD 755	M. Pentaiah Vs B. Parmeshwar
5	Hon'ble High Court of Telangana & A.P	2002 Suppl. (1) ALD 588	G.Narayanappa Vs Ganne Lakhmamma and Ors
6	Hon'ble High Court of Telangana & A.P	2015 (4) ALD 512	Koya Lalitha Kumara & Ors Vs Polina Nageswara Rao (died) & Ors

7	Hon'ble Court	Apex	IV (2017) BC 445 (SC)	Mobilox Innovations (P) Ltd Vs Kirusa Software P Ltd
8	Hon'ble Court	Apex	I (2019) BC 52 (SC)	Transmission Corporation of AP Limited Vs Equipment Conductors and cables limited
9	Hon'ble Court	Apex	I (2019) BC 3 (SC)	K. Kishan Vs Vijay Nirman Co. Pvt Ltd
10	Hon'ble NCLAT		IV (2017) BC 126 (NCLAT)	Design Work Infrastructure India Pvt Ltd Vs Premier Restaurants Pvt Ltd.
11	Hon'ble NCLAT		II (2018) BC 87 (NCLAT)	A.D. Electro Steel Co. Pvt Ltd. And Anr Vs Anil steels
12	Hon'ble Court	Apex	AIR-2018-SC-5601	B.K. Educational Services Private Ltd Vs Parag Gupta & Associates
13	Hon'ble Court	Apex	2018 Supreme SC 1092	Sagar Sharma Vs Pheonix Arc Pvt Ltd & Anr
14	Hon'ble High Court of AP	High	2014-1-ALD-412	State of AP Vs N V Bhaskar Reddy
15	Hon'ble High Court of Delhi	High	MANU/DE/03 05 /1990	Escorts Ltd Vs Sai Autos and Ors
16	Hon'ble Karnataka High Court	High	2008 CRI.L.J. 998	Om Shakti SC/ST & Minority Creditor Co Operative Society Ltd Vs M. Venkatesh
17	Hon'ble High Court of AP	High	2005-0-Supreme (AP) 1164	Sabbu Yella Anjaneyulu Vs Uppari Lakshmanna
18	Hon'ble High Court of Rajasthan	High	1992-0-Supreme (RAJ) 959	Asu Singh Rajput Vs Gehlot Enterprises ltd

6. FINDINGS OF THE BENCH

6.1 It is not in dispute that Operational creditor supplied sponge iron to the Corporate Debtor. The Operational Creditor has sent demand notice on 27.06.2018 in Form-3 enclosing ledger account showing the closing balance @





Rs. 2,04,26,888/- which includes interest. The Operational Creditor also sent Form-4 attaching invoices shown at page Nos. 42-79 of the paper book-let. It is very clear from the invoices that Operational creditor raised invoices for the supply of materials to the Corporate Debtor. The Operational Creditor also filed vouchers. It is interesting to note that Corporate Debtor was making part payments against supplies. The very important document relied by the Operational Creditor is the email dated 30.11.2017 shown at page Nos. 82-90 marked as Annexure A-8. It is received from Corporate Debtor enclosing account ledger of Operational Creditor maintained by the Corporate Debtor. This email is dated 30.11.2017. As on 31.03.2016, the balance payable by the Corporate Debtor to the Operational Creditor was Rs. 99,48,706/-. The Corporate debtor enclosed the supply ledger of Operational Creditor from 01.04.2017 to 29.11.2017 where under the Operational creditor purchased material from Corporate Debtor which was deducted against the balance payable by the Corporate Debtor to Operational Creditor. Thus, the balance payable to the Operational Creditor by the Corporate Debtor as per its own ledger account supplied to the Operational Creditor was Rs. 92,21,586/-

- 6.2 Admittedly, the Corporate Debtor had not given any reply to the Demand Notice and prior to demand notice no dispute was raised. There was no correspondence in writing from the Corporate Debtor raising any dispute with regard to quality or quantity. Interestingly, the Corporate Debtor made part payment of Rs. 1 lakh on 25.07.2018. There was no correspondence between Corporate Debtor and Operational Creditor to establish that Corporate Debtor raised debit notes nor was there correspondence from the corporate debtor to the

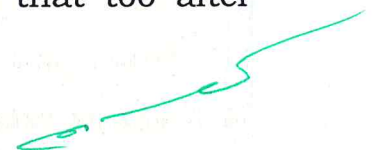
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operational creditor stating that there was defect in the quality of the goods supplied. Had it been true that Corporate Debtor was bringing to the notice of the Operational Creditor raising dispute with regard to quality of the goods supplied, then Corporate Debtor would have raised debit notes as and when it received material from the Operational Creditor.

- 6.3 In the counter, the Corporate Debtor was alleging that it was raising oral dispute with the Operational Creditor when operational creditor was supplying materials and raising invoices. When material was supplied through lorry then how Corporate Debtor was orally raising dispute about quality of the material received. It is very interesting that the Corporate Debtor was making part payments. This is a strong ground to disbelieve the case of Corporate Debtor that it was raising dispute with Operational Creditor regarding quality of the material supplied. Had there been any truth in the contention of the corporate debtor that there was no proper supply of material, and that materials were found defective, then how the debit notes were raised on 25.07.2018 for the first time only after receiving demand notice. In fact the Corporate Debtor sent email dated 30.11.2017 to the Operational Creditor along with ledger copy maintained by it in respect of the Operational creditor, confirming the balance to be payable to the Operational Creditor. Had there been any dispute with regard to defective supply of materials, then Corporate Debtor would have brought to the notice of the Operational Creditor through email or through other modes of correspondence raising dispute with regard to quality of the material and there was no need to wait to raise alleged debit notes on 25.07.2018 for the first time in respect of the supplies that too after receiving demand notice.





- 6.4 The Corporate Debtor tried to contend the debit notes are in fact delivered to the Operational Creditor and there is an MOU between them. The Operational Creditor vehemently denied the alleged debit notes dated 25.07.2018 were all served on them. The Operational Creditor is disputing the round seal which is purportedly said to be that of Operational Creditor and short signatures of the person appearing on the rubber stamp (round seal) belong to that of its employee. The contention of Operational Creditor that rubber stamp as well signature on the rubber stamp purportedly that of the Operational Creditor are forged and fabricated. The main contention of Operational Creditor is that these debit notes are forged and fabricated and created for the first time when counter was filed by the Corporate Debtor. These debit notes have not come into existence on the day on which they are stated to have been raised i.e. on 25.07.2018.
- 6.5 The Learned Counsel for Operational Creditor has drawn our attention to the various discrepancies that are found between the rubber stamp and the signature appearing on the debit notes and the rubber stamp and signatures appearing on the admitted documents filed by the Operational Creditor. At the first instance the Corporate Debtor is unable to say who received these debit notes on behalf of Operational Creditor. There is no full signature of the person who is stated to have received these debit notes on behalf of Operational Creditor. Even Corporate Debtor did not furnish the name of the person who signed in the debit notes on behalf of Operational Creditor till date. It is not known who received these debit notes on behalf of Operational Creditor, his designation and his name. The rubber stamp said to be that of Operational Creditor appearing on the debit notes is totally different

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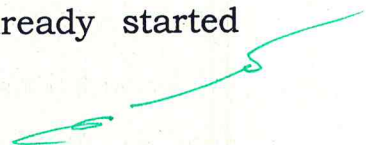
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from the rubber stamp appearing on the admitted documents of the Operational Creditor which is very clear to the naked eye. Very interesting to note all the debit notes relating to the transactions starting from the year 2013 were all raised on a single day i.e. on 25.07.2018. How the Corporate Debtor raised debit notes on single day for transactions starting from 2013? These documents on the face of them cannot be relied in the light of serious doubts expressed.

6.6 Before filing the counter, the representation made on behalf of Corporate Debtor in the open court was that Corporate Debtor was planning to enter into compromise with the Operational Creditor. If there was already settlement and no amount was due by the Corporate Debtor to the Operational Creditor, then what was the need to make a representation in the open court on behalf of Corporate Debtor that it was planning to settle the claim of Operational Creditor? Such a question does not arise if at all these debit notes and MoU really came into existence on the alleged date mentioned thereon. Thus, serious doubt is created over the alleged debit notes and also service of these debit notes on the Operational Creditor.

6.7 The Counsel for Operational Creditor strongly disputed the genuineness of the MoU dated 25.07.2018. This document allegedly came into existence after service of demand notice on the Corporate Debtor. Interestingly there was no reply to the demand notice. Had it been true that MoU was entered on 25.07.2018 and there was settlement of accounts, the Corporate Debtor should have given reply. There are so many doubts apparent on the face of MoU. A portion of MoU was struck off and replaced with some hand written matter. A reading of the MoU discloses that some proceedings has already started





against the Corporate Debtor. In fact, no proceedings started against Corporate Debtor by Operational Creditor on 25.07.2018. The petition against Corporate Debtor was filed under Section 9 of IBC before the Tribunal in October 2018. Then how there is a recital in the MoU that this document to be used in the proceedings. So the contents of the MoU create a lot of doubt about its authenticity and reliability and its execution by Operational Creditor. Proceedings never started against Corporate Debtor by then. The original copy of MoU was stated to have been given to the Operational Creditor which is contrary in a given circumstance. The Corporate Debtor should be the custodian of the original MoU because by this document the Corporate Debtor is said to have been relieved of the liability. If original remains with the Operational Creditor then what is the safety for the Corporate Debtor. If the original MoU is torn or destroyed, then there is nothing with the Corporate Debtor to prove that it was relieved of the burden of paying the debt. Therefore, original must be with the Corporate Debtor. A portion of MoU which was typed was struck off and replaced with some hand written matter. This document written on the stamp paper which was of two months old by then. So, much can be said against the MoU dated 25.07.2018. This document is highly doubtful document and it is impossible to believe the contention of the Corporate Debtor that Operational Creditor was a party to this MoU.

- 6.8 There are so many suspicious circumstances in respect of MoU dated 25.07.2018. At no time Corporate Debtor raised any dispute in writing regarding quality of goods supplied. There was no correspondence from the side of Corporate Debtor informing the Operational Creditor about rejection of a part of goods supplied. The case of

Nil

Operational Creditor that Corporate Debtor has sent email dated 30.11.2017 attaching account copy. The Corporate Debtor categorically admitted vide this email by sending account copy that an amount of Rs. 92,21,586/- was payable to the Operational Creditor. Now the Corporate Debtor is disputing the email. The Account copy is attached to the email. The Operational Creditor has relied on the email received from the Corporate Debtor dated 30.11.2017 along with attachment of ledger copy marked as Annexure "A-8". This is shown at page Nos. 82-90 of the paper booklet filed by the Operational Creditor. The amount payable is Rs. 92,21,586.33. The Corporate Debtor also filed the account copy maintained by it in respect of transactions with the Operational Creditor. The ledger extract relating to the Operational Creditor filed by the Corporate Debtor is at page Nos. 13-17. As on 12.07.2017 the balance payable to the Operational Creditor even according to the Corporate Debtor was Rs. 92,21,586/-. The Corporate Debtor further filed the ledger in respect of Operational Creditor in continuation of the ledger ending at page No. 17. This is annexed from page 18-20 of the counter booklet filed on behalf of Corporate Debtor. This account goes to show that all the debit notes are raised on 25.07.2018 against the Operational creditor whose details are given in this part of the ledger and the debit notes raised were debited into the account of Operational Creditor. The balance was stated to be Rs.1,00,000/- and the same was paid on 25.07.2018.

- 6.9 We already discussed that Operational Creditor strongly disputed the genuineness of the debit notes and that they were served on them. Secondly, execution of MoU was also denied. There was no material from the side of Corporate Debtor to substantiate that there was any need for entering into MoU. No foundation was laid by the



Corporate Debtor for the Operational Creditor to enter into the alleged MoU. Secondly, there are suspicious circumstances over this MoU. The stamp paper was purchased in the name of Shyam Sundar Agarwal, Managing Director of Corporate Debtor on 24.05.2018. The stamp paper of Rs. 100/- was used for this MoU dated 25.07.2018. Why the stamp paper of two months old was used for MoU? The fact remains, by the date of purchasing of this stamp paper, the Operational Creditor did not issue any demand notice. No proceedings started against the Corporate Debtor by then. Then what was the need to purchase the stamp paper on 24.05.2018. Secondly, a portion of MoU which is typed written was struck off and in its place the following is substituted by hand written matter as under:-

6. On the instigation of the first party original signed MOU is retained by the first party to produce before the legal forum/forums to withdraw the proceedings.

Sl.No.6 is struck off and in its place the above matter was written with hand. The struck off portion goes to show that original MoU to be retained by the Corporate Debtor. On the other hand it was struck off and above matter was hand written as if original is to be retained by the Operational Creditor. This document is stated to have been signed by Jitender Kumar Kedia acting as Managing Director on behalf of Operational Creditor. This signature is denied by the Operational Creditor.

- 6.10 An Application bearing IA No. 726/2019 is filed on behalf of Operational Creditor seeking for production of original MoU as well the debit notes and also sought further relief to send those documents to the Forensic Science Laboratory for examination by hand writing expert. This Application is also heard along with main petition. There

A. B. Reddy

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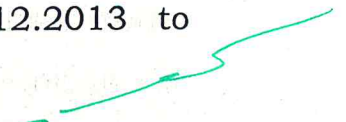
is absolutely no need to send the documents (Originals) to the hand writing expert since there are other circumstances creating suspicion over the execution of these documents by the Operational creditor and also party to the alleged debit notes. We have seen the signature of Jintender Kumar Kedia appearing in the main petition. The signature appearing in the MoU (Xerox copy) is not tallying with the admitted signature of Jintender Kumar kedia appearing in the main petition. Under Section 73 of Indian Evidence Act, the court has power to compare the admitted signature with that of disputed signature. Section 73 of Indian Evidence Act is reproduced for the purpose of convenience.

Section 73: Comparison of signature, writing or seal with others admitted or proved- In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person.

6.11 This Tribunal while relying on Section 73 of Indian Evidence Act, compared the signature of Jintender Kumar kedia which is found in the original petition filed under Section 9 of IBC with that of the signature found in the MoU dated 25.07.2018. They are neither similar nor identical. Therefore, the very execution of MoU is highly doubtful.

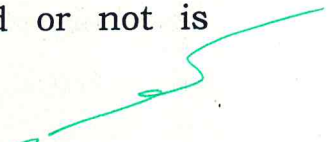
6.12 The next contention of Corporate Debtor is raising of 53 debit notes attached to the counter at page Nos. 29-81. These debit notes are starting from 23.12.2013 to



28.09.2014. Very interesting to note that all the debit notes were raised on a single day i.e. 25.07.2018, the date on which the alleged MoU also came into existence. Why the debit notes were raised on a single day after lapse of 04 years in respect of supplies made in 2013-14. The debit notes were all raised for a simple reason that a portion of the quantity supplied was rejected ranging from 2 MTs to 14 MTs. In some of the debit notes large quantity of supply was stated to have been rejected. There is no corresponding material from the side of Corporate Debtor. The grounds for such rejection of the commodity is questionable. There is also no evidence from the Corporate Debtor as to what happened to the rejected quantity and no proof whether it was returned to the Operational Creditor, whereas ledger for 2013-14 shows payment and the balance. No debit entry in the ledger during the period when commodity was supplied. Thus, no credence can be given to the contention raised by the Corporate Debtor that it was not liable to pay operational debt.

6.13 The Petition is filed within limitation and it is not barred by limitation. It is undisputed fact that Rs. 1 lakh was paid by Corporate Debtor to the Operational Creditor on 25.07.2018. The present application is filed within 3 years from the date of last payment. The present application is filed in 2018. Therefore, it is not barred by limitation. Even ledger also shows that Corporate Debtor was paying money to the Operational Creditor and part payment of Rs. 1 lakh was made on 25.07.2018. The limitation starts from the date of last payment i.e. 25.07.2018. Therefore, the present application is well within limitation.

6.14 The Hon'ble NCLAT has also held in matter of **Shelendra Kumar Sharma vs DSC Ltd** that so far as the question as to whether the documents are forged or not is



concerned, it cannot be determined by the Adjudicating Authority (NCLT / NCLAT). There is no need to send all the original documents to the forensic laboratory for examination of hand writing expert for the reasons stated above and consequently IA 726/2019 is dismissed.

- 6.15 The material placed by the Operational Creditor is quite satisfactory and the Corporate Debtor committed default of the Operational debt and thus, petition is liable to be admitted.

ORDER

7. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

- 7.1 The Bench hereby prohibits 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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;
- 7.2 That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- 7.3 That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the



- Central Government in consultation with any financial sector regulator.
- 7.4 That the order of moratorium shall have effect from 17.08.2020 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
- 7.5 This Bench hereby appoints Ms. G. Kalpana, H.No.16-11-19/4, G-1, Sri Laxmi Nilayam, Saleem Nagar Colony, Malakpet, Hyderabad-500036, having Registration No. **IBBI/IPA-001/IP-P00756/2017-2018/11288** as Interim Resolution Professional.
- 7.6 That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.
- 7.7 Registry of this Tribunal is directed to send a copy of this order to RoC, Hyderabad for marking appropriate remarks against the Corporate Debtor on MCA site as being under CIRP.

Accordingly, this Petition is **admitted** and IA No. **726/2019 is dismissed.**


(VEERA BRAHMA RAO AREKAPUDI)
MEMBER (TECHNICAL)


(RATAKONDA MURALI)
MEMBER (JUDICIAL)

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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No.604 of 2020

IN

C.P (IB) No. 585/9/HDB/2018

Application under Rule 11 of NCLT Rules, 2016

**In the matter between Om Shiv Shakti Iron Industries (P) Ltd vs
M/s Sheetal Shipping & Metal Processor Private Limited:**

M/s Sheetal Shipping & Metal Processor Pvt Limited

.. **Applicant/
Corporate Debtor**

AND

M/s Om Shiv Shakti Iron Industries (P) Ltd

.. **Respondent/
Operational Creditor**

Date of order: 25.08.2020

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Veera Brahma Rao Arekapudi, Member (Technical)

Parties / Counsels Present:

For the Applicant : Shri N. Vinesh Raj, Advocate

For the Respondent: Dr S.V. Ramakrishna, Advocate

Heard on: 17.08.2020

SHRI VEERA BRAHMA RAO AREKAPUDI
MEMBER (TECHNICAL)

ORDER

1. The present application is filed by the corporate debtor/ original respondent in Company Petition No.585 of 2018, praying for re-opening the case and to give an opportunity of hearing to enable the applicant to further represent its case

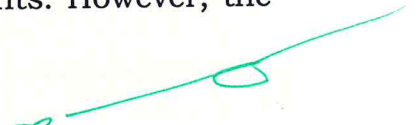
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before this Tribunal before orders are passed in the Company Petition. The Company Petition is filed by M/s Om Shiv Shakti Iron Industries (P) Ltd against the present applicant/respondent/ corporate debtor- claiming an amount of Rs. 2,03,26,888/- towards default allegedly committed by the corporate debtor.

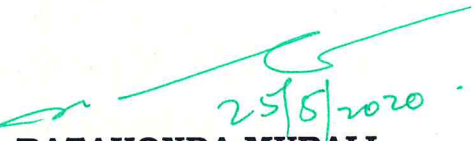
2. Averments made in IA No.604 of 2020 in brief are that the main petition was listed for orders on 17.08.2020. Meanwhile the Applicant / Corporate Debtor realized about non-representation of some crucial grounds at the time of hearing and not referring them in the written submissions filed by the Corporate Debtor. It is the case of Applicant that the additional grounds are crucial and necessary to facilitate the Adjudicating Authority to arrive at proper conclusion on merits. The Applicant further sought two weeks' time on the ground that some well-wishers of business community offered to mediate between the parties amicably outside the court. As such requested this Tribunal to grant some more time, failing which it is stated that the Applicant will face serious and irreparable loss.
3. Counter is filed by the Operational Creditor urging this Tribunal to decide the case on merits. It is further contended that the petition is being listed time to time since 22.10.2018 and that Corporate Debtor kept dragging the matter on some flimsy ground or other with fake and fabricated documents. It is further contended both parties were heard at length and matter was listed for pronouncement of orders on 17.08.2010.
4. The Learned Counsel for Operational Creditor submits that the Corporate Debtor preferred a memo on 14.08.2020 to reopen the petition citing mediation between the parties, which has been denied by the Operational Creditor.
5. We heard the Counsels for Applicant/Corporate Debtor and Operational Creditor through video conference. This Application is filed by Corporate Debtor for re-opening the main petition for advancing further arguments. However, the



Learned Counsel for Operational strongly objected to reopening the petition and urged this Tribunal to decide the petition on its merits. We have perused the Application and materials on record. It is true the main petition was filed in October, 2018. Since then the matter has been listed from time to time and granted several adjournments at the request of either of the parties. The matter was listed for orders on 27.07.2020 after hearing both sides at length with a direction to file written submissions, if any. However, the order could not be passed on that day as Hon'ble Member (Technical) was on leave and yet again listed for orders on 17.08.2020. However, on 17.08.2020, the Applicant filed this Application for re-opening the matter. The Application was heard on 17.08.2020.

6. We do not see any new plea or claim put forth in this case. The matter is coming up since October, 2018. The matter was heard at length. Both sides filed written submissions. When matter is listed for orders, this application is filed. The filing such application at the eleventh hour, that too on the day when the matter was listed for pronouncement of order is not appreciable. It is apparent that this Application is filed just to drag and delay the matter. There is no merit in this Application, as such it deserves to be dismissed.
7. In the result, IA is dismissed.


VEERA BRAHMA RAO AREKAPURI
MEMBER (TECHNICAL)


RATAKONDA MURALI
MEMBER (JUDICIAL)