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IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-1700/ND/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/s. A.B. STAINLESS STEEL

...Applicant/Operational Creditor

VERSUS

M/s. INTERNATIONAL COIL LIMITED

...Respondent/ Corporate Debtor

Pronounced on: 16.12.2019

CORAM:

SMT. INA MALHOTRA

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. Lakshay Dhamija, Mr. Karan Gandhi,

Ms. Suman Rastogi, Advocates

For the Respondent : Mr. Ankur Singhal, Adv.

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07/1/2020

MEMO OF PARTIES

M/s. A.B. STAINLESS STEEL

Having its office at:

56TH, First Floor, Office No. 10,
Kika Street, Gulalwadi,
Mumbai-400004, Maharashtra

...Applicant/Operational Creditor

VERSUS

M/s. INTERNATIONAL COIL LIMITED

Having its registered office at:

A-21/24, Naraina Industrial Area,
Phase-II, New Delhi- 110028

Having office at:

7th Floor, Building 9B,
Cyber City, DLF Phase-III,
Gurgaon, Haryana-122002

...Respondent/Corporate Debtor

ORDER

PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to

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Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s. A.B. Stainless Steel (for brevity 'Applicant'), through its partner Mr. Deepak Shah, authorizing him to file present application vide letter of authorization, signed by all the partners dated 08.10.2018, with a prayer to initiate the Corporate Insolvency Resolution Process against (CIRP) against M/s. International Coil Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, namely M/s. A.B. Stainless Steel is a partnership firm, having PAN no. AASFA6512F, having its registered office at 56th, First Floor, Office No. 10, Kika Street, Gulalwadi, Mumbai-400004, Maharashtra, inter alia, engaged in the business of manufacturer, supplier, wholesaler and trader of S.S., C.S., M.S. & Alloy Steel Pipe, Fittings & Flanges, all types of Industrial Valves, M.S. Angle, Channel & Plates.
3. The Respondent, namely M/s International Coil Limited, is a company incorporated on 02.07.2004 under the provisions of Companies Act, 1956 with CIN No. U29192DL2004PLC127325, having its registered office at A-21/24, Naraina Industrial Area, Phase-II, New Delhi 110028.



The Authorised Share Capital of the respondent company is Rs.5,00,00,000/- and Paid Up Share Capital of the company is Rs.5,00,00,000/- as per Master Data of the company.

4. It is the case of the applicant, that the Corporate Debtor approached the Operational Creditor in 2015 and represented that the Corporate Debtor had been assigned project at Mundra Solar PV Limited at Village Wandh, Taluka: Mundra, District Kutch, Gujarat (hereinafter referred to as the **“said Project”**) for which the Corporate Debtor requires steel pipes, fittings, materials etc. As per the arrangements between the parties, the Corporate Debtor used to place Purchase orders on the Operational Creditor for the purchase of steel pipes, fittings, materials etc. The Corporate Debtor placed fifteen purchase orders upon the Operational Creditor and against which the Operational Creditor had supplied goods as per the specifications and requirements mentioned in the purchase order and raised invoices upon the Corporate Debtor. The copies of said purchase orders have been annexed by the Applicant.



5. The Operational Creditor states that, for materials supplied to the Corporate Debtor they raised twenty four invoices upon the Corporate Debtor amounting to Rs. 2,06,95,156/- (Rupees Two Crore Six Lakhs Ninety Five Thousand One Hundred Fifty Six), against the materials supplied to the Corporate Debtor as per their own specifications and requirements. Further, it has been stated that the Operational Creditor received, towards the part payment against the aforesaid stated invoices raised a sum of Rs.69,72,452/- (Rupees Sixty Nine Lakhs Seventy Two Thousand Four Hundred Fifty Two) from Corporate Debtor and Rs. 30,00,000/- (Rupees Thirty Lakhs) has been paid by Adani Group on 17.12.2016 on behalf of Corporate Debtor to the Operational Creditor, thereby, the part amount of Rs.99,72,452/- (Rupees Ninety Nine Lakhs Seventy Two Thousand Four Hundred Fifty Two), was paid to the Operational Creditor by the Corporate Debtor out of Rs.2,06,95,156/-, hence, the outstanding balance amount of Rs.1,07,22,704/- (Rupees One Crore Seven Lakhs Twenty



Two Thousand Seven Hundred Four) is still legally due and payable by the Corporate Debtor.

6. As per the submissions of the Operational Creditor, it had duly supplied the goods to the Corporate Debtor against the purchase orders issued by the Corporate Debtor and submitted all the invoices along with lorry receipts with the Corporate Debtor. The Corporate Debtor issued five post dated cheques of Rs. 10,00,000/- on or about 15.09.2017, each in favour of the Operational Creditor stating that the outstanding amount will be cleared at the earliest, however, neither the payment has been made by the Corporate Debtor nor it gave any instructions to the Operational Creditor despite follow up with the Corporate Debtor. to deposit the aforementioned cheques. It is also submitted that the last invoice was raised by the Operational Creditor on 23.12.2016, since then Operational Creditor has been following up with the representatives and authorized personnel of the Corporate Debtor for clearing dues. Representatives of Corporate Debtor assured the Operational Creditor that the payment will be cleared before Diwali vide email dated 18.10.2016, however,



the Corporate Debtor failed to honour its commitment. It is also submitted that the Corporate Debtor had acknowledged the liability of outstanding amount and also assured that the outstanding payment would be cleared at the earliest, vide email dated 12.12.2017.

7. It has further been stated by the Applicant, that on 23.09.2017 the Corporate Debtor, in order to create fictitious dispute, filed a frivolous suit for recovery of liquidated damages along with pendente lite and future interest, bearing Civil Suit No. 1018/2017 titled "*International Coil Limited Vs. A.B. Stainless Steel*" in the court of Sh. Chandra Shekhar, Ld. ADJ, Patiala House Courts, New Delhi (hereinafter referred to as the "**said suit**"). It has further been submitted that a compromise was entered into between the parties and a compromise deed dated 23.05.2018 was executed between the Corporate Debtor's representative and Operational Creditor wherein, the Corporate Debtor agreed to withdraw the afore stated suit within 7 days from the date of signing the compromise deed, as well as it agreed to pay the Operational Creditor a sum of Rs. 1,08,00,000/-, in nine equal monthly



installment of Rs. 12,00,000/- each on 26th day of each month starting from the month of June, 2018, however, till date the Corporate Debtor failed to adhere to the terms of the said compromise deed.

8. It has also been stated by the Operational Creditor, that at the time of entering into settlement, the CIRP triggered against the Corporate Debtor vide order dated 16.08.2017 in CP No. (IB)-120/PB/2017, titled "*Maxim Tubes Company Private Limited Vs. International Coil Limited*", was stayed by Hon'ble Supreme Court, vide order dated 19.02.2018, in SLP(C) No. 4608/2018, titled "*Paramjeet Singh Vs. Maxim Tubes Company Private Limited & Anr*". The said settlement was also produced by the Operational Creditor before Sh. Chandra Shekhar, Ld. ADJ, Patiala House Courts, New Delhi on 18.07.2018. Thereafter, the authorized representatives of the Corporate Debtor appeared in person before Ld. ADJ, Patiala House Court and admitted the settlement and falsely submitted that the said settlement was subject to certain conditions being fulfilled by the Operational Creditor. Further, post the execution of compromise deed dated 23.05.2018



executed between the Corporate Debtor and Operational Creditor sent follow up emails to the Corporate Debtor for complying with and adhering to the terms of compromise deed dated 23.05.2018, yet no payment has been received from the Corporate Debtor, a copy of the said email dated 23.05.2018 has been annexed along with the application.

9. It is further submitted that there cannot be any performance due upon the Operational Creditor towards Corporate Debtor since Operational Creditor fulfilled its commitment and obligations for supplying goods in the year 2016 and Corporate Debtor has neither given any notice of termination to the Purchase orders nor raised any dispute regarding the supply of materials by the Corporate Debtor to the Operational Creditor till the filing of the said suit.
10. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 10.10.2018, under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the respondent asking them to make the entire payment of Rs.1,56,24,690/-



(Rupees One Crore Fifty Six Lakhs Twenty Four Thousand Six Hundred Ninety) [comprising of due principal amount of Rs.1,07,22,704/- and interest charged @ 24% from the due date of the invoices till 10.10.2018], within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

11. The applicant has annexed postal receipt, along with the tracking report, showing the delivery of the said demand notice at the registered office as well as the corporate office of the Corporate Debtor.
12. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has filed its reply through its counsel, to the said notice. In its reply it has been stated that, it had issued purchase orders to the Operational Creditor and the same were accepted by it, time was the essence of the agreement, as the articles was required to be delivered as per the prescribed period of the purchase orders. Due to the delay in supplying the articles the entire project got delayed. Thus, the Corporate Debtor completed the execution of entire



project on 25.07.2017. Further, it has been states that, the Operational Creditor had supplied the articles for the aggravated value to Corporate Debtor by making the articles costlier, which was never agreed or approved by any client. Mundra Solar PV Limited after taking control of the project had started operating he plant and found that the articles were of sub-standard quality. Therefore, Mundra Solar PV Limited had made the deductions @ 20% out of the total payment on account of delay and also for sub-standard quality.

13. The applicant has stated that total debt due and payable is Rs.1,56,24,690/- (Rupees One Crore Fifty Six Lakhs Twenty Four Thousand Six Hundred Ninety) [comprising of due principal amount of Rs.1,07,22,704/- and interest charged @ 24% from the due date of the invoices till 10.10.2018].
14. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP. The applicant has also filed affidavit of service wherein he states that the respondent has been served dasti on 15.04.2019. The receiving of the



Corporate Debtor in this regard has also been annexed along with the affidavit.

15. After the service of said notice, the respondents have caused appearance in the matter and have filed their reply, in its reply to the present section 9 application, the respondent states that, the Corporate Debtor had been assigned the huge project by Mundra Solar PV Limited, it was in need of various stainless steel products for the purpose of executing the said project, the Operational Creditor approached the Corporate Debtor at its registered office for supplying the various stainless steel products; therefore, with an intention to enter into business transaction, the Corporate Debtor and Operational Creditor had exchanged offers and had discussions regarding the same, after the final discussion Corporate Debtor had issued the various purchase order for supplying the various stainless steel products in favour of the Operational Creditor, having the total value of Rs.1,81,62,317/- and the same was immediately accepted by the Operational Creditor, it is important to note here that time was the essence of the agreement, as the articles were



required to be delivered as per the prescribed period mentioned in the respective purchase orders.

16. The Respondent further states that, the Operational Creditor proved to be a defaulter supplier as it had not supplied articles within the agreed delivery period which was specifically stated in the said purchase orders i.e., defect liability period shall be for 12 months from the date of commissioning or 18 months from the date of dispatch, whichever is earlier. It also submitted that the Operational Creditor had breached the agreement by delivering incomplete set of articles. The Corporate Debtor also submits that, against the total value of the said purchase orders the Operational Creditor had supplied the articles for the aggravated value. Thus, making the articles costlier which was never agreed or approved by the Corporate Debtor.

17. The applicant in its Rejoinder states that, Once IRP has been appointed and a moratorium is declared, the directors of the company are no longer in the management of the company, therefore, the company could not file a civil suit. However, in the present case CIRP was triggered against the Corporate



Debtor on 16.08.2017, in CP no. (IB)-120/PB/2017 titled "Maxim Tubes Company Pvt. Ltd. Vs. International Coil Ltd." and the section 14 of the Insolvency and Bankruptcy Code, 2016 is effected against the Corporate Debtor. The Corporate Debtor with mala fide intent concocted/ fabricated a board resolution dated 01.08.2017 i.e., prior to date of commencement of the CIRP in the aforesaid case, in order to file a frivolous suit and to defend forseen application under section 9 of the I &B Code, 2016 by the Operational Creditor before this Hon'ble Tribunal. the date of filing of suit is during the moratorium period which would have required prior approval/consent/permission of then acting IRP.

18. The Applicant further states that, the Corporate Debtor has never in the past raised any concerns over the quality or the delay in supplying of the goods by the Operational Creditor. Also, the ultimate employer, i.e., Mundra Solar PV Limited has never raised any concerns for delay or quality of goods supplied and rather has supported the claims of the Operational Creditor by sending communications to the Corporate Debtor to release the payments of the Operational



Creditor. It is further submitted that corporate debtor has successfully provided Form C dated 18.01.2018 in the name of the Operational Creditor which further shows that the Corporate Debtor has undisputedly accepted its liability towards Operational Creditor.

19. It is pertinent to note that the applicant has placed on record all the invoices, stating that the respondent itself had acknowledged the said invoices. Once the debt is shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. There has been much cloud in the submission of the respondent. Therefore, without any specific details of material particulars or evidence the fact of existence of a dispute cannot be sustained.
20. In ***"Innoventive Industries Ltd. (Supra)"***, the Hon'ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the 'Corporate Debtor'. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.



21. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

In the present case, there is no such dispute as pre-existing, the dispute which was being claimed to be pre-existing by the



corporate debtor did not survive. The record reveals that, as the Operational Creditor filed an application under Order XXIII Rule 3 of CPC, 1908 in CS No. 1018/2019, titled "*International Coil Limited Vs. A.B. Stainless Steel*" for disposing off the said suit in terms of the compromise deed dated 23.05.2018. Thereafter, Ld. Additional District Judge, Patiala House Courts New Delhi, vide order dated 26.09.2019 allowed the application of the Operational Creditor, inter-alia, upheld the compromise deed and decreed the suit in terms of the compromise deed, in favour of the Operational Creditor as per the provisions of the Order XXII Rule 3 of the CPC, 1908.

22. The applicant has attached the copy of Bank statements in compliance of the requirement of Section 9(3)(c) of the IBC 2016.
23. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under



section 9(5) of the Code. Hence, the present application is admitted.

24. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
25. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints the Mr. Rajesh Kumar Gupta, having registration no. IBB/IPA-003/IP-N00198/2018-2019/12308, email address is rgadv21@gmail.com and contact number is +91-9911703900 as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.
26. We direct the Operational Creditor to deposit a sum of Rs.2 lacs with the Interim Resolution Professional Mr. Rajesh Kumar Gupta to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of



Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

27. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting the respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.

28. The Registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR,



New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update their website by updating the status of 'Corporate Debtor' and specific mention regarding the admission of this application must be notified.

SKL

(HEMANT KUMAR SARANGI)
MEMBER (Technical)

SKL

(INA MALHOTRA)
MEMBER (Judicial)

Pronounced today under Rule 151 of NCLT Rules, 2016 as Hon'ble Member (Judicial) Ms. Ina Malhotra is not holding the court today.



[Signature]
07/12/2020

[Signature]
Court Officer
16.12.2019.

[Signature] 07/12/2020
Deputy Registrar
National Company Law Tribunal
CGO Complex, New Delhi-110003