

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH-II**

C.P.(IB) No. 252/9/HDB/2021
Under Section 9 of the IB Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of

M/s Steel Exchange Inda Ltd.,
Rep. by Its Marketing Executive Cum Authorized Person,
Block A, Green City, Near Apparel Export Park,
Vadlapudi, Visakhapatnam – 46.

...Applicant/Operational Creditor

Vs.

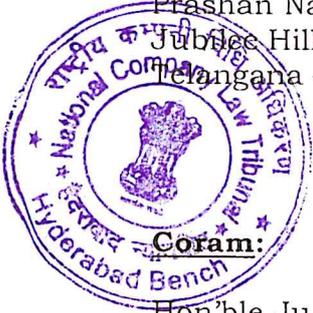
FREE OF COST COPY

M/s Sai Bhaskar Irons Ltd.,
Registered Office at Plot No. 73,
Lane No. 5, Road No. 72,
Prashan Nagar, Near Andhra Bank,
Jubilee Hills, Hyderabad
Telangana – 500 086

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

...Respondent/Corporate Debtor

Date of Order: 24/04/2023



Coram:
Hon'ble Justice Mrs. Telaprolu Rajani, Member (Judicial)
Hon'ble Sri Charan Singh, Member (Technical)

Counsel present:

For the Operational Creditor: S/Shri V.S.R. Avadhani/Prabha Prasad
For the Respondent: : Shri Y. Suryanarayana

Heard on: 18/04/2023

Per : Bench

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ORDER

1. This application is filed by the Petitioner M/s Steel Exchange India Ltd., Operational Creditor (OC) against the Respondent M/s Sai Bhaskar Irons Ltd., Corporate Debtor (CD), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against the CD for the default committed by the CD, in discharging the debt due to it.

2. The facts, as laid down in the Synopsis filed along with the Petition, are as follows:

i) The Operational Creditor (OC) is in the business of trading and manufacturing of TMT steel bars at Visakhapatnam and the Corporate Debtor (CD) is in the business of rolling steel bars.. The CD purchased the steel billets to convert them into steel bars and sell them to its customers. On 31/12/2015, the Debtor approached the Creditor and started purchasing steel billets and bars on credit basis and debtor's transaction with creditor came to an end on 30/09/2017.

ii) On 30/09/2017, there was an outstanding amount of Rs. 98,11,053/-. In this respect, the Debtor issued a cheque for Rupees One crore in the name of the Creditor. The cheque was dishonoured on the ground that "payment stopped" when it was presented on 03/05/2018 and after dishonour of the cheque, the Creditor approached the Debtor several times, but, the Debtor refused to pay the outstanding amount.

iii) The OC periodically sent invoices, made repeated requests to the Debtor, but, in vain and the debt has accumulated to a tune of Rs. 1,76,10,437/-. When there was no option left with the OC, statutory notices were sent in Form - 3 to the Debtor and the same were returned with the postal endorsement as "Addressee Left". Hence, the notice is deemed to be served as per the judgement of the Hon'ble



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Supreme Court in the case of N. Parameswaran Unni Vs. Kannan [2017] 5 SCC 737. There was no dispute between the OC and CD and no cases are pending.

iv) The debit confirmation was made by the Debtor on 03/05/2018 by issuing a cheque and when it was dishonoured on 04/05/2018, the limitation period of three years i.e. 04/05/2021 has occurred. But, by virtue of the judgment of the Hon'ble Supreme Court in the case of RE: Cognizance for extension of limitation stands extended between the period from 15/03/2020 and 14/03/2021. In cases where the limitation period would have expired during the period between 15/03/2020 and 14/03/2021, the limitation period of 90 days starting from 15/03/2020 shall stand extended. The Hon'ble Supreme Court by orders dated 27/03/2021 in In Re Cognizance for Extension of Limitation extended the suspension of limitation period from 15/03/2021 till further orders. It is still in force. Hence, the claim is within the limitation.

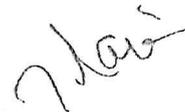
3. The Respondent/CD filed Counter denying the contentions made by the Petitioner in the Application and contended that the petition is barred by limitation. No due date was mentioned in the invoices enclosed by the Petitioner along with the Petition. It was merely on the mutual understanding between the Petitioner and the CD. The Petitioner is misleading the adjudicating authority by making false and baseless contentions. On 31/12/2015, the Debtor approached the Creditor and started purchasing steel billets and bars on credit basis and debtor's transaction with the creditor came to an end on 30/09/2017. As per the invoices enclosed by the Petitioner on 30/09/2016, no date of default is mentioned in the invoices and the Petitioner cannot take any such random dates as the base date for calculation of the period for limitation, as the Petitioner conveniently did not mention the date of default either in the



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demand notice or in the Petition. The CD issued a cheque for Rs. 1 crore as a security to the Petitioner and not towards the admission of debt by the CD. Therefore, the same cannot be construed as an acknowledgment of debt and the same is evident from the fact that despite the dishonour of the cheque issued by the CD, the Petitioner did not file any case. With regard to the statement of the OC that notice was sent to the CD, which was returned with the remark that "Addressee Left", the CD contended that it is a blatant lie and there is no evidence enclosed by the Petitioner to the said effect. The CD is having an operative office at the Registered Office since the incorporation till date, hence, return of the notice with the said remark does not arise. The Petitioner could have sent an email to the authorised representative of the CD if it was keen to send the notice. The Petitioner claiming the said amount with interest @ 36% p.a. is false and no agreement was effected with regard to the interest and there was no discussion with regard to charging of interest in case of default by the CD.

3.1 The Petition has enclosed a letter dated 01/04/2018 sent by the CD acknowledging the debt payable to the Petitioner, but, as per the said letter, the CD agreed to the balance confirmation only based on the information and statements of accounts attached by the Petitioner along with the request letter dated 31/03/2018 sent by the OC to the CD, but, the same was not confirmed as per the books of account of CD. Even if this letter is considered and treated as the balance confirmation letter by the CD, the confirmation is only towards principal amount. The CD never agreed for the interest. The Invoices do not mention due date of payment and the invoices also mentioned that interest @36% will be charged if the bill is not paid within the due date. Since no due date is mentioned in the invoices, the period of calculation of interest is false. If interest is excluded, the claim amount would fall below the threshold limit of Rs. 1 crore, on the basis of which, the application is to be rejected.



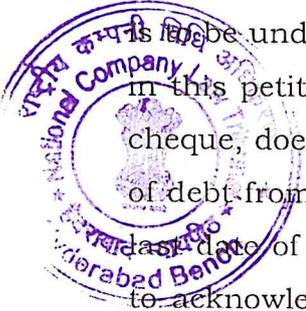
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3.2 The Hon'ble NCLAT in the matter of Jumbo Paper Products and Hansraj Agrofesh Pvt. Ltd. held that the threshold limit to be considered for application filed will be Rs. 1 crore from the date of notification which is 24/03/2020 even if the debt is of a date earlier than 24/03/2020. The Petitioner could have filed a cheque bounce case for the default of the cheque. Since the application is filed beyond three years, it is liable to be dismissed.

4. The Petitioner/OC filed rejoinder, in which, it is submitted that on the own showing of the CD, the amount due under the first invoice dated 26/09/2016 upto the last invoice dated 30/09/2016 are to be regarded as transactions entered into between the parties and, therefore, the limitation would commence from the last transaction.

5. With regard to the contention that no cheque bounce case was filed, the Petitioner contended that it is false, as the case is filed in CC 42 of 2018 before the Special Magistrate Court III, Visakhapatnam and the same is pending. Even though notices are served on the accused to appear before the Court, since, none appeared on behalf of the CD, non bailable warrant was issued on the CD, which is pending for execution.

6. As regards the issuance of cheque by the CD, towards which liability as 'security', is not stated by the CD. In the absence of any other liability it is to be understood that the cheque was issued towards the debt mentioned in this petition. Non-filing of complaint consequent to the dishonour of the cheque, does not take away the right of the Petitioner to recover the amount of debt from CD. The limitation expires on 30/09/2018 construed from the last date of invoice, cheque was issued on 03/05/2018 thereby it amounts to acknowledging the debt and a fresh period of limitation starts from the date of issuance of cheque. According to the judgement of the Hon'ble Madras High Court in the case of M. Balaji Vs. Perim Janardhana Rao, 2020 (2) LW 176, even if the cheque is not presented in time and becomes stale,



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and when the cheque was issued with intention to discharge the debt or part of the debt then, the limitation has to be reckoned from the date of the cheque considering the cheque as acknowledgment of debt. The said position of law is upheld by the NCLAT in the matter of Mr. Rajendra Kumar Kundanmal Jain Vs. Mr. Vijal A. Jain and Others, CA (AT) (Insolvency) No. 366 of 2020 dated 04/03/2021.

7. The contention that there is no notice in Form 3 served on the CD in compliance of section 8 of the Code, is far from truth as the notice was sent to the CDs registered office as per the company's profile available on the website, in compliance to section 12 of the Companies Act, 2013.

8. The contention of the CD that the balance confirmation vide its letter dated 01/04/2018 is for Rs. 98,11,053/- is towards the principal amount due and that charging of interest is fraudulent, it contended that this is a statement deliberately misleading the Tribunal. If the debt includes the interest due and the invoices admittedly contain an endorsement to that effect, hence, the contention of the CD is liable to be set aside.

9. Both the counsels filed written submissions reiterating the contents of the pleadings filed by them.

10. We heard both the Counsel and perused the submissions filed by them. The objections raised by the CD with regard to challenging the Application are quadri fold:

- i) That the demand notice was not served on the CP.
- ii) No agreement for interest.
- iii) The claim amount does not exceed the threshold limit if interest is not included, and
- iv) The application is not within the limitation.

POINT NO.1




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6.1 Whether there is proper service of demand notice on the CD:

i) On this point, both the counsel have relied on certain judgements. In this case, the demand notice was served on the Registered Address of the CD Company, which is not disputed and the same was returned with a remark that "Addressee left". The Id. Counsel for the Respondent contends that the notice has to be served on the Respondent until which time section 8 does not stand complied with and therefore, the Company Petition fails on the said ground. He relies on the judgment of the Hon'ble NCLAT in the matter of D. Srinivas Rao Vs. Vaishnovi Infratech Ltd., CA (AT)(Insolvency) No. 880 of 220. In the said case the issue that came up before the NCLAT is whether the refusal of demand notice would amount to proper service of notice or not. While holding that it would be a proper service, the NCLAT passingly remarked that "*Had the notice been returned unserved on account of the addressee being not available on the given address or the venue of addressee being non-existent or the delivery of notice being frustrated because of some reason other than that attributed to the Corporate Debtor, the fact of notice having been returned unserved would amount to non-delivery of notice*". The above observations are only an obiter of NCLAT. It is not the Ratio laid down. Apart from that the grounds mentioned therein are not the same as in this case. In this case, as already observed the notice was returned with a remark that "Addressee left". Being not available in the given address at a particular point of time when the notice was taken for service and addressee leaving the place of address are not the same. The delivery of notice in this case is frustrated because of the CD company being not in the place where he has intimated to be, as the same is the registered address of the CD.



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ii) The other judgement relied upon by the Respondent' counsel is rendered by the Hon'ble NCLAT in the matter of Nitin Singh Proprietor of Shi Shyam Printers Vs. Waves Bio-tech Pvt. Ltd., CP (AT)(Insolvency) No. 876 of 2020. In this case, the notice was served on the email of the CD, which was not used regularly by the CD. In such a situation, the Court held that it is not a proper service.

iii) On the other hand, the Id. Counsel for the Petitioner relies on the judgment of the Hon'ble Supreme Court reported in [2014] 12 Supreme Court Cases 685 between Ajeet Seeds Ltd. Vs. K. Gopala Krishnaiah, wherein the Hon'ble Supreme Court while dealing with section 27 of the General Clauses Act, 1897, which deals with "Presumption as to service of notice", held that "*Notice sent to correct address by registered post is deemed to be proper service unless and until the contrary is proved.*" It was categorically held that section 27 gives rise to a presumption that service of notice has been effected when it was sent to the correct address by registered post. The service by way of prescribed mode would suffice to satisfy proper service. Hence, in this case, the notice being sent to the correct address has to be deemed as having been served on the Respondent as prescribed. Hence, it can be held that there is proper service of notice on the Respondent.

POINTS NO.2 and 3

6.2 Whether there is an agreement for interest and whether the claim amount exceeds the threshold limit of one crore.

i) As regards the contention of the Respondent that no agreement for interest and that the claim amount does not exceed the threshold limit if the interest is not included, the Counsel for the petitioner contends that interest is very much incorporated in the invoices and, though, there is no signature of the Respondent on the invoices





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acknowledging the invoices with regard to agreement for interest, when he has issued cheque towards the invoices, which is above the principal amount contained in the invoices it amounts to an acknowledgement of interest. A perusal of the invoices would show that interest @ 36% per annum is stipulated to be charged if the bill is not paid within the due date. In the written submission of the respondent also, it is admitted that it was mentioned in the invoices that interest would be charged from the due date. The contention is that the due date is not mentioned in the notice.

ii) The Id. Counsel for the petitioner submits that there is an acknowledgment by the CD with regard to the debt when he has confirmed the balance as on 31/03/2018 in the letter dated 01/04/2018 sent by the CD. The Id. Counsel for the Respondent contends that the CD has stated that there is credit balance of Rs 98,11,053/- based on the related information and the statement of accounts attached along with the request letter dated 31/03/2018 sent by the Petitioner/OC to the CD and that it is also stated in the letter that the actual balance outstanding as on 31/03/2018 will be confirmed after verification and reconciliation of the related amounts as per the books of account of the CD.

iii) Be that as it may, it is not disputed that cheque dated 03/05/2018 was issued by the CD for Rs. 1 crore, which is subsequent to the above mentioned letter confirming the balance. It is to be noted that the confirmation of balance by the CD is over and above Rs. 98,11,053/- as the cheque was issued for Rs. 1 crore. The contention that the cheque was issued for security does not hold any water as, as rightly argued by the counsel for the Petitioner there is no other transaction between the parties for which the cheque could have been issued as security and if as contended by the respondent's counsel, if



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it was given as security in this case, security would not be given for the amount more than what is due. Hence, it can be safely concluded that the outstanding due amount is beyond Rs. 1 crore.

iv) With regard to the inclusion of interest in the principal amount for the purpose of threshold limit, the Counsel for the Petitioner relies on the judgement of the Hon'ble NCLAT, Principal Bench in CA (AT)(Insolvency) No. 690 of 2022 in the matter of Mr. Prashat Agarwal Vs. Vikash Parasrampur and Another, wherein it was held that *the total amount for maintainability of claim will include both principal as well as interest on delayed payment which was clearly stipulated in the invoice itself*". Hence, the above point is answered in favour of the Petitioner.

POINT NO.4

6.3 Whether the application is filed within limitation:

i) The Id. Counsel for the Respondent contends that the last invoice raised by the Petitioner was on 30/09/2016 and the Instant CP is filed on 29/09/2021, which is beyond 5 years and, hence, the application is barred by limitation. He also contends that the letter dated 01/04/2018 does not confirm the balance outstanding and, hence, the same cannot be taken as acknowledgment and the cheque issued is only as security to the petitioner and not towards the admission of the debt by the CD. It is already held that the cheque was issued to discharge the amount due. The Counsel for the Petitioner relies on the judgment of the Hon'ble High Court of Madras, 2020 SCC Online Mad 28058 in the matter of M. Balaji Vs. Perim Janardhana Rao and Others, wherein, it is held that "*Cheque is defined under section 4 of the Negotiable Instruments Act as a "bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand. The cheque is therefore a negotiable*



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instrument carrying the promises implicitly, unlike a pro-note where the promise is explicit and mandatory. Therefore, limitation has to be reckoned from the date of the cheque and not on the fact whether the cheque was honoured or dishonoured. It was further held that even if the cheque is not presented in time and becomes stale, but it is proved that the cheque was issued with intention to discharge the debt, then, the limitation has to be reckoned from the date of the cheque, considering the cheque as acknowledgment of the debt”.

ii) Apart from the above, the Counsel for the Petitioner has also relied on the judgement of the Hon’ble Supreme Court reported in [2022] 3 Supreme Court Cases 117 in the case of Cognizance for Extension of Limitation, in RE, wherein, the Hon’ble Supreme Court has excluded the period from 15.03.2020 till 28.02.2022. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01/03/2022.

ii) In this case, limitation expires within the period from 15.03.2020 till 28.02.2022. The cheque having been issued on 03/05/2018, limitation has to be reckoned from the said date and three years would be expiring by 03/05/2021. This application is filed on 29/09/2021, hence, if the period from 15/03/2020 till 28/02/2022 is excluded, as per the above judgment of the Hon’ble Supreme Court, this application filed by the Petitioner stands to be within the limitation.



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7. In view of the conclusions drawn by us under the above points, CP (IB) No. 252/9/HYD/2021 is allowed.

8. Accordingly, the instant application is hereby admitted and this Adjudicating Authority orders the commencement of the Corporate Insolvency Resolution Process (CIRP) which shall ordinarily be completed within the timelines stipulated in the IB Code, 2016 (as amended), reckoning from the day of this order is passed.

9. In the petition, the name of Mr. Anubolu Kuladeep is mentioned for appointment of R.P., but, his name is not found in the list of R.Ps of State of Telangana, which is circulated by Insolvency & Bankruptcy Board of India. Hence, this Adjudicating Authority hereby appoints **Mr. Kondapalli Venkata Srinivas** bearing IBBI Registration No. IBBI/IPA001/IPP00520 /2017- 2018/10945, his email id is : ip_kvs@assetsadvisory.com and his mobile No. 9959223615 **As per the IBBI website, his AFA is valid upto 30.06.2023.** He is directed to file Authorization for Assignment within three days from the date of this order.

10. The IRP is directed to take charge of the Respondent/Corporate Debtor's Management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IB Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

11. We direct the Operational Creditor/Petitioner to pay a sum of Rs.2,00,000/- towards the advance fee of IRP and expenses towards CIRP, which shall be ratified later on by CoC.

12. The moratorium is hereby declared which shall have effect from the date of this order till the completion of CIRP. For the purposes referred to in Section 14 of the IB Code, 2016. It is hereby ordered to prohibit all of the following namely:-

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- 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 or 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 rights 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 Securitization and Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- v. Notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.

13. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, if the IRP considers supply of any goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period.





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Furthermore, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, agreements, or other arrangement as may be notified by the Central Government in consultation with any operational sector regulator or any other authority.

14. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The Directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and co-operation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I & B Code, 2016.

15. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor & assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

16. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

17. The Registry shall also communicate this Order to the ROC, Hyderabad for updating the status of the Corporate Debtor in the MCA website.

18. Accordingly, this CP (IB) No. 252/9/HYD/2021 is admitted.



Charan Singh
Member, Technical

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Justice Telaprolu Rajani
Member, Judicial

Deputy Registrar / Assistant Registrar / Court Officer
National Company Law Tribunal, Hyderabad Bench...

प्रमणित प्रति
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केस संख्या
CASE NUMBER... (P/IB) No. 252/9/HDB/2021
निर्णय का तारीख
DATE OF JUDGEMENT... 24/4/23
प्रति तैयार किया गया तारीख
COPY MADE READY ON... 27/4/23