

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, COURT-I, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 66/Chd/Pb/2021

**Under Section 9 of the
Insolvency and
Bankruptcy Code, 2016**

In the matter of C.P. (IB) No. 66/Chd/Pb/2021

M/s Oswal Minerals Limited

Having its Registered Office at
8/11, Police Station Road,
Pallavaram, Chennai
Tamil Nadu- 600043
CIN: L30006TN1996PLC035973

...Petitioner/Operational Creditor

Vs.

M/s ARK Engineering Private Limited

Having its registered office at
E-497, Phase VI, Focal Point
Ludhiana, Punjab
CIN: U74210PB1993PTC013540

...Respondent/Corporate Debtor

Judgment delivered on: 01.07.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L.N. GUPTA, MEMBER (TECHNICAL)**

Present:

For the Petitioner : Mr. Nahush Jain, Advocate

For the Respondent: Mr. Akashdeep Miglani, Advocate

Per: Sh. Harnam Singh Thakur, Member (Judicial)

Sh. L. N. Gupta, Member (Technical)

JUDGMENT

The instant petition has been filed by M/s Oswal Minerals Limited, (hereinafter referred to as **“Petitioner/Operational Creditor”**) against M/s ARK Engineering Private Limited (hereinafter referred to as **“Respondent/Corporate Debtor”**) under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“the Code”**), seeking initiation of the Corporate Insolvency Resolution Process in respect of the Respondent on account of default in the payment of Rs. 54,99,006/- (Rupees Fifty Four Ninety Nine Thousand and Six only).

2. The Operational Creditor averred the following in its petition:

- i. It is a public limited company and a trading concern in metals and minerals, which supplied primary nickel from 20.03.2019 to 29.10.2019, vide several invoices amounting to Rs. 53,18,850/- on credit basis of 30 days to the Corporate Debtor, which is a private limited company and a manufacturer and exporter of a wide range of bicycles.
- ii. Vide balance confirmation dated 21.12.2019 (Annexure- A-1/6), the total principal amount of Rs. 53,18,580/- was duly admitted by the Respondent and nowhere raised any dispute regarding quality defects.

iii. The Corporate Debtor paid a sum of Rs. 5,00,000/- prior to the issuance of the demand notice dated 22.01.2020, which was replied to by the Corporate Debtor on 02.02.2020, pointing out defects with regards to the quality of material supplied by the Operational Creditor. The Corporate Debtor made a part payment of Rs. 3,00,000/- on 12.02.2020. Thus, the total outstanding amount is Rs. 54,99,006/-.

3. On issuance of the notice, the Corporate Debtor filed its reply dated 10.05.2022, vide diary no. 00062/4, wherein it submitted that the present petition is not maintainable in view of the notification S.O. 1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs, Government of India, whereby the threshold limit was raised to Rs. One crore, whereas the alleged claim of the Operational Creditor is for Rs. 54,99,006/- only. The petition was filed in the month of April 2021 and notice was issued on 14.07.2021. The Corporate Debtor further submitted the following:

- i. The Corporate Debtor faced problems with regard to quality of material supplied by the Operational Creditor and reported the said issue to the Operational Creditor's Ludhiana office, from where the Corporate Debtor had all the dealings. Due to the supply of material with compromised quality, the Corporate Debtor withheld the payment until the quality issue was sorted and mutually settled.
- ii. The Corporate Debtor was further assured by the Operational Creditor that damages suffered by it would be compensated by

carving out a mutually settled payment term and would be without interest. Thereafter, the Corporate Debtor made the first payment and the Operational Creditor accepted the above mentioned cheques including cheque no. 120591 dated 30.11.2019 drawn on ICICI Bank for Rs. 5,00,000/-, which has been encashed by the Operational Creditor. The Operational Creditor also encashed cheque no. 119694 dated 25.01.2020 for Rs. 4,52,260 and cheque no. 119695 dated 05.02.2020 for Rs. 3,00,000/- and the remaining cheques were not encashed by the Operational Creditor, and now stand expired.

4. Operational Creditor, in its rejoinder dated 27.09.2022 filed vide diary no. 00062/6 submitted that the petition was filed on 12.03.2020. Due to Covid upsurge, NCLT, vide letter dated 22.03.2020, closed all Benches for judicial work. Further, the Hon'ble Supreme Court in suo moto Petition (C No. 3 of 2020) extended the period of limitation w.e.f. 15.03.2020 to 14.03.2021. The matter was listed on 14.07.2021. The Operational Creditor further submitted that:

- i. The terms and conditions in the invoices mention that objections, if any, for the discrepancy regarding the delivered material shall be filed within 3 days from the receipt of the material. The Corporate Debtor sent an apology email dated 05.09.2019 and WhatsApp communications for delayed payments. No proof with regards to defects in the material supplied has been placed on record by the

Corporate Debtor. Affidavit under Section 9(3)(b) is appended with the petition stating that there is no pre-existing dispute.

5. Written submissions dated 31.01.2023, were filed by the Operational Creditor vide diary no. 00062/7. The Corporate Debtor filed its Written submissions dated 10.04.2023 vide diary no. 00062/8.
6. During the course of arguments, the Ld. Counsel for the Operational Creditor submitted that the email dated 06.01.2020, and the balance confirmation dated 21.12.2019 show that there was no dispute or any debit note or any protest letter or rejection letter ever raised by Corporate Debtor having issued for the material supplied. Also, no document has been supplied either with the notice 02.02.2020 or with the reply filed to the petition regarding supply of poor quality material. A sum of Rs. 54,99,006/- was due as on 24.02.2020, which along with interest at the rate of 18% till 08.12.2022 sums up to Rs. 83,81,777/-, which is now outstanding and liable to be paid by the Corporate Debtor. Since the petition has been filed on 12.03.2020, the amount claimed is within the threshold limit.
7. Refuting the contentions of the Petitioner, the Ld. Counsel for the Corporate Debtor stated that the present petition was filed in the month of April 2021 and is not maintainable in view of the threshold limit being increased to Rs. One Crore. The Ld. Counsel for the Corporate Debtor relied upon the following judgments of the Hon'ble NCLAT:

a. Jumbo Paper Products vs. Hansraj Agro Fresh Pvt. Ltd.,

Company Appeal (AT) No. 813 of 2021; and

b. Prafulla Purushottamrao Gadge vs. Narayan Mangal and Anr., Company Appeal (AT) (Ins.) No. 498 of 2022.

The Ld. Counsel for the Corporate Debtor has further stated that in view of the following payment terms mutually agreed to between the parties, the Corporate Debtor made the payment of Rs. 5,00,000/- to the Operational Creditor. The payment terms are set out in the table below:

Bill no & Date	Bill Amount	Bank Name	Chq. No. & Date	Amount
233 dtd 14.09.2019	4,52,260.00	ICICI BANK LTD	119694 dtd 25.01.2020	4,52,260.00
259 dtd 24.09.2019	9,48,720.00	ICICI BANK LTD	119695 dtd 05.02.2020 119696 dtd 02.03.2020 119697 dtd 20.03.2020	3,00,000.00 3,20,000.00 3,28,720.00
272 dtd 03.10.2019	14,23,080.00	ICICI BANK LTD	119698 dtd 10.04.2020 119699 dtd 30.04.2020 119700 dtd 15.05.2020 119701 dtd 30.05.2020	3,50,000.00 3,60,000.00 3,50,000.00 3,63,080.00
294 dated 11.10.2019	9,69,960.00	ICICI BANK LTD	119702 dtd 15.06.2020 119703 dtd 30.06.2020 119704 dtd 15.07.2020	3,20,000.00 3,30,000.00 3,19,960.00
316 dtd 19.10.2019	9,11,904.00	ICICI BANK LTD	119705 dtd 30.07.2020 119706 dtd 14.08.2020 119707 dtd 30.08.2020	3,00,000.00 3,10,000.00 3,01,904.00
316 dtd 19.10.2019	6,12,656.00	ICICI BANK LTD	119708 dtd 15.09.2020 119709 dtd 30.09.2020	3,00,000.00 3,12,656.00
TOTAL	53,18,580.00			

8. After hearing the Ld. Counsels of both parties and a careful perusal of the records produced before us. The moot question that begs for an answer is whether the date of filing of petition is to be treated from the filing of the original petition or after removal of the objections/defects, whereas it is argued by the Applicant that the original petition was filed on 12.03.2020. It is observed from the NCLT website that the petition was re-filed on 12.01.2021. The screenshot of the website is reproduced overleaf, for an immediate reference:

SR. No	Case No	Diary No	Main Case Diary No	Main Case No	Party Details	Filing Date	Registration Date
1	C.P. (IB)66(CH)2021	0404114000622021			OSWAL MINERALS LIMITED VS ARK ENGINEERING PRIVATE LIMITED	12/01/2021	26/04/2021

9. Since the present petition is filed on 12.01.2021 after removing the defects, therefore, in view of the authority in ***Prafulla Purushottamrao Gadge vs. Narayan Mangal and Anr. (supra)***, the date of filing of the present petition is to be treated as 12.01.2021 instead of 12.03.2020, whereas the threshold limit has been increased from Rs. One Lakh to Rs. One Crore, vide Notification dated 24.03.2020.
10. The alleged claim of the Operational Creditor is for Rs. 54,99,006/- only, which is clearly far below the threshold limit of Rs. One crore, as prescribed under Section 4 of IBC.
11. In light of the discussion foregoing, the present petition is not maintainable. Hence, the petition ***CP (IB) No. 66/Chd/Pb/2021 is dismissed.*** However, the Operational Creditor is at liberty to have recourse to civil remedies

Sd/-

(L. N. Gupta)
Member (Technical)

July 01, 2024
 ASG

Sd/-

(Harnam Singh Thakur)
Member (Judicial)