

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-V

(IB) 912 (ND)/2020

IN THE MATTER OF:

M/S TECHNICO STRIPS & TUBES PRIVATE LIMITED

REGD OFFICE: 103, PARTAP BHAWAN,

BHADURSHAH ZAFAR MARG,

NEW DELHI 110002 APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S EMKAY AUTOMOBILE INDUSTRIES LIMITED,

REGD OFFICE: W-10/14,

WESTERN AVENUE SAINIK FARMS,

NEW DELHI PIN 110062 ...RESPONDENT/CORPORATE DEBTOR

SECTION: U/S 9 of IBC, 2016

Order delivered on: 24.11.2020

CORAM:

MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

MR. K.K. VOHRA, MEMBER (TECHNICAL)

**For the Applicant/Operational Creditor: Dr. Rajesh Thukral,
Mr. Rajesh Loomba**

For the Respondent/Corporate Debtor:

ORDER

AS PER MR. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016, (hereinafter referred to as the "Code"), praying for initiation of Corporate Insolvency



Resolution Process of the Respondent/Corporate Debtor on grounds of its inability to liquidate its operational debt.

2. The facts mentioned in the application in brief are as follows:
 - i. As per averments made in the petition, the Corporate Debtor M/S Emkay Automobiles Industries Limited, is a company registered under the Companies Act, 1956 (now Act of 2013) and is operating from its 6 Units located all over India and is engaged in manufacturing of parts and accessories for motor vehicles and their engines and other automotive parts and accessories.
 - ii. The applicant M/S Technico Strips & Tubes Private Limited is also a company registered under the Companies Act, 1956 (now Act of 2013) and is operating from 2nd Mile Stone, G.T. Road, Doraha, Ludhiana, Punjab and is engaged in the business of manufacturing and supplying of ERW/CEW pipes & tubes, etc. The applicant has been dealing with the Corporate Debtor on the basis of various orders placed by its Gurgaon Unit and Pantnagar unit from time to time for the supply of goods (CEW/ERW tubes).
 - iii. That the Corporate Debtor and the Applicant had a business arrangement wherein various purchase orders were raised by Corporate Debtor and accordingly, the Applicant supplied goods (CEW/ERW tubes) to the Corporate Debtor. The invoices were raised by the Applicant on the Corporate Debtor on the terms and conditions mutually agreed upon between the Applicant and the Corporate Debtor. There has been a current and running account between the applicant and the Corporate Debtor.
 - iv. Defaults occurred on the part of the Corporate Debtor on various dates when the amounts due under the Invoices were not paid or partially paid by the Corporate Debtor and an amount of INR 3,72,51,640/- had become outstanding



and payable to the applicant as per the books of accounts of the applicant. The last Invoice was raised on Gurgaon Unit and Pantnagar unit of the Corporate Debtor on 19.09.2019 and on 13.03.2020 respectively.

- v. That many requests were made by the applicant to the Corporate Debtor but they did not make the payment and continued to use the money realized by them for their own use and to the disadvantage of the applicant.
- vi. On 07.07.2020 notice of demand was sent in terms of section 8 of the Insolvency and Bankruptcy Code, 2016 read with rule 5 (1) (a) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 3 and Form 4 prescribed thereunder along with the copies of invoices and other documents relied upon by the applicant company demanding payment of the outstanding amount of Rs. 3,72,51,640/- together with interest @ 10.6% pa. as per Annexure-3 & Annexure-3A amounting to Rs. 21,13,963/-. The said Notice was dispatched by speed post at the registered office of the Corporate Debtor as well as on the email address as per the company master data. The same was duly served on the Corporate Debtor on 14.07.2020.
- vii. That, after the service of demand notice the Corporate Debtor has transferred Rs. 12,02,047.5/ and Rs. 5,42,222.89 in the account of applicant on 31.07.2020 and on 03.08.2020 through NEFT. But the Corporate Debtor has not cleared the entire default amount of Rs. 3,72,51,640/- and interest thereon and has also not demonstrated any pre-existing dispute. After payment of Rs. 17,44,270.24, an amount of Rs. 355,07,369.76 plus interest thereon continues to be in default.
- viii. Thus, after service of the notice, apart from payment of Rs. 17,44,270.24 the Corporate Debtor has neither made balance payment nor served any notice in respect of any



dispute within 10 days or thereafter till the date of filing of the present application as provided in section 8 of the code.

- ix. Hence, the applicant has filed the present application under the Code for initiation of corporate insolvency resolution process.
3. We have heard the Ld. Counsel for the applicant.
4. Ld. Counsel for the applicant in course of arguments submitted that although the demand notice was issued on 07.07.2020 and the same was delivered on 14.07.2020 but the default occurred much before the sending of the demand notice.
5. He further submitted that as per the invoice after 76 days from the date of invoice the amount become due and payable.
6. He further submitted that the first invoice was issued on 18.06.2019 and the last invoice was issued on 13.03.2020.
7. He further submitted that of course the applicant has also enclosed the computation of default and calculation of interest which is available at page 159 of the paper book.
8. He further submitted that of course, the part payment has been made and even after the delivery of demand notice, the Corporate Debtor has paid Rs. 1202047.5/- and Rs. 542222.89/- in the account of the applicant with Yes Bank on 31.07.2020 and 03.08.2020 through NEFT but the Corporate Debtor has not cleared the entire amount.
9. He further submitted that since even before the insertion of Section 10A of the IBC, there was a default, therefore, the present application is maintainable.
10. In the light of the submissions raised on behalf of the petitioner, when we have gone through the averment made in the application then we notice that the applicant in part IV of the application mentioned that total amount of debt together with interest i.e. Rs. 39365603/- and it is further mentioned that after the delivery of the demand notice, the Corporate Debtor has paid Rs. 1744270/-, so, the defaulted amount is of Rs. 35507370/-



together with interest. We further notice that the applicant has enclosed the invoices on the basis of which, the applicant has claimed the default and the last invoice which is enclosed at page 156 of the paper book is of dated 13.03.2020 and as per the averment made in the application this amount became due and payable after 76 days and we further notice that apart from this, there was other invoices also, of course those invoices from 18.06.2019 but nowhere it is mentioned in the application that the amount which the applicant has received against the outstanding dues is in respect of a particular invoice rather the payment made by the Corporate Debtor was not against the particular invoice but rather it is a lump sum amount paid by the Corporate Debtor against the total outstanding dues and as we have already noticed that the last invoice was of dated 13.03.2020 and it became due and payable after 76 days, which is much after 25.03.2020, therefore, in our considered view, in view of the amendment made in the IBC by which Section 10A is inserted and which is effective from 25.03.2020, the present application is barred under Section 10A of the IBC.

11. Therefore, at this juncture, we would like to refer Section 10A of the IBC and the same is quoted below: -

“10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified² in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to



any default committed under the said sections before 25th March, 2020.”

12. Mere plain reading of the provision shows that no application for initiation of CIRP of a Corporate Debtor shall be filed, for any default arising on or after 25.03.2020 and herein the case in hand, the default has occurred after 25.03.2020, therefore, in our considered view, the present application is barred under Section 10A of the IBC.
13. For the reasons discussed above, we have no option but to dismiss the application at this stage. **Accordingly, the present application stands dismissed.**
14. However, the applicant is at liberty to file a fresh application in accordance with the provisions of law if any relaxation is made under Section 10A of the IBC.

Sd/-

K. K. VOHRA

Member (T)

Sd/-

ABNI RANJAN KUMAR SINHA

Member (J)