

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

CP (IB) No. 38/Chd/Pb/2023

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

In the matter of:

GRI Towers India Private Limited
having its registered office at
GAT No.355, A/P Majale Kolhapur MH 416109

...Petitioner-Operational Creditor

Vs.

Inox Wind Limited
having its registered office at
Plot No.1, Khasra Nos.264 to 267 Industrial Area
Village Basal UNA, HP 174303
CIN No. L31901HP2009PLC031083

...Respondent-Corporate Debtor

Judgement delivered on: 22.05.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : Mr. Rishab Gupta, Advocate, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by Authorised Signatory Mr. Ramesh, of **GRI Towers India Private Limited**, (for brevity

‘Operational Creditor’ / ‘Petitioner’), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Inox Wind Limited (for brevity ‘Corporate Debtor’ / ‘Respondent’)**).

2. The Corporate Debtor, namely, **Inox Wind Limited**, is a Company incorporated on 09.04.2009 under the provisions of Companies Act, 1956 with CIN No. L31901HP2009PLC031083 with its registered office at having its registered office at Plot No.1, Khasra Nos.264 to 267 Industrial Area, Village Basal UNA, HP 174303. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure-B.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is a company engaged in trade and service relating to business of providing equipment and manpower as required by corporate debtor and illustrated in three purchase orders (1) No.510002464 dated 23.02.2013, (2) No.5100003533 dated 23.10.2013 and (3) No.5100013393. The during the stage-i of the works performed post the grant of purchase order No.1 and 2, the operational creditor commenced work and raised 65 invoices on different dates from 31.10.2013 to 29.03.2014 totaling amount to Rs.3,61,40,025/-. The said invoices were duly communicated and accounted for undisputed by the corporate debtor. Furthermore, against the invoices raised, the operational creditor received a sum of Rs.2,88,84,623/- till 03.06.2014 as payment on the first invoiced first paid basis, leaving a sum of Rs.72,55,402/- attributable to invoices raised during the period 09.03.2014 to 29.03.2014. Even after the lapse of two years from the due date, no payment was received from the corporate debtor and the operational creditor issued

termination notice dated 20.10.2016 along with statement and demand against which the operational creditor has till date not filed any rebuttal.

3.1 On the assurance of the corporate debtor for clearing the past dues, the operational creditor issued new PO No.5100013393 dated 28.08.2017 in stage-II for which three invoices amounting to total of Rs.21,91,122/- were raised, but the corporate debtor again miserably failed to make any payment for purchase order dated 28.08.2017. Failure to discharge the dues timely made the operational creditor to file suit No.67 of 2017 dated 03.10.2017 for recovery of the said amount under Order 7 Rule 1 CPC 1908, before the Civil Judge, Senior Division, Lehalkaranji. However, the said suit was withdrawn due to oversight of arbitration clause vide order dated 18.07.2022.

3.2 Thereafter, the operational creditor served the corporate debtor with notice under Section 8 of IBC, 2016 dated 27.07.2022 which was duly delivered to corporate debtor on 18.08.2022.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 1,78,78,390/- (Rupees One Crore Seventy Eight Lakhs Seventy Eight Thousand Three Hundred Ninety Only) as on 27.07.2022. The default occurred on 30.04.2015 for stage-I and 23.10.2018 for stage-II. Copies of 65 Invoices of Stage-I (Annexure-G), Copies of invoices dated 22.09.2017 of Stage-II (Annexure H), Computation table (Annexure-J), Bank Statement (Annexure-K) and Board Resolution (Annexure-O) are attached with the main petition.

5. A demand notice in Form 3 is stated to be issued by the operational creditor on 27.07.2022 and the same has been delivered to the

corporate debtor as postal receipt is annexed as Annexure -A and corporate debtor had not replied to demand notice till date nor any objection were received by operational creditor against said notice.

6. We have heard the learned counsel for the petitioner and have perused the records.

7. The first issue for consideration is whether the demand notice in Form 3 dated 27.07.2022 was properly served. The demand notice was served upon respondent-corporate debtor as postal receipt is annexed at Annexure-A of the petition. This application was filed on 04.01.2023 vide Diary No. 03108.

8. The other issue for consideration is whether this application is filed with threshold limit of Rs. One Crore and whether it is within limitation. A demand notice issued dated 27.07.2022 in Form 3 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default 30.04.2015 for stage-I and 23.10.2018 for stage-II. Even if date of default is taken as 28.07.2017 for purchase order Stage-II then also the present petition should have been filed up to 28.08.2020 but petitioner failed to do so. Learned counsel for the petitioner contended that the Civil Suit No.67 of 2017 for recovery of the said amount which was filed on 03.10.2017 has been withdrawn on 18.07.2022. Therefore, the period of limitation would be reckoned from date of withdrawal of the suit and in support of his contention, learned counsel placed reliance upon '**Sesh Nath Singh & Anr. Vs. Baidyabati Sheoraphuli Co-operative Bank Ltd. and anr.**', **Civil Appeal No.9198 of 2019**, decided on 22.03.2021 passed by **Hon'ble Supreme Court of India**, wherein it has been held, "*in any case,*

Section 5 and Section 14 of the Limitation Act are not mutually exclusive. Even in a case where Section 14 does not strictly apply, the principles of Section 14 can be invoked to grant relief to an applicant under Section 5 of the Limitation Act by purposively construing sufficient cause'. It is well settled that omission to refer to the correct section of a statute does not vitiate an order. At the cost of repetition it is reiterated that delay can be condoned irrespective of whether there is any formal application, if there are sufficient materials on record disclosing sufficient cause for the delay."

9. Taking into consideration the facts and circumstances of the present petition, the date of the withdrawal of the civil suit cannot be taken as date for commencement of the limitation period of three years because the same is to be reckoned from the date of default. The authority (supra) in Sesh Nath's case relied upon by learned counsel for the petitioner is not applicable to the case in hand because withdrawal of recovery suit does not amount to 'sufficient cause' as per Section 5 and Section 14 of the Limitation Act, 1963. Moreover, there is no averments that the suit was withdrawn with liberty to file the present petition before NCLT, Chandigarh. Rather, it is seen that said recovery suit was withdrawn on 18.07.2022 with a cost of Rs.5,000/- which was imposed upon the petitioner. Moreover, it is pleaded that the said suit is withdrawn due to oversight of arbitration clause, however, petitioner has not applied for initiation of arbitration proceedings, rather preferred this petition before NCLT, Chandigarh which a clear case of Bench hunting.

10. Similarly, the present petition is not maintainable as principal amount claimed is below threshold limit of one crore i.e. Rs.72,55,402/- for

the Stage-I and Rs.21,91,122/- for Stage-II. Although, learned counsel for the petitioner has claimed interest of 12% p.a. on the said amount but there is no agreement placed on record for the such interest clause and similarly, the copies of invoices annexed in the petition are also silent about the rates of interest and even if it is there, then the same is not signed or agreed upon by the respondent-corporate debtor. Unilateral, covenant, if any, is not binding upon the other party.

11. As a sequel, to the discussion above, the present petition is not maintainable and the same is dismissed in limine, without any order to costs.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

Sd/-

(Harnam Singh Thakur)
Member (Judicial)

May 22 , 2023
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