

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
MUMBAI BENCH – I**

CP (IB) No. 829/MB/2023

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.

SR Sales

... Operational Creditor/Petitioner

Versus

M/s Salawas Metals Private Limited

...Corporate Debtor/Respondent

Order Delivered on: 10.06.2024

Coram:

Hon'ble Member (Judicial) : Justice V.G. Bisht (Retd.)

Hon'ble Member (Technical): Mr. Prabhat Kumar

Appearances:

For the Operational Creditor : Ms. Shikha Bhura, Advocate

For the Corporate Debtor : Mr. Ankul Seth, Advocate

ORDER

Per: Justice V.G. Bisht, Member(Judicial)

1. The present Company Petition is filed by **SR Sales** (hereinafter referred to as “the Operational Creditor”) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 seeking initiation of Corporate Insolvency Resolution Process (“**CIRP**”) against **M/s Salawas Metals Private Limited**, (hereinafter referred to as “the Corporate Debtor”).

Brief facts:

2. The Petitioner submits that the Operational Debt due and payable is Rs.1,11,99,841.10/- (Rupees One Crore Eleven Lakhs Ninety-Nine Thousand Eight Hundred Forty-One and Ten Paisa) which is inclusive of Principal Amount to the tune of Rs.74,25,914/- (Rupees Seventy-Four Lakhs Twenty-Five Thousand Nine Hundred Fourteen only) and interest computed at the rate of 18% per annum to the tune of Rs.37,73,927.10/- (Rupees Thirty-Seven Lakhs Seventy-Three Thousand Nine Hundred Twenty-Seven and Ten Paisa only) by the Corporate Debtor to the Operational Creditor in lieu of the transaction fructified between the parties.
3. It is submitted that SR Sales, through its sole proprietor, Mr. Ajay Mehta/Operational Creditor is *inter alia* engaged in the business of supply of burning fuel, LSHS (Low Sulphur Heavy Stock), etc. The Operational Creditor has supplied the goods to the Corporate Debtor i.e. M/s Salawas Metals Private Limited pursuant to demands raised by the Corporate Debtor. It is submitted that the Corporate Debtor has consumed the said goods. Pursuant thereto, the Operational Creditor has raised invoices upon the Corporate Debtor qua supply of the said goods, which are duly acknowledged by the corporate debtor as also furthered from weigh bridge slip.
4. The Corporate Debtor submits that the amount reflected in the ledger account is acknowledged on behalf of the corporate debtor since the same bears the stamp and signature of the corporate debtor.
5. As per the ledger account of Corporate Debtor maintained by the Operational Creditor, invoices have been raised to the tune of Rs.76,17,642/- (Rupees Seventy-

Six Lakhs Seventeen Thousand Six Hundred Forty-Two only) against which Corporate Debtor has made payments aggregating to Rs.1,91,728/- (Rupees One Lakh Ninety-One Thousand Seven Hundred Twenty Eight only) leaving an outstanding operational debt of Rs.74,25,914/- (Rupees Seventy-Four Lakhs Twenty-Five Thousand Nine Hundred Fourteen only) including interest at the rate of 18% per annum to the tune of Rs.37,73,927.10/- (Rupees Thirty-Seven Lakhs Seventy-Three Thousand Nine Hundred Twenty-Seven and Ten Paisa only) computed in terms of invoices raised. The Operational Creditor last received part payment on 12th May, 2020 and since then, the operational debt is outstanding.

6. Accordingly, the Operational Creditor issued Demand Notice under Section 8 of the Code on 26th December 2022 demanding repayment. However, it is submitted that the Corporate Debtor has not repaid the outstanding amount till date. The Corporate Debtor has replied to the aforesaid Demand Notice vide letter dated 04.12.2022 raising certain disputes.

Submissions advanced by the Corporate Debtor vide Affidavit-in-Reply.

7. At the outset, the Corporate Debtor submits that the present application is not maintainable as the Operational Creditor has already preferred a dispute under the provisions of the Micro, Small and Medium Enterprise Development Act, 2006 (hereinafter referred to as the Act of 2006) before the Micro, Small and Medium Enterprise Suvidha Council, Jaipur (herein after referred to as MSME Council). bearing case number RJ/22/S/RJS/02224 in which the conciliation proceedings failed and the matter was taken up for arbitration under Section 18 of the Act of 2006, which is pending consideration. Before the MSME Council, the counter claim also stands preferred by the Respondent. In addition to this, the Corporate

Debtor submits that two Writ Petitions arising from the aforementioned MSME dispute, are also pending before the Hon'ble High Court of Rajasthan, Principal Seat, Jodhpur bearing Writ Petition number SB Civil Writ Petition No. 10118/2022 and 16476/2022.

8. The Corporate Debtor submits that it was only thereafter, the notice under section 8 of the Code was issued by the applicant on 26.11.2022. Further, it is submitted that the present Petition is filed whilst the proceedings of arbitration are pending before a statutory authority under the Act of 2006. It is further submitted that the Respondent is solvent and is presently maintain good market and product ratio.
9. The Respondent submits that they have duly intimated the Petitioner about the poor quality of Low Sulfur Heavy Stock Burning Oil (hereinafter referred to as LSHS) alongwith the complaints that were received by the consumer/customers of the utensils.
10. The Corporate Debtor submits that in order to attain impartible quality of goods i.e. utensils in the present case, an optimal level of LSHS for making of utensils is required and it is due to the bad quality of LSHS, the requisite temperature was not attained, which resulted in breakage of goods as manufactured by the Respondents. It was immediately thereafter, that on the request of the Respondents the claimant being apprised of the bad quality of fuel supplied, on the very next day i.e. 20.03.2020, the claimant alongwith his accountant visited the factory of the respondents and took the samples of the LSHS and insured to resolve the issue at the earliest. The aforesaid samples were sent to the laboratory for testing and the testing report was received confirming the fact of bad supply of LSHS. That the test was conducted by the "Generation Four Engitech Ltd. (ISO 9001-2015)".

11. The Respondent submits that only after the utilization of the goods that the dispute between the present parties arose and as such, the implication of Input Tax Credit could not be joined with the quality of goods. Further, it is argued that the present issue as to the quality of goods is under the examination before the MSME Suvidha Council. It is submitted that the invoices to the Sr. No.1 to 8 stands duly paid and to that extent, the amount already stands credited to the Operational Creditor, the details list of the cheque issued to the operational creditor is annexed herewith and marked as Exhibit-"J". Invoices from Sr. No.9 to 11 i.e. invoices number 0431, 0475 and 011 are against the LSHS supplied for which the quality stands disputed and has resulted into the loss of business to the Respondents.

Submissions advanced by the Petitioner vide Affidavit-in-Rejoinder:

12. The Operational Creditor submits that the defences raised by the Corporate Debtor are nothing but an afterthought.
13. Further, the Operational Creditor states that the lab test reports are false, fabricated. The Operational Creditor contends that the test reports attached to the reply lack the names and signatures of the individuals responsible for taking or collecting samples, nor do they specify the details of the lot from which the samples were obtained. Consequently, the Operational Creditor states that there is no indication that the samples belong to the lot or goods supplied by the Operational Creditor. It is pertinent to note that no joint sampling was called for or performed.
14. Moreover, it is stated that the payments and/or cheques by the Corporate Debtor are against the prior dues/ running of the Corporate Debtor. The Operational Creditor states that the payments made by the Corporate Debtor pertain to the running account, there were outstanding dues in the ledger balance before the

period in question. Therefore, the amounts paid by the Corporate Debtor are to be adjusted towards the previous outstanding dues as matter of running account.

Findings

15. We have heard the submissions of both sides and perused the records.
16. At the outset, the Corporate Debtor submits that there exists a pre-existing dispute between the parties and the Corporate Debtor submits that it is a solvent company. It is submitted that the Operational Creditor has filed appropriate proceedings before the MSME Tribunal and has also filed Writ Petitions before the Hon'ble High Court of Rajasthan. The said proceedings were instituted by the Petitioner herein before the issuance of Demand Notice under Section 8 of the Code. Upon perusal of records, we note that the aforesaid submissions advanced by the Corporate Debtor are substantiated. The said Writ Petitions were filed before the Hon'ble High Court of Rajasthan on 15.07.2022 whereas the demand notice was issued on 26.11.2022. On this ground alone, the present Petition *ex-facie* warrants dismissal as there clearly exists a dispute between the parties.
17. Since, the Present Petition is liable to dismissed on the ground of pre-existing dispute, we need not delve into the contentions raised by the Operational Creditor herein.
18. In view of the above, **CP(IB) No. 829 of 2023 is dismissed.**

Sd/-

PRABHAT KUMAR

Member (Technical)

10.06.2024

Sd/-

JUSTICE V.G. BISHT

Member (Judicial)