

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT - II**

C.P. (IB) 848/MB/2023

Under section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

M/s. LUNKAD ALUMINIUM LIMITED
Represented by its whole time-Director, Mr. Saijal
Surendra Lunkad

Having its registered office address at 1st
Floor, Lunkad Tower's 63 Jilla Peth,
Jalgaon 425001

..... Petitioner/ Operational Creditor

Versus

**M/s. ELECTROPATH SERVICES
(INDIA) PRIVATE LIMITED**

Having its address at Yogeshwari Wasahat,
Shepwadi Parli Road,
Ambajogai 431517

..... Respondent/Corporate Debtor

Order Delivered on :- 24/04/2024

Coram:

Mr. Anil Raj Chellan
Member (Technical)

Mr. Kuldip Kumar Kareer
Member (Judicial)

Appearances:

For the Operational Creditor : CS, Praveen Tiwari

For the Corporate Debtor : Adv. Apoorva Kulkarni

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") by **M/s. Lunkad Aluminium Limited** (hereinafter called Operational Creditor) praying inter-alia for initiation of Corporate Insolvency Resolution Process (CIRP) against **M/s Electropath Services (India) Private Limited** (hereinafter called Corporate Debtor) by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called " the Code") for resolution of an unresolved Operational Debt of Rs. 8,79,32,274/- (Rupees Eight Crore Seventy-Nine Lakh Thirty Two Thousand Two Hundred and Seventy Four Only)

The submissions of the Operational Creditor are as follows:

2. The debt aroused from the supply of various size of conductors by the operational creditor to the Corporate Debtor.
3. The Total amount of debt: Rs. 8,79,32,274/- (Rupees Eight Crore Seventy-Nine lakh Thirty Two thousand Two hundred and Seventy Four Only) bifurcated as below:

Principal: Rs. 3,38,08,791/- (Rupees Three Crore Thirty Eight lakh eight thousand seven hundred and ninety One Only) Interest: Rs. 5,41,23,483 /- (Rupees Five Crore Forty One lakh Twenty Three thousand Four Hundred and eighty Three) (Interest calculated @18% p.a. since the date of default).

4. It is submitted that the various email communications have taken place which shows that the Corporate Debtor has acknowledged the debt.
5. It is further submitted that the Corporate Debtor has released Rs. 92,00,000/- on 15/04/2023 against some part of the total outstanding amount and interest. Hence the present Petition.

Reply filed on behalf of the Corporate Debtor:-

6. In reply, the Corporate Debtor has denied all allegations and/ or contentions and/or submissions made by the Petitioner in the Petition which are inconsistent with and/or contrary to what has been stated herein. Further, nothing shall be deemed to have been admitted for the reasons of non-traverse.
7. It is submitted that the present Petition is not maintainable as the date of default stated in Part IV of the Petition as '18 August 2020' defeats the Petition itself. The said Petition ought to have never been filed by the Petitioner and this Tribunal ought to have been rejected at the time of issuance of court notice as this Petition is barred under Section 10A of the Insolvency and Bankruptcy Code, 2016.

8. It is further submitted that the present Petition filed by the Petitioner is not maintainable as the alleged claim does not meet the threshold of Rs. 1,00,00,000/- (Rupees One Crore Only) as required under IBC and therefore, on this ground alone, the present company petition deserves to be dismissed with costs.
9. It is submitted that the date of default, as stated in Part IV of the present Company Petition is 18 August 2020, which clearly falls under the period as envisaged under Section 10A of IBC which categorically states that no Petition for Corporate Insolvency Resolution Process can be proceeded with when the default has taken place on or after 25 March 2020 for a period of six months or such further period, no exceeding one year from such date, as may be notified ("10A period").
10. It is further submitted that the said Company Petition, the Operational Creditor, to prove the alleged default, has brought on record purported ledger accounts / Invoices from 25 July 2017 to 04 July 2020 annexed to the Petition. The purported ledger accounts from 25 July 2017 to 04 July 2020 makes a mention of purported invoices starting from 25 July 2017 to 04 July 2020. It is submitted that the purported invoices issued during 25 July 2017 to 04 July 2020 are barred by limitation and cannot be considered to calculate the default.
11. It is submitted that the purported invoices issued during 25 July 2017 to 04 July 2020 are not within limitation. However, the same does not meet the threshold of Rs. 1,00,00,000/- (Rupees One Crore Only) prescribed under Insolvency and Bankruptcy Code 2016 ('Code') and, therefore, the Captioned Petition deserves to be dismissed on this sole ground.

12. It is further submitted that the Petitioner has levied 18% at the rate of interest and has claimed Rs. 5,41,23,483/- which is levied by the Petitioner at its own discretion and without any basis in fact and / or law when the principal amount itself is completely time barred and the interest levied is also completely barred and cannot be levied and claimed.
13. It is further submitted that interest amount cannot be clubbed with principal debt to cross-over the threshold limit of Rs. 1,00,00,000/- (Rupees One Crore Only).
14. In the end, the Corporate Debtor has prayed for the dismissal of the Petition.

Analysis and Findings:

15. We have heard the Counsel for the parties and gone through the record.
16. During the course of arguments, Counsel for the Operational Creditor has argued that the Corporate Debtor supplied goods vide invoices which were issued between 25.07.2017 and 04.07.2020. As per the invoices, the payment of invoices was to be made within a period of 45 days, failing which interest @ 1.5 % per month is required to be paid. Counsel for the Operational Creditor has further pointed out that since the payment was not made by the Corporate Debtor, a demand notice dated 07.06.2023 was issued to the Corporate Debtor but despite the receipt of the demand notice, no payment was made by the Corporate Debtor. Counsel for the Operational Creditor has further argued that there is no pre-existing dispute between the parties and in the given circumstances, the present Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 deserves to be admitted.

17. On the other hand, Counsel for the Corporate Debtor has argued that the present Petition is miserably barred by time. In this regard, it has been pointed that the date of default in this case is 18.08.2020 whereas the present Petition was filed on 07.07.2023 when the claim in respect of most of the invoices have become time barred and, therefore, the present Petition deserves to be dismissed on this ground alone. Counsel for the Corporate Debtor has further contended that some of the invoices are covered under Section 10A period and, therefore, the Petition is liable to be dismissed.
18. We have weighed the contentions raised by the Counsel for the parties and carefully gone through the record.
19. The claim of the Operational Creditor is based upon the invoices and the details of which is being given as under:-

Sr. No.	Invoice Date	Outstanding Amount	Due Date
1.	25.07.2017	1,40,675.40	09-09-2017
2.	26.07.2017	11,44,836.00	10-09-2017
3.	21.08.2017	12,71,214.00	06-10-2017
4.	01.09.2017	16,68,048.00	17-10-2017
5.	04.09.2017	17,53,834.00	20-10-2017
6.	02.10.2017	17,89,824.00	17-11-2017
7.	28.11.2017	6,25,518.00	13-01-2018
8.	23.01.2018	23,364.00	10-03-2018
9.	17.03.2018	46,728.00	02-05-2018
10.	09.04.2018	19,25,885.40	25-05-2018
11.	18.04.2018	15,31,238.80	03.06.2018
12.	21.04.2018	9,63,322.50	06.06.2018
13.	21.04.2018	4,97,488.00	06.06.2018
14.	03.05.2018	85,550.00	18.06.2018
15.	10.05.2018	7,47,884.00	25.06.2018
16.	24.05.2018	17,87,700.00	09.07.2018

17.	21.06.2018	28,47,458.00	06.08.2018
18.	02.07.2018	7,46,350.00	17.08.2018
19.	14.12.2018	32,00,750.00	29.01.2019
20.	02.01.2019	2,64,792.00	17.02.2019
21.	26.02.2019	17,77,906.00	13.04.2019
22.	19.03.2019	19,40,569.00	04.05.2019
23.	27.03.2019	16,04,859.00	12.05.2019
24.	14.04.2019	17,99,736.00	30.05.2019
25.	15.04.2019	4,99,016.00	31.05.2019
26.	15.04.2019	6,72,010.00	31.05.2019
27.	02.05.2019	16,80,969.00	17.06.2019
28.	08.05.2019	15,96,894.00	23.06.2019
29.	08.05.2019	70,092.00	23.06.2019
30.	08.05.2019	25,1782.50	23.06.2019
31.	12.06.2019	4,41,320.00	28.07.2019
32.	12.06.2019	3,81,730.00	28.07.2019
33.	06.07.2019	18,79,740.00	21.08.2019
34.	29.07.2019	11,08,020.00	13.09.2019
35.	26.09.2019	17,55,840.00	11.11.2019
36.	02.12.2019	4,21,802.80	17.01.2020
37.	07.12.2019	92,028.20	22.01.2020
38.	15.01.2020	17,73,540.00	01.03.2020
39.	04.07.2020	1,98,476.00	19.08.2020
	Total	4,30,08,790.70/-	

20. So far as the invoices at serial no. 1 to 16 are concerned, the due date, which is to be treated as the date of default in respect of these invoices fall between 08.09.2017 and 08.07.2018. We have examined these invoices and even if the law laid down by the Hon'ble Supreme Court in the suo motu judgement, whereby the Covid period was ordered to be excluded, is taken into consideration, even then the claim in respect of these invoices are clearly time barred.

21. Similarly, the invoices at serial no. 21 to 38 have also been found to be time barred. In this regard, it is pertinent to point out that the due date in respect of these invoices fall between 12.04.2019 and 29.02.2020 whereas the present Petition was filed on 07.07.2023 and, therefore, if the due date/default of default in respect of these invoices are also taken into consideration, the claim in respect of these invoices, which was required to be filed within the period of three years, had clearly become barred by time when the present Petition was filed on 07.07.2023.
22. So far as the invoices at serial no. 39 dated 04.07.2020 is concerned, the due date of which fall on 18.08.2020, the same is hit by Section 10A of the IB Code, 2016 and the same can also not be taken into consideration.
23. However, the invoices refer to the serial no. 17 to 20 are well within the period of limitation as these invoices were issued between 21.06.2018 and 02.01.2019. The due date/ date of default in respect of these invoices fall between 05.08.2018 to 16.02.2019. If the law laid down by the Hon'ble Supreme Court in suo moto judgement regarding the exclusion of Covid period is taken into consideration, the claim in respect of these invoices are well within the period of limitation, the total amount of these invoices comes to Rs. 70,59,350/-/. Since there is an interest clause in the invoices which states that, in case the payment is not made within 45 days of each invoice, the Corporate Debtor is liable to pay interest @ 1.5% per month, therefore, the amount of interest in respect of these invoices comes to Rs, 57,12,650.60/- . Though the Operational Creditor has calculated compound interest @1.5% per month, the same cannot be allowed considering the fact that the invoices are silent with regard to the fact whether the interest would be calculated on

simple or compound interest basis. Therefore, it would be just and proper to calculate interest only on simple interest rate basis.

24. After taking into account the principal and the interest in respect of the aforesaid invoices issued between 21.06.2018 and 02.01.2019, the total amount comes to Rs. 1,27,72,001/- which is clearly beyond the threshold limit. Therefore, on the basis of the invoices issued between 21.06.2018 and 02.01.2019, the present Petition can be admitted.
25. No other points have been raised on behalf of the Corporate Debtor nor any pre-existing disputes between the parties have been alleged to be in existence by the Respondent nor any material has been brought on record in this regard.
26. As a result of above discussion, we hold the Operational Creditor has been able to prove the existence of operational debt and its default committed by the Corporate Debtor and further that the Petition is well within the period of limitation and there are no pre-existing disputes between the parties. Therefore, the Petition under Section 9 of Insolvency and Bankruptcy Code, 2016 deserves to be admitted and it is ordered accordingly in following terms:-

ORDER

- a. **The above Company Petition No. (IB) 848/(MB)/2023 is hereby admitted** and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against **M/s Electropath Services (India) Private Limited.**

- b. This Bench hereby **appoints Mr. Pramodkumar Ramesh Ladda, Registration No: IBBI/IPA-002/IP-N00694/2018-2019/12148 as the Interim Resolution Professional having his address at 106, B-Wing Sr No. 55, Sukhniwas, 15th August Chowk, Mangalwar Peth ,Pune, Maharashtra ,411011 ; Email id:- csladdaji@gmail.com, Mobile No:- 7972405776** to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 5,00,000/- (Rupees Five Lakhs Only) towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits 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 of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under

the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management

the Corporate Debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

- j. Registry shall send a copy of this order to the concerned Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.

27. **Accordingly, this Petition is admitted.**

28. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-
ANIL RAJ CHELLAN
(MEMBER TECHNICAL)
Sushil

Sd/-
KULDIP KUMAR KAREER
(MEMBER JUDICIAL)