

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

C.P. (I.B) No. 500/MB/2020

Under Section 8 & 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016.

In the matter of **M/s. Supreme & Co. Private Limited**, having its registered office at 53, Justice Chandra Madhav Road, Kolkatta: 700 020.

CIN: U24116WB1978PTC031466.

...Petitioner/ Operational Creditor

V/s.

M/s. Overseas Infrastructure Alliance (India) Private Limited, having its registered office at 501-502,OIA House,470, Cardinal Gracious Road, Andheri (East). Mumbai; 400 099.

CIN: U65920MH1989PTC052900.

...Respondent/Corporate Debtor

Order Reserved on: 16.11.2022

Order Pronounced on: 06.12.2022

Coram: Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Advocate Urmila Chakraborty.

For the Respondent: Advocate Ram Upadhay

Per: Smt. Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company Petition is filed by **M/s. Supreme & Co. Private Limited**, (hereinafter called as "**Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against **M/s. Overseas Infrastructure Alliance (India) Private Limited**, (hereinafter called as "**Corporate Debtor**") by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter called as "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an unresolved Operational Debt of Rs. 29,88,206.20/-.

2. Petitioner's Submissions:

- a. The Corporate Debtor had issued 6 Purchase Orders, from 29.10.2015 to 25.08.2016, to the Petitioner, for supply of certain electrical equipments and components. Further to which, the

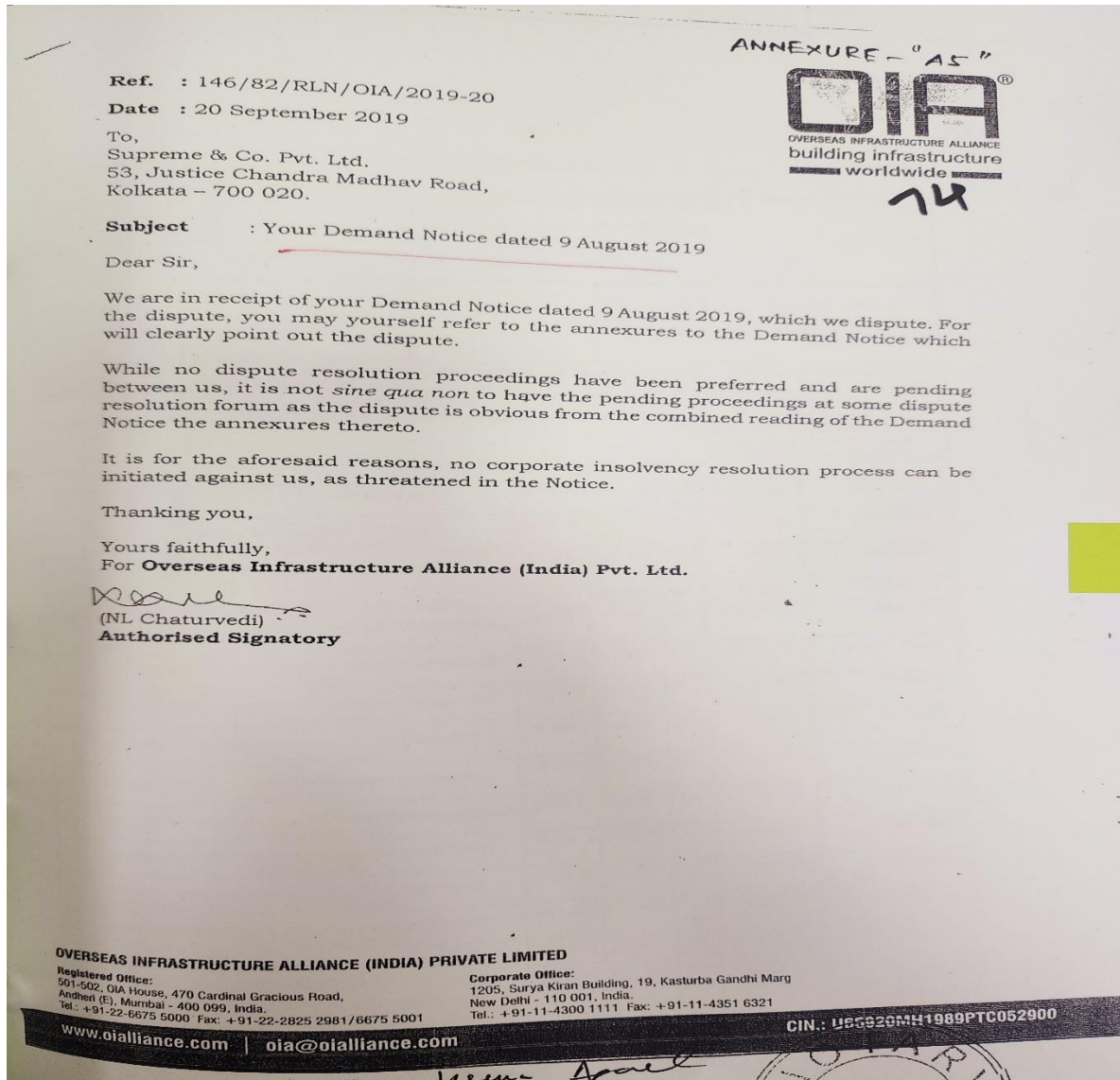
Petitioner delivered the goods to the Corporate Debtor from time to time in pursuance to those Purchase Orders.

- b. Further, the Petitioner issued various invoices to the Corporate Debtor against those supplied goods, from 07.01.2016 to 16.02.2017. The Petitioner further states that, the Corporate Debtor defaulted in the payment of the said invoice amount. The which the Petitioner sent several reminders, vide e-mails, to the Corporate Debtor to make the said payment.
- c. It is pertinent to note that, on 05.07.2019, the parties had adiscussion towards settlement of the outstanding invoice amount of Rs. 19,37,489/-. It was further decided that the cost of earthling rods aggregating to Rs.4,00,000, was to be borne by both the parties equally. This was duly recorded in the Minutes of the meeting and consequently the Corporate Debtor issued a debit note of sum of Rs. 2,00,000/- to the Petitioner. Thus, the outstanding invoiced amount was reduced to a sum of Rs.17,37,489/-. The Corporate Debtor was required to release the balance payment to the Petitioner. However, the Corporate Debtor has failed to honor its commitment to make the balance payment of Rs.17,37,489/- to the Petitioner as per the terms of the agreement. Therefore, the Petitioner states that, the Corporate Debtor's debit note is void and does not require to be honored.

- d. The Petitioner further states that, the Petitioner is entitled for the entire outstanding amount of Rs.19,37,489/- along with the interest calculated thereon @ 18% per annum, aggregating to total outstanding of Rs.29,88,206.20/-.
- e. Pursuant to above, the Petitioner sent several reminders via emails to the Corporate Debtor, to which the Corporate Debtor had responded admitting its liability towards the Petitioner.
- f. Thereafter, the Petitioner issued a Demand notice dated 09.08.2019, calling upon the Corporate Debtor to make the payments of the outstanding amount of Rs. 19,37,489/- within 10 days of the receipts of the notice. The Corporate Debtor accepted its liability but did not make the payment. Hence, this Petition.
- g. Therefore, the Petitioner states that the multiple e-mail correspondence between the parties clearly demonstrates an outstanding amount between the parties. Hence there is an existence of debt and default.

3. Corporate Debtor's Submissions:

The Corporate Debtor had filed a reply to the Demand notice dated 20.09.2019, opposing the admission of the above Company Petition with raising an issue of a pre-existing dispute is reproduced hereunder:



The contentions of Corporate Debtor mentioned in its Affidavit in Reply (“Reply”) are summarized under:

- a. The Corporate Debtor based on its past dealings with the Petitioner, placed the Purchase Order No's. 4500005957 dated 29.10.2015, Order No. 4500005973 dated 09.11.2015 and Order No. 4500006476 (AMD-1) dated 25.08.2016, with regard to the Medium and Low Voltage Line accessories (various sizes & dimensions which are more specifically stated therein).

- b. The Corporate Debtor states that, the materials as ordered vide the Purchase Orders of the Corporate Debtor were entirely different from what was supplied by the Petitioner. In addition there was delay on part of the Petitioner, in supplying the goods, thereby causing delay in the execution of the project.
- c. Thereafter, the Corporate Debtor had to order for a replacement of the accessories, delivery of which was further delayed by the Petitioner. The shipment had to be broken in three parts which added to the cost of transportation, which was borne by the Corporate Debtor. Meanwhile, the quality of the material which was supplied on Site, was also not up to the mark, for which the Corporate Debtor received complaints from the Site. The Corporate Debtor had to purchase the required material for the Site, as per its requirement, which further added to the cost of the Corporate Debtor.
- d. The Corporate Debtor had to bear an additional cost of Rs. 4 Lakh for the delays and because substandard material supplied by the Petitioner.
- e. Further, the Corporate Debtor informed the Petitioner regarding the same and requested to accept a debit note. A meeting was held on 05 July 2017, wherein it was agreed that both the Corporate Debtor and the Petitioner shall equally bear the cost of replacement of the material and it was further decided that the Corporate Debtor shall raise a Debit Note of Rs. 2,00,000/-.

Thereafter, on acceptance of the said Debit Note by the Petitioner, the Corporate Debtor shall release the payment to the Petitioner.

- f. On 05 July 2017, the Corporate Debtor raised a Debit Note of Rs. 2,00,000/-, against the faulty material and delay in shipment. The said Debit Note was received by the Petitioner without any protest.
- g. The Corporate Debtor states that after the raising the Debit Note, the amount to be paid to the Petitioner is Rs. 17,37,489 and not Rs. 19,37,489/- as alleged in the present Company Petition. Hence, in the light of the aforesaid the amount alleged in the present Petition is disputed.
- h. The Corporate Debtor states that, it is an afterthought strategy which is being adopted by the Petitioner for the initiating insolvency proceedings against the Corporate Debtor, ignoring the Debit Note dated 05.07.2017 raised by the Corporate Debtor.
- i. Further, the Petitioner is allegedly claiming interest @ 18% p.a. for the period from 29 October 2015 till 31 October 2019. This is uncalled for and the Corporate Debtor is not liable for paying any such interest to the Petitioner.
- j. The Corporate Debtor states that, it is settled law that IBC is not intended to be a recovery forum and for the recovery of the alleged amount of Rs. 19,37,489/-, the Petitioner could have exercised efficacious remedy which is available to them by first amicably settling the dispute and if the amicable settlement had not

worked, then after 30 days of such mutual consultation could have invoked the arbitration clause for settling the alleged disputes which is mentioned in the Purchase Orders. However, the Petitioner has chosen to approach this Hon'ble Tribunal without exercising the efficacious remedies of initiating the arbitration thereby showcasing the gluttonous nature of the Petitioner who seems to be taking this Tribunal proceedings too leniently.

FINDINGS

4. The Petitioner has annexed certain e-mails to this Company Petition which will clinch the issue of debt and default by the Corporate Debtor. The contents of the emails are reproduced hereinunder for the sake of clarity and appreciation:

- i. **Email dated 21.03.2017 addressed by the Corporate Debtor to the Petitioner with regards to repayment of Ovedue Payment.**

Original Message -----

From: Chandrakant Lokhande

To: Provat

Cc: A Raghuram; Sushil Yadav

; operations@supreme.in ; subhash.commercial@supreme.

in; asis.sales@supreme.in;

tenders@supreme.in; ASISH BANERLEE; Harish Sir Sent:

Tuesday, March 21, 2017 11:40 AM

Subject: RE: OVERDUE PAYMENT (Oversease)

Dear Mr. Provat,

Will release payment on next week. Inform you accordingly.

Thanks and Regards, Chandrakant Lokhande.

ii. **Email dated 27.03.2017 addressed by the Petitioner to the Corporate Debtor with regards to Ovedue Payment.**

From: Provat

To: Chandrakant Lokhande

Cc: A Raghuram ; Sushil Yadav ; operations@supreme.in; subhash.commercial@supreme.in; asis.sales@supreme.in; tenders@supreme.in; ASISH BANERLEE; Harish Sir

Sent: Monday, March 27, 2017 4:26 PM

Subject: Re: OVERDUE PAYMENT (Oversease)

Dear Sir,

Please provide us the current status of payment.

iii. **Email dated 05.04.2017 addressed by the Corporate Debtor to the Petitioner with regards to repayment of Ovedue Payment.**

Original Message -----

From: Chandrakant Lokhande

To: Provat

Cc: A Raghuram; Sushil Yadav

; operations@supreme.in ; subhash.commercial@supreme.

in; asis.sales@supreme.in;

tenders@supreme.in; ASISH BANERLEE; Harish Sir Sent:

Tuesday, March 21, 2017 11:40 AM

Subject: RE: OVERDUE PAYMENT (Oversease)

Dear Sir,

We will release at earliest. Will update you once released.

Thanks and Regards, Chandrakant Lokhande.

- iv. **Email dated 22.04.2017 addressed by the Petitioner to the Corporate Debtor with regards to Ovedue Payment.**

Subhash Mukherjee

To: Chandrakant Lokhande; Provat

Co: A Raghuram ; Sushil Yadav; operations@supreme.in ;

asis. sales@supreme.in ; "Tenders [Supreme & Col'; ASISH

BANERLEE; Kolambekar Harish Sir; Laxman S. Takmoge

; Santosh Vithal Mahadik; Atish

Sent: Saturday, April 22, 2017 2:33 PM

Subject: Re: OVERDUE PAYMENT (Oversease)

Dear Mr. Chandrakant,

With reference to your trailing mal we observed that you

have failed to keep your commitment for payment against

our overdue claim Rs. 18,69,489.00. You are aware of the

facts that you have introduced R.E. Cable of Hyderabad

just to get your urgent materials from us through R.E. Cable, on advance payment against your urgent material keeping your overdue balance unpaid.

The time when we receive advanced payment we were not interested to release materials as it was to be released under your Bond but at that time you have been involved yourself and given us assurance by E-mail dt. 21/03/2017 that the overdue payment would be released within next week which is within the month of March 2017. Based on your assurance and on good faith we had released materials of R.E. Cable on 30/03/2017 but we have not received payment till date.

On our regular follow-up for payment against overdue balance of Rs.18,69,489.00 we got commitment vide your E-mail dt. 05/04/2017 as if you are releasing payment shortly but till now we have not received payment.

Hence we are getting that there are only option open to us to prefer for legal action to recover our Overdue Payment along with Interest as applicable for Industries under MSME Sector, which is @ monthly computing rate of 10%.

Regards : Subhash Mukherjee, Chief Manager - Commercial

v. **Email dated 08.06.2017 addressed by the Petitioner to the Corporate Debtor with regards to Ovedue Payment.**

From: *Provata mail to :commercial@supreme.in]*

Sent: *Thursday, June 08, 2017 12:33 PM*

To: *Provata; Subhash Mukherjee; Chandrakant Lokhande*

Co: A Raghuram; Sushil Yadav; operations@supreme.in;

Asis.sales@supreme.in; "Tenders (Supreme & Col'; ASISH

BANERLEE; sarish Sir, Laxman S. Takmoge; Santosh

Vithal Mahadik; Atish Kolambekar

Subject: *Re: OVERDUE PAYMENT (Oversease)*

REMINDER - 7

Dear Sir, We will appreciate if you kindly inform that how and when we can realise our long overdue payment of Rs. 18,69,489.00.

Regards: Provata Show, Manager - Commercial

5. After hearing the submissions of both the parties and upon perusing the above documents relied by the Petitioner, this Bench is of the considered opinion that the “**debt and default**” in this case are proved beyond doubt as the Corporate Debtor has acknowledged and assured to repay the overdue amount as per the e-mail dated 21.03.2017.
6. It is pertinent to note that, the issue of the dispute raised by the Corporate Debtor in its reply of the Demand Notice is not maintainable and is without substance.

7. Considering the above facts, we come to conclusion that the nature of Debt is a “**Operational Debt**” as defined under section 5 (21) of the Code. It has also been established that there is a “**Default**” as defined under section 3 (12) of the Code on the part of the Debtor. The two essential qualifications, i.e., existence of ‘**debt**’ and ‘**default**’, for admission of a petition under section 9 of the I&B Code, have been met in this case. Besides, the Company Petition is well within the period of limitation.
8. On-going through the submissions made by the Learned Counsel for the Petitioner and on perusing the documents produced, which are placed on record, it is clear that the Corporate Debtor has defaulted in repayment of debt. Hence, owing to the inability of the Corporate Debtor to pay its dues, this is a fit case to be admitted u/s 9 of the I&B Code.
9. As a consequence, keeping the aforesaid facts in mind, it is found that the Petitioner has not received the outstanding debt from the Corporate Debtor and that the formalities as prescribed under the Code have been completed by the Petitioner, we are of the conscientious view that this Petition deserves ‘**Admission**’.

Accordingly, the above Company Petition is admitted by passing the following:

ORDER

- a. The above **Company Petition No. 500/MB/2020** is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is

ordered against **M/s. Overseas Infrastructure Alliance (India) Private Limited.**

- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Mr. Harish Kant Kaushik**, Insolvency Professional, Registration No: **IBBI/IPA-001/IPP01469/2018-2019/12340**, e-mail id: harishkant2007@gmail.com, Contact Info: 9819799455 as the Interim Resolution Professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs. 2 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order. The IRP shall spend the above amount only towards expenses and not towards his fee till his fee is decided by COC.
- 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 or 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 of 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 Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor. Accordingly, this Petition is admitted.
- k. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-

ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-

H.V. SUBBA RAO
MEMBER (JUDICIAL)