

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V

C.P. (I.B) No. 1115/MB/2022

Under Section 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 Flowjet Valves Private Limited

Having its registered office address at Plot 519, Road 14, Phase – II, GIDC, Kathwada, Ahmedabad - 382430

.....Petitioner/Operational Creditor

Vs

M/s Cesare Bonetti International Pvt. Ltd.

Through its Director/Managing Director

Having its registered office at ASA-19, Ashirwad Bungalow, Ashwin Nagar, Nr. Grand Ashwin Hotel, Nashik, Maharashtra- 422009.

.....Corporate Debtor

Order Dated: 01.05.2024

Quoram:

Reeta Kohli, Hon'ble Member (Judicial)
Madhu Sinha, Hon'ble Member(Technical)

Appearances:

For the Petitioner/Operational Creditor: Adv. Vijay B. Limbachiya
a/w Adv. Pranav D. Thakkar

For the Corporate Debtor: Adv. Pritesh Burad

ORDER

This Company Petition is filed by **M/s Flowjet Valves Private Limited** (hereinafter referred as “**the Petitioner/Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **M/s Cesare Bonetti International Pvt. Ltd.** (hereinafter called “**Corporate Debtor**”) on **01.10.2022** by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**the Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for committing default in payment of an Operational Debt of **Rs. 1,19,29,233/- (Principal and Interest wherein the Interest component amounts to Rs. 52,78,498/-)**.

Brief Facts and Submissions by the Operational Creditor:-

1. The Operational Creditor is in the business of manufacturing and supplying valves since 2018 and the Corporate Debtor approached the Operational Creditor for manufacture and supply of valves of various dimensions, sizes and quantities (**Hereinafter referred to as “Goods”**).
2. Thereafter, Corporate Debtor used to issue purchase orders and goods were manufactured and supplied to Corporate Debtor on various occasions qua which bills/invoices were raised from 29.12.2018 to 28.01.2020. These invoices were duly acknowledged by the Corporate Debtor and no dispute/objection was raised by the corporate debtor at the time of receiving or utilizing these goods. The Corporate Debtor would make on account payment to the Operational Creditor.

3. The Operational Creditor had repeatedly requested to pay the outstanding amount and because of follow-up emails and calls, the Corporate Debtor had assured through email that he will pay interest on outstanding amount as and when he pays the amount.
4. As no payments were forthcoming with respect to the outstanding amount, the Operational Creditor sent a Demand Notice dated 18.04.2022 in Form 3 under Section 8 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor further submits that the Date of Default as on Demand Notice was 27.02.2020 and the Amount of Default was Rs. 1,19,29,233 /-.
5. The Corporate Debtor in its Reply to the Demand Notice dated 08.06.2022 (after 45 days), alleged that the above stated Demand Notice is not as per statute and the rules therein. Furthermore, according to the Corporate Debtor, he is liable to pay the interest only when he pays the original principal amount. It is a settled principle of law that provisions of the Code are not applicable for debts which are not payable and due on futuristic date. The Corporate Debtor further alleged that the Demand Notice fails to demonstrate how the debt of more than 1 crore is due and pending, and in the absence of acknowledgement by the Operational Creditor to offer payment of simple interest at the bank's lending rate at the relevant time, there is no absolute and enforceable contract about the interest between the parties.
6. Hence, this Petition.

Submissions by the Corporate Debtor:

1. The Ld. Counsel for the Corporate Debtor submitted that it is the admitted case of the Operational Creditor that from the total claim amount of Rs. 1,19,29,233/-, only a sum of Rs. 66,50,736/- is

the principal amount whereas the sum of Rs. 52,78,498/- is towards the interest component. It is the case of the Corporate Debtor that since interest component in an operational debt does not have any time value for money, it hence does not become a *sine qua non* for an Operational Debt. Also the definition of Operational Debt as per the Code does not expressly include "Interest" as in the case of Financial Debt and hence the Operational Creditor is not able to satisfy the minimum threshold amount of 1 crore as provided in Section 4 of the Code. Therefore, on this ground the petition is not maintainable. It is also pertinent to note that interest is included under "terms" only in approximately half of the invoices, that too, at the rate of 24% p.a. which was never agreed upon by the Corporate Debtor. Vide email dated 08.01.2021, the Corporate Debtor had offered to pay interest @ 10% p.a. i.e. Bank cc interest but this offer was never accepted by the Operational Creditor and hence there is a lack of concluded contract regarding interest. It is further alleged by the Corporate debtor that interest @ 10% was not agreed upon by the Operational Creditor as it would then render this petition below threshold limit of 1 crore.

2. The Corporate Debtor further raises the defence of pre-existing dispute qua the interest quantum and applicability and alleges that through its own email dated 08.01.2021, the Operational Creditor for the first time claimed interest on invoices after calculating 60 days credit only. These invoices, in actuality, have been paid by the Corporate debtor and what is even more interesting to note is that the Operational Creditor had increased the rate of interest to 24% p.a. from 10% p.a. as specified in the email.
3. The Corporate Debtor also submitted inconsistency in principal amount from the documents placed on record of this Tribunal by

the Operational Creditor wherein Rs. 66,50,736/- has been claimed as Principal amount as per ledger statement and pleadings of the Operational Creditor and Rs. 73,71,750/- has been claimed as Principal amount as per another ledger account statement. This inconsistency cannot be justified even on the ground of difference in time period as it pertains to principal amount and not interest amount.

4. The Corporate Debtor further alleged that the Operational Creditor had included the invoices from the period March 2020 to September 2020 and as per credit period of 60 days as decided between the parties, the last date of default of such invoices is 28.11.2020 which are barred from consideration by this Hon'ble Tribunal in view of Section 10A of the Code. The inclusion of these invoices is seen in the Ledger Account Statement annexed to this Petition by the Operational Creditor. Furthermore, the invoices placed on record of this Hon'ble Tribunal by the Operational Creditor are not signed by the Operational Creditor itself let alone being acknowledged by the Corporate Debtor. The absence of signatures raises questions about the authenticity and validity of the invoices. This lack of proper documentation also affects the applicability of stipulated interest terms for delayed payments, especially when those terms have not been signed or accepted by the Corporate Debtor.
5. It is also the case of the Corporate Debtor that he had paid Rs. 35,00,000/- to the Operational Creditor on 04/05/2023 and is also ready to pay the principal amount if the books of the two parties are reconciled.

Findings

- It is the case of the Operational Creditor that the Corporate Debtor had failed to make payment pertaining to the invoices dated 27.09.2019, 02.10.2019, 10.10.2019,12.10.2019, 19.10.2019, 22.10.2019, 21.11.2019, 26.12.2019, 17.01.2020, 28.01.2020 and 28.01.2020 qua which total outstanding Principal Amount of invoices is Rs. 66,50,736/- and the total outstanding interest is Rs. 52,78,498/- calculated @ 24% p.a.
- On the other hand, the case of the Corporate Debtor is that above stated interest component does not form part of “Operational Debt” and the interest was never agreed upon between the two parties and resultantly its exclusion will result in this present petition falling below the minimum threshold due to which this petition will become non-maintainable. The Corporate Debtor also contends that the invoices placed on record of this Hon’ble Tribunal by the Operational Creditor, are not signed by either parties, have an interest imposition @ 24% p.a., in fact cannot be deemed to be agreed upon by the Corporate Debtor. It is therefore pertinent to note that in the absence of any signature or certification of either party on the invoices, the interest for delayed payments is not binding on the Corporate Debtor. Furthermore, it is also the case of the Corporate Debtor that invoices pertaining to the period March 2020 to September 2020, have also been included in the claim amount of this petition whereas the Code bars the inclusion of such invoices by virtue of Section 10-A.
- After close perusal of the documents placed on record by both the parties and appreciating the arguments of both the parties, this Hon’ble Tribunal is of the considered view that invoices dated 27.09.2019, 02.10.2019, 10.10.2019,12.10.2019, 19.10.2019, 22.10.2019, 21.11.2019, 26.12.2019, 17.01.2020, 28.01.2020

and 28.01.2020 having Dates of Default ranging from period 26.10.2019 to 27.02.2020, are not covered by applicability of Section 10-A of the Code and are also not barred by limitation.

- However, interest in this case cannot be made binding on the Corporate Debtor as the invoices containing the stipulated interest terms on delayed payments do not bear the signature/ acknowledgement of either parties, particularly, the Corporate Debtor. The above stated invoices placed on record of this Hon'ble Tribunal are merely "True Copies" which shall not be regarded as evidence substantiating binding interest on the Corporate Debtor. Furthermore, the Operational Creditor, vide email dated 08.01.2021 had categorically asked for interest to be charged after 60 days whereas the invoices stipulate a credit period of 30 days. This establishes changing stance on the part of the Operational Creditor which again negates imposition of interest for a definite period.
- As regards the Principal Component, there is no dispute raised from the side of the Corporate Debtor therefore, we come to the conclusion that delivery of goods has actually taken place and debt of Rs. 66,50,736/- has been duly acknowledged.
- However, merely based on the Principal Amount totalling to Rs. 66,50,736/-, this present petition cannot be adjudicated upon by this Hon'ble Tribunal, in view of the fact that its Pecuniary Jurisdiction is not satisfied in terms of Section 4 of the Insolvency and Bankruptcy Code, 2016. Hence, the present petition is **rejected.**

- It is categorically pointed out that any observation made in this Order of this Hon'ble Tribunal does not bar the Operational Creditor from continuing to pursue or invoking other legal remedies available to it before any other appropriate forums.

Sd/-

MADHU SINHA

MEMBER (TECHNICAL)

//VLM//

Sd/-

REETA KOHLI

MEMBER (JUDICIAL)