

S.No.3

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – 1
VC AND PHYSICAL (HYBRID) MODE
ATTENDANCE CUM ORDER SHEET OF THE HEARING HELD ON
15-04-2024 AT 10:30 AM**

CP(IB) No. 171/9/HDB/2023
u/s. 9 of IBC, 2016

IN THE MATTER OF:

M/s. Zenith Metalik Alloys Limited

...Operational Creditor

AND

M/s. Lamco Industries Private Limited

...Corporate Debtor

C O R A M:-

**DR. VENKATA RAMAKRISHNA BADARINATH NANDULA, HON'BLE MEMBER (JUDICIAL)
SH. CHARAN SINGH, HON'BLE MEMBER (TECHNICAL)**

ORDER

Orders pronounced. In the result, **this petition is rejected. No costs.**

Sd/-

MEMBER (T)

Sd/-

MEMBER (J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH – I**

CP (IB) No. 171/9/HDB/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*

Between:

Zenith Metalik Alloys Limited,
Rep by its Chief Financial Officer,
Mr. Anindya Chowdhury,
Registered Office at 133,
Biplabi Rash Behari Basu Road,
Chopra House, 2nd Floor, Kolkata,
West Bengal – 700 001.

...Petitioner/Operational Creditor

Versus

LAMCO Industries Private Limited,
Having its registered office at B-39,
Industrial Estate, Sanathnagar,
Hyderabad, Telangana – 500 018.

...Respondent/Corporate Debtor

DATE OF ORDER: 15.04.2024

CORAM:-

Dr. Venkata Ramakrishna Badarinath Nandula, Hon'ble Member (Judicial)
Shri. Charan Singh, Hon'ble Member (Technical)

PARTIES/COUNSELS APPEARANCE:-

For the Petitioner : Mr. Vikram C Puttapaga, Counsel
For the Respondent : Mr. Omar P Pasha, Counsel

PER: BENCH

ORDER

1. This company petition is filed under Section 9 of Insolvency & Bankruptcy Code, 2016, read with Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon, on the ground that the respondent has defaulted in payment of the operational debt of a sum exceeding rupees one crore.

2. **The averments in the Petition are;**

2.1 It is stated that sometime in March, 2022, the Corporate Debtor requested for most recent quotation/ pricing of raw materials from the Operational Creditor showing its intention to purchase raw materials against which the operational creditor issued pro-forma invoice vide email dated 10th March, 2022 which is annexed as **Annexure-C**. After accepting the terms and conditions mentioned in the proforma invoice, the Corporate Debtor was pleased to place its purchase order on 21 March, 2022 upon

the Operational Creditor being Purchase Order No.- LA/21-22/00717 dated 21.03.2022 which is annexed as **Annexure-D**.

2.2 Upon understanding the contents, terms and conditions put forth by the corporate debtor, operational creditor further negotiated the terms of payment with LAMCO and accordingly it was agreed that payment terms will be considered as 90 days with PDC. The corporate debtor duly accepted such request and believing upon the representations made by the Corporate Debtor and terms and conditions mentioned in the Purchase Order dated 21.03.2022, the Operational Creditor duly issued a letter dated 23rd March, 2022 being Sales Confirmation No. S.C/L.I/MAR/01 confirming the sale of raw materials as required by the Corporate Debtor based on the terms and conditions mentioned in the purchase order dated 21.03.2022 subject to modification of payment terms as 90 days with PDC which is annexed as **Annexure-E**.

2.3 It is stated that the Operational Creditor issued their e-invoices for the supplies made by them to the Corporate Debtor. Against such invoices, PDC's were issued by the Corporate Debtor which were dishonoured on presentation for payment with remarks "Account Closed". Corporate

Debtor vide their email dated November 19, 2022 intimated that they will provide different cheque for the aforesaid amount of different bank. However, despite the commitment being made by the Corporate Debtor, no new cheques were given. Accordingly, a sum of Rs 1,66,24,763/- (Rupees One Crore Sixty-Six Lakhs Seven Hundred and Sixty-Three only) became due and payable against the aforesaid invoices.

2.4 It is stated that due to such non-compliance on part of the Corporate Debtor and after chasing the Corporate Debtor innumerable times, the operational creditor was compelled to send a demand notice to the Corporate Debtor under Section 8 of the Insolvency & Bankruptcy Code, 2016 dated 20th March, 2023 which was received by the Corporate Debtor on 23rd March, 2023.

2.5 It is stated that despite receiving the copy of the said demand notice, the corporate debtor has failed and neglected to pay the same and issued a letter dated 02nd May, 2023 which was received by the Operational Creditor on 06th May, 2023 disputing the claim of the Operational Creditor which is out of the statutory time period of 10 days of receipt of

notice and also, an afterthought of the Corporate Debtor, which shall be disregarded.

3. Reply filed by the Respondent/ Corporate Debtor:

3.1 It is stated that the contents of Para 6 (IV) and 6 (V), it is true that the Corporate Debtor had placed a purchase order dated 21.03.2022, being Reference No. LA/21-22/00717 for the purchase of the following raw materials:

- a. Antimony Trioxide, 10,000 Kgs
- b. Cobalt Oxide, 3000 Kgs
- c. Tin Oxide, 2500 Kgs,
- d. Nickle Oxide, 2500 Kgs

Further, the Corporate Debtor had also placed a purchase order dated 26.10.2021, bearing Reference No. LA/21-22/00404, for the purchase of 12,000 Kgs of Bismuth Trioxide from the Operational Creditor. Copy of the purchase order dated 21.03.2022, being Reference No. LA / 21 - 22/717 is annexed herein as **Annexure 1**.

3.2 In reply to the contents of Para 6 (V) (i), the Corporate Debtor submits that on inspection of the prices stated in the invoice by the Operational Creditor in comparison with the prevailing market prices of the raw

materials, the Corporate Debtor had found that prices quoted by Operational Creditor on which the Corporate Debtor had placed the order in trust were abnormally higher than then prevalent market prices which was done in connivance with the Corporate Debtor's decision making officers. Spreadsheet of the difference in prices of the materials supplied by the Operational Creditor from market rate prices of the materials supplied is annexed at **Annexure-2**.

- 3.3 It is stated that Mr. YSN Murthy, GM of Corporate Debtor was a long-serving employee of the Corporate Debtor and when it was discovered that he was taking kickbacks from the Operational Creditor, his services were terminated from his post around June 2022. In July 2022, the Corporate Debtor then had decided to hire a new General Manager of accounts and finance, Mr Radhakrishna Ravuri, who then started an e-mail conversation with the representatives of the Operational Creditor regarding the supply of the material at inflated prices in comparison with the prevalent market prices set by the London Metal Exchange (LME) prices which are readily available and accepted globally. This was substantiated when the Operational Creditor alongwith its principal supplier from China had visited the factory and offices of the Corporate

Debtor and the Chinese principals had also confirmed the fact that they work on pricing set by the London Metal Exchange (LME) with the Operational Creditor. Copy of mails dated January 23,2023, exchanged between the parties herein are annexed as **Annexure-3**.

3.4 It is stated that the Operational Creditor had charged in excess of the market rates in order to take inordinate advantage of the illegal relationship between the Operational Creditor and the employee of the Corporate Debtor herein. Further, the representatives of the Corporate Debtor had also received knowledge that the Operational Creditor had imported the material Cobalt Oxide at a rate of Rs. 2,079/- per Kg and it have decided to sell the same material to the Corporate Debtor at a rate of Rs. 6400/- per Kg, which is three times the price. The prevailing market rates for the raw materials in comparison with the rates charged by the Operational Creditor are mentioned in the counter at page 7.

3.5 It is stated that in response to Para 6 (V) (ii), the Corporate Debtor had every intention to pay the Operational Creditor for supply of the material. The Corporate Debtor and the Operational Creditor over the period of 10 years, from 2013 to 2023, had engaged in a total quantum of business

worth Rs.2933 lakhs and the Corporate Debtor had paid the Operational Creditor an amount of Rs.2768 lakhs. The Corporate Debtor had issued multiple post-dated cheques to the Operational Creditor in exchange for its services, right from the beginning of the transaction concerning the purchase order dated 21.03.2022, being Reference No. LA/21- 22/00717 and a majority of the cheques issued by the Corporate Debtor were cleared and payments were received by the Operational Creditor and few of the cheques issued were uncleared due to the fact that the Corporate Debtor was shifting its bank account from SBI to HDFC and the same was also notified to the Operational Creditor, one of the Corporate Debtor's employees, Mr. Sesha Sai had contacted the Operational Creditor via e-mail dated 19.11.2022 and had informed that Corporate Debtor. Spreadsheet with the information of the cheques issued to the Operational Creditor by the Corporate Debtor is annexed as **Annexure-4**.

- 3.6 It is stated that the Corporate Debtor's employee had further stated to the Operational Creditor in the same e-mail that the Corporate Debtor would be replacing the cheques drawn on SBI bank with new cheques as soon as possible. However, the Operational Creditor paid no heed to the

Corporate Debtor requests and proceed to deposit the cheques drawn on SBI Bank, due to which they were dishonoured. Copy of the e-mails dated November 5, 2022 and November 19, 2022 are annexed as **Annexure-5**.

3.7 It is stated that in response to Para (VI), it is reiterated that the Corporate Debtor intends to pay an adjusted mutually decided amount to the Operational Creditor and the same has also been stated in the reply notice sent by the Corporate Debtor, however, the Corporate Debtor had only requested the Operational Creditor to revise the rates of the material in accordance with the market rates, however no such revision was effected by the Operational Creditor. Copy of the reply notice dated 02/05/2023 issued by the Corporate Debtor to the Operational Creditor is annexed as **Annexure-6**.

3.8 It is stated that in response to Para (VII), it is stated that there is a clear dispute between the parties herein with regard to rates of the material supplied by the Operational Creditor to the Corporate Debtor. The Corporate Debtor is prepared to pay the adjusted mutually decided amount owed to the Operational Creditor, as per prevailing market rates

and not the inflated rates illegally provided by the Operational Creditor.

In view of the above-mentioned facts, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the present Application.

4. Rejoinder filed by the Petitioner/ Operational Debtor:

4.1 It is stated that the Corporate Debtor has raised frivolous and baseless grounds for defence as a result of complete afterthought which are devoid of any truth or merit whatsoever and deserves to be dismissed by this Tribunal. It is stated that the Corporate Debtor has duly admitted to the issuance of the Purchase Orders and has also duly admitted receipt of the goods from the Operational Creditor.

4.2 It is stated that the Corporate Debtor has further falsely alleged connivance and collusion by one of its ex-employees, namely, Mr. YSM Murthy, for over pricing in the invoices in lieu of purported kickbacks. It is stated that in response to the queries raised by the Corporate Debtor, the Operational Creditor by its email dated 10th March, 2022 duly issued its pro-forma invoice in relation to the goods enquired by the Corporate Debtor.

- 4.3 It is stated that the Operational Creditor duly supplied the goods in accordance with the terms and conditions of the Purchase Orders. It is further stated that the Test Certificate Report with respect to the goods supplied by the Operational Creditor was also duly shared with the Corporate Debtor at the time of delivery of the goods.
- 4.4 It is stated that the first and only dispute raised by the Corporate Debtor does not fall within the definition of existence of dispute under the I & B Code and as such, false and misleading statements are made by the Corporate Debtor in its reply which deserves to be dismissed by this Tribunal.
- 4.5 The Petitioner also given parawise rejoinder to the objection/reply given by the Corporate Debtor. The contents of the paragraph 10 to 14 of the reply filed by the Corporate Debtor are denied in its entirety by the Operational Creditor for being false and misleading. It is stated that the Corporate Debtor has raised frivolous and baseless grounds for defence as a result of complete afterthought which are devoid of any truth or merit whatsoever and deserves to be dismissed by this Hon'ble Tribunal.

4.6 It is stated that the contents of the Paragraph 15 to 17 of the reply filed by the Corporate Debtor are denied in its entirety by the Operational Creditor for being false and misleading. It is expressly denied that there is any pre-existence of dispute whatsoever and as such the Corporate Debtor has resorted to make false depositions on affidavit in order to mislead this Hon'ble Tribunal.

5. While it was so, on 13.03.2024 this Tribunal passed the following order:

- (i) "Learned counsel for the corporate debtor had submitted that corporate debtor has paid the entire principal amount to the operational creditor. Whether upon this Tribunal directed the corporate debtor to file the proof of payment."
- (ii) On 19.03.2024 the corporate debtor filed a memo which is as below;

"It is submitted that the Corporate Debtor has paid the principal amount of Rs.1,66,24,763/- (Rupees One Crore Sixty-Six Lakhs Twenty-Four Thousand Seven Hundred and Sixty-three only) to the Operational Creditor as prayed by it in its petition and the same was noted by this Hon'ble Tribunal in its order dated 13.03.2024.

It is further submitted that the present dispute only pertains to the recovery of the interest amount of Rs.24,05,617/- (Rupees Twenty-Four Lakhs Five Thousand Six Hundred and Seventeen only). However, it is to be noted that the Hon'ble NCLAT in Rohit Motawat v. Madhu Sharma, Proprietor Hind Chem Corporation & Anr. (para 10), ruled that once the principal amount has been paid during the pendency of the proceedings of application under Section 9 of IBC, the application shall not be maintainable towards the recovery of the interest amount. The same principle was also confirmed by the Hon'ble NCLT, Ahmedabad in its recent decision passed in Shah Paper Mills Ltd. V. Shree Rama Newsprint & Papers Ltd. (para 11). Further, it is stated that stipulation for the payment of interest is only mentioned in the

invoices produced by the Operational Creditor, which are unilateral and not signed by the Corporate Debtor herein and the Hon'ble NCLAT, Delhi in S.S.Polymers Vs. Kanodia Technoplast Ltd. (para 4), had held that in the absence of any agreement signed with the consent of both the parties to the transaction, interest amount cannot be claimed. Therefore, in accordance with the above decisions, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the present application, as the principal amount has been paid and the present application is only pending for the recovery of the interest amount.”

6. Therefore, the only point that remains for our consideration is:

Whether the present application under Section 9 of IBC, can survive in so far as the same relates to the interest portion of the claim when the entire principal amount has been paid?

7. We have heard Mr.Vikram C Puttapaga, Learned Counsel for the Petitioner and Mr.Omar P Pasha, Learned Counsel for the Respondent, perused the record and the written submissions. .

8. **Point:**

Whether the present application under Section 9 of IBC, can survive in so far as the same relates to the interest portion of the claim when the entire principal amount has been paid?

- (i) Admittedly, the corporate debtor had paid entire principal amount mentioned in the Company Petition before admission of the above application. Hence the issue was only regarding to interest. In this scenario, an application under Section 9 of the Code is not

maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'.

- (ii) In an identical situation, Hon'ble NCLAT, New Delhi in re "Rohit Motawat V. Madhu Sharma, Proprietor Hind Chem Corporation & Anr, in Comp.App. (AT) (Ins) No.1152 of 2022, held as below:

"10. We have heard counsel for the parties and after perusal of record, are of the considered opinion that the impugned order is patently illegal and deserves to be set aside. The question which has been raised by the Appellant, is hereby answered in favour of the Appellant in view of the decision taken by this Court in case of 'S.S.Polymers' (Supra), 'Permali Wallace Pvt. Ltd.' (Supra) as well as the decision of the 'Hon'ble Karnataka High Court' in the case of 'Jyothi Limited' (Supra). Before parting, we are constrained to observe that the Adjudicating Authority has erred in not looking into the facts that the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'.

- (iii) A coordinate bench, NCLT, Ahmedabad in re "Shah Paper Mills Ltd V. Shree Rama Newsprint & Papers Ltd., in CP (IB) No. 251/NCLT/AHM/2019 with IA.No.123/NCLT/AHM/2023, held as below:

"11. In order to support the said contention, the Corporate Debtor has relied upon the decision in the matter of S.S.Polymers Vs. Kanodia Technoplast Ltd. Company Appeal (AT) (Ins) No. 1227 of 2019 wherein it is observed as follows:-

"3. The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by 'Corporate Debtor' to the

Applicant by 17th January, 2019 through NEFT(s). The said amounts were paid before the admission of the application under section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. In these backgrounds, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

4. The Learned Counsel for the Appellant relied on 'Invoices' to suggest that in 'Invoices', the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one-side invoices raised without any consent of the 'Corporate Debtor'.

5. Admittedly, before the admission of application under section 9 of the I&B Code, the Corporate Debtor paid the total debt. The application was pursued for realization of interest amount, which according to us is against the principle of I & B Code as it should be treated to be an application pursued by applicant with malicious intent (to realize only interest) for any purpose other than the resolution of insolvency, or liquidation of Corporate Debtor and which is barred in view of section 65 of the I&B Code."

The Corporate Debtor has also relied upon the decision in the matter of **Rohit Motawat Vs. Madhu Sharma, proprietor of Hindu Chem Corporation & Ors. Company Appeal (AT) (Ins) No. 1152 of 2022** wherein facts of the matter are similar to that of the present case and view taken in **S.S.Polymers Vs. Kanodia Technoplast Ltd.**, has been confirmed. Further, it was also observed therein that principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for 'resolution of debt' and not for 'recovery'.

Therefore, the present petition squarely applies to the case on hand as in this matter also before the admission of application under section 9 of the I&B Code, the Corporate Debtor paid the total debt. The application is sought to be pursued for realization of interest amount, which according to us is against the principle of I & B Code, and as per the ruling, supra, it should be treated to be an application pursued

by applicant with malicious intent (to realize only interest) for any purpose other than the resolution of insolvency, or liquidation of Corporate Debtor and which is barred in view of section 65 of the I&B Code.

Therefore, the present petition is liable to be rejected.

9. Accordingly, the petition is rejected. No costs.

SD

Charan Singh
Member (Technical)

SD

Dr.Venkata Ramakrishna Badarinath Nandula
Member (Judicial)

Sridher/Pavani