

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 3921/IBC/MB/2019

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

In the matter of

Alpine Stampings

322, Adhyaru Industrial Estate,
Sun Mill Compound, Lower Parel
(West), Mumbai- 400013

.....Operational Creditor

Vs

**Satiata Engineering (I) Private
Limited**

(CIN: U29190MH2008PTC178261)
Registered office at: A-101, Trinity,
Orlem Tank Road, Opp.
Siddhivinayak Towers, Malad (West),
Mumbai-400064

.....Corporate Debtor

Order delivered on: 16.07.2021

Coram:

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

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Applicant: Mr. Rashid Battwalar, Advocate

For the Respondent: Mr. Prasant Aher, Advocate

Per: Shri Chandra Bhan Singh, Member (Technical)

ORDER

1. This Company petition is filed by *Alpine Stampings* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Satiate Engineering (I) Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor for the provided by the petitioner to the Corporate Debtor. This petition has been filed by invoking the provisions of Section 8 and 9 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 48,00,000/- (Rupees Forty Eight Lakhs Only) including interest as on 30.09.2019.
3. The brief facts of the Operational Creditor are as follows:-
 - a. The Operational Creditor submitted that the Demand Notice dated 06.03.2018 issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 raising a demand for a sum of Rs. 63,56,989 towards amount due and payable under the said purchase orders.
 - b. The letter dated 15.03.2018 addressed by the Corporate Debtor to the Applicant admitting a debt due and making payment of Rs. 5,00,000/- towards outstanding amount.

- c. The demand notice dated 28.08.2018 issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 raising a demand for repayment of Rs. 52,92,570/- towards goods supplied to the Corporate Debtor.
- d. As no response was received to the aforesaid Demand Notice, a fresh Demand Notice dated 04.10.2018 was issued calling upon the Corporate Debtor to make immediate payment of Rs. 53,45,033/- inclusive of interest at contractual rate of 15% and 24% failing which the Applicant would adopt legal proceedings against the Corporate Debtor.
- e. Further, the letter dated 12.10.2018 addressed by the Corporate Debtor promising payment of the entire amount by March 2019.
- f. Subsequent thereto, the Applicant issued another Demand Notice dated 26.02.2019 demanding payment of Rs. 23,63,354/- being 50% of the total outstanding of Rs. 47,25,709/- within 15 days from date of receipt of the said notice. The said notice was duly received by the Corporate Debtor on 27.02.2019.
- g. Thereafter, the cheques issued by the Corporate Debtor in favour of the Operational Creditor was deposited with the Bank.
- h. The cheques as deposited were not honoured. In view of the same, the Operational Creditor issued a notice dated 26.08.2019 under the Negotiable Instruments Act. Further, a response dated 11.09.2019 in regard thereto was received by the corporate debtor.

4. The Corporate Debtor has on the contrary, denied all the averments and allegations raised by the Operational Creditor. The contentions of the Corporate Debtor are summed up as follows:

a. The Corporate Debtor submitted in his reply that some of preliminary objections in part-4 of the petition is as follows:

- i. There is an alleged due amount of Rs. 48,00,000/- and the default occurred on 30.09.2019.
- ii. In para-6 of the petition, it is alleged that the contractual rate of interest is at 15% and 24%, imposed by the Applicant upon the respondent.
- iii. In para-6 of the petitioner, demand notice, dated 06.03.2018 under Section-8 of IBC, the demand raised for a sum of Rs. 63,56,989/- by virtue of purchase order.
- iv. Second demand notice, dated 28.08.2018, under Section 8 of IBC, demanding amount of Rs. 52,92,570/-
- v. Third demand notice, dated 04.10.2018, for an amount of Rs. 53,45,033/- along with interest at the rate of 15% and 24%.
- vi. Fourth demand notice, dated 26.02.2019, demanding payment of Rs. 23,63,354/-, being 50% of outstanding of Rs. 47,26,709/-.
- vii. Part-4 of the petition alleges issuance of notice dated 30.05.2019, however no such notice came to be received by the Respondent neither proof of delivery of the said notice, have been produced by the applicant in the petition.

- b. The Corporate Debtor further submitted that the purchase orders, accepted by the Applicant is silent on the rate of interest to be charged, after the stipulated period of 60 days as mentioned in the said order, despite the same, the applicant had accepted the said purchase orders and has received most of the payments towards the delivery of goods to the respondent.
- c. The applicant has raised Invoice bearing No. 227, 238 and Debit Note, dated 15.05.2019, for the interest delayed payment on 01.02.2019, 01.03.2019 and 15.05.2019, before that the applicant has inducted the amount on delayed payment in the actual invoices itself, which has been not noticed by the respondent and has made payments in respect thereof to the applicant.
- d. The respondent company has maintained Ledger Account of the Applicant, since 28.03.2017 up to 16.08.2019, in its regular course of business, wherein the debit and credit statement is maintained date-wise, as per the said ledger amount, the credit amount reflecting in the said ledger is Rs. 23,30,318/- as on 16.08.2019.
- e. The applicant has also issued statutory notice under Section 138 of Negotiable Instrument Act, along with the outstanding details as per Applicant's statement dated 08.08.2018, wherein the Applicant himself has admitted that interest debit notes to the extent of Rs. 12,27,923/- have been raised.
- f. The interest part on delayed payment have not been expressly agreed in between the parties, neither the same have been mentioned and set out in the work order raised by the respondent.
- g. The demand notice dated 30.05.2019 not received by the Respondent, no reply as to existence of dispute under Section

8(2) of IBC could be sent by the Respondent, however all that have been required to be raised as to content of dispute have already been raised by the respondent in its notice dated 11.09.2019 to the applicant.

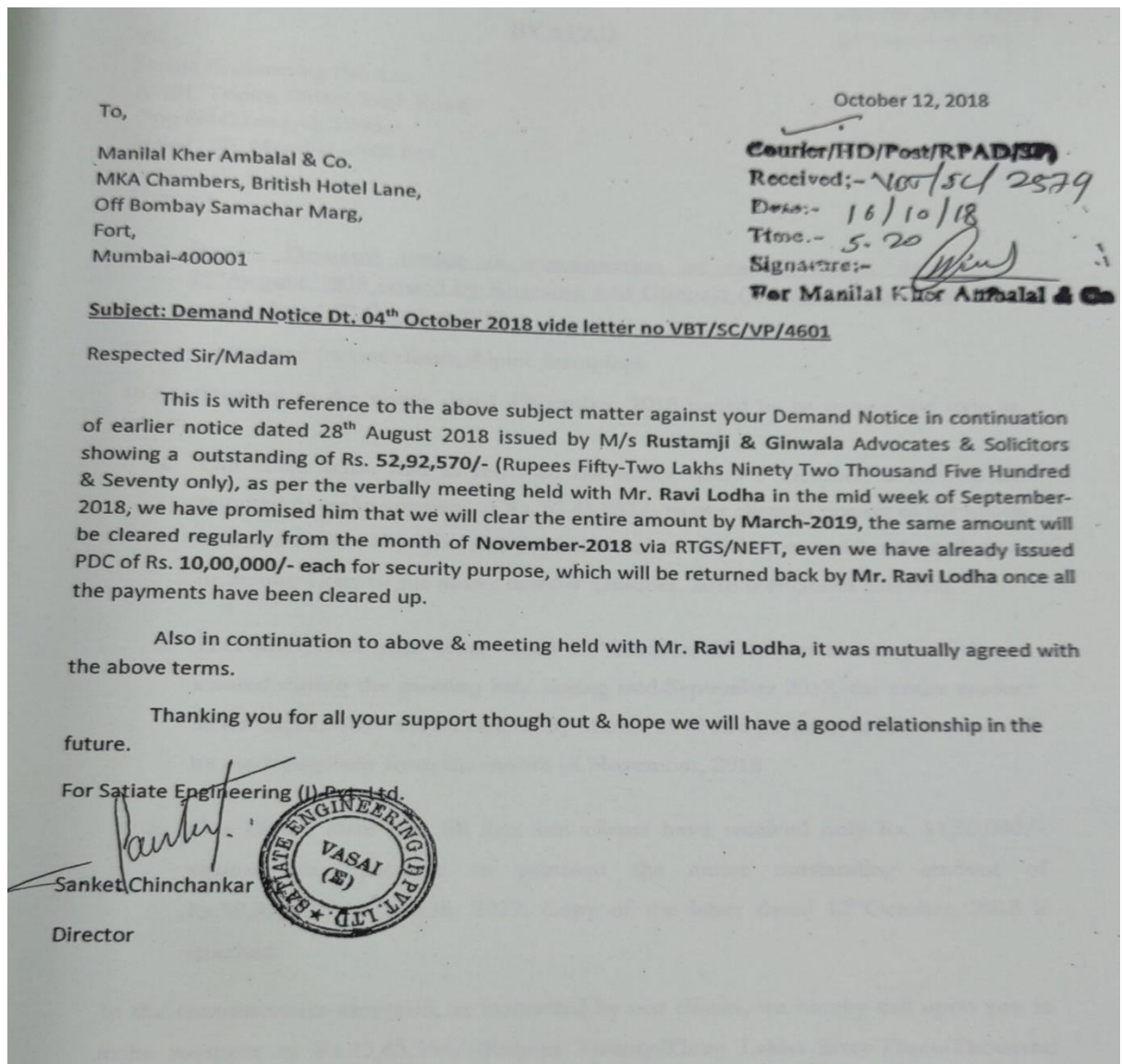
- h. For the reason set out, the respondent submits that the present petition under section 9 of the Act shall be dismissed against respondent in interest of justice.

Findings

1. This application filed by the Petitioner, Alpine Stampings against the respondent/corporate debtor, Satiata Engineering (I) Pvt. Ltd. under Section 9 of the IBC for a total amount of Rs. 48 lakhs including interest as on 30.09.2019. This petition has been filed on 06.11.2019.
2. The petitioner mentions that the Corporate Debtor had purchased the material as per the purchase order dated 25.07.2017 and 16.08.2017. Pursuant to this, this Bench notes that several invoices were raised by the petitioner between July, 2017 to May, 2019 for the material purchased by the respondent. The Bench also notes from the copies of the invoices that has been produced by the petitioner, that the goods purchased by the Corporate Debtor has been received by them and also each of the invoices provide for an interest at the rate of 24% per annum in case of delayed payment. These invoices have been annexed to this petition.
3. Petitioner has also brought on record before the Bench the emails received by them wherein the Corporate Debtor has admitted to the debt and also agreed to make the payment of the dues. The petitioner on 06.03.2018 issued the demand notice calling upon the respondent to make payment of Rs. 63,56,989/-. In response while admitting and acknowledging

the amount payable, the Corporate Debtor mentions that they will make payment in four instalments.

4. This Bench observes that to another demand notice dated 04.10.2018 signed by the petitioner, the respondent vide his reply dated 12.10.2018 promised to clear the outstanding of Rs. 52,92,570/- by March, 2019. The letter from the respondent in this regard is reproduced below:



5. Another demand notice dated 30.05.2019 under Section 8 was sent by the petitioner on 13.05.2019 to pay the

outstanding amount of Rs. 50,63,897/-. In response to this, respondent issued 5 separate cheques of Rs. 5 Lakhs each amount of Rs. 48 lakhs towards discharge of its liability. The copies of the cheques have been annexed by the petitioner in the petition. The Bench notes that all these cheques have bounced and got dishonoured. Thereafter, petitioner filed an application under Section 9 of IBC on 06.11.2019 before NCLT. The Bench notes that the demand notice has been issued in the matter and under Section 8 of IBC and there is a clear admission by the respondent regarding the debt. The petitioner has also submitted the copy of account along with bank certificate of the Corporate Debtor appearing in the books of accounts of the petitioner showing a total debt of about Rs. 48 lakhs as on 14.08.2019.

6. The Bench notes that the Corporate Debtor in his reply has not put forward much cohesive argument but only said that as per his books of accounts total amount due to the petitioner is at all only about 23.3 lakhs. He also mentioned that there were prior disputes between the parties for which he has not put anything in the reply to substantiate the same.
7. The respondent mentioned that the invoices are exaggerated, and no delayed interest is payable dues. However, no supporting documents have been placed before the Bench by the respondent to buttress his argument.
8. The Bench in totality is of the view that there is documentary evidence which shows that there is an operational debt in terms of Section 5(21) of the code has been due for payment to the petitioner. Further the debt is

above Rs. 1 lakh as per requirement of Section 4 of IBC as existing before the notification dated 24.03.2020. Also, there exist no prior dispute in the matter.

9. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

ORDER

- a. The above Company Petition No. (IB) -3921(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Satiata Engineering (I) Pvt.Ltd.
- b. Since the Operational Creditor has not suggested the name of any person 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. Rakesh Kumar Tulsyan** (tulsyanrk@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01144/2018-2019/11970 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 Lakh 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 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.

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

Sd/-

**CHANDRA BHAN SINGH
MEMBER (TECHNICAL)**

Sd/-

**H.V. SUBBA RAO
MEMBER (JUDICIAL)**