

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, MUMBAI
C.P. NO. 850/I&BP/NCLT/MAH/2017**

Coram: B. S.V. Prakash Kumar, Member (Judicial) &
V. Nallasenapathy, Member (Technical)

In the matter of under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016.

Bharat Steel,
52, Kika Street,
1st Floor, Gulalwadi,
Mumbai – 400 004.

... Applicant/ Operational Creditor

Aarti Infra Projects Pvt. Ltd.,
Gandhi Bagh,
Tehsil Police Station Road,
Nagpur – 440 002.

... Corporate Debtor

Counsel for Applicant/Operational Creditor: Dipesh U. Siroya,
Advocate.

Counsel for Corporate Debtor: None Present.

ORDER

(Heard on 15.06.2017

Pronounced on 22.06.2017)

Per V Nallasenapathy, Member (Technical)

1. Bharat Steel, a registered partnership firm, the Operational Creditor herein, filed this Insolvency and Bankruptcy Petition against the Corporate Debtor, Aarti Infra Projects Pvt. Ltd., claiming that a sum of Rs.5,93,588/- with further interest @ 24% per annum, is on default as on 02.11.2016 and hence the proceedings under Insolvency and Bankruptcy Code, 2016 (the Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (the Rules) seeking relief under Section 9 of the Code.

2. The Operational Creditor states that goods were supplied to the Corporate Debtor, based on Purchase Order No. AIPPL/GADNAN/13-

14/PO/108 dated 6th March 2014 and an invoice No. 45 dated 23.04.2014 was raised for a sum of Rs.15,93,578.64. Since there was balance due of Rs.4,93,588/-, the Operational Creditor sent a demand notice under the Code on 15.02.2017 to the Corporate Debtor calling upon to pay the sum of Rs. 4,93,588/-. The said demand notice further reveals that a cheque no.000264 dt 10/10/16 issued by the Corporate Debtor for the said balance due of Rs.4,93,588/- was returned with an endorsement "account closed".

3. The Corporate Debtor who has received the above demand notice on 18.02.17, replied on 01.03.17 through an advocate, denying the issue of any purchase order, receipt of invoice, receipt of goods and also stated that no cheque was issued to the Operational Creditor as claimed.

4. This Adjudicating Authority noticed that the amount claimed in the statutory notice issued under section 8(2) is Rs.4,93,588/- and whereas the amount claimed in the Petition is Rs.5,93,588 with further interest @ 24% p.a . Since the cause of action for filing this petition arises from the demand notice issued under the code, the claim amount in the petition cannot vary from the amount mentioned in the demand notice. Hence, the Petition fails.

5. Further, the Operational Creditor has not enclosed the certificate from the bank as required under Section 9(3)(c) of the Code.

6. Previously, before the issue of statutory notice under the Code, the Operational Creditor issued a notice (page containing part of para 10 and paras 11,12 and 13 are not enclosed with the petition) on 22/10/16, demanding payment stating that cheque no.000264 dt 10/10/16 issued by the Corporate Debtor for Rs. 4,93,588/- drawn on UCO Bank was returned. The Corporate Debtor replied for the said notice stating that they have not placed any Purchase Order, not received any materials and the invoice raised by the Operational Creditor is false. The Corporate Debtor further contended that they have not issued the above said cheque in favour of the Operational Creditor.

7. However, since it has already been held that the claim amount in the Petition being in variance to the claim mentioned in the notice given under Section 8 of the Code, this Petition is dismissed with liberty to the operational creditor to approach appropriate forum for suitable remedy if eligible under any other law in force.

8. The Registry is directed to communicate this order to the Operational Creditor and to the Corporate Debtor.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B. S. V. PRAKASH KUMAR
Member (Judicial)