

**In the National Company Law Tribunal  
Single Bench, Chennai**

**CP/574/(IB)/CB/2017**

Under Section 9 of the IB Code, 2016

**In the matter of**

OPG Metals Private Limited  
V/s  
Pavai Alloys & Steels Private Limited

Order delivered on: 28.09.2017

For the Petitioner/OC: Shri Sandeep Kumar, Advocate  
For the Respondent/CD: Shri P. Jesus Morisravi, Advocate

**Per: K. ANANTHA PADMANABHA SWAMY, MEMBER (J)**

**ORDER**

1. Under Consideration is a Company Petition filed by OPG Metals Private Limited (in short, '**Petitioner/Operational Creditor**') against Pavai Alloys & Steels Private Limited (in short, '**Respondent/Corporate Debtor**') under section 9 of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, '**IB Rules 2016**').
2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.

3. The Petitioner is engaged in the manufacturing of M.S. Billets whereas the Respondent is engaged in the business of steels & alloys.
4. Shri Sandeep Kumar, the learned counsel appearing on behalf of the Petitioner/OC submitted that the Respondent/CD approached the petitioner and expressed its requirements for buying M.S. Billets and accordingly, the petitioner supplied the said products from time to time under various specified invoices. It is also submitted that the Respondent, till the date of the Demand Notice under the IB Code 2016 has accepted and not disputed the quantity and quality of the products supplied against various purchase orders. Subsequently several orders were made by the respondent and the petitioner made deliveries of the same on credit basis.
5. It is further submitted that part payments were received from the respondent towards the outstanding invoices on regular basis but the respondent had suddenly stopped the rest of the outstanding amount and the petitioner didn't receive any further payments from the respondent towards the outstanding invoices from 14.07.2014.
6. It is further submitted that the petitioner, after making several requests for settling the dues with the respondent and having

waited for a long period of time for his legitimate dues, sent a Demand Notice dated 27.03.2017 as per the provisions under section 8 of the IB Code 2016 r/w Rule 5 of the IB Rules 2016 calling upon the respondent to make the payment of the outstanding due of Rs. 2,47,052/- inclusive of interest and claimed to be an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent/CD.

7. Shri P. Jesus Morisravi, the learned counsel appearing on behalf of the Respondent/CD vehemently opposed the contentions raised by the counsel for the petitioner and submitted that the instant petition is false and not maintainable either in law or on facts. He submitted that he does not want to go into the merits of the case but would argue on limitation point and suppression of material fact.
8. He further submitted that the instant petition is time barred as the last invoice was raised 09.10.2013 and already three years of limitation period has crossed. He also submitted that the respondent has replied to the Demand Notice sent by the petitioner but the same was not disclosed before this Adjudicating Authority. He submitted that the petitioner in its Affidavit filed under section 9 (3)(b) of the IB code 2016 has

stated that *the corporate debtor has failed to bring to notice of the operational creditor an existence of a dispute or a pendency of a suit or arbitration proceedings filed before the service of the demand notice. Furthermore, the corporate debtor has failed to repay the unpaid operational debt as specified in the demand notice sent by the operational creditor.* Therefore, the learned counsel for the respondent finally submitted that the petition should be rejected at threshold for suppression of this material fact.

9. After hearing submissions of the counsel for the petitioner and respondent and having perused the record, it is clear that as per submissions of the petitioner's counsel, the date of last invoice was raised on 09.10.2013, therefore the claim is time barred. Further, the petitioner has suppressed the fact of giving reply to the Demand Notice by the respondent which indicates that the affidavit filed by the petitioner is not correct and false. Therefore, it is clear that the petitioner has suppressed the material fact before this Adjudicating Authority. In the circumstances, I am not inclined to admit the instant petition due to suppression of material of material fact.
10. Therefore, the instant petition is rejected.

11. The Registry is also directed to communicate this Order to the  
Operational Creditor and the Corporate Debtor.

  
**K. ANANTHA PADMANABHA SWAMY**  
**Member (J)**

RLS