

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

Present: CHIEF JUSTICE (Retd.) SHRI M.M.KUMAR, HON'BLE PRESIDENT

& SHRI R.VARADHARAJAN, MEMBER (JUDICIAL)

Company Application No. (I.B.)24/PB/2017

In the matter of:

Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor.

In the matter of:

1. M/s.DEEM ROLL-TECH LIMITED

C/3-301 ANUSHRUTI

APARTMENT, OPP., NEW YORK TOWER,
NEAR JAIN MANDIR

S.G.HIGHWAY, THALTEJ AHMEDABAD,
380 054.

..... APPLICANT COMPANY/
OPERATIONAL CREDITOR

VS.

2. M/s.R.L.STEEL & ENERGY LTD.

C-1/A, OPPOSITE ARYA SAMAJ MANDIR,
NIZAMUDDIN EAST,
MATHURA ROAD,
NEW DELHI-110013

..... RESPONDENT/
CORPORATE DEBTOR

Counsel for the Petitioner:

Shri Vinit Trehan, Advocate
Shri Kunal P Vaishnav, Advocate



ORDER

1. The Petitioner has moved this petition before us claiming to be an Operational Creditor as defined under the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC') of the respondent company. The transaction giving rise to filing of this petition is stated to be one of sale of goods to the respondent company of Spherodial Graphite Rolls based on 3 (three) invoices as detailed below:

Invoice No.	Date	Amount
Invoice No. 550	11.10.2011	Rs.9,60,841/-
Invoice No. 785	21.12.2011	Rs.8,43,795/-
Invoice No.885	20.01.2011	Rs.4,50,024/-
	Total	Rs.22,54,660

2. Out of the above said amount of Rs.22,54,660/-, the Petitioner claims that a sum of Rs.16,95,000/- had been paid by the respondent company the last of the payment being made in March 2014 and subsequently no payment is forthcoming of the balance amount in a sum of Rs.5,59,660/- from the respondent.
3. The Petitioner, with a view to recover the balance amount due to it of Rs,5,59,660/- had initiated a Summary Suit under Order XXXVII of CPC in the Court of SR.Civil Judge, Ahmedabad (Rural) A Mirzapur, Ahmedabad I in Summary Suit No.217/2014 and that in the said suit the Learned Judge had decreed ex-parte on 19.10.2016 the suit in favour of the Plaintiff for a sum of Rs.5,59,660 with simple interest at the rate of 8% per annum from the date of filing of the suit till the date of its realization as well as the costs of the suit to the Petitioner.
4. Based on the strength of the Invoices as given, Demand Notice in Form 3 of IBC seems to have been issued on 15.02.2017 under the hand of its counsel on the respondent by e-mail. Immediately after the expiry of 10 days as mandated under IBC to await for notice of dispute or for due payment of the amounts claimed, the Petitioner has filed



the instant petition to let loose the Corporate Insolvency Resolution Process on the respondent on 27.02.2017 as evident from the endorsement made by the Registry of this Tribunal.

5. The above petition was initially moved before us on 08.03.2017 and since we found that no proof had been adduced by the Petitioner for having effected the service of the Notice of Demand dated 15.02.2017 on the respondent other than through e-mail, we directed the Petitioner to serve a notice of the hearing of the Petition fixed on 28.03.2017. Despite service the respondent company as evident from the tracking report has not chosen to appear before us and in the circumstances we are constrained to proceed with the hearing of the petition in the absence of the respondent company.
6. Be that as it may on a perusal of the records available before us, particularly taking into consideration the invoices as detailed above annexed as Annexure – 3 (colly) to the petition coupled with the Copy of the Ledger Account for the year 2011, 2012, 2013 and 2014, all annexed as part of Annexure – 4 (Colly), it is evident that the invoices relates to the period between February 2011 to January 2012 and the non-payment of dues is claimed to be in relation to 3 invoices as detailed above, and the last date of payment as per the ledger account for the period between 1.4.2013 to 31.3.2014 is that of 25.2.2014 where in a sum of Rs.2,00,000/- is shown as received from the respondent and for the year ended 31.3.2014 the closing balance is disclosed to be in a sum of Rs.5,59,660/- as due from the respondent company. For the year ended 31.3.2015 as well as 31.3.2016 the same amount figures as the closing balance due from the respondent as per the ledger accounts certified by the petitioner. The same seems to be the story for the period commencing from 1.04.2016 to 31.03.2017? as found in page number 26 of the petition. It is pertinent to note that none of the ledger accounts produced and the closing balances stated therein have been confirmed by the respondent company nor any other acknowledgements issued by the respondent produced by the petitioner. In view of the above facts we do not have any hesitation in holding that the amount claimed as a 'debt' by the petitioner, as against the

respondent giving a ground for triggering the insolvency process as contemplated under IBC is time barred and hence the petition is liable to fail keeping in view the provisions of IBC as delineated hereunder:-

7. 'Debt' is defined under section 3(11) of IBC to mean a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. 'Claim' is defined under sec 3(6) of IBC as follows:

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;


(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

8. It is also relevant to consider the definition of 'operational debt' and 'operational creditor' which seems to have given rise to the instant petition. Operational debt is defined under sec 5(21) of IBC to mean a claim in respect to the provision of goods or services including employment or a debt in respect of the debt in respect of repayment of dues arising under any law for the time being in force and payable to the central government, state government or any local authority and an operational creditor is defined in sec 5(20) of IBC means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred. As per section 60 of IBC this Tribunal has been designated as adjudicating authority in relation to corporate persons. Further as per clause (c) sub-Section (5) section 60, this tribunal is enjoined with the jurisdiction to entertain or dispose off any question of priorities or any question of law or facts, arising out of or in relation to the insolvency resolution or liquidation proceedings of the corporate debtor or corporate person under this code. Sec 255 of IBC provides that the Companies Act 2013 shall be amended in the manner specified in the eleventh schedule to IBC and a perusal of the eleventh schedule of IBC discloses the amendments made to the Companies Act 2013 of several provisions



though not section 433 of the Act wherein specifically the provisions of the Limitation Act 1963 (36 of 1963) is made applicable and that it shall, as far as may be apply to the proceedings or appeals before the Tribunal or Appellate tribunal as the case may be. Hence in the absence of any specific bar in the IBC to the application of the Limitation Act, 1963 coupled with the provisions of Sec 433 of the Act as contained in the Companies Act 2013 which makes Limitation Act applicable to this Tribunal the debt as claimed by the petitioner is barred by limitation and hence cannot be the basis for invoking IBC before this Tribunal.

9. In relation to the decree obtained from the civil court in relation to the amounts claimed, we are of the considered view that the petitioner is well within its rights to have it executed before the appropriate civil courts meant for execution and that this Tribunal cannot be converted into an executing court of the above said ex parte decree obtained. Further we have categorically held in matter of Annapurna Infrastructure Pvt. Ltd. & Ors. Vs. Soril Infra Resources Ltd. in C.P.No.(IB)-22(PB)/2017 dated 24.03.2017 that a petitioner cannot seek to avail multiple remedies in respect of the same cause of action and thus venture into forum shopping.
10. In view of all the above the petition is dismissed with costs of Rs.25,000/-



(CHIEF JUSTICE M.M.KUMAR)
PRESIDENT



(R.VAKADHARAJAN)
MEMBER(JUDICIAL)

Date:

(u.d.mehta)
31/03/2017