



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

CP(IB)/1454(IBC)/2018

(filed under Section 9 of the Insolvency and Bankruptcy code, 2016)

M/s. ISUZU MOTORS INDIA PVT LTD.,

Having its Registered Office at:

9th Floor, Prestige Centre Court – Office Block,

Vijaya Forum Mall, No: 183,

NSK Salai, Vadapalani,

Chennai – 600 026.

... Operational Creditor

Vs.

M/s. VR RAIL NIRMAN (P) LTD.,

Having its Registered Office at:

F-2, Sri Mahalakshmi Enclave,

No: 75. Gandhi Road,

Choolaimedu, Chennai – 600 094.

... Corporate Debtor

Order Pronounced on 25th September 2024

CORAM

SHRI JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)

SHRI RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)

Present:

For Operational Creditor : Ms. Prapti Mehta, Advocate
M/s. Surana & Surana Advocates

For Corporate Debtor : Mr. C.S Kiran, Advocate
G. Gautham Ram Vittal, Advocate



ORDER

This application has been filed under Section 9 of the Insolvency and Bankruptcy code, 2016 by **Isuzu Motors India Pvt Limited** (hereinafter referred to as 'Operational Creditor') seeking to initiate Corporate Insolvency Resolution Process against **VR Rail Nirman (P) Limited** (hereinafter referred to as 'Corporate Debtor').

2. In Part-I of the application it is averred that the Operational Creditor is an company having its registered office at 9th Floor, Prestige Centre Court – Office Block, Vijaya Forum Mall, No: 183,NSK Salai, Vadapalani, Chennai – 600 026.

3. In Part-II of the application it is stated that the Corporate Debtor is a Company registered under companies Act, 2013 having its registered office at F-2, Sri Mahalakshmi Enclave, No: 75. Gandhi Road, Choolaimedu, Chennai – 600 094.

4. In Part-III of the application the Operational Creditor has not proposed any Insolvency Professional to act as a Resolution Professional.

5. Part-IV of the application states that the total outstanding Debt is Rs.13,70,502/- along with 22% interest per annum. The date of default is not mentioned.



6. It is stated that the Operational Creditor is a manufacturer of automobiles and the Corporate Debtor is a service provider company. The Operational Creditor had entered into an agreement dated 27.08.2015 with the corporate debtor for the period upto 31.12.2015 for the purpose of clearing the scrap from the Operational Creditor's plant is Sri City, Andhra Pradesh. The agreement dated on 27.08.2015 was renewed and the said agreement was extended upto 31.10.2016.

7. As per the above said agreement the Corporate Debtor has to pay for the full sale value of the material before lifting the material from the company premises. Subsequently, the Corporate Debtor has defaulted in making payment for the sale of scrap materials from the premises of the Operational Creditor.

8. It is stated that in the Agreement dated 27.08.2015 has the following key terms and conditions:

a) The contractor shall deposit a security of Rs.20,000/- (Twenty Thousand only) at the time of entering into the contract and such deposit amount shall be returned on expiry of this agreement.

b) material identified as scrap will only be lifted from the scrap yard in presence of our authorized personal and after completion of relevant documentation.



c) All Weighment / Loadings will be done by at the contractor's cost in presence of our security personal.

d) Payment for full sale value of the material will have to be made to the company by DD/ bank transfer/Pay order before lifting the material from the company's Premises.

e) The contractor shall alone be responsible for collection/ transportation/storage and disposal of the scrap outside our premises and during performance of the services envisaged under this Agreement.

9. The corporate debtor has defaulted in making payment of outstanding dues to the operational creditor to the tune of 13,70,502/- along with 22% of interest. The Operational Creditor has stated that several emails have been sent to the Corporate Debtor to repay the operational debt amount. The operational creditors have also submitted the 42 invoices evidencing the delivery of goods made to the Corporate Debtor.

10. *Per Contra*, in the counter filed by the Corporate Debtor it is stated that the invoices relied on by the Operational Creditor are self-serving statements and do not create any liabilities on part of the



corporate debtor. The Operational Creditor in Form-5 has ambiguously stated that the Operational Creditor has allegedly received part payment without disclosing any detail of the same. It is stated that the Petitioner did not fulfil the mandate of section 9(3)(c) of the IBC, 2016, stating the reason that the certificate from the financial institution was for the period of 01.01.2017 to 13.09.2018 but the required relevant period is 04.10.2016 to 26.10.2016.

11. It is stated that debt notice attached by the petitioner on an alleged tax due is not operational debt and such claim does not form part of any operational dues. Therefore, the Respondent submits that the claim is baseless.

12. In turn, the Operational Creditor in its rejoinder stated that the Agreement forms the basis of the commercial relationship between the parties and has stated that the respondent failed to pay the debt since, 2016. The Operational Creditor rebutted the contention regarding certificate from the Financial Institution under section 9 (3) (c) of IBC, 2016 mere procedural provision and directory in nature.

13. In the written submission filed by the Operational Creditor it is stated that agreement between the parties that the Corporate Debtor



has to handle and dispose the identified scrap material from the premises of the Operational Creditor for that the full sale value of the scrap material have to be made to the Operational Creditor.

14. It is stated that the Operational Creditor raised invoices for the above process some of the invoices were part paid by the Corporate Debtor and remaining were defaulted. It is further stated that the Corporate Debtor has never raised any dispute regarding any invoices before filing counter in this Petitioner.

15. It is stated that the Operational creditor vide e-mail dated 10.11.2016 demanded the Corporate Debtor that Rs.14,55,469.25/- is due and payable and the same was admitted by the Corporate Debtor.

16. In the written submission filed by the Respondent it is stated that the invoices filed by the Petitioner is false and bogus. The Respondent further added that all the 42 invoices are self-serving and proofs of delivery were attached.

17. The claim of interest is also imaginary, the Respondent has also submitted that except one email all other emails are "inter-office" emails of the Applicant that cannot bind the Respondent. It is stated that the Applicant has failed to prove the existence of liability.



18. The Corporate Debtor relied on the judgement of Hon'ble NCLAT in *SFO Technologies (P) Ltd., Vs Vanu India (P) Ltd., 2023* (SCC Online NCLAT 301), wherein it was held that an application under section 9 of the code, requires a strict proof of debt and default. An existence of a 'pre-existing dispute is a bar to initiation of CIRP. Further, referred to the judgment of NCLT in *Drulum India Pvt Lts vs M/s. Sharma Kalypso Private Limited 2018* (SCC Online NCLT 916), wherein it was held that 'when there is an existence of dispute the authority has refused to admit the application under section 9 of IBC, while we have noticed the plea taken by the appellant that no reply pursuant to demand notice was given by the Corporate Debtor, but that will not take away the right of Corporate Debtor to take pleas of existence of dispute before the adjudicating authority at the time of admission of application under section 9 of IBC'.

19. Further the corporate debtor has relied judgement of Hon'ble NCLAT in the case of *V.Duraisamy Vs. Jeyapriya Fruits and Vegetables Commission Agent & others 2023* SCC Online NCLAT 285, wherein it was held that the company having been struck off for non-filling of the financial statements, the Adjudicating Authority ought to have allowed the application seeking dismissal of the CIRP. The



Appellate Tribunal has ordered the company is released from all rigours CIRP.

20. Heard the submissions of Ld. Counsels of both the parties and perused the documents on record.

21. The application CP/1454/IB/2018 was filed by the Operational Creditor to initiate CIRP against the Corporate Debtor. The Tribunal has dismissed the application vide order dated 29.01.2019 on the ground that the company was already struck off and is not in existence as on date.

22. The Operational Creditor has filed an application CA/952/2019 under section 252 of Companies Act, 2013 before this Tribunal against the Registrar of Companies, Chennai seeking to restore the name of the company in the Register maintained by the ROC. This Tribunal vide order dated 02.03.2021 allowed CA/952/2019 and directed the RoC to restore the name of the Corporate Debtor in the Register maintained in the RoC and the status of the Company become active.

23. Thereafter the Operational Creditor has filed an application RST. APP (IB) /10 (CHE)/ 2022 under section 60(5) of IBC, 2016 r/w Rule 11



of NCLT Rules, 2016 for revival of the company petition CP/1454/IB/2018, which was allowed by this Tribunal vide order dated 01.05.2023 and the same was restored which is nothing but a present petition.

24. In so far as the maintainability of this case is concerned we see that the total claim in this petition is Rs.13,70,502/-. Since, this petition was restored, the original date of filing i.e. October 2018 is considered for determining pecuniary jurisdiction of this Tribunal. At October 2018, Rs.1 lakh was the minimum amount of default to maintain a Petition under Section 9 of IBC, 2016 before this Tribunal. This petition met the minimum threshold prescribed under Section 4 of IBC, 2016 and hence it is maintainable.

25. Coming to the merits of the case it is seen that in the scrap agreement dated 27.08.2015, and addendum dated 02.08.2016 it is stated as follows,

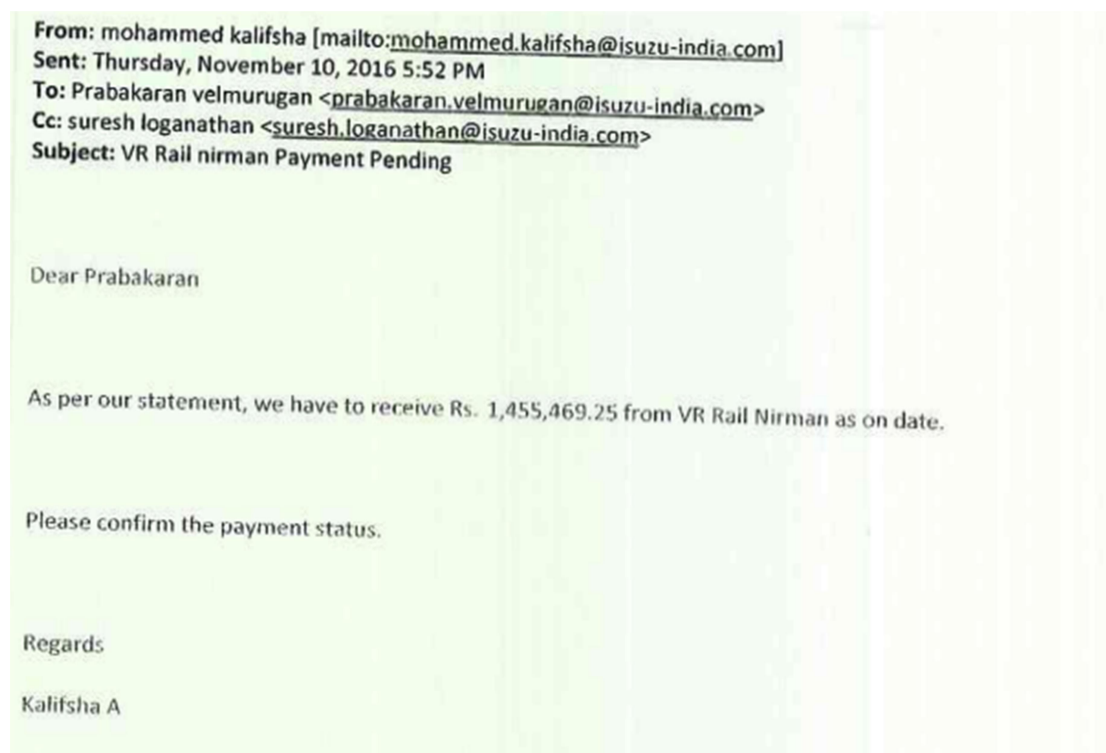
“The company wishes to engage the services of a firm for clearance of the scrap at the Companies factory at Sri City”

Further, upon perusing the invoices filed by the Operational Creditors at pages 44-88 of the petition we find that the transaction between the



Operational Creditor and the Corporate Debtor is operational in nature.

26. Upon perusing the e-mails pointed out by the Operational Creditor we noticed that the e-mail dated 10.11.2016 at page 19 of the rejoinder recording the debt due of Rs.14,55,469.25/- was not addressed to the Corporate Debtor e-mail ID i.e. vrrailnirman@gmail.com and the same is reproduced under:



In the other e-mail dated 11.11.2016 at page 18 of the rejoinder referred by the Operational Creditor it is stated as follows:



[india.com](mailto:santosh.singh@isuzu-india.com)>; santosh singh <santosh.singh@isuzu-india.com>; mahesh.vangala@isuzu-india.com
Subject: RE: FW: VR Rail nirman Payment pending

Dear Prabhakaran san,
Pls provide the Bank account details and collect the outstanding from customer ASAP.
Account details attached FYR.
Thanks

Regards
L.Suresh Kumar

From: vinoth r [<mailto:vrrailnirman@gmail.com>]
Sent: Friday, November 11, 2016 8:32 AM
To: Prabakaran velmurugan <prabakaran.velmurugan@isuzu-india.com>
Cc: sanjay loganathan <sanjay.loganathan@isuzu-india.com>; mohammed kalifsha <mohammed.kalifsha@isuzu-india.com>; suresh loganathan <suresh.loganathan@isuzu-india.com>
Subject: Re: FW: VR Rail nirman Payment Pending

Hello Prabakaran Sir,

I can able to make cash deposit in your isuzu company bank account because you know all the problems in the banks there is no Demand draft , Rtgs and Neft transaction for few more days so please provide me your company bank account pan details.

Regards
Vinoth.R
VR Rail Nirman (P) Ltd

On Fri, Nov 11, 2016 at 7:45 AM, Prabakaran velmurugan <prabakaran.velmurugan@isuzu-india.com> wrote:

Dear Vinoth,

Please do confirm the payment status.

Thanks & Regards,

Prabakaran Velmurugan

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In the above e-mail the representative of the Corporate Debtor Mr.Vinoth.R expressed its ability to deposit the cash into the account of the Corporate Debtor and the same cannot be considered as the acknowledgement of the previous e-mail dated 10.11.2016 at page 19 of the rejoinder. From the above e-mail of Mr.Vinoth.R this Tribunal can



infer that the Corporate Debtor owe some money to the Operational Creditor but the question regarding quantum of the due/money and whether the due is defaulted or not remains unanswered based on the evidences placed on record.

27. Here it is relevant to refer to relevant provisions of IBC, 2016 Section 3(12) defines default as follows,

Section 3 (12): “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;

Further, Section 6 stipulates as follows:

Section 6: Persons who may initiate corporate insolvency resolution process. – Where any corporate debtor commits a default, a financial creditor, an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor in the manner as provided under this Chapter.

28. In the instant case the Operational Creditor has not established the element of default thorough sufficient evidence. To allow a petition under Section 9 of IBC, 2016 this Tribunal requires to satisfy two things, a) there should be an undisputed operational debt of Rs.1 lakh or Rs.1 crore on the relevant dates as per Section 4 of IBC, 2016, b) a clear proof to show that the debt is defaulted or the default is acknowledged by the Corporate Debtor.



29. In the case relied by the Corporate Debtor viz. *SFO Technologies (P) Ltd., Vs Vanu India (P) Ltd., (2023 SCC Online NCLAT 301)* Hon'ble NCLAT clearly held that

"39. Be it noted, that the Proceedings under the I & B Code, 2016, are summary in character and a trial is not conducted, like that of 'Civil' matter, before the 'Competent Civil Court'.

40. It cannot be forgotten that an Application under Section 9 of the Code, requires a 'strict proof' of 'Debt and Default'.

30. In view of the above discussions and considering the judgment *supra* we conclude that as there is no sufficient proof evidencing debt and default by the Operational Creditor and this petition deserves dismissal. Accordingly, this petition CP(IB)/1454(CHE)/2018 is dismissed. No orders to cost.

Sd/-

RAVICHANDRAN RAMASAMY
MEMBER (TECHNICAL)

Sd/-

JYOTI KUMAR TRIPATHI
MEMBER (JUDICIAL)

Sangeetha