



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - IV**

C.P. (IB) No. 618/MB/2024

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016

In the matter of

M/s. Turakhia Iron and Steel LLP
(LLPIN: AAN-5257)

...Operational Creditor

v/s.

M/s. D.I. Steels Private Limited
(CIN: U27100MH2005PTC153442)

...Corporate Debtor

Order Delivered on: **13.11.2024**

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor:

Adv Mily Ghoshal, Ld. Counsel
for Petitioner.

For the Corporate Debtor:

Adv Avinash. R. Khanolkar, Ld.
Counsel for Respondent.



ORDER

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) on 01.08.2024 by **M/s. Turakhia Iron and Steel LLP** (“Operational Creditor”) seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against **M/s. D.I. Steels Private Limited** (“Corporate Debtor”) for the amount(s) payable to the Operational Creditor.
2. The Operational Creditor *viz.* Applicant in the captioned petition is a Limited Liability Partnership engaged in the business of wholesale and retail trade; repair of motor vehicles, motorcycles and personal and household goods. The Corporate Debtor is a Private Company incorporated on 19.05.2005 under the Companies Act, 2013, having its Registered Address at 1, Rajyog Society, Old Nagardas Road, Behind BJP Office, Andheri (East), , Mumbai, Maharashtra, India - 400069.

Submissions of the Operational Creditor

3. The present petition is filed by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of ₹ 20,87,48,152/- (Rupees Twenty crore, eighty-seven lakhs, forty-eight thousand, one hundred and fifty-two only). The date of default as specified in Part-IV of the Application is 26.03.2024. Nesl Certificate mentioning date of default is placed on record.
4. The Operational Creditor submits that, the Corporate Debtor is into the business of steel trading and had approached the Operational Creditor offering a sale GP Coils of such sizes and specifications as mentioned in the purchase order issued by the Operational Creditor. The Operational



Creditor further submits that the Operational Creditor had issued two purchase orders dated 11.03.2024 for supply of GP Coils amounting of Rs 3,13,50,000/- and 20,05,50,000/- respectively.

5. The Operational Creditor submits that the Corporate Debtor was supposed to deliver the above mentioned products within 7 to 15 days from the date of Purchase Order i.e. on or before 26.03.2024. Accordingly, the Operational Creditor paid an advance amount of Rs 20,87,48,152/- (Rupees Twenty crore, eighty- seven lakhs, forty-eight thousand, one hundred and fifty-two only) to the Corporate Debtor.
6. The Operational Creditor submits that the Corporate Debtor miserably failed to supply the goods within stipulated period as agreed between the Operational Creditor and the Corporate Debtor. The Operational Creditor further submits that the Operational Creditor on several occasions time and again followed up with respect to the supply of the goods with the Corporate Debtor but he did not pay any heed to the same.
7. The Operational Creditor submits that the Operational Creditor issued a letter dated 12.06.2024 to the Corporate Debtor for refunding the advance amount paid by Operational Creditor of Rs 20,87,48,152/- (Rupees Twenty crore, eighty- seven lakhs, forty-eight thousand, one hundred and fifty-two only) on account of failure of Corporate Debtor to supply the goods in the stipulated time. The said letter is served on the Corporate Debtor by the hand delivery which is duly acknowledged by the Corporate Debtor. However, the Corporate Debtor have till date not responded to the same.
8. The Operational Creditor claims that despite various reminders issued to Corporate Debtor to make the requisite payments, the same has not been



acted upon so, the Operational Creditor issued a Demand Notice dated 11.07.2024 U/s 8 of the Insolvency and Bankruptcy Code, 2016 by way of hand delivery and the same was duly received and acknowledged by the Corporate Debtor.

9. The Operational Creditor claims that Operational Creditor had requested on the various occasions to refund the amount mentioned above but the Corporate Debtor had shown a very cavalry approach towards the same. Hence, the present petition.

Submissions of the Corporate Debtor

10. Upon perusal of records, we note that the Corporate Debtor herein was directed to file its Reply *vide* Order dated 03.09.2024. The same was duly dispensed with, and the Corporate Debtor has raised the following contentions *vide* its Affidavit-in-Reply dated 07.10.2024, which duly forms part of the record(s) hereto.
11. The Corporate Debtor submitted that their objections are in fourfolds:
 - a. No Default occurred on behalf of Corporate Debtor
 - b. There is change in the date of Default
 - c. Corporate Debtor is a Solvent Company
 - d. Fair chance of Revival is to be granted
12. The Corporate Debtor states that the Corporate Debtor has approached Mr. Murtaza Shakir who is a partner of M/s. Zagros Hardware Trading Company, a partnership firm assisting in procuring materials from various suppliers, for supply of the goods as ordered by the Operational Creditor which in return Mr. Murtaza Shakir failed to provide and for the same the Corporate Debtor has preferred a complaint with EOW against the said Mr.



Murtaza Shakir. It is further submitted that the Corporate Debtor has not deliberately defaulted in supply of goods to the petitioner. The Corporate Debtor also claims that the Operational Creditor has terminated the purchase order and thereby Operational Creditor has demanded back the advanced amount paid by it. hence there is no default committed on the part of the Corporate Debtor.

13. The Corporate Debtor states that the Operational Creditor for the first and only time vide letter dated 12.06.2024 demanded back the payment of advance amount paid. The corporate debtor further submits that the default has occurred on or after 12.06.2024 not prior to that which is a date of the demand notice and not the date of purchase order i.e. 26.06.2024 as mentioned in part IV of the petition. The Corporate Debtor also submits that it is settled position of the Law that the petitioner to the Insolvency Petition cannot change date of default as per its convenience and therefore, this petition is not maintainable in the eyes of law.
14. The Corporate Debtor states that the Corporate Debtor had taken tremendous efforts for adhering to the terms of purchase orders issued by the Operational Creditor. Since the Corporate Debtor itself is a Victim of illegal and fraudulent act of someone else, the Operational Creditor should have taken a lenient view against the Corporate Debtor. The Corporate Debtor further states that the Corporate Debtor is genuinely trying to resolve the issue and assuring the Operational Creditor for the agreed supply the petition filed for the Insolvency of the Corporate Debtor would not lie.



Findings

15. Heard the Learned Counsel for the Operational Creditor and the Corporate Debtor.
16. This bench observes that, the Operational Creditor in Part IV of the application has specified date of default 26.03.2024 and the present petition filed on 01.08.2024 is within limitation period. Therefore, this Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor.
17. Upon perusal of the record files, we note that the corporate Debtor admitted in its reply affidavit that the advance payment received from the Operational Creditor which have been in return paid to Mr. Murtaza Shakir for procurement of the goods. The corporate Debtor also failed to supply the goods within the time frame specified in the purchase order issued by the Operational Creditor which was within 7-15 days and the date of default as per the purchase order was 26.03.2024. Therefore, this bench notes that the date of default mentioned in Part IV of the petition is accurate and there is no change in the date of default on the part of Operational Creditor.
18. In so far as the Applicant herein *viz.* Operational Creditor is concerned, the records reveal that on account of non-payment by the Corporate Debtor; The Operational Creditor sought to issue payment reminder to the Corporate Debtor *vide* Letter *dated* 12.06.2024, and we note that the receipt of the said letter has further not been denied by the Corporate Debtor hereto. Pursuant to inaction by the Corporate Debtor apropos the same, the Operational Creditor was constrained to issue the Statutory Demand Notice *dated* 11.07.2024, containing particulars of the (unpaid) Operational



Debt, mandating the Corporate Debtor to pay the disputed amount and the receipt of the same has not been disputed by the latter herewith.

19. In the present circumstances, we are of the shared view that there exists an 'operational debt' in terms of Section 5(21) of IBC, 2016, to the tune of INR 20,87,48,152/- (Rupees Twenty crore, eighty- seven lakhs, forty-eight thousand, one hundred and fifty-two only) being an amount due as afore-established and further validated by the Ledger of Accounts maintained by the Operational Creditor in respect of the Corporate Debtor for F.Y. 2024-25, and that there exists a 'default' in payment thereof in terms of Section 5(12) of IBC, 2016.
20. This Bench is of the view that, on perusal of the documents submitted by the Operational Creditor, it is clear that Operational Debt amounting to more than Rs.1,00,00,000/- (Rupees One Crore Only) is due and payable by the Corporate Debtor to the Operational Creditor. There is default by the Corporate Debtor in payment of debt amount. Therefore, we find that it is a fit case for initiation of CIRP against the Corporate Debtor. This Tribunal has jurisdiction to adjudicate the Company Petition filed by the Operational Creditor and that there is a Debt due & payable by the Corporate Debtor. Since, the debt and default exist and no pre-existing dispute has been brought to our notice, it is a fit case for admission u/9 of IBC, 2016.
21. In light of the afore-stated aspects in relation to existence of 'debt' and 'default' in so far as the captioned petition is concerned, and in absence of any pre-existing dispute to render the same repudiated hereto, coupled with the dictum laid down in law in this regard; We opine that the captioned petition is complete in all aspects and deserves to be Admitted,



and that Corporate Insolvency Resolution Process ought to be initiated in respect of the Corporate Debtor herein.

22. It is accordingly hereby ordered as follows:

- a** The captioned Company Petition bearing C.P. No. (IB) 618/MB/2023 is hereby **Admitted** and initiation of Corporate Insolvency Resolution Process is ordered **M/s. D.I. Steels Private Limited**, viz. the Corporate Debtor herein.
- b** In consonance with the afore-stated, this Tribunal deems it fit to appoint Mr. Anish Gupta, Registration No IBBI/IPA-002/IP-N00285/2017-18/10843 (Address: 105, Lotus Business Park ,Ram Baug Lane, Off S V Road, Malad (West) ,Mumbai City, Maharashtra ,400064| Email Id: ipanishgupta@gmail.com, as the Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as mentioned under IBC, 2016. The fee payable to the IRP/RP shall be compliant with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable.
- c** During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or as the case may be, the RP in terms of Section 17 of the IBC, 2016. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of **two weeks** from the date of receipt of this Order, in default of which coercive steps will effectively follow.
- d** The Operational Creditor shall deposit a sum of **INR 5,00,000/-** (Rupees Two-lakhs only) with the IRP to meet the initial CIRP cost,



if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be Interim Finance and paid back to the Operational Creditor viz. Applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).

- e There shall be a moratorium under Section 14 of the IBC, in regard to the following:
 - i 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;
 - ii Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
 - iv The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- f Notwithstanding the above, during the period of moratorium:



- i The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii That the provisions of sub-Section (1) of Section 14 of the IBC, 2016, shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- g The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Tribunal approves the resolution plan under sub-Section (1) of Section 31 of the IBC, 2016, or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.
- h The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post **and** E-mail immediately, and in any case, not later than **two days** from the date of this Order.
- i A copy of this Order be sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court **within seven days** from the date of receipt of a copy of this order.

Sd/-

ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)