

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

CP (IB) No.292/NCLT/MB-IV/2021

Under Section 9 of the IBC, 2016

In the matter of

M/s Ventura Metal & Alloys

...Operational Creditor

v/s.

Shree Radhe Metaliks Private Limited

[CIN: U27310MH2010PTC211440]

...Corporate Debtor

Order Delivered on: 24.12.2021

Coram:

Mr. Rajesh Sharma
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Shyam Kapadia, Advocate.

For the Respondent: Mr. Manoj Kumar Mishra, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by M/s Ventura Metal & Alloys, (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Shree Radhe Metaliks Private Limited (“the Corporate Debtor”), [CIN: U27310MH2010PTC211440].

2. The Corporate Debtor is a Company incorporated on 27.12.2010 under the Companies Act, 1956, as a Private Company Limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U27310MH2010PTC211440. Its registered office is at 512, Ashirwad Building, 64/E, Ahmedabad Street, Carnac Bunder, Masjid Bunder East Mumbai, Maharashtra-400009. Therefore, this Bench has Jurisdiction to deal with the present petition.

3. The present petition was filed on 26.03.2021 by the Operational Creditor before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.5,77,43,663/- (Rupees five crore seventy-seven lakh forty-three thousand six hundred sixty-three only) including the interest at the rate of 21% p.a. The details of the total outstanding are as under:

Principal amount: Rs.4,75,25,524/- (Rupees four crore seventy-five lakh twenty-five thousand five hundred twenty-four only);

Interest amount: Rs.1,02,18,139/- (Rupees one crore two lakh eighteen thousand one hundred thirty-nine only);

Total outstanding: Rs. 5,77,43,663/- (Rupees five crore seventy-seven lakh forty-three thousand six hundred sixty-three only).

4. The case of the Operational Creditor is as under:

a) The Operational Creditor has supplied Stainless Steel items of various descriptions based on the purchase order issued by the Corporate Debtor. The Corporate Debtor made payment for invoices raised up to 19.04.2018. Thereafter, the Corporate Debtor has stopped making payment in spite of repeated reminder. The Purchase Orders issued by

the Corporate Debtor has provision of the interest at the rate of 21% p.a. for delayed payments. The details of the Purchase Orders are as follows:

- i. Purchase Order No. SRM/15/2017-18 dated 17.03.2018;
- ii. Purchase Order No. SRM/04/2018-19 dated 14.04.2018;
- iii. Purchase Order No. SRM/08/2018-19 dated 08.05.2018;
- iv. Purchase Order No. SRM/16/2018-19 dated 12.11.2018;
- v. Purchase Order No. SRM/20/2018-19 dated 23.12.2018;
- vi. Purchase Order No. SRM/23/2018-19 dated 31.12.2018;
- vii. Purchase Order No. SRM/28/2018-19 dated 01.02.2019;
- viii. Purchase Order No. SRM/32/2018-19 dated 28.02.2019;

b) For the purpose of settling the dues the Operational Creditor and Corporate Debtor entered into the Settlement Deed dated 10.03.2019, wherein the mode of payments was stipulated. The mode of payments mentioned in the Settlement Deed is as follows:

Proposed payment date (on or before)	Proposed payment
30.06.2019	1,50,00,000/-
30.09.2019	1,50,00,000/-
31.12.2019	1,50,00,000/-
28.02.2020	1,08,55,524/-
Total	5,58,55,524/-

a) Pursuant to the said Settlement Deed the Corporate Debtor made payment of Rs.83,30,000/- (Rupees eighty-three lakh thirty thousand only) and Rs.30,00,000/- (Rupees thirty lakh only) during the month of November, 2020 and December, 2020. The Principal amount of

Rs.4,75,25,524/- (Rupees four crore seventy-five lakh twenty-five thousand five hundred twenty-four only) is still outstanding. However, the last payment received by the Corporate Debtor was on 09.12.2020.

- b) The supply of materials was made from 21.03.2018 till 06.03.2019 and the invoices were raised for the above supplied material. The payment was to be made within 30 days as per the terms of Purchase Order issued by the Corporate Debtor.
- c) The Operational Creditor has made total supply of Rs.6,33,05,524/- (Rupees six crore thirty-three lakh five thousand five hundred twenty-four only) to the Corporate Debtor. Out of which the Corporate Debtor has made the payment of Rs.1,57,80,000/- (Rupees one crore fifty-seven lakh eighty thousand only) to the Operational Creditor. Even after the payment by the Corporate Debtor the Operational Creditor continued to supply as and when the request was received by the Corporate Debtor.
- d) The details of Invoices and outstanding are as follows:

Sr. No.	Invoice No.	Date of Invoice	Amount Outstanding (Rs.)
1	VMA/64/18-19	02.04.2018	1,62,879/-
2	VMA/66/18-19	23.04.2018	23,21,113/-
3	VMA/67/18-19	23.04.2018	27,42,823/-
4	VMA/72/18-19	24.04.2018	1,22,669/-
5	VMA/111/18-19	09.05.2018	7,33,871/-
6	VMA/136/18-19	21.05.2018	18,36,699/-
7	VMA/134/18-19	21.05.2018	17,45,790/-
8	VMA/145/18-19	23.05.2018	23,57,168/-
9	VMA/156/18-19	24.05.2018	7,30,122/-
10	VMA/418/18-19	15.11.2018	4,01,766/-
11	VMA/441/18-19	29.11.2018	15,80,750/-
12	VMA/512/18-19	25.12.2018	22,99,833/-
13	VMA/514/18-19	25.12.2018	27,31,138/-
14	VMA/516/18-19	25.12.2018	45,39,460/-

15	VMA/534/18-19	28.12.2018	3,29,291/-
16	VMA/549/18-19	31.12.2018	20,84,175/-
17	VMA/557/18-19	02.01.2019	25,31,443/-
18	VMA/558/18-19	02.01.2019	10,72,443/-
19	VMA/562/18-19	02.01.2019	24,78,000/-
20	VMA/564/18-19	03.01.2019	33,95,037/-
21	VMA/565/18-19	03.01.2019	11,77,935/-
22	VMA/591/18-19	16.01.2019	3,06,979/-
23	VMA/663/18-19	04.02.2019	4,15,032/-
24	VMA/700/18-19	13.02.2019	20,00,100/-
25	VMA/728/18-19	22.02.2019	7,61,382/-
26	VMA/761/18-19	28.02.2019	9,99,250/-
27	VMA/773/18-19	01.03.2019	10,83,473/-
28	VMA/784/18-19	05.03.2019	9,99,250/-
29	VMA/789/18-19	05.03.2019	20,59,430/-
30	VMA/791/18-19	06.03.2019	7,44,561/-
31	VMA/793/18-19	06.03.2019	7,81,179
TOTAL			4,75,25,524/-

- e) Clause 5 of Settlement Deed dated 10.03.2019 specified for 18% interest in case of default in the payment. Clause 5 of the Settlement Deed is as follows:

“That the “Debtor” agrees that in case of any default in the re-payment of instalments in timely manner, the “Creditor” can initiate all legal proceedings and take all the legal re-course against “Debtor” along with damage and cost along with the interest at 18% per annum from the date of default.”

5. The case of the Corporate Debtor is as under:

- a) The Corporate Debtor has admitted the purchase of Stainless-Steel items of various description amounting Rs.6,33,05,524/- (Rupees six crore thirty-three lakh five thousand five hundred twenty-four only). The Corporate Debtor has not denied the supply and the terms of payment.

- b) The Corporate Debtor has not denied the Settlement Deed dated 10.03.2019 entered into between Operational Creditor and Corporate Debtor. The Corporate Debtor submitted that in view of the COVID-19, the Corporate Debtor was facing difficulty to make payment to the Operational Creditor.
- c) The Corporate Debtor confirms that the principal amount of Rs.4,75,25,524/- (Rupees four crore seventy-five lakh twenty-five thousand five hundred twenty-four only) is due and payable but the interest amounting to Rs.1,02,18,139/- (Rupees one crore two lakh eighteen thousand one hundred thirty-nine only) is denied as no interest clause was mentioned in the invoices raised on Corporate Debtor.
6. The Last date of invoice is 06.03.2019 which is placed at p.80 of the Petition. The date of default as per the Settlement Deed dated 10.03.2019 between the Operational Creditor and Corporate Debtor is 30.06.2019.
7. Invoices have been placed on record at pp 49-80. The Purchase Orders issued by the Corporate Debtor are placed at pp 41-48 of the Petition. The Purchase order provides for interest at the rate 21% per annum in case of default in making payment. The total debt due and payable to the Operational Creditor is Rs.5,77,43,663/- (Rupees five crore seventy-seven forty-three lakh forty-three thousand six hundred sixty-three only), as mentioned at p.5 of the Petition.
8. The Operational Creditor had served a Demand Notice in Form 3 dated 22.12.2020 to the Corporate Debtor claiming total outstanding of Rs.5,77,43,663/- (Rupees five crore seventy-seven forty-three lakh forty-three thousand six hundred sixty-three only) which is at pp 91-100 of the Petition in terms of section 8 of the IBC. The said Demand Notice was served on the

Corporate Debtor on 23.12.2020. The Corporate Debtor has not filed replied to the Demand Notice.

9. The Operational Creditor has submitted the Ledger Statement of Corporate Debtor which is placed at pp.37-40 of the Petition. The Operational Creditor has also submitted the Affidavit under section 9(3) (b) of the code at pp 27-28 of the Petition.

Findings:

10. We have heard the arguments of Learned Counsel for Operational Creditor and Corporate Debtor and perused the records.
11. The Bench observed that the Operational Creditor and Corporate Debtor had entered into the Settlement Deed for settlement of dues by the Corporate Debtor. The said Settlement Deed clearly shows the liability of Corporate Debtor to pay the outstanding. As per the terms of the Settlement Deed the payment was to be made from 15.06.2018 till 06.03.2019.
12. It is also noticed from the petition that-
 - a) There is unequivocal admission of liability on the part of the Corporate Debtor in its Affidavit in Reply dated 08.12.2021 filed by the Corporate Debtor which is at p.2, para 6 of the said Reply;
 - b) The date of default is 30.06.2019.
13. The Corporate Debtor filed the Reply and denied the interest portion stating that there is no interest clause mentioned in the invoices raised on the Corporate Debtor. However, upon perusal of the records and documents filed by the Operational Creditor, the Purchase Order at p.41 and the Invoices attached clearly show that interest is chargeable @ 21% p.a. after the due date of payment. Further, as per Settlement Deed dated 10.03.2019,

both Operational Creditor and the Corporate Debtor have agreed for interest @ 18% p.a. for payment after due date. Hence, the Bench is of the considered view that the Operational Creditor is entitled to charge interest from Corporate Debtor.

14. Therefore, the Petition made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of One Crore rupees stipulated amendment made under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. Accordingly, this Adjudicating Authority admits the Petition and orders initiation of CIRP against the Corporate Debtor.
15. The Operational Creditor has proposed Mr. Prabhakar Kumar as Interim Resolution Professional (IRP) in the matter.
16. It is, accordingly, hereby ordered as follows: -
 - (a) The petition bearing CP(IB) 292/MB-IV/2021 filed by M/s Ventura Metal and Alloys, the Operational Creditor, under section 9 of the IBC read with rule 4(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Shree Radhe Metaliks Private Limited [CIN: U27310MH2010PTC211440], the Corporate Debtor, is **admitted**.
 - (b) 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.
- (c) 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 shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;
- (d) 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 or passes an order for

liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.

- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Mr. Prabhakar Kumar, registration No. IBBI/IPA-002/IP-N00774/2018-19/12373, as Interim Resolution Professional to carry the functions as mentioned under IBC, the fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard. The IRP shall carry out functions as contemplated by Sections 15,17,18,19,20,21 of the IBC.
- (g) 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. 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.5,00,000/- (Rupees five lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.

- (j) 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/-

Kishore Vemulapalli
Member (Judicial)

24.12.2021

Sd/-

Rajesh Sharma
Member (Technical)