

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

C.P. No. 2521/I&BP/2018

Under section 8 & 9 of the IBC, 2016

In the matter of

Harsh Vinimay Private Limited,  
Regd. Office at: 34/1, Agrasen Road,  
Ward No.9, Khalpara Opp. Durga Dutta  
Goyal, Siliguri, Darjeeling,  
West Bengal, 733405

....Petitioner

v/s.

Maa Mahamaya Steels Private Limited,  
Regd. Office at 1<sup>st</sup> Floor, Office Space, Masrani  
Bhawan, Mehadiya Chowk, Dhantoli,  
Nagpur, Maharashtra 440012

....Respondent

Order delivered on: 29.10.2018

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Mr. Ankit Singal, Advocate,

For the Respondent : Ms. Anushree, Advocate i/b Auris Legal

*Per: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)*

**ORDER**

1. This Company Petition is filed by Harsh Vinimay Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Maa Mahamaya Steels Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default on 30.04.2018 in making payment to the extent of Rs. 99,52,730/-, which is inclusive of interest of Rs.2,00,882.40/- calculated @ 24% p.a., by invoking the provisions of Sections 8 & 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The Petitioner submits that they have supplied MS Ingot to the Corporate Debtor and raised bills from 11.03.2018 to 03.04.2018 to the

extent of Rs. 97,51,848.40. Since, the payment was not forthcoming the Petitioner issued a Demand Notice on 08.05.2018 demanding a sum of Rs.99,52,730.00 which is inclusive of interest @24% p.a., enclosing the details of calculation and invoices. The Corporate Debtor replied to the said Demand Notice on 18.05.2018 disputing the existence of unpaid operational debt and also stated that the goods such as ingots/billets supplied by the Petitioner was of inferior and substandard quality because of which they have incurred huge monetary loss and suffered loss of goodwill in the market. It was also stated that on several occasions they have requested the Petitioner to look into the matter of quality and quantity of materials but the same was not rectified. They have also requested the Petitioner to lift the balance ingots which are inferior in quality. It was further alleged that on 16.04.2018, the Petitioner alongwith some other persons came to the office of Corporate Debtor at Bilaspur, Chhattisgarh and threatened them with dire consequences and also obtained signatures from Directors of Corporate Debtor on certain papers and those papers are being used illegally by the Petitioner.

3. The Corporate Debtor also filed their reply to the Petition reiterating the same points as stated in the reply. They contended that the goods are of inferior quality, the amount claimed in the petition is disputed and the amount is not crystalized, the invoice does not contain the rate of interest levied for the delay in payment, there is no due date mentioned in the invoice, the Petitioner failed to explain how they have calculated the due and on what basis, they are making regular ad-hoc payments and hence there is no default especially in view of fact that the invoices raised does not mention any due date and since it was a running account unless the balance is confirmed by the Corporate Debtor the balance amount is not crystalized, etc.

4. The Petitioner enclosed the statement of account of the Corporate Debtor in its books of account which shows a balance receivable of Rs.99,52,730/-. Further, the Petitioner enclosed the statement of account of the Petitioner in the books of the Corporate Debtor which shows a balance of Rs.99,52,730/-. This shows that the Corporate Debtor owes a sum of Rs. 99,52,730/- to the Petitioner.

5. Even though the Corporate Debtor submits that the goods are substandard and the Petitioner was requested to take back the goods, there

was no communication to that effect prior to the issue of Demand Notice. This issue has been raised only at the time of reply to the Demand Notice, hence it cannot be considered as a pre-existing dispute. The Corporate Debtor's another contention is that since there was no due date of payment in the invoice, the Petitioner cannot claim any interest. However, when there is no due date of payment, the invoice amount will become payable immediately without any grace period and hence the petitioner is entitled to charge reasonable interest from the date of invoice. In respect of another contention of the Corporate Debtor that when there is no mention about rate of interest in the invoice the Petitioner cannot charge interest, is not appreciable in view of the fact that the outstanding is nearly Rupees One Crore and the Corporate Debtor wants to enjoy this credit without any interest charges. The Corporate Debtor shall remember that "money never sleeps". It is not the case of the Corporate Debtor that the amount due is wholly paid but its contention is that there is no due date in the invoice, hence, so long as Corporate Debtor confirms the balance, the due is not crystalized but such contention cannot be accepted in view of the fact that the invoice became payable from the date of invoice. If its contention is accepted, then there will not be any due till its confirmation by the Corporate Debtor. Apart from that the Corporate Debtor's ledger accounts itself shows a credit balance, i.e. Rs. 99,52,730/- as payable to the Petitioner which is the amount claimed in the petition. As far as the dispute raised by the Corporate Debtor saying that the goods are substandard, since there was whisper about this before issue of the Demand Notice, this bench is of the view that there is no preexisting dispute and the stand of the Corporate Debtor is only to avoid Corporate Insolvency Resolution Process.

6. The invoices for which the amount claimed is very clearly stated in the Demand Notice as well as in the Petition but the Corporate Debtor made a balled denial that the amount is not due and crystalized. It is not the case of the Corporate Debtor that there is no due in respect of the invoices and the default thereon. Mere absence of due date of payment in the invoice does not mean that the amount is not due and in fact it becomes due on the date of invoice itself.

7. The allegation of the Corporate Debtor that on 16.04.18 the Petitioner came to their office, threatened them and obtained signature of directors, is not supported by Police complaint or some proof for any action on the part

of Corporate Debtor and cannot be taken as a ground to stall these proceedings.

8. The Hon'ble Supreme Court in the case of Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software (P) Limited- 2017 (SCC Online SC 1154) held as below :-

*"40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application"*

9. In the case on hand the contentions raised by the Corporate Debtor are not supported by evidence and those contentions were raised merely to avoid the Corporate Insolvency Process as if there are disputes which were never raised prior to the issue of demand notice by the petitioner. In the circumstance the petition deserves to be admitted in view of the proof of debt and default.

10. One Mr. Yash Jeet Basrar, residing at 1302, Vijaya Building, 17, Barakhamba Road, Connaught Place, New Delhi-110001 having Registration No. IBBI/IPA-002/IP-N00275/2017-2018/10833 has given his consent letter to act as an Interim Resolution Professional.

11. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

- (a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of

by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

- (b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from 29.10.2018 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Yash Jeet Basrar, residing at 1302, Vijaya Building, 17, Barakhamba Road, Connaught Place, New Delhi-110001 having Registration No. IBBI/IPA-002/IP-N00275/2017-2018/10833 as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

12. Accordingly, this Petition is admitted.

13. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional.

Sd/-

V. NALLASENAPATHY  
Member (Technical)

Sd/-

BHASKARA PANTULA MOHAN  
Member (Judicial)