



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

CP (IB) No.778/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

M/s Wellcome Steel

Through sole proprietor Mr. Abdul Hafiz
Murtaza Hussain Khan

...Financial Creditor/Applicant

V/s

**Kavish International Trading Private
Limited**

[CIN: U52399MH2011PTC223040]

...Corporate Debtor/Respondent

Order Dated: 12.04.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Haris A Khan i/b/ Kurdukar
& Co., Advocates.

For the Respondent(s) : None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 778/MB-IV/2021 filed by M/s Wellcome Steel, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation

of Corporate Insolvency Resolution Process (CIRP) against Kavish International Trading Private Limited, Corporate Debtor.

- 1.1 The Application is filed by Mr. Abdul Hafiz Murtaza Hussain Khan, Sole Proprietor of the Operational Creditor, claiming total outstanding amount of Rs.2,21,02,450/- (Rupees two crore twenty-one lakh two thousand four hundred fifty only).
 - 1.2 The date of default is stated as 07.06.2019 in Part IV of the Application and this date represents date of the last invoice raised upon the Corporate Debtor. The goods were supplied during the period from 20.07.2018 to 07.06.2019. The Petition is filed on 14.07.2021 which is well within the period of limitation from even the first invoice date.
2. The case of the Operational Creditor is that the Operational Creditor had supplied M S Scrap to the Corporate Debtor during the period from 20.07.2018 to 07.06.2019. A copy of account of the applicant in the books of the Corporate Debtor has been annexed with the application. Pursuant to the said supply, the Operational Creditor had raised and issued various invoices upon the Corporate Debtor. The Corporate Debtor has made part payments against the running invoices issued by the Operational Creditor.
- 2.1 The Operational Creditor issued Demand Notice dated 26.04.2021 in Form-3 upon the Corporate Debtor claiming total outstanding of Rs.2,21,02,450/- (Rupees two crore twenty-one lakh two thousand four hundred fifty only). The Operational Creditor has filed the Leger of the Corporate Debtor for period from 01.04.2017 to 12.09.2019.

- 2.2 The Operational Creditor has not filed Section 9 (3) (b) Affidavit as required under the Code.
3. The Corporate Debtor has neither appeared nor filed its reply in the matter. Vide order dated 31.08.2021, Court Notice was issued upon the Corporate Debtor to appear in the matter. Thereafter, pursuant to order dated 21.10.2021, the Operational Creditor made out substituted service on 31.12.2021 by way of newspaper publication in two newspapers. However, the Corporate Debtor failed to appear in the matter and hence, the Corporate Debtor vide order dated 21.03.2022 was set ex-parte in the matter.

Findings:

4. We have heard the arguments of the Learned Counsel for Operational Creditor.
- 4.1 After perusal of the material on record, this Bench is observed that the Operational Creditor had supply oil sheets on various occasions to the Corporate Debtor. Pursuant to the said supply, the Operational Creditor had raised and issued various invoices upon the Corporate Debtor. The Corporate Debtor made part payment towards the invoices as reflected in the Ledger.
- 4.2 The Corporate Debtor has failed to appear in the matter after giving several opportunities and has also not filed the reply.
- 4.3 From the perusal of the material on records, it is observed that, the Operational Creditor has not filed the Affidavit under Section 9 (3) (b), which is mandatory under the Code. Section 9 (3) (b) states as follows:

“9. (3) The operational creditor shall, along with the application furnish—

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;”

4.4 This Bench is of the considered view that the Affidavit under section 9 (3) (b) of the Code is required to be filed and the same must be in relation to the notice of dispute with regard to receipt or non- receipt of the payments made by the Corporate Debtor. Hence, in view of the aforesaid, the Petition filed by the Operational Creditor deserves to be dismissed on the ground of non-filing of the Affidavit under section 9 (3) (b).

ORDER

5. The petition bearing CP (IB) 778/MB-IV/2021 filed by M/s Wellcome Steel, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against Kavish International Trading Private Limited, Corporate Debtor, is hereby **Dismissed**.
6. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present Petition.

Sd/-

Prabhat Kumar
Member (Technical)
12.04.2023

Sd/-

Kishore Vemulapalli
Member (Judicial)