

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-III**

CP (IB) NO. 414 OF 2023

**APPLICATION BY OPERATIONAL CREDITOR TO INITIATE
CORPORATE INSOLVENCY RESOLUTION PROCESS UNDER
THE INSOLVENCY AND BANKRUPTCY CODE, 2016.**

*(Under Section 9 of the Insolvency and Bankruptcy Code, 2016
read with Rule 6 of the Insolvency and Bankruptcy (Application to
adjudicating Authority) Rules, 2016)*

In the matter of

OSWAL MINERALS LIMITED

CIN: L30006TN1996PLC035973

Registered Office: OSWAL'S Road, 2nd
Floor, Dr. Rajkumar Raod, 4th Block,
Rajajingar, Bengaluru 560010

.... Operational Creditor

Versus

**Vidhi Minerals & Alloys Private
Limited.**

CIN: U10300MH200PTC169017

Registered Office at: 579, Tharsa Road,
Gandhi Chwok, Kanhan, Nagpur
441401

.... Corporate Debtor

Order dated 04.09.2023

**Coram: MS. LAKSHMI GURUNG, HON'BLE MEMBER (JUDICIAL)
SHRI CHARANJEET SINGH GULATI, HON'BLE MEMBER (TECHNICAL)**

Appearance:

For the Petitioner: Adv. Christople D'souza a/w Ms. Malika
Shirzade i/b M/s ALMT Legal Sameer

For the Respondent: None appeared

Per: MS. LAKSHMI GURUNG, MEMBER (JUDICIAL)

1. This Company Petition is filed by *Oswal Minerals Limited* (hereinafter called “Operational Creditor”) seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against *Vidhi Minerals & Alloys Private Limited* (hereinafter called “Corporate Debtor”) by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of an Operational Debt of Rs. 3,14,94,938/- (Rupees Three Crore Fourteen Lakh Ninety-four Thousand Nine Hundred and Thirty-Eight only).
2. **The brief facts of the case are as follows:**
 - a. It is stated that the Operational Creditor had supplied Manganese Ore to Corporate Debtor from the year 2020 to 2021. The Corporate Debtor accepted and utilized the magnesium ore ("Magnesium Ore" or "Goods") without any complaints or demurrer whatsoever.
 - b. The Operational Creditor further submits that the Corporate Debtor raised several purchase orders (“Purchase Orders”), wherein the Corporate Debtor demanded for supply of Magnesium Ore from the Operational Creditor. As per the agreed terms and conditions, the Operational Creditor supplied Goods to the Corporate Debtor and in return the Corporate Debtor was obligated to pay to the Operational Creditor for the quantity purchased. The parties agreed that the Corporate Debtor shall make the payment to the Operational Creditor after 10 days from lifting the material and any delay in making the payment shall attract, 18% per annum interest.
 - c. In the present instance, the Corporate Debtor issued Purchase Orders to the Operational Creditor for supply of

Magnesium Ore. The said material was duly delivered as per the requirements of the Corporate Debtor. Against the aforementioned Purchase Orders, the Operational Creditor issued approximately 40 invoices amounting to Rs 1,87,84,248/-. In terms of the Purchase Orders and Invoices issued by the Operational Creditor, a credit period of 10 (ten) days was given to the Corporate Debtor to make payment. The Corporate Debtor has failed to make payment as agreed, despite receiving the material.

- d. The Operational Creditor further submits that on 17th January, 2023 they issued a demand notice in Form-3 to the Corporate Debtor demanding payment of the outstanding amount of Rs. 3,14,94,938.78/- including principal amount of Rs. 1,87,84,248/- plus interest amounting to Rs. 1,07,71,771.85/- and Goods and Service Tax on Interest charged of Rs. 19,38,918.93/-
- e. The said demand notice was received by the Corporate Debtor on 23rd January, 2023 by Registered Post Acknowledgement Due. No reply or payment has been received from the Corporate Debtor against the said Demand Notice. The Corporate debtor was also served by email on the registered email ID of the Company and also on the email address of the Directors on 17th January, 2023.
- f. Hence, the Operational Creditor filed the present Application to initiate Corporate Insolvency Resolution Process against the Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016 on account of default of payment of Rs. 3,14,94,938.78/- (Rupees Three Crores Fourteen Lakhs Ninety-Four Thousand Nine Hundred Thirty-Eight and Seventy-Eight Paise only).

3. The matter has been listed from time to time on board. Ample opportunity was given to the Corporate Debtor to file its reply. Since the Corporate Debtor remained absent despite receiving notice, the Corporate Debtor was set ex-parte vide order dated 04.07.2023.

FINDINGS & OBSERVATIONS

4. The records have been perused. The learned counsel appearing for the Operational Creditor invited the attention of this Tribunal to the relevant purchase orders dated 08.09.2020, 02.10.2020, 12.10.2020 and 19.10.2020 in support of their claim.
5. It is seen from the record that all the invoices have been raised during the period from 24.09.2020 to 03.11.2020. As per the terms and conditions, payment was to be made by the Corporate debtor within 10 days after lifting the material. (Invoices along with E-way bills are attached to the petition as **Annexure-B**).
6. Thus, the payments of all the above invoices amounting to Rs. 1,87,84,248/- fell during the period of Section 10A of the Code. This bench further observes that there are two debit notes dated 31.03.2021 for an amount of Rs. 10,125.00/- and 30.09.2021 for an amount of Rs. 4,527.00/-.
7. We observe from the invoices that Operational Creditor has raised all the invoices from 24.09.2020 to 03.11.2020 and the Corporate Debtor was liable to pay the invoices amounts in 10 days from the date of lifting of the materials. Therefore, the date of default for each invoices fell within 10A period. Thus, the date of default of the above invoices fell during the 10A period.
8. Section 10A of the code is reproduced herein below:
“Section 10A: Suspension of initiation of corporate insolvency resolution process.
10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution

process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

*Provided that **no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.***

9. The use of the terms “**default**” in Section 10A makes it clear that no application shall **ever be filed** for initiation of corporate insolvency resolution process of a corporate debtor for the default occurring during the said period. We observed that in the present case, the entire default occurred during the period of Section 10A of the Code.
10. Upon asking the counsel appearing for the Operational Creditor to read Section 10A of the Code and to explain why the debt which due fell during 10A period should be entertained in this petition. However, the contention of the counsel appearing for the Operational Creditor is though the material was supplied during 10A period, and the payment is also fell due within 10A period and default was also within 10A period, however, as per the proviso of Section 10A, Operational Creditor did not file the application during the 10A period but filed after the 10A period. Hence, the above company petition is maintainable.
11. The submission as has been mentioned in para 11 above is clearly not in keeping with the Provisions of Section 10A of the Code. The language of Section 10A is very clear that no application ***shall ever be filed*** for initiation of CIRP of the Corporate Debtor for the default occurred during the period mentioned in Section 10A of the Code.

12. Further, learned counsel appearing for the Operational Creditor drew our attention to the debit notes dated 31.03.2021 and 30.09.2021 raised by the Operational Creditor which have been annexed at Page Nos. 100 & 101 of the petition. Learned Counsel appearing for the Operational Creditor contended that since these debit notes are beyond the period provided in Section 10A of the Code, the above Company Petition is maintainable. In this regard, it is seen that such debit notes are for an amount of Rs. 10,125 and Rs. 4,527/- only. Therefore, the total amount reflected by these debit notes comes to Rs. 14,652/- and this could only be considered as total amount which should be said to be defaulted by the Corporate Debtor and which falls beyond the period mentioned in Section 10A of the Code. However, since this amount is less than the stipulated threshold limit of Rs. 1 crore for initiation of CIRP, such contention of the Operational Creditor is found to be not acceptable.
13. It is observed that the Part-IV of the petition in respect of particulars of Operational Debt wherein it is mentioned as under:
*“...on account of supply of Magnesium Ore of various grade, quantity and price; several Invoices were raised from August, 2020 onwards till September 2021 by the Operational Creditor to the Corporate Debtor which is annexed as **Annexure-B...**”*
14. On plain reading, it appears as if the invoices were raised from August 2020 to September 2021. However, it is seen from the facts of the case that the Operational Creditor had raised all the invoices during the period from 24.09.2020 to 03.11.2020. For the sake of clarity, the details of the Invoices are extracted herein below:

Sr. No.	Invoices Number	Date of Invoice	Amount (In INR)
1.	VZG/OM/20/01330	03.11.2020	8,87,790.00
2.	VZG/OM/20/01323	30.10.2020	8,79,358.00
3.	VZG/OM/20/01322	30.10.2020	7,68,013.00
4.	VZG/OM/20/01321	29.10.2020	6,26,661.00
5.	VZG/OM/20/01320	29.10.2020	7,69,748.00
6.	VZG/OM/20/01319	29.10.2020	7,65,780.00
7.	VZG/OM/20/01280	16.10.2020	3,86,017.00
8.	VZG/OM/20/01279	16.10.2020	3,86,287.00
9.	VZG/OM/20/01278	15.10.2020	4,22,063.00
10.	VZG/OM/20/01277	15.10.2020	4,81,782.00
11.	VZG/OM/20/01276	15.10.2020	4,10,766.00
12.	VZG/OM/20/01275	15.10.2020	4,13,724.00
13.	VZG/OM/20/01274	15.10.2020	4,08,613.00
14.	VZG/OM/20/01273	15.10.2020	4,23,139.00
15.	VZG/OM/20/01272	13.10.2020	4,13,724.00
16.	VZG/OM/20/01271	13.10.2020	4,67,524.00
17.	VZG/OM/20/01270	13.10.2020	4,63,759.00
18.	VZG/OM/20/01269	13.10.2020	4,19,643.00
19.	VZG/OM/20/01268	13.10.2020	4,25,829.00
20.	VZG/OM/20/01267	13.10.2020	4,20,988.00
21.	VZG/OM/20/01266	13.10.2020	4,20,181.00
22.	VZG/OM/20/01265	13.10.2020	4,65,911.00
23.	VZG/OM/20/01265	13.10.2020	4,12,379.00
24.	VZG/OM/20/01263	13.10.2023	4,18,567.00
25.	VZG/OM/20/01262	12.10.2020	4,10,497.00
26.	VZG/OM/20/01247	08.10.2020	4,10,497.00
27.	VZG/OM/20/01246	08.10.2020	4,08,613.00
28.	VZG/OM/20/01245	08.10.2020	4,02,427.00

29.	VZG/OM/20/01244	08.10.2020	3,98,929.00
30.	VZG/OM/20/01243	08.10.2020	4,03,233.00
31.	VZG/OM/20/01242	08.10.2020	4,08,344.00
32.	VZG/OM/20/01241	08.10.2020	4,24,484.00
33.	VZG/OM/20/01240	08.10.2020	4,15,877.00
34.	VZG/OM/20/01239	07.10.2020	4,11,842.00
35.	VZG/OM/20/01238	07.10.2020	4,21,794.00
36.	VZG/OM/20/01237	07.10.2020	4,12,379.00
37.	VZG/OM/20/01236	07.10.2020	4,23,408.00
38.	VZG/OM/20/01235	07.10.2020	4,19,373.00
39.	VZG/OM/20/01191	24.09.2020	4,41,015.00
40.	VZG/OM/20/01192	24.09.2020	4,34,591.00

Beyond these Invoices as reflected above, there are two debit notes dated 31.03.2021 and 30.09.2021 which fall beyond the period of Section 10A of the Code.

15. Keeping in view the facts, hereinabove, and in the light of the above observations, the instant Company Petition bearing CP (IB) No. 414 of 2023 filed under Section 9 of the Code for initiation of CIRP against the Corporate Debtor, M/s Vidhi Minerals & Alloys Pvt. Ltd. for default which occurred during 10A period is liable to be dismissed. Accordingly, the above Company Petition is **dismissed and disposed of.**
16. Further, with distress it is noted that despite the clear language of the Section 10A of the Code, the Operational Creditor sought to initiate the CIRP against the Corporate Debtor in clear disregard to the Provisions of the Code and by mentioning misleading facts in Part-IV of the petition. At Point No.2 of Part-IV, despite mentioning that the Corporate Debtor had issued various purchase orders dated 08.09.2020, 02.10.2020,

12.10.2020 and 19.10.2020, Operational Creditor has mentioned that “Several Invoices were raised from August, 2020 onwards till September 2021”. However, the facts mentioned hereinabove clearly bring out that all the Invoices were raised before 03.11.2020 and only two debit notes of miniscule amount were issued on 31.03.2021 & 30.09.2021 of Rs. 10,125/- and Rs. 4527/- respectively. The attempt of the Operational Creditor in mentioning such incorrect facts is nothing but an attempt to take undue advantage of the present proceedings.

17. In view of the above, the above Company Petition is **dismissed** with cost of Rs. **25,000/-** on the Operational Creditor payable to the **Bharat Kosh** within two weeks from the date of the order.
18. The Operational Creditor is directed to file compliance affidavit regarding payment of costs along with proof of payment. Registry shall ensure the compliance affidavit.

Sd/-
CHARANJEET SINGH GULATI
Member (Technical)

Sd/-
LAKSHMI GURANG
Member (Judicial)