

(2024) 02 NCLT CK 0031

National Company Law Tribunal, Chandigarh Bench

Case No: Company Petition No. (IB) No. 181/Chd/Hry/2021

Sunflag Iron and Steel Company
Limited

APPELLANT

Vs

Omax Autos Limited

RESPONDENT

Date of Decision: Feb. 9, 2024

Acts Referred:

- Insolvency and Bankruptcy Code, 2016 - Section 9, 10A
- Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 - Rule 6

Hon'ble Judges: Harnam Singh Thakur, Member (J); L. N. Gupta, Member (T)

Bench: Division Bench

Advocate: Shivam Grover, Ujjal Bannerjee

Final Decision: Dismissed

Judgement

L. N. Gupta, M (T) & Sh. Harnam Singh Thakur, M (J)

1. M/s. Sunflag Iron & Steel Company Limited (for brevity, the "Applicant") has filed the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, the 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency process against M/s. Omax Autos Limited (for brevity, the "Respondent").

2. The Respondent namely, M/s. Omax Autos Limited is a Company incorporated on 28.04.1983 under the provisions of the Companies Act, 1956 with CIN L30103HR1983PLC026142 having its registered office at Plot No. B-26, Institutional Area, Sector-32 Gurgaon HR 122001 which is within the territorial jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent Company is Rs. 30,00,00,000/- and the Paid-up Share Capital of the Company is Rs. 21,38,82,128/- as

per the Master Data annexed with the application.

3. In its application, it is averred by the Applicant that the Respondent issued a Purchase Order No. 5510004921 for supply of peeled round bars and rods on the Applicant. It is further submitted that all the material was delivered to the Respondent by the Applicant without any record of protest at the relevant time.

4. The detailed particulars of the unpaid Financial Debt claimed including the total amount of default and the date of default as mentioned by the applicant in Part IV of its application read thus:

XXXX

XXXX

XXXX

XXXX

5. Thus, as per Part IV of the application (ibid), the Applicant has claimed an outstanding "financial debt" of Rs. 1,20,23,007/- (including interest) and relied on 10.06.2021 as the "date of default". It is further submitted that on 10.06.2021, the Applicant issued the Demand Notice, calling upon the CD to pay the defaulted amount.

6. In support of its contention, the Applicant has relied on the following documents:

i. Demand notice as in Form 4 served on the corporate debtor.

ii. Copy of Invoices No. 192722791, 1927227950, 1927227951, 1927227952, 1927227953, 192726580, 192723898, 192723899, 192723946, 192723947, 192723948, 192723949, 192724194, 192724195, 192724196.

iii. Books of account and bank statement from the Indian Bank maintaining account of the operational creditor.

iv. Emails exchanged for asking of payment.

v. Certified true copy of the resolution for authorization to file application.

vi. The tracking report of the Demand Notice on the corporate debtor.

vii. Reply to the demand notice received from the corporate debtor.

8. During hearing on 29.01.2024, the Ld. Counsel for the Respondent argued that the petition is barred by section 10A as all the invoices based on which the debt and default has been claimed relates to the period between 04.04.2020 to 19.04.2020. Accordingly, the Petitioner was asked to file a short note to indicate how the present petition is maintainable. On the next date of hearing, i.e., on 07.02.2024, the Petitioner argued that the aforesaid dates were for the purpose of calculating interest only.

9. We heard the parties and gone through the pleadings on record. Before examining the petition on merits, we would like to examine maintainability of the present petition. In the backdrop of the objection raised by the Respondent, we refer to the statement

filed by the Applicant on Page No. 44 of the Application, which reads thus:

Further, when we refer to Page No. 7 of the Application, we find the following averment made by the Applicant:

Thus, it is evident that due date of payments for each of the invoices was between 30 to 45 days from the date of invoices. Accordingly, the Applicant itself has provided the due date of payment in column No. 6 of the table (ibid) as given on Page 44 of the Application, as per which due date of payment (after the credit period) falls in the period between 04.04.2020 to 19.04.2020 which is covered in the Section 10A period, for which no Application can ever be preferred.

11. In the light of the aforesaid discussion, the need of going into the merits of the case is obviated and the present Application is dismissed being barred under Section 10A, and not maintainable.