

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB- 218/PB/2018**

(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:**M/S SE POWER LIMITED****...Applicant/Operational Creditor****VERSUS****CHOWDHRY RUBBER & CHEMICAL PRIVATE LIMITED****...Respondent/ Corporate Debtor****Pronounced on:03.06.2021****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (Technical)**

MEMO OF PARTIES**M/S SE POWER LIMITED****Through its managing director****Registered office at Survey NO 54/B**

PratapnagarJarod-Savli Road

Samiaya Vadodara, Gujrat 391520

...Applicant/Operational Creditor**VERSUS****CHOWDHRY RUBBER & CHEMICAL PRIVATE LIMITED****Registered office at 19/310/40, Old Rohtak Road**

Shehzada Bagh

Near Daya Basti Railway Station

New Delhi-110035

...Respondent/ Corporate Debtor**For the Applicant:** Mr. P. Nagesh, Mr. Harshal Kumar, Mr. Shivam Wadhwa, Advocates**For the Respondent:**Mr. Manpreet Kaur Advocate

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s SE Power Limited (for brevity 'Applicant') through its authorized representative, Mr. Amit Kumar, who has been authorized vide board resolution dated 14.05.2018 with a prayer to initiate the Corporate Insolvency process against Chowdhary Chemical & Rubber Limited (for brevity 'Corporate Debtor').
2. The Applicant is a limited company incorporated under the provisions of Companies Act, 1956 on 11.08.2010, having CIN L40106GJ2010PLC091880. The applicant is having its registered office at Survey NO 54/BPratapnagar Jarod-Savli Road Samiaya Vadodara, Gujarat 391520.
3. The Corporate Debtor is a private limited company incorporated under the provisions of Companies Act, 1956 on 05.06.2008, having CIN U74120DL2008PTC179126. The applicant is having its registered office at 19/310/40, Old Rohtak Road Shehzada Bagh Near Daya Basti Railway Station New Delhi-110035.
4. The Applicant submits that in the usual course of business the Corporate Debtor placed purchase order with the applicant, goods were supplied and invoices were raised from 29.02.2016 to 09.08.2016 for total amount of Rs 16,31,176/- by applicant. The payment was to be made by the corporate debtor within 60 days as per invoice terms.

5. The applicant submits that out of total amount part payment was made by the corporate debtor eabingoutstning of Rs 8,42,863/-. To be paid by the corporate debtor.

The applicant submits that despite several reminders and emails sentto the corporate debtor, no payments have been made till dateagainst the outstanding dues.

6. The applicant issued a demand notice dated 09.11.2017 under Section 8 of the I& B Code, 2016(Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016calling upon to pay the outstanding amount of Rs 8,42,863/-. The Corporate Debtor replied to the notice and raised dispute with respect to quality of goods supplied by the applicant and the losses occurred to the corporate debtor due to applicant.
7. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application through speed post at its registered address as reflected on the MCA website.
8. The Corporate Debtor has filed reply and has contendedas follows:
 - i. That the applicant supplied defective material and of poor quality due to whichcorporate debtor suffered losses as the said goods were rejected by the firm to whom it was sent. The corporate debtor further claims to have suffered loss ofRs.125,271.30/- and claims from the applicant.
 - ii. That various firms where thecorporatedebtor supplied the goods whichweredelivered by the applicant to the corporate debtor, gave

negative reports about the products of the applicant and stopped making payment to the corporate debtor, causing losses.

- iii. That the corporate debtor under the agreement is entitled to commission @2.5% (ORC) which till date has not been paid by the applicant.
 - iv. That the corporate debtor had to suffer losses because of the substandard material to the customer of the corporate debtor MR belting, by the applicant. The said customer had deducted the amount from the total bill and wrote a letter to not to supply substandard quality of the goods to the corporate debtor.
 - v. That the firm Indag Rubber had out rightly rejected the material, which was intimated to applicant by the corporate debtor through email but the applicant chose to remain silent for the said defective material.
9. The Applicant has filed rejoinder controverting the averments made in the reply and has asserted as follows:
- i. That the material supplied by the applicant to the corporate debtor was of superior quality and any defect or quality issue as raised by corporate debtor, must have taken place as the warehouse of the corporate debtor. That the failure of the corporate debtor in recovering money from the clients is not being compensated by not paying the applicant. Further loss if any of the corporate debtor is because of its own inability.
 - ii. That the invoices raised by the applicant had a clear disclaimer about intimation of any discrepancy in any material supplied by the applicant,

within 3 days of delivery else the applicant is not liable.No such intimation was received by the applicant.

- iii. That the corporate debtor has placed on record a letter and the debit note dated 10.03.2017 which has been addressed to the corporate debtor by M R Belting, claiming substandard material. The said letter and the debit note is dated after the applicant had called upon the corporate debtor to clear its dues and this makes it amply evident that this was all an afterthought on the part of the corporate debtor in collusion M R Belting to evade its liability to make the overdue payments to the applicant.
 - iv. That it is denied that there were any issues regarding substandard material or any losses caused to the corporate debtor. The rejection which corporate debtor is talking about is of the samples sent to the party and not the goods supplied. There were significant transactions between the parties especially of Super king Tyres and namely Reclaim Rubber and Rubber Crumb.
 - v. That the corporate debtor has been making sham allegations against the applicant which is clearly evident from the email dated 04.05.2016 wherein firstly, the corporate debtor itself agrees that the product of the applicant is of superior quality and has 'technical advantage of high tensile' and the applicant maintained the quality of its goods supplied.
10. Heard both the sides and perused the documents on record, we observe that the default has occurred with respect to the payment of the operational debt due to the Applicant. The corporate debtor has failed to show any existence of dispute as the applicant has clearly established that the claim with respect to quality is an

afterthought, in view of email sent by corporate debtor dated 04.05.2016 describing the quality of goods as 'superior quality' & 'technical advantage of high tensile'. The corporate debtor has failed to place on record any concrete evidence to prove that there was a genuine dispute which was raised prior to issuance of notice under section 8 and the said was duly communicated time and again to the applicant. The communication of the corporate debtor with its customers cannot be considered as disputes against the transactions with the applicant. In "*Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software(P)Limited—2017 SCC On Line SC 1154*", Hon'ble Supreme Court held:

"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 defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above."

In the present case, there is no such dispute is pre-existing and we are convinced that the present dispute is patently feeble legal argument. The application being complete needs to be admitted.

11. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
12. The last invoice was raised on 09.08.2016, and the present application was filed on 24.04.2018, hence the debt is not time barred and the application is filed within the period of limitation.
13. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.
14. The applicant had proposed the name of IPR in the application filed under section 9 of I & B Code, 2016, thereafter, the applicant had filed an application seeking to change the name of the proposed IPR and proposed the name of Mr Mukesh Gupta as IRP. The application was allowed vide order dated 12.05.2021, taking Form 2 on record of the said IRP. As a consequence, Mr. Mukesh Gupta is and hereby appointed as IRP of corporate debtor having registration number IBBI/IPA-001/IP-P-01494/2018-19/12254 (email -camukeship@rediffmail.com) as IRP subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

15. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Mukesh Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
17. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
(MS. SUMITA PURKAYASTHA)
MEMBER (T)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (J)