

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT NO.1, MUMBAI BENCH**

CP(IB)1625(MB)/2018

(Under Section 9 of the IBC, 2016)

J B Ecotex LLP

...Petitioner/Operational Creditor

Vs

Shree Hanuman Texfab Pvt Ltd

... Respondent/Corporate Debtor

Order delivered on 14.2.2020

Coram:

Hon'ble Member (Judicial) Smt Suchitra Kanuparthi

Hon'ble Member (Technical) Shri V Nallasenapathy

For the Petitioner: PCS Dhiren Dave

For the Respondent: Adv. Shivangi Kedia

Per: V. Nallasenapathy, Member (Technical)

ORDER

It is a Company Petition filed u/s 9 of Insolvency and Bankruptcy Code, 2016 by the Operational Creditor, viz. J B Ecotex LLP stating that they have supplied Polyester Staple Fibre to Shree Hanuman Texfab Pvt Ltd, the Corporate Debtor, towards which the invoices raised were acknowledged by the Corporate Debtor. Copies of the invoices and delivery challans are attached to the petition. The Operational Creditor has filed Form 5, showing the amount of debt as Rs.91,05,327.63, i.e. Rs. 79,24,592/- as shown in the ledger balance, Rs.9,55,110.62 towards "C" forms not being received and Rs.2,25,625/- towards the probable penalty for 'C' form. It may be noted that the amount of Rs.2,25,625/- claimed towards probable penalty for 'C' form is baseless. Therefore, the total amount of claim may be treated as Rs.88,79,702.62 (Rs.79,24,592/- + Rs.9,55,110.62)

2. It is submitted that since the amount of Rs.79,24,592/- was not paid by the Corporate Debtor, the Operational Creditor issued Demand

Notice in Form 3 demanding the payment in respect of the unpaid operational debt due from the Corporate Debtor.

3. The Operational Creditor has neither received reply nor any payment was made by the Corporate Debtor. The Corporate Debtor has issued post dated cheques to the Operational Creditor which were dishonoured. Copies of the said cheques are enclosed with the Petition.

4. Since there was no payment made by the Corporate Debtor to the Operational Creditor, the Operational Creditor filed this Company petition on 4.5.2019 for initiation of CIRP against the Corporate Debtor.

5. The Corporate Debtor has filed the affidavit-in-reply on 1.11.2018 wherein it is stated that this Company petition is misconceived, bad-in law, not maintainable and the forum of IBC is malafide used to recover the disputed amount, therefore, the same deserves to be dismissed.

6. The Corporate Debtor in its reply further submitted that it is a trade practice that as and when the Corporate Debtor place the orders with the Operational Creditor, the Corporate Debtor is required to issue blank cheques and the issues such as quality problem, price variation etc are to be settled later on and till the claim and the accounts are reconciled, the Petitioner is not entitled to deposit the cheques without prior consultation with the Corporate Debtor. The said cheques are to be deposited only after seeking the necessary approval and finalisation of the dispute in respect of the price, quality and claim between the parties.

7. The Corporate Debtor in its reply has contended that after receipt of the above mentioned goods, it was pointed out to partner of the Operational Creditor that the materials supplied were not as per the order and certain materials were of inferior quality to which the Partner informed the Corporate Debtor to utilize the said materials supplied by them and the quality issue in respect of the materials supplied can be settled amicably at later stage. The Corporate Debtor further submitted that the Partner of the Operational Creditor further assured that till the finalisation of the said dispute and reconciliation of the account, they will not deposit the cheques with their bankers. However, taking undue advantage of the blank cheques issued by the Corporate Debtor, the applicant deposited the cheques which were dishonoured by the Bank.

8. The Corporate Debtor in its reply further stated that after the said cheques were dishonoured, the Corporate Debtor personally contacted

the partner of the Operational Creditor to settle the dispute of the quality immediately and to settle the amount. However, the partner of the Operational Creditor refused to do so and initiated legal proceedings.

9. The Corporate Debtor has relied on the judgment of the Hon'ble Supreme Court in *Mobilox Innovations Private Limited vs Kirusa Software Private Limited*, (AIR 2017 SC 4532) to say that the petition is not maintainable in view of the quality issues raised by the Corporate Debtor.

10. It is pertinent to mentioned that in the above said judgement, it is held that *"All that the adjudicating authority is to see at the stage of admitting/rejecting the application 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 authority does not need to be satisfied that the defence is likely to succeed so long as the dispute is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application. Moreover the existence of the dispute and /or the suit or arbitration proceeding must be pre-existing i.e It must exist before the receipt of the demand notice or invoice"*

11. In the light of the decision mentioned supra, and the facts of the Application at hand, it is observed that there is no real dispute which was in existence before the receipt of Demand Notice. The Corporate Debtor has not produced any material to the effect that disputes were raised before the issue of Demand Notice on 26.12.2017. Therefore, the judgement of Hon'ble Supreme Court in *Mobilox Innovations Private Limited (supra.)*, is not applicable in this case.

12. The Petitioner has also annexed an affidavit under Section 9(3)(b) dated 19.9.2018 stating interalia that no notice is given by the Corporate Debtor to the Petitioner of the existence of a dispute with respect to the unpaid Operational debt before the receipt of the Demand Notice by the Corporate Debtor

13. The Operational Creditor has filed the ledger Account of the Corporate Debtor maintained by it, which shows the balance of Rs.79,24,592/-.

14. On hearing the Counsel on either side and on going through the Form 5 and other connected materials, this Bench is of the view that debt

and default is writ large in the petition, hence the petition deserves admission.

15. The Operational Creditor has also proposed the name of a registered insolvency resolution professional to act as Interim Resolution Professional, to carry out the functions as mentioned under I&B Code along with declaration of the proposed IRP, in Form 2, that no disciplinary proceeding is either pending or initiated against him.

16. The Petition under Section 9 of I&B Code, 2016 filed by the Operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. The existing operational debt of more than rupees one lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

17. Accordingly, this Petition is admitted. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

1. That this Bench as a result of this prohibits:
 - a) 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;
 - b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any activity under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

2. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
 3. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 4. That the order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 of I&B Code or passes an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.
 5. That the public announcement under section 13 of the I&B Code regarding initiation of corporate insolvency resolution process should be made immediately.
 6. That this Bench appoints Mr. Devesh Pathak, a registered insolvency professional having Registration Number [IBBI/IPA-002/IP-N00234/2017-2018/10685] as Interim Resolution Professional to carry out the functions as mentioned under I&B Code.
18. The Registry is directed to immediately communicate this order to the Operational Creditor, the Corporate Debtor, and the Interim Resolution Professional. Compliance report of the order by Designated Registrar is to be submitted immediately.

Sd/-

V NALLASENAPATHY
Member (Technical)

Sd/-

SUCHITRA KANUPARTHI
Member (Judicial)