IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

CP (IB) No. 515/9/HDB/2019
U/s 9 of IBC, 2016
R/w Rule 6 of IBC, 2016

In the matter of S.N.S. Starch Limited

M/s. S. S. V. Fab Industries Private Limited,
R/o: Plot No. 7C and 7D,
Phase v, IDA, Jeedimetla
Hyderabad, 500 055.

... Petitioner/
Operational Creditor

VERSUS

M/s. SNS Starch Limited,
R/o: 311/A MLA Colony,
Road No. 12, Banjara Hills,
Hyderabad, 500 034.

... Respondent/
Corporate Debtor

Date of order: 20.12.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Hon'ble Shri Narender Kumar Bhola, Member (Technical)

Parties / counsels present:

For the Petitioner : Dr. Pradeep G Tulsian, PCA

For the Respondent: Shri. P. Anil Mukherjee, Advocate.

Heard on: 04.12.2019.

Per: Shri Ratakonda Murali, Member (Judicial)

ORDER

1. The Petitioner M/s. S.S.V. Fab Industries Private Limited (hereinafter referred as Petitioner/ Operational Creditor) has filed the present petition against M/s. SNS Starch Limited (hereinafter referred as Respondent/ Corporate Debtor). It is alleged by the Petitioner that the Corporate Debtor had defaulted in paying of Rs. 22,58,154/- (Twenty Two Lakhs, fifty Eight Thousand, One Hundred and Fifty Four Rupees only) i.e. Principal Amount- Rs.12,29,300/- adding Rs.10,28,854/- interest @ 24% PA from 27.10.2015 to 22.07.2019 . The debt arose due to failure of making payment towards consideration for supplying goods to the Respondent. Hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.

2. The averments made in the Petition are as follows:

   A. The Petitioner being a manufacturer and exporter of PP/ HDPE woven bags, Fabrics and other plastic products supplied PP woven printed bags with ply liner vide its invoices of various dates against the purchase order of the Respondent.

   B. The Respondent made various payments during the period, leaving the balance of Rs.12,29,300/-. The invoice contained the condition that interest will be calculated at 24% if the invoice is not paid within the due date.

   C. The Petitioner despatched the goods and same were received and acknowledged by the Respondent through its reply dated 17.06.2019 to the legal notice.

D. The Respondent was supposed to make the payment as per the terms on due date. But after repeated remainders and follow ups also, the Respondent did not make the payment.

E. The Petitioner then sent notice of Demand, demanding payment under the Insolvency and Bankruptcy Code, 2016 i.e. Form 3 & 4 dated 14.05.2019.

F. In response to the demand notice/ legal notice, the Petitioner received the letter dated 17.06.2019 from the Respondent i.e after 10 days of the legal notice (after the statutory period) in which Respondent/ Corporate Debtor accepted that it has received the material. Corporate Debtor has disputed the amount payable only on the ground that the bags supplied are not of good quality. Respondent has not raised any other concern.

G. It is averred by the Petitioner that inspite of continuous supply of material for years, there was never a quality problem and suddenly the quality issue arose. However, if this was case also, the Respondent never communicated with the Petitioner regarding the quality issue of material.

H. Therefore, it is clear that the Petitioner supplied the material to the Respondent and its dues are pending. Thus, till 22.07.2019 the Respondent is liable to pay Rs. 22,58,154/- including interest at 24% PA.

3. The averments made in the Counter are as follows:

I. It is averred by the Respondent that the Petition is barred by limitation. The transactions were from 27.10.2015 to 11.06.2016. Admittedly part payment was done on 23.05.2015, later no payments were done by the Respondent. The Petition was filed either on or after 22.07.2019, when three years were completed by 10.06.2019.

II. It is averred that the material supplied by Petitioner has not been upto the standards of quality agreed between Petitioner and Respondents. The quality of sacks in which the material was packed for supply to domestic and international markets, was of poor quality and the sacks used to tear while in shifting and transportation and the material used to spill over and damaged the surroundings apart from the fact that the same material could not be used again. Thus, the company suffered huge loss because of bad quality of products supplied by the Petitioner. The same has been conveyed to the Petitioner at various occasions and the Petitioner also assured the Respondent that it would give a credit notes in respect of the quantity spoiled and rejected. But so far Petitioner has not issued any credit notes.

4. We have heard the PCA for the Operational Creditor and Counsel for Corporate Debtor. The Learned CA appearing for Operational Creditor filed written submissions cum rejoinder. It is the case of Operational Creditor that it had supplied material to Corporate Debtor basing on the purchase orders placed by the Corporate Debtor. The Operational Creditor supplied material on various dates to the Corporate Debtor who was releasing payments against the material received, except the outstanding bills. It is the case of Operational Creditor that it was demanding Corporate Debtor to clear the outstanding bills.

5. On the other hand, the Corporate Debtor was postponing it on some pretext or other and thus outstanding bill continue to be pending. The Operational Creditor has no other go, except to issue demand notice in Form 3 & 4 as per the provisions of IBC, to the Corporate Debtor which was served on Corporate Debtor. Hence the Petition.

6. The Learned CA would contend that there is no denial of placing purchase orders with Operational Creditor nor any

denial of receiving the material supplied by the Operational Creditor. The Learned CA would contend that the only objection raised by the Corporate Debtor is that the claim is barred by limitation on the ground that limitation starts from 11.06.2016, the last date of invoice and that the present Petition is filed on 24.07.2019 which is beyond three years and as such the Petition is barred by limitation by virtue of Article 137 of Limitation Act. On the other hand, the Learned CA would contend that the claim is not barred by limitation. The CA would contend that the ledger account discloses the last transaction with Operational Creditor which was entered by Corporate Debtor on 23.09.2018. The Learned CA has relied on page No. 47 to show that the last transaction was on 23.09.2018, where under the Corporate Debtor made part payment leaving the outstanding balance. The Learned CA would contend, it is a running account and Corporate Debtor used to make part payment from time to time and that last payment was made on 23.09.2018. The limitation starts from the date of last transaction and the present Petition therefore, is within the period of limitation.

7. The Learned CA would contend that as per purchase order grace period of 60 days is allowed for payments. The last invoice was 11.06.2016 and 60 days will expire on 09.08.2016. The limitation starts from the period allowed for payment and as such the present Petition filed on 24.07.2019 is within limitation. In this connection, the Learned CA also relied on Section 18 (1) of Limitation Act and contended that limitations starts from the date of acknowledgement. The part-payments is acknowledgement of debt and therefore, the present petition is not barred by limitation.

8. The Learned CA also contended that the Petitioner was demanding through whats app, the Corporate Debtor to pay

the amount. The whatsaap messages are shown at Page No. 18 & 19 of the rejoinder. Thus, the Learned CA would contend the Petition is within the period of limitation and there is no pre-existing dispute. Even in the reply to the whatsapp messages, the Corporate Debtor undertakes to pay the outstanding balance. The Learned CA would contend that the Petition is not barred by limitation and that Applicant is able to establish existence of operational debt and default. As such, the Petition is liable to be admitted.

9. On the other hand, it is the case of Corporate Debtor that there was a pre-existing dispute and further the Petition is barred by limitation. Accordingly to the Learned Counsel for Corporate Debtor, the transactions started from 27.10.2015 and ended on 11.06.2016. The part payments was made only on 23.05.2015 and there were no payments thereafter. The present petition is filed on 24.07.2019 which is beyond 3 years and is barred by limitation under Article 137 of Limitation Act. The Counsel contended that the quality of goods supplied by Operational Creditor is not of such quality as was directed and commodity was packed in sacks which were of poor quality. Due to inferior quality, the sacks get torn and the commodity gets spill over and the same cannot be used. Thus, commodities supplied using inferior quality of packing bags, the Corporate Debtor suffered loss and it is pre-existing dispute.

10. So far as pre-existing dispute is concerned nothing is placed on record to establish the same. The Corporate Debtor has not filed communications to the Operational Creditor raising any dispute with regard to poor quality of sacks/packing bags used for supply of the material. The alleged dispute is raised for the first time after filing of the Petition against Corporate Debtor. As per decision of the Hon'ble Supreme Court in

Mobilox Innovations Private Limited Versus Kirusa Software Private Limited, a dispute must be genuine and must not be spurious, hypothetical or illusory. Since there is absolutely no material on record to suggest that there was a pre-existing dispute, then the same cannot be taken as a ground for not admitting the Petition.

11. The next contention by the Corporate Debtor that the claim is barred by limitation on the ground that last transaction was on 11.06.2016 and payment was also made on 23.05.2015. The Petition is barred by limitation which was filed on 24.07.2019.

12. According to the Corporate Debtor, the last transaction was on 11.06.2016. However, the Operational Creditor relied on ledger copy maintained in the course of business shown at page Nos. 26-48. At page No. 47, the ledger shows there was interstate sales dated 21.09.2018 of Rs. 46,00,114/- and there was payment thereafter and the last payment was on 23.09.2018. The ledger shows that Voucher No. 0521 dated 21.09.2016 is relating to inter-state sales and Voucher No. 381, 382 & 383 are in respect of part-payments. However, the Operational Creditor has not filed the alleged voucher/invoice dated 21.09.2018 under which inter-state sales was stated to have been conducted.

13. The next contention raised by Learned CA for Operational Creditor that payments to be made within 60 days from the date of raising of invoices. The contention of the Learned CA that last invoice was dated 11.06.2016 and payment ought to have been made by 10.08.2016 which is the time allowed and limitation starts thereafter. It is true, the last invoice, even according to Corporate Debtor, was on 11.06.2016 and time for payment is 60 days which would expire by 10.08.2016 and this Petition was filed on 24.07.2019 and therefore Petition is not barred by limitation and it is well within three years from the

expiry date of payment including the grace period allowed as per invoice. Even otherwise, the ledger shows some payments. Of course it is the duty of Operational Creditor to file receipts raised for making payments to the Corporate Debtor. However, the limitation starts from the expiry of period given in the purchase order. We have seen the purchase order and invoice attached to written submissions cum rejoinder. 60 days' time is given for payment. The last invoice is on 11.06.2016. The payment under the invoice is within 60 days. Therefore, limitation to start after expiry of 60 days. The petition is filed on 24.07.2019 is therefore, within the period of limitation. Demand notice was not issued and served on the Corporate Debtor. The Petition is therefore, liable to be admitted. The Petition is in order.

14. The Operational Creditor failed to name anyone as Interim Resolution Professional and has requested the Tribunal to appoint one for the Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional for the period 1st July 2019 to 31st December, 2019 in compliance with Section 16(3)(a) of the Code in order to avoid delay. Accordingly, this Tribunal appoints **Mr.Ritesh Mittal with IP-Registration Number**: IBBI/IPA-001/IP-P00888/2017-2018/11485 **e_mail id**: mrriteshmittal@gmail.com as Interim Resolution Professional. The aforesaid interim resolution professional has no disciplinary proceedings pending against him. He shall file his written communication and all relevant paper immediately before Registrar of this Tribunal but not later than two days.

15. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-

(1) The Bench hereby prohibits 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; Transferring , encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); 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 moratorium period.

(3) That the provisions of sub-section (1) of Section 14 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 20.12.2019 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.

(5) The Petitioner is directed to pay a sum of Rupees 1,00,000/- (One Lakh Only) to the interim resolution professional to meet out the expenses to perform the functions assigned to him in accordance with regulation 6 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall, however, be subject to adjustment by the committee of creditors as accounted for by interim resolution professional and shall be paid back to the petitioner.

(6) That the Public announcement of Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the code.

Accordingly, this Petition is admitted.

20.12.19

NARENDER KUMAR BHOLA
MEMBER (TECHNICAL)

20/12/19

RATAKONDA MURALI
MEMBER (JUDICIAL)

Dy. Regr./Asst. Regr./Court Officer/
National Company Law Tribunal, Hyderabad Bench

प्रमाणित प्रति
CERTIFIED TRUE COPY
केस संख्या
CASE NUMBER C.P(IB)No.515/9/HDB/2019.
निर्णय का तारीख
DATE OF JUDGEMENT 20/12/19
प्रति तैयार किया गया तारीख
COPY MADE READY ON 23/12/19