

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 1374/ND/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 ANHUI TECHNOLOGY IMP. & EXP. CO. LTD.

...Applicant/Operational Creditor

VERSUS

M/s PANTEL TECHNOLOGIES PRIVATE LIMITED

...Respondent/Corporate Debtor

Pronounced on:19.09.2019

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant: Mr. Purni Marwaha Gupta, Adv.

Mr. Nikhil Palli and Ms. Sanya Kumar, Adv.

For the Respondent: Mr. Abhishek Anand, Adv.

Mr. Dev Vrat Anand, Adv.

MEMO OF PARTIES

M/s ANHUI TECHNOLOGY IMP. & EXP. CO. LTD.

Having its registered office at:
459, West Changjiang Road,
Hefei, China.

...Applicant/Operational Creditor

VERSUS

M/s PANTEL TECHNOLOGIES PRIVATE LIMITED

Having its registered office at:
214, Triveni Complex,
E 10-12, Jawahar Park,
Laxmi Nagar, New Delhi-110092

...Respondent/ Corporate Debtor

ORDER

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 Anhui Technology Imp. & Exp. Co. Ltd. (for brevity 'Operational Creditor') through its authorized representative who is Power of Attorney Holder Mr. Manoj A.I., with a prayer to initiate the Corporate Insolvency process against M/s Pantel Technologies Private Limited (for brevity 'Corporate Debtor').

2. The Applicant, the Operational Creditor namely M/s Anhui Technologies Imp. & Exp. Co. Ltd, is a company incorporated and existing under the laws of China, having its head office at 459 West Changjiang Road, Hefei, China. The Registration Identification Number of the applicant is 91340000148941384F.
3. The Respondent, the Corporate Debtor namely M/s Pantel Technologies Private Limited is a company incorporated on 23.08.2010 under the provisions of Companies Act, 1956 with CIN No. U72300DL2010PTC207463, having its registered office at. 214, Triveni Complex, E 10-12, Jawahar Park, Laxmi Nagar, New Delhi -110092.
4. The Authorised Share Capital of the respondent company is Rs. 3,00,00,000/- (Rupees Three Crores only) and Paid Up

Share Capital of the company is Rs. 2,50,00,000/- (Rupees Two Crores and Fifty Lakhs only) as per Master Data of the company.

5. The Operational Creditor claims to have supplied varied quantities of Tablet PC SKD Kits, accessories and other allied materials to the Corporate debtor. The terms and conditions of such supply was that payment of the goods so supplied was to be made on basis of Open Account 90 days after Bill of Lading Date. The goods were supplied by the Operational Creditor in accordance with the arrangement between the parties and the same were received by the Corporate Debtor without any dispute or demur which were utilized and/or consumed by the Corporate Debtor in the usual course of business.
6. With the supply of each tranche to the Corporate debtor, the Operational Creditor raised invoices from time to time and out of total invoices, 6 invoices remained unpaid.
7. The Corporate Debtor failed to make payment within the agreed credit period and therefore Operational Creditor through its advocates sent a notice vide email dated

03.02.2017 and 13.02.2017 and demanded the payments due from Corporate debtor. The copies of the said email are annexed with the present application.

8. Pursuant to the meeting between the representatives of Operational Creditor and Corporate debtor on 14.02.2017, the Corporate Debtor issued a letter dated 14.02.2017 addressed to the Operational Creditor whereby the Corporate debtor duly acknowledged its liability and informed that due to demonetization by the Government of India, cash crunch is faced by the Corporate debtor, leading to delay in payment. The Corporate debtor further made assurances to make payment to the Operational Creditor without any delay. The said letter is annexed with the present application.
9. In spite of various requests made and reminders sent by the Operational Creditor, the Corporate Debtor failed to pay the amount demanded. Consequently, the Operational Creditor issued an email dated 03.03.2017 followed by letter dated 23.03.2017, demanding payments due from the Corporate debtor.

10. On failure to pay the outstanding amount by the Corporate debtor, the Operational creditor sent a demand notice dated 30.06.2017 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate debtor asking them to make the entire payment of Rs. 7,05,22,339.68/- (Equivalent to USD990,681.27) within 10 days from receipt of the notice, failing which the Operational Creditor shall initiate the Corporate Insolvency Resolution process against the Corporate debtor.
11. The Corporate debtor has replied to the Section 8 notice vide its email dated 18.07.2017 alongwith attaching letter dated 10.07.2017 and offered to pay the due amount by way of monthly installments over a period of more than 03 years i.e. August, 2017 to October 2020. The aforesaid payment schedule offered by the Corporate debtor being wholly unreasonable, the Operational Creditor vide its letter dated 23.08.2017 rejected the payment schedule offered by the Corporate debtor.

12. The Operational Creditor has stated that total debt due and payable is Rs. 7,05,22,339.68/- (Rupees Seven Crores Five Lakhs Twenty- Two Thousand Three Hundred and Thirty- Nine and Sixty- eight paisa only) which is equivalent to United States Dollar 990,681.27 considering the exchange rate of Rs.71.19= 1 USD as on 4th September, 2018 and hence filed the present application.
13. The Corporate debtor has filed its reply and raised objections with respect to the supply of faulty goods. It is submitted by the Corporate debtor that several emails have been written to the Operational Creditor with respect to pending delivery of spare parts and delivery of faulty goods by the applicant. The copy of entire trail of e-mail between 18.07.2016 to 30.09.2016 are annexed along with the reply.
14. The e-mails of the Corporate debtor dated 08.09.2016 and dated 12.09.2016 were addressed to the Corporate debtor complaining about the faulty and improper goods.
15. In rejoinder of the applicant, the submissions made in the application are reiterated and controverting the assertions in the reply. It is stated that Letter of Guarantee dated

14.02.2017, issued by the Corporate debtor shows clear admission of liability by the Corporate debtor, wherein no such alleged dispute of faulty goods was raised and the grounds for non-payment was mentioned as “*Demonetization*” and “*unable to sale goods due to Cash Crunch in the market*”.

16. It is further submitted in the rejoinder that Corporate debtor in response to the demand notice dated 30.06.2017, Corporate debtor had offered to pay the due amount by way of monthly installments over a period of more than 03 years, which was unreasonable and unacceptable. It is further submitted that despite the Corporate debtor alleging “existence of dispute”, it could not provide a single document reflecting the dispute about quality of goods received by them. On the contrary, the Corporate debtor had issued a Letter of Guarantee dated 14.02.2017 confirming to pay the entire amount to the Operational Creditor without any objection and delay.

17. It is pertinent to note that the Operational Creditor has placed on record all the tax invoices, stating that the Corporate debtor itself had acknowledged the said invoices. There is no

documentary evidence on record to show that any complaint was ever made or any proceedings were initiated by the Corporate debtor regarding pending delivery of spare parts and delivery of faulty goods by the Operational creditor .The Corporate debtor has repeatedly communicated to Operational creditor of its intention to pay outstanding dues but has repeatedly failed to make any payment. The Corporate debtor had admitted its liability to pay the outstanding dues in the Letters and e-mails exchanged and ensued between the parties. Once the debt shown as due, it is for the Corporate debtor to prove that there are no outstanding dues to be paid to the Operational creditor. Therefore, without any specific details, material particulars and evidence the fact of existence of a dispute cannot be sustained.

18. In ***“Innoventive Industries Ltd.(Supra)”***, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be

taken into consideration to hold that there is a pre-existing dispute.

19. 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. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

In the present case, there is no such dispute which is pre-existing, albeit a hypothetical or illusory dispute has been raised by the 'Corporate Debtor' and the same is a moonshine defense.

20. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
21. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
22. The Operational creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Gautam Singhal having registration no. IBBI/IPA-001/IP-P01437/2018-2019/12240 and email address is gautam@klfindia.com and contact number is 9811898418, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more

specifically in terms of Sections 15,17,18,20 and 21 of the Code.

23. 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 Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.
24. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.
25. The applicant/Operational Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and accounted for by the IRP. The amount shall be reimbursed to Operational Creditor after the COC has approved the expenses of the IRP before appointing Resolution Professional.
26. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from

today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this application must be notified.

Sd/-

(SH. HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)