

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No. 437/MB/2018

Under section 9 of the IBC, 2016

In the matter of

Blend Colours Private Limited.

34, IDA, Kattedan,
Hyderabad - 500077.

....Petitioner

v/s.

M/s. Vast Industries Pvt. Ltd.

B – 821, Pranik Chamber, Saki Vihar Road,
Sakinaka, Andheri (East).Mumbai – 400072

....Respondent

Order delivered on: 11.03.2019

Coram: Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble V. Nallasenapathy, Member (Technical)

For the Petitioner : Adv. Mayank Baglaa/w Adv. Rahul Totala i/b Adv.

RashmiPatil

For the Respondent: Adv. Ishwarlal S. Agarwal

Per: Bhaskara Pantula Mohan, Member (Technical)

ORDER

1. This Company Petition is filed by Blend Colours Private Limited (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Vast Industries Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in between 15th February to 28th May 2016 in making payment to the extent of Rs. 14,64,044/- which is inclusive of interest @ 24% p.a. on the delayed payment, of the principal outstanding of Rs. 11,23,230/- (sum total of all 7 invoices) by invoking the provisions of Sections 9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.

2. The Petitioner is engaged in the business of providing flexible packaging, poly bags, chemicals and pharmaceuticals products. The Corporate Debtor is engaged in the business of colouring plastic products. The Petitioner was supplying various goods to the Corporate Debtor as per the specifications

mentioned in the invoices. Invoices dated 15.02.2016, 27.02.2016, 30.03.2016, 26.04.2016, 09.05.2016, 14.05.2016 and 28.05.2016 were raised by the Petitioner which remains unpaid till date.

3. The Petitioner submits that a demand notice dated 01.08.2017 was sent to the Corporate Debtor demanding the outstanding amount of 11,16,988 inclusive of interest @ 24%p.a. on the delayed payment.

4. The Advocate of the Corporate Debtor replied to the demand notice on 14.08.2017 stating that the demand notice sent by the Petitioner was false, frivolous and the claim of the Petitioner was based on forged documents.

5. The Corporate Debtor raised the following defenses in its reply dated 20.08.2018:

- a. That the service of the petition is not done by following the due process of law. The petition was served to the Corporate Debtor by the Petitioner in its personal capacity and not by this Tribunal as per the NCLT Rules.
- b. That the Petition must be dismissed as material facts have been suppressed and that the Petitioner has not come with clean hands.

The Corporate Debtor cited:

- (i) *Dalip Singh v. State of Uttar Pradesh & Others* which held that “if a litigant attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”
- (ii) *Welcome Hotel and others v. State of Andhra Pradesh and others etc., AIR 1983 SC 1015* which held that if a party has misled the Court in passing an order in its favour, it is not entitled to be heard on the merits of the case.
- (iii) *S.P. Chengalvaraya Naidu by L.Rs. v. Jagannath by L.Rs. and others JT 1993 (6) SC 331*, it was held that where a preliminary decree was obtained by withholding an important document from the court, the party concerned deserves to be thrown out at any stage of litigation. and various other case laws to drive home the point that it is imperative for the Petitioner to come with clean hands and put forward all facts before the court and not conceal or suppress any fact to obtain appropriate relief.
- c. That the Petitioner has submitted forged documents in the Petition, i.e. Balance confirmation letter dated 31.03.2017 sent by the Petitioner to the Corporate Debtor which was allegedly signed by the authorized signatory of the Corporate Debtor. The stamp of Vast Industries is

counterfeit. The forged signature of some unknown person and counterfeit stamp of the Corporate Debtor is put on the said letter dated 08.06.2017 to show that the balance payment of Rs. 11,6,998/- was done with the sole intention for false, dishonest and fraudulent recovery of debt illegally from the Corporate Debtor by presenting false and forged documents with this Tribunal.

- d. That the Corporate Debtor on 07.09.2017 made a complaint under Section 420, 465, 467, 468, 471, 472, 474, 475 and 120B of the IPC, 1860 to the Senior Inspector of Police, Saki Naka, Andheri (East) against the directors of Blend Colours Private Ltd. for creating a false debt and for creation of a forged document showing false debt amounting to Rs, 11,16,998/-.
 - e. The aforementioned Balance Confirmation letter dated 08.06.2017 was addressed to Vast Industries at an address in Sholapur.
 - f. The Ledger accounts filed with the Petition are false as the copy of the ledger statement for the period 01.04.2016 to 31.03.2017 and for the period 01.04.2017 to 31.07.2017 are different.
6. The Petitioner filed its Rejoinder on 05.11.2018 and raised the following key arguments:
- a. That the principle contention of the Corporate Debtor as to non-maintainability of this petition due to a police complaint being filed by them against the directors of the Petitioner is totally vague.
 - b. The allegation that the documents showing debt are false, baseless and misconceived is an afterthought by the Corporate debtor as the police complaint was filed only after receipt of demand notice from the Petitioner.
 - c. Pursuant to the police complaint made by the Corporate Debtor, the directors of the Petitioner have neither received any summons nor directions from police to participate in any investigation.
 - d. That there existed no record of any dispute raised by the Corporate Debtor prior to receipt of demand notice as per the provisions of Section 8 (2)(a) of the Code. The police complaint was lodged only to create a record and obstruct the proceedings before this Bench and that it does not create an embargo on initiating CIRP against the Corporate Debtor. The Petitioner cited *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 SCC 353 which held as follows:

“.. All that the Adjuicating 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.

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

The Petitioner contended that the defense of the Corporate Debtor is spurious and without any substantial evidence.

- e. That the argument made by the Corporate Debtor that the documents are false and fabricated is of no credence as no authority has adjudicated upon these documents and held them to be false and fabricated.
- f. That certain payment was duly received from the Corporate Debtor towards the said invoices hence it is wrong on the part of the Corporate Debtor to allege that the invoices are false and fabricated.

7. The Corporate Debtor raised the following key arguments in its written submissions dated 29.11.2018:

- (i) The present matter requires the proving and disproving of documents, examination and cross- examination of the Applicant and the Respondent, etc. This Tribunal just like Civil court has the jurisdiction to conduct an inquiry to adjudicate on the veracity of these documents.
- (ii) The ledger statements annexed to the Petition are print-outs of electronic documents and are not accompanied by the Certificate as required under Section 65B of the Indian Evidence Act, 1872. In absence of valid documentary evidence the present application be dismissed with costs.
- (iii) The director of the Petitioner, Mr. Sharad Kumar Rathi who was authorized vide a board resolution of the Petitioner to file this petition does not state his DIN. Therefore he does not have any valid authority for filing this Petition before this Tribunal.

8. Issues:

- a. Whether the petition was served as per the due process under law?
- b. Whether this Tribunal is vested with the power to conduct trial and to see the veracity, genuineness, relevancy and genuineness of the documents that are attached to the Petition?

9. Findings:

- a. Petition was duly served by the Petitioner on the Corporate Debtor at his office by speed post on 16.04.2018 and the same was accepted by them on 29.04.2018. The Corporate Debtor was represented its Advocate and Reply as well as written submissions are on record. Principles of natural

justice have not been violated as the Corporate Debtor was sufficiently represented before this bench.

- b. The Invoices as appended to the Petition cannot be doubted for the reasons that some payments have been made against the same. Now the point is whether this Tribunal is vested with the power to conduct Trial for deciding a Petition filed under the Code. It is a fact that this Tribunal is established under Section 408 of the Companies Act, 2013 and under Rule 11 of the National Company Law Tribunal Rules, 2016 this Court has got inherent powers to make such orders as may be necessary for meeting the ends of justice. Apart from that this Tribunal is not required to conduct Trial in a matter where the same can be decided on the basis of documents annexed to the Petition and the reply or any other pleadings although under Section 424 of the Companies Act, 2013, this Tribunal has got all the powers to examine the witness on oath and conduct trial and follow the procedure as follow in regular Civil Court. In the instant case on hand since some payments have been made against the invoices, there is no requirement to adduce any evidence by conducting trial.
- c. The Respondent had doubted the genuineness of certain documents but had not denied the receipt of material on the basis of invoices annexed to the Petition. The invoices are supported by the Transportation Documents which prove that the material which in fact has been delivered to the respondent.
- d. Mobilox – dispute raised by the Corporate Debtor is spurious and not raised before sending of demand notice as per the provisions of Sections 8(2)(a) and 9(5)(ii)(d). Apart from that the so called defence raised by the Respondent is bald and not supported any documents and the denials are not specific. In view of the same the case of the Petitioner has to be accepted and the Petition requires to be admitted.

10. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

- (a) That this 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

- (b) 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.
- (c) 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.
- (d) That the order of moratorium shall have effect from 11.03.2019 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, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Kashinath Ranoba Palekar, 201, Amartaru 3, Opp. Pinky Cinema, New Nagardas X Road, Andheri (East), having Registration No. IBBI/IPA-002/IP-N00613/2018-19/11983 Mumbai-400069 email-id k.palekar1951@gmail.com as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

11. Accordingly, this Petition is admitted.

12. The Registry is hereby directed to communicate this order to both the parties as well as IRP immediately.

Sd/-

V. Nallasenapathy
Member (Technical)

/NP/

Sd-/

Bhaskara Pantula Mohan
Member (Judicial)