

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

**CP (IB) No.1146/MB-IV/2021**

Under Section 9 of the IBC, 2016

*In the matter of*

Avdhut Agency

A sole Proprietor Concern

Through its Sole Proprietor,

Mr. Rajesh Lahoti

...Operational Creditor

v/s.

Yellow Spun and Linens Private Limited

[CIN: U18100MH2003PTC143031]

...Corporate Debtor

Order Delivered on: 11.07.2023

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Operational Creditor:

Mr. Shon D. Gadgil, Ld. Counsel.

For the Corporate Debtor:

Ms. Madhavi Nalluri, Ld. Counsel.

**ORDER**

***Per: Prabhat Kumar, Member (Technical)***

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by Avdhut Agency (A sole Proprietor Concern through its Sole Proprietor, Mr. Rajesh Lahoti) (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Yellow Spun and Linens Private Limited, the Corporate Debtor.
  - 1.1. The Company Petition is filed on 27/05/2021 claiming an amount of Rs. 2,72,67,918/- in default. The Part IV of the petition does not clearly specify date of default.
  - 1.2. The Operational Creditor started supplying yarn to the Corporate Debtor since the year 2014, when the Corporate Debtor orally placed an Order on the Operational Creditor. The Operational Creditor raised Invoices accordingly, whenever any yarn was supplied to the Corporate Debtor. After November, 2018 there was no payments from the Corporate Debtor.
  - 1.3. After the continuous follow up, the Corporate Debtor issued a cheque dated 19/08/2019 drawn on Indian Overseas Bank, Solapur Branch amounting to Rs. 1,00,00,000/- to the Operational Creditor, the said cheque was dishonoured and the Operational Creditor filed a Complaint under Section 138 of the Negotiable Instruments Act, 1881 bearing S.C.C. No. 3384 of 2020.
  - 1.4. The Operational Creditor issued a Demand Notice dated 24/12/2020 to the Corporate Debtor u/s 8 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor has issued a Reply dated 04/02/2021 to the said Demand Notice dated 24/12/2020 issued by the Operational Creditor falsely claiming that the demand notice was not supported with any supporting documents.

2. The Corporate Debtor vide its reply dated 09.02.2022 hereby states that the Ledger as annexed by the Operational Creditor is totally denied and in fact the Ledger Statement is fabricated, the entry is contradicting to what the Operational Creditor is claiming; the Cheques which are mentioned has been used illegally and if read with this fake and fabricated Ledger Statement only proves the malafide intention; the Corporate Debtor cannot be called for paying any percentage of interest; the Corporate Debtor states that the invoices produced in the Petition were never signed or acknowledged by the Corporate Debtor.

2.1. It is submitted that Mr. Mukund Lahoti used to arrange the yarn through Operational Creditor which is owned by Mr. Rajesh Lahoti, a close relative of Mr. Mukund Lahoti. The Corporate Debtor has submitted that Mr. Mukund Lahoti and Mr. Rajesh Lahoti, owner of the Operational Creditor were clearly told in advance that the finished goods are being exported to USA, UK and German based clients only, therefore, a superior quality yarns of the highest standard was required to be made available to the Corporate Debtor, otherwise it would lead to serious financial losses to the said company, as exported goods, if rejected, due to inferior quality, in such events the Corporate Debtor will suffer the serious losses. Such rejected goods would not be even sold in the local Indian market, after being reimported.

2.2. That, taking advantage of the said Mr. Rajesh Lahoti and Mr. Mukund Lahoti have stolen the huge chunk of goods from the Company stock, which was only revealed after the Physical stock was compared by the said company in the year 2018. The material which has been lying in the stock was having huge shortage when compared with the invoices, delivery challans and bills raised relating to the supply of the yarns. Mr. Venkatesh Gurram, Mr. Pravin and Mr. Joshi were present, When Mr. Mukund Lahoti

---

and Mr. Rajesh Lahoti were present in the factory and they have failed to provide the answer to the said missing of stock worth Rs. 2,50,00,000/- from the said Company. Mr. Venkatesh Gurram and Mr. Pravin were the people responsible to take physical stock. The Corporate Debtor has alleged that 121411.188 Kg of yarn valued at Rs. 140 per kg total amounting to Rs.1,69,97,565 was found missing.

2.3. The Corporate Debtor has filed a Police complaint against the Operational Creditor pointing out the Criminal breach of trust, fraud, cheating, committed by the Operational Creditor against the Corporate Debtor, on 15.04.2021.

2.4. It is further stated that, the Operational Creditor is liable to pay a sum of Rs. 94,25,632/- as on April,2019, for the business conducted by the Operational Creditor with the Corporate Debtor. Apart from this the Corporate Debtor claims huge loss of Rs. 2.5 Crores due to supply of inferior quality of yarn; Rs. 1 Crore due to non-delivery of goods.

2.5. It is further stated that the cheques which are mentioned has been used illegally and if read with this fake and fabricated Ledger statement inly proves the malafide intention.

2.6. Further, the interest, as claimed by the Operational Creditor, was never agreed. Hence, the claim of this interest is illegal on perusal of the invoices annexed to the petition this bench finds that there is no stipulation of any interest.

2.7. Further the Corporate Debtor has referred to paragraph 29 and Para 40 of the judgement of Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited v/s Kirusa Software Private Limited*, to contend that "Even

*otherwise, the word "and" occurring in Section 8(2)(a) must be read as "or" keeping in mind the legislative intent and the fact that an anomalous situation would arise if it is not read as If read as "and", disputes would only stave off the bankruptcy process if they are already pending in a suit or arbitration proceedings and not otherwise. This would lead to great hardship: in that a dispute may arise a few days before triggering of the insolvency process, in which case, though a dispute may exist, there is no time to approach either an arbitral tribunal or a court", and "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".*

- 2.8. This has been further submitted that, the Judgement of ***M/s Innoventive Industries Ltd. v/s ICICI Bank & Anr***, allows the corporate debtor to point out to the adjudicating authority that a default has not occurred; in the sense that a debt, which may also include a disputed claim, is not due i.e. It is not payable in law or in fact.
3. This Bench directed the Operational Creditor to file copy of GSTR-1 giving details of invoice claimed in the petition along with e-way bills. The Operational Creditor submitted the details of GSTR-1 and pleaded that generation of e-way bills was not required as the place of supply of the material and destination were in the same locality.
4. The bench directed the corporate debtor to confirm whether the invoices stated in GSTR-1 filed by the Operational Creditor were found appearing in their login account in the GST portal. Counsel for the Corporate Debtor shall also submit how they substantiate their assertion that debt goods were never received in the light of this fact and whether any input tax credit on such purchases was taken

by the Corporate Debtor or not at any time in its GST Return. The Corporate Debtor was asked whether the transactions appearing in the GSTR-2A were considered while finalizing annual returns to be filed under GST Law for relevant year and, in that light, how they can plead that goods were never received. Also clarify whether they have notified to the Operational Creditor about the invoices(s) wrongly appearing in their GSTR-2A to seek revision thereof?.

4.1. The Corporate Debtor vide additional affidavit dated 10.05.2023 that the invoices produced in the petition were never signed or acknowledged by the Corporate Debtor and accordingly it cannot be made liable for the fake and fabricated invoices. The Corporate Debtor has also filed some what's app chats to support its contentions on the inferior quality. Further, it has submitted quantitative reconciliation of the yarn demonstrating that the shortage of 121411.83 Kg of yarn found at the physical verification. Further, it has submitted details of purchases appearing in GST portal to corroborate the quantity of purchase shown in the reconciliation statement. Based on this Corporate Debtor has derived the outstanding amount payable to the Operational Creditor as NIL.

#### *Findings & Decision*

5. This bench heard the counsel and perused the material available on record.

5.1. It is not in dispute that Mr. Mukund Lahoti was acting on behalf of the Corporate debtor to procure the yarn from the Operational Creditor, which is owned by Mr. Rajesh Lahoti the relative of Mr. Mukund Lahoti. The Corporate Debtor has alleged shortage of goods, which was discovered upon the physical verification of the inventory, conducted in the presence of Mr. Mukund Lahoti. The Corporate Debtor has filed a quantitative reconciliation of its inventory with the financial books, and this

---

reconciliation supports the contention of the Corporate Debtor that there is no account of 121411.83 Kg of yarn, alleged to have been purchased from the Operational Creditor. This bench finds that a police complaint against the Operational Creditor pointing out the Criminal breach of trust, fraud, cheating, committed by the Operational Creditor against the Corporate Debtor, and this complaint was filed prior to issue of demand notice u/s 8 of the Code by the Operational Creditor. The goods were supplied through a vehicle, the registration no of which stated on the delivery challans seems incomplete. The supply of goods did not require generation of e-way bill under GST Law, accordingly, the fact of supply cannot be established merely on the basis of tax invoice, considering that the Corporate Debtor has claimed in the reconciliation of input credit that the credit against these invoices was not claimed. These facts lead us to a conclusion that there exists prima facie dispute in relation to supply of goods, giving rise to debt due from the Corporate Debtor, and claimed in default in the present petition. The facts require examination of the parties involved in the transaction to establish the existence of debt.

5.2. It is trite law that an Application under Section 9 of the Code cannot be admitted in relation to disputed debt as held by the Hon'ble Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited* held that, in the event there is a pre-existing dispute between the parties, an Application under Section 9 of the Code would have to be rejected.

5.3. In view of the above, we find that the present case is fit for dismissal under Section 9(5)(ii)(d) read with Section 8(2)(a) and Section 5(6) of the Insolvency and Bankruptcy Code, 2016 in view of pre-existing dispute between the parties with respect to the purported claims. Hence, the present case requires adjudication which is beyond the powers granted to us to adjudicate a petition filed under sec. 9 of the code and deserves to be dismissed.

**ORDER**

6. The petition bearing C.P. (IB) No. 1146/MB/C-IV/2021 filed by Avdhut Agency (A sole Proprietor Concern through its Sole Proprietor, Mr. Rajesh Lahoti) (“the Operational Creditor”), seeking initiation of Corporate Insolvency Resolution Process (CIRP) in the matter of Yellow Spun and Linens Private Limited, the Corporate Debtor, is **Dismissed**.
  
7. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**  
**11.07.2023.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**