

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V

RCP (IB)/9/(MB)2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules 2016)

In the matter of

M/s Kunaal Cotton Corporation

Roowala Building, Kuvadva Road, Nr. Dhakan Hospital, Rajkot 360003.

.....Petitioner/Operational Creditor

Vs

Planet Spinning Mills Pvt. Ltd.

Having its registered office at:
JBF House, 13, Old Post Office Lane,
Kalbadevi Road, Mumbai- 400002

.....Corporate Debtor

Order Dated:21.12.2023

Coram:

Reeta Kohli, Hon'ble Member (Judicial)
Madhu Sinha, Hon'ble Member(Technical)

Appearances:

For the Petitioner/Operational Creditor: Adv. Shantibhushan Nirmal
(PH)

For the Corporate Debtor: None Present

ORDER

Per: Reeta Kohli Member (Judicial)

This Company Petition is filed by M/s Kunaal Cotton Corporation (hereinafter referred as “**the Petitioner/Operational Creditor**”) on **15.03.2020** seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **Planet Springing Mills Pvt. Ltd.** (hereinafter called “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called “**the Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for committing default in payment of an Operational Debt of **Rs. 33,26,073/- (Principal Amount as on 30.04.2016 plus interest on principal amount from 30.04.2016 till actual date of payment).**

Brief Facts and Submission by the Operational Creditor:-

1. The case of the Operational Creditor is that he sold, supplied and delivered bales of cotton waste herein after referred to as ‘goods’ to the Corporate Debtor against ten invoices raised on the following dates, that is, 01.03.2016, 03.03.2016, 05.03.2016, 14.03.2016, 17.03.2016, 01.04.2016, 02.04.2016, 04.04.2016, 04.04.2016 and 08.04.2016 for a total sum of Rs. 33,26,073/-.
2. Operational Creditor further submitted that the Corporate Debtor issued five post dated cheques towards the payment of the first five invoices out of the aforesaid ten invoices. The total money value of all the five cheques collectively was Rs. 16,30,467/-.

3. After a period of almost two months when the date of presentation of cheques was nearing the Corporate Debtor in order to avoid payment of cheques, as an after-thought, issued baseless letters raising the issue of inferior quality of goods under the initial five invoices.
4. The case of the Operational Creditor further is that vide letter dated 30.04.2016 & 09.05.2016, he requested to the Corporate Debtor to provide lab tested report justifying goods to be of inferior quality and to return the goods back. Neither any lab tested report was provided nor the goods were returned. Hence the establishment of the default on the part of the Corporate Debtor.
5. The Operational Creditor further submitted that because of dishonourment of five cheques he filed five different complaints under section 138 of Negotiable Instruments Act, 1881.
6. The Operational Creditor also informed that in September 2016 he issued legal notice dated 23.09.2016 for winding up of the Corporate Debtor under Companies Act, 2013 with respect to the default of the outstanding amount of five invoices i.e. Rs. 16,95,606/- and subsequently issued a fresh/second winding up notice dated 09.01.2016 withdrawing the previous notice and claiming a total sum of Rs. 33,26,073/-. The second winding up notice was issued as the Operational Creditor had erroneously omitted to claim his full debt in the first legal notice. The Corporate Debtor sent replies to the Operational Creditor in which it denied the claim.
7. The Operational Creditor, thereafter, issued Demand Notice under section 8 in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 of the Code on 03.12.2018 demanding the amount of Rs. 33,26,073/- from the Corporate Debtor pending under ten invoices along with the interest. Vide letter dated 12.12.2018 the Corporate Debtor

responded to the Demand Notice and made a submission of inferior quality of goods under initial five invoices. Hence the present petition by the Operational Creditor for initiating CIRP proceedings against the Corporate Debtor.

8. In 'Part IV of Form 5', the Operational Creditor has claimed an amount of Rs. 33,22,603/- along with the interest @ 18 percent from 30.04.2016 totaling to 33,26,073/-. The date of default as set out in the petition is the date of dishonourment of cheques i.e. 30.04.2016.
9. During the course of arguments the Ld. counsel on behalf of the Operational Creditor submitted that the letters dated 26.04.2016 & 09.05.2016 by the Corporate Debtor raising the issues with respect to inferior quality of goods supplied was with mala-fide intention, as the same was issued only when the due date for presentation of cheques were nearing. Hence stoppage of payment by the Corporate Debtor on the premise of the inferior quality of goods is unreasonable, illegal and unsustainable in the eyes of law. Learned counsel further submitted that vide letters dated 30.04.2016 & 09.05.2016 sent in response to the letters to the Corporate Debtor, the Corporate Debtor was requested to return back the goods with same condition with lab tested report which was never fulfilled. Therefore, it was submitted that it is a clear case of debt and default having been established against the Corporate Debtor.
10. The Learned Counsel further contended that the pendency of the recovery suit cannot be said to be an impediment to initiate the CIRP against the Corporate Debtor as both these remedies being independent of each other are available to the Operational Creditor. Counsel further contended that the dismissal of the criminal complaint under section 138 of Negotiable Instruments Act, 1881 also has no bearing on the present petition as these were the

criminal complaints filed against the Corporate Debtor because of the stoppage of the payment of the amount due whereas the present code is a complete code in itself granting the right to the Operational Creditor to prefer the petition against the Corporate Debtor for established debt and default. Hence the Corporate Debtor deserves to be admitted to CIRP.

Submissions by the Corporate Debtor:

11. Learned counsel on behalf of the Corporate Debtor vehemently stated that the alleged outstanding amount of **Rs. 33,26,073/-** is neither due nor payable to the Operational Creditor.
12. The affidavit and reply has been filed on behalf of the Corporate Debtor. Exhibits D1 to D3 annexed with the reply stated to be the credit notes, given to the Corporate Debtor have been seriously disputed. In its reply the Corporate Debtor has stated that these are forged and fabricated. The Corporate Debtor had further stated that during numerous telephonic conversations the Operational Creditor was asked to take back delivered goods but no attempt was made by the Operational Creditor. Thus, the Corporate Debtor was compelled to resort to stoppage of payment of cheques issued in favour of the Operational Creditor. He further submitted that he also intimated the Operational Creditor about the stoppage of payment much prior to the date of presentation of cheques. Despite having the information regarding stoppage of the payment of all these cheques on account of inferior quality of goods, the Operational Creditor with malafide intention presented the cheques and got them dishonoured. Thus Operational Creditor cannot be allowed to take advantage of his own wrong of presenting the cheques knowing fully well that the payment has been stopped on

account of inferior quality of material supplied by the Operational Creditor.

13. Ultimately, criminal complaints filed by the Operational Creditor were also dismissed by the Learned Chief Judicial Magistrate as the factum of stoppage of payment and the reasons for the same were well within the knowledge of the Corporate Debtor. The Corporate Debtor in its reply had denied the receipt of letters dated 30.04.2016 & 09.05.2016 respectively. It had been categorically stated that these letters now being relied upon by the Operational Creditor for the first time in reply to the petition are self generated and ante dated with a mala fide intention and ulterior motive. It is also stated that the said letters are not even on the petitioner's letter head and do not even bear the seal of petitioner's company. So much so that even the signatures are different from the original signature of the petitioner. The Corporate Debtor had disputed various documents annexed with the petition and the same have been stated to be fraudulently procured with mala-fide intention.

Findings

1. After having heard the counsel for the parties and having appreciated the documents on record we are of the considered view, that vide letters dated 26.04.2016 & 09.05.2016 much prior to the issuance of the Demand Notice dated 03.12.2018, Corporate Debtor had raised the issue of inferior quality of goods. In its reply dated 12.12.2018 sent by the Corporate Debtor to the statutory Demand Notice, it was clearly stated that they were not required to make payment against the invoices because of the inferior quality of goods and stoppage of the payment of the cheques was also brought to the attention of the Operational Creditor in 2016 itself. Still these cheques were presented. It is further stated in the reply

to the notice that the complaints of the Operational Creditor were dismissed by the competent court. In this reply it was categorically mentioned by the Corporate Debtor that they are not liable for any legal debt payable to the Operational Creditor because of inferior quality of goods which were to be replaced by the Operational Creditor before asking for payment.

2. Furthermore, perusal of the letters dated 30.04.2016 & 09.05.2016 the authenticity of which have been disputed by Corporate Debtor seems to be self -procured for advancement of its own interest by the Operational Creditor. The same being handwritten on a simple plane sheet of paper seem to be ante-dated. Hence deserves no consideration as no mention of these was ever made prior to filing the reply to the present petition. Further, the amount of debt claimed to be due towards the Corporate debtor is stated to be disputed. Rather the debt is not crystallised debt. In addition the raising of issue of inferior quality by the Corporate Debtor in 2016 itself and stoppage of payment because of the same established pre-existing dispute between the parties.
3. To substantiate it further we take notice of the judgment of the Hon'ble Supreme Court in **Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. [(2017) ibclaw.in 01 SC]** with respect to Pre-existing Dispute in which it was held that the breach of the terms and conditions of the Agreement entered into between the parties to the case before the Demand Notice is sent under Section 8 of the Code qualifies to be a Pre-existing dispute and, therefore on the ground of existence of such a Pre-existing Dispute, an Application under Section 9 of the Code is not maintainable.
4. In view of the law laid down by the Hon'ble Supreme Court and also in view of the facts of the present case the pendency of suit, filing of criminal complaints and legal notices sent for winding up of the

Corporate Debtor and the letters by the Corporate Debtor stopping the payment of cheques are reasons enough for us to come to the conclusion of Pre-existing Dispute between the parties. Thus the present petition deserves to be dismissed.

5. In conclusion, therefore, the present CP No. 1041/MB/2019 is **rejected**.

Sd/-

MADHU SINHA
MEMBER (TECHNICAL)

Sd/-

REETA KOHLI
MEMBER (JUDICIAL)

//VLM//