



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-304
IB-1752/ND/2019

IN THE MATTER OF:

M/s Optus Laminates Pvt. Ltd.

Vs.

M/s Santasha Decor Pvt. Ltd.

....Applicant

.....Respondent

SECTION

U/s 9 IBC

Order delivered on 15.09.2023

CORAM:

SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets. IB-1752/ND/2019 is stands **dismissed**.

Sd/-

(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-

(P.S.N PRASAD)
MEMBER (J)



IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – V, NEW DELHI
C.P (IB)/1752(ND)2019

An application 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 OPTUS LAMINATES
PRIVATE LIMITED

At & Post-Sonasan,
Opposite Ceramic Zone,
Ta-Prantij, Dist-Sabarkantha
Gujrat – 383210

....Operational Creditor

Versus

M/S SANTASHA DÉCOR
PRIVATE LIMITED

2914 Street No. 4,
Multani Dhandha, Pahar
Ganj, New Delhi- 110055

...Corporate Debtor

Order Delivered on: 15.09.2023



CORAM:

SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Adv. Mr. Gaurav Dua

For the Respondent : Adv. Mr. Mansij Arya

ORDER

PER: SHRI P.S.N PRASAD, HON'BLE MEMBER (JUDICIAL)

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

1. The instant application is filed by M/s Optus Laminates Pvt. Ltd. (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code/IBC') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against M/s Santasha Décor Pvt. Ltd. (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for failing to make the payment amounting Rs.31,24,707/- (Rupees Thirty one lacs twenty four thousand seven hundred and seven only). The present application was filed on 18.07.2019.



2. The Respondent Company M/s Santasha Décor Pvt. Ltd. (hereinafter referred as Corporate Debtor) was incorporated under the provisions of the Companies Act, 1956 having its registered office situated at 2914 Street No. 4, Multani Dhandha, Pahar Ganj, New Delhi- 110055. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under subsection (1) of Section 60 of the Code.

Averments of the Applicants:

3. Briefly stated the facts of the present case as averred by the applicant are that the applicant is engaged in the business of manufacturing of product of wood, cork, straw and painting materials etc. Further, submitted that the both Operational Creditor and Corporate Debtor had agreed to business with the understanding that the entire dealing between them would be on the principle of an open, running, mutual and current account. The Applicant submitted that, during the course of business, the Corporate Debtor had placed a purchase order for purchase of various goods from the operational creditor, and accordingly the Operational Creditor had supplied the material to the Corporate Debtor on credit basis and pursuant thereto various invoices were raised. Further, it is submitted that since certain supplied goods were returned by the



Corporate Debtor, pursuant thereto the Operational Creditor adjusted the amount of returned goods and claimed the sum of Rs.31,43,796/- (Rupees Thirty One Lac Forty Three Thousand Seven Hundred and Ninety Six only) plus interest @24% p.a from the Corporate debtor as the Corporate Debtor had defaulted in making payment of the invoiced amount.

4. The Applicant further submitted that the date of default occurred on 02.03.2017 and in view of default on part of the Corporate Debtor to make the payment to the Applicant against the material so supplied, the Applicant had issued the statutory demand notice under section 8 of the Code through speed post on 06.06.2019 and also by courier on 07.06.2019. However, the said statutory Notice returned unserved.
5. Subsequently, the statutory demand notice under section 8 of the Code has been successfully received at registered office of Corporate Debtor when it was served through private courier service. However, the Operational Creditor neither received any reply of Notice sent under Section 8 of the Code nor any payments of the mentioned unpaid amount to the Operational Debtor within a period of 10 days of the receipt of the Legal Notice was made by the Corporate Debtor. Therefore, the Applicant was constrained to file the instant application under section 9 of the Code.

Reply of the Respondent Corporate Debtor:



- 6.** Per contra, the respondent through his reply submitted that all averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety.
- 7.** Further, the Respondent submitted that the purported amount claimed by the Operational Creditor is not in default on account of the Corporate Debtor. In fact, neither the default has occurred on the part of the Respondent nor the Respondent denied to make the payment subject to the fulfillment of the agreed terms.
- 8.** The Corporate Debtor submitted that, there is a pre-existing dispute on failure on the part of Operational Creditor to meet with agreed term as regard to the Dealership Agreement entered between the Operational Creditor and the Corporate Debtor dated 10.12.2015. The said term and conditions mention such as, allocated territory for the business, a monthly target was assigned which needed to be achieved jointly, submitting the sale review of every month, promotion of the goods on national level, etc. The said terms and conditions are attached as Annexure II to its reply.
- 9.** It is submitted on behalf of the Corporate Debtor that, the non-adherence of agreed terms on the part of Operational Creditor, resulted in a loss of around Rs.12 Lakhs to the Respondent including the loss of goodwill of the business and the same has been raised and highlighted in detail by the Respondent vide its emails dated 08.09.2016 and 19.11.2016, that is, almost three



years prior to the issue of purported abovesaid statutory Notice to the Corporate Debtor. In fact, the Corporate Debtor vide the mentioned email dated i.e 08.09.2016 and 19.11.2016 informed to the Applicant that the Dealership Agreement between them could not be continued and it would end on 24.12.2016 and that thereafter the Operational Creditor could collect the goods and material from the godowns (i.e warehouse) which were stocked in the Corporate Debtor godowns during the course of business. It is averred that pursuant to such return of the stock, adjustment and negotiation between the parties, the Applicant agreed to issue a cheque dated 09.10.2018 of Rs.1,00,000/- to the Corporate Debtor against the full and final settlement between both the parties.

Rejoinder by the Applicants

- 10.** The Operational Creditor through its rejoinder has submitted that the Reply filed by the Corporate Debtor is totally false, frivolous and vexatious and is devoid of any merit. Further submitted that the Corporate Debtor admitted herein that it had to make payment to the Operational Creditor subject to fulfillment of agreed terms, however failed to explain which are those terms. Further, the Operational Creditor denied that there was any dispute between the parties in regard to fulfillment of agreed conditions of the Distribution Agreement as alleged. Further, the Applicant through its rejoinder denied any pre-existing dispute between the parties which make the



instant application not maintainable under section 9 of the Code, 2016.

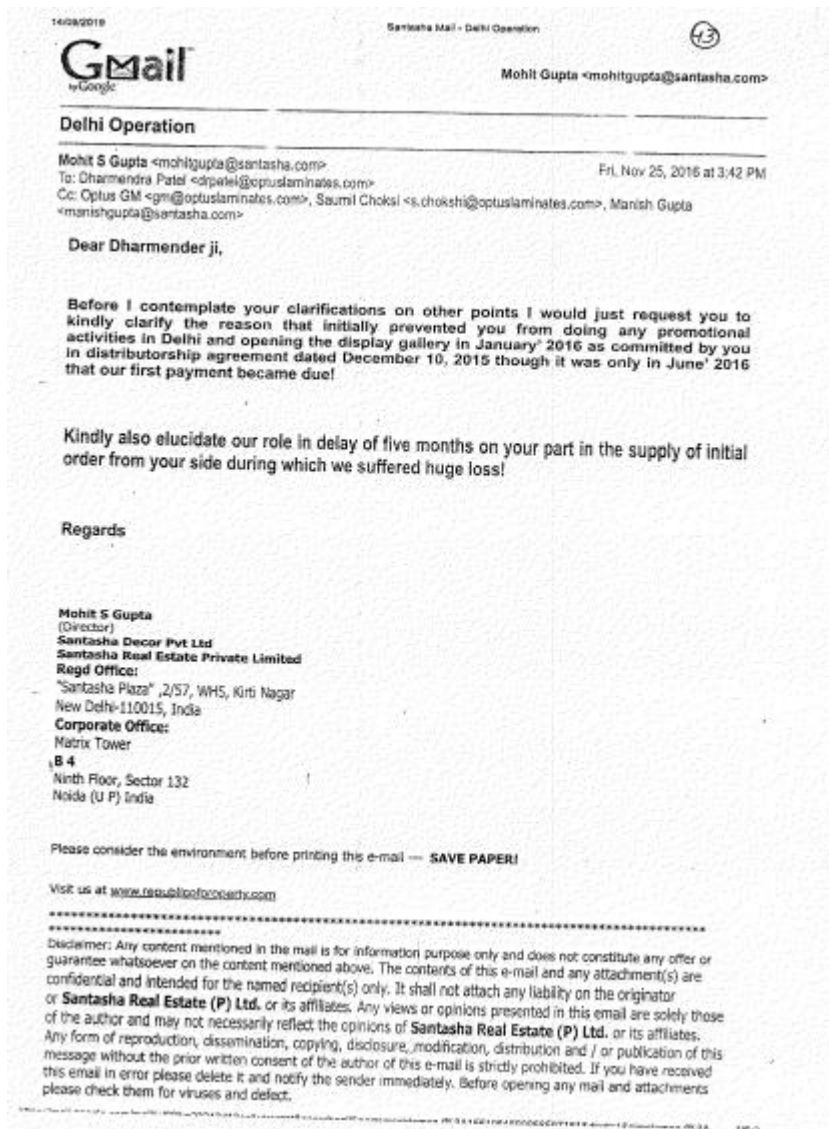
11. The Applicant further denied that the Corporate Debtor incurred loss of name and goodwill of business due to non-fulfillment of agreed terms by the Operational Creditor. Further, the Applicant submitted that there were no such adjustments or negotiation which resulted in full and final settlement of the dues between the parties as contended by the Corporate Debtor in its reply.

Analysis and Findings

12. We have heard Ld. Counsels for the applicant as well as the Ld. Counsel for the Respondent and perused the averments made in the application, counter affidavit and rejoinder. The relevant documents annexed with the submissions have also been examined.
13. We have perused the proof of purchase orders, invoices, Ledger account of Corporate Debtor in the books of Operational Creditor, interest calculation sheet produced by the Operational Creditor. We have also perused the copy of e-mail communications made prior to the issue of statutory demand notice. While the Applicant has prayed for initiation of CIRP against the Corporate Debtor, the Respondent has prayed for dismissal of the present Application in the light of pre-existing disputes between the parties.



14. We find that the issue of deficiency in terms of agreed term and delays in respect of supplies received from the Operational Creditor was raised by the Corporate Debtor prior to issue of Statutory Demand Notice of 06.06.2019 as borne out from a series of emails placed at pages 34-43 of reply filed by the Corporate Debtor. Concisely put, the email dated 08.09.2016 from the Corporate Debtor raises issues about not fulfillment of the agreement made; email dated 19.11.2016 relates to complaint about failure to deliver the consignment according to the Distributorship Agreement dated 10.12.2015; email dated 25.11.2016 is about delay of five months on the part of the Operational Creditor in supply of Goods ordered which caused loss to the Corporate Debtor, as shown below:



15. The email dated 25.10.2016 sent by the Operational Creditor to the Corporate Debtor categorically states that “We even are not in a position to look out on your (i.e Corporate Debtor) expenses”, as shown below:



14/03/2019

Santasha Mail - Delhi Operation

36

Gmail
by Google

Mohit Gupta <mohitgupta@santasha.com>

Delhi Operation

Dharmendra Patel <drpatel@optuslaminates.com>
To: mohitgupta@santasha.com
Cc: Optus GM <gm@optuslaminates.com>, Saumil Choksi <s.chokshi@optuslaminates.com>, Dharmendra Patel <drpatel@optuslaminates.com>

Tue, Oct 25, 2016 at 2:56 PM

Dear Mohitji,

Warm Greetings from Optus Laminates....

We have been discussing to find out a better solution/strategy for working in Delhi region with better viability for you as well as for us from last couple of months. After detailed discussion and analyzing from our side, in present situation we find it will be very difficult to be a viable because as far as your part is concerned you have been doing delicately Optus Laminates and all your expense incurred will be on Optus Laminates' sale only, even your team is working for Optus Laminates so naturally you calculate expense of your team on Optus Laminates sales only. And looking to the today's market situation immediate growth would not be possible to cover those expenses.

We also have opened up new office set up for better operation and appointed a good sales team. So our expenses are already on a very higher side. We even are not in a position to look out on your expenses. In this situation, it is better to part away in a better way with better relation instead of incurring further more expenses.

On our part, we will look another option who is having his own godown set up with staff already working in his other distribution like plywood, particle board etc. So that his expenses can be met from his ongoing business and he is not relied upon Optus only.

Pls send the latest stock so that we can arrange for the lifting of the material so that further more expense can be avoided. we will communicate Sanjay to collect the latest stock list from you or from your godown person.

And you are requested to kindly deposit the outstanding amount after deducting stock value available with you.

Hope this separation will not anyway have effect on our relation.

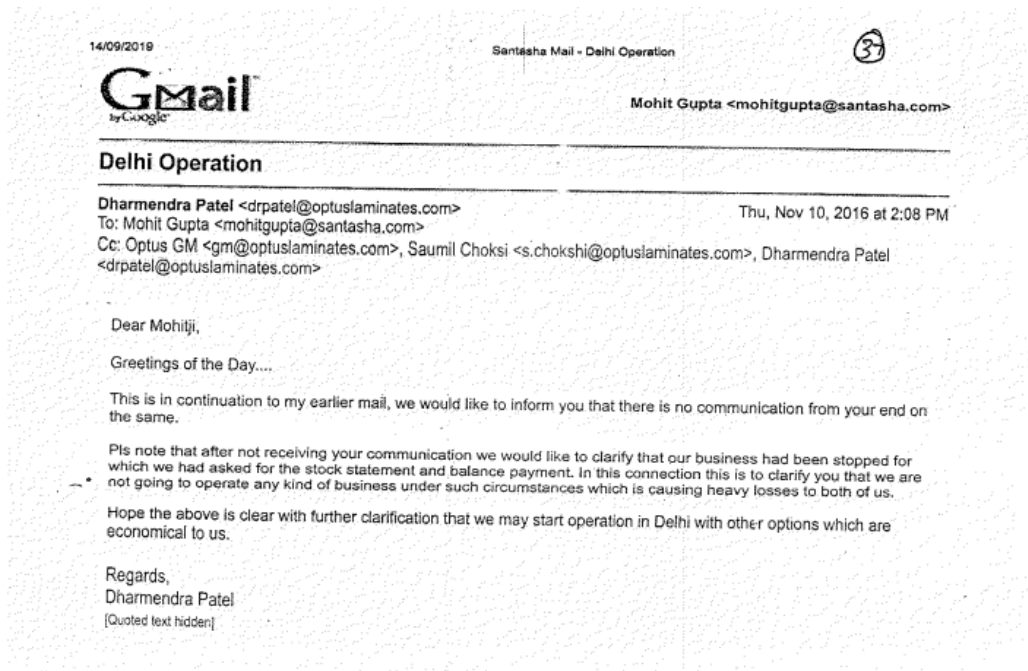
Thank You

..

Regards,

Dharmendra Patel
09879208702
Optus Laminates Pvt. Ltd.

- 16.** The material on record, specifically the email dated 10.11.2016 evidences that the said 'Dispute' is not 'transaction centric' but is an ongoing 'Dispute', as shown below:



17. Additionally, there is no documentary evidence to substantiate the contention of the Learned Counsel for the Applicant that the said 'Dispute' got settled between parties. Further it is observed that, these emails which are on record clearly substantiate that the Operational Creditor was put to notice regarding non-supply of goods, delay in supplies, non fulfillment of Distributorship agreement which are clear signs of pre-existing disputes.
18. It is pertinent to note that Hon'ble NCLAT in **Mr. Umesh Saraf Vs. Tech India Engineers Pvt. Ltd. (2020)**, held that *"exchange of e-mails/correspondences, clearly establishes that there is a pre-existing dispute between the parties regarding completion of the work and the Appellant/Corporate Debtor continuously made complaints regarding non-completion of work and deficiency in services, thereby loss caused to the Appellant/Corporate Debtor. Therefore, it is quite clear that there is pre-existing dispute*



regarding completion of the work and the learned Adjudicating Authority ought not to have admitted the Application under Section 9 of IBC filed by the Respondent/ Operational Creditor”

- 19.** Further, Hon’ble Supreme Court in Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd., AIR 2017 SC 4532 has already amplified the role of Adjudicating Authority on the question of consideration of dispute. For benevolent reference, the relevant paragraph of the said judgment is reproduced below:

“40. All the adjudicating authority is to see at this stage is whether there is 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...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.”

- 20.** Keeping in mind the facts of the instant case as discussed hereinabove and aforementioned judgment, we are of the opinion that the pre-existing disputes in the instant case are not mere feeble arguments; instead they are backed by evidence. Further, upon considering all the facts and circumstances of the case, we hold that the instant application



is liable to be dismissed due to existence of pre-existing Dispute between the Applicant and the Respondent.

- 21.** Accordingly, CP (IB) No.1752/ND/2019 stands dismissed and disposed of.
- 22.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

Sd/-

**(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)**

Sd/-

**(P.S.N. PRASAD)
MEMBER (JUDICIAL)**