

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201
TP 144 of 2019 [CP(IB) 101 of 2018]

Proceedings under Section 9 IBC

IN THE MATTER OF:

Northbrook Jute Company Ltd

.....Applicant

V/s

Madhya Pradesh State Civil Supplies Corporation Ltd

.....Respondent

Order delivered on 03/11/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Braj Mohan

-Sd-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH

TP/144/2019
CP(IB)/101/MP/2018

(An application under section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

Northbrook Jute Company Ltd.

CIN: U17119WB1908PLC001801

A Public Limited Company

having its registered address at:

1, G.T. Road, Champdani,

Baidyabati Hoogly,

Kolkata,

West Bengal- 712222

.....Applicant/Operational Creditor

Versus

Madhya Pradesh State Civil Supplies Corporation Limited

CIN: U15411MP1974SGC001268

A State Government Company,

having its registered address at:

Block-1, 3rd Floor Paryavas Bhavan,

Mother Teresa Marg,

Bhopal,

Madhya Pradesh- 462011

.....Respondent/Corporate Debtor

Order Reserved on: 13.10.2022

Order Pronounced on: 03.11.2022

Coram: Dr. Madan B. Gosavi, Member (J)

Kaushalendra Kumar Singh, Member (T)

Appearance:

For Applicant: Ld. Adv. Mr. Moti Dabhi

For Respondent: Ld. Adv. Mr. Abhishek Tugnawat

ORDER

1. This application has been filed by Mr. Danmal Kothari, Director of M/s Northbrook Jute Company Ltd. (Operational Creditor) under section 9

of the Insolvency and Bankruptcy Code, 2016 (the Code) for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Madhya Pradesh State Civil Supplies Corporation Limited (Corporate Debtor). The default amount stated by the applicant is Rs 1,74,15,753/-.

2. The Corporate Debtor is a State Government owned company incorporated under the provisions of the Companies Act, 1956, having CIN: U15411MP1974SGC001268, its registered address is at Block-1, 3rd Floor Paryavas Bhavan, Mother Teresa Marg, Bhopal, Madhya Pradesh 462011.

3. The averments made by the operational creditor in its application and presented/argued by the learned counsel for the applicant are summarized hereunder:

(i) The operational creditor being a manufacturer of SBT gunny bags entered into an agreement bearing no. Procurement/Gunnies/2011-12/3067 dated 12.03.2012 with the corporate debtor and supplied 20,010 bales of SBT gunny bags amounting to Rs 37,84,27,404/-.

(ii) The corporate debtor against its admitted liability made a part payment of Rs 36,10,11,651/- till 20.11.2013 and failed to pay the balance payment of Rs 1,74,15,753/-.

(iii) The corporate debtor vide letter dated 07.04.2016 admitted/acknowledged its liability of Rs 1,13,85,026/-.

(iv) The operational creditor issued a demand notice dated 13.12.2017 under section 8 of the Code, calling upon the corporate debtor to pay an admitted amount of Rs 1,13,85,026/-. The said demand notice was duly served upon the corporate debtor. No reply of the above stated demand notice has been given by the corporate debtor disputing the debt in respect of the said unpaid operational debt.

4. In this context, defense placed by the corporate debtor in its affidavit in reply and submission made thereon and as presented/argued by the learned counsel for the corporate debtor are summarized as under:

(i) The corporate debtor functions under the Food and Civil Supplies Department of the State of Madhya Pradesh and collaborates/work under the directions of the Food Corporation of India for the purpose of civil supplies and food supplies within the state of Madhya Pradesh.

(ii) In the financial year 2012-13, the Food Corporation of India with a view to supply and distribute food grains within the state of Madhya Pradesh entered into an agreement with the corporate debtor, requiring the corporate debtor to purchase jute bags from private suppliers.

(iii) The terms of the contract were such that it was a back-to-back contract dependent wholly on the contract between the Food Corporation of India and the corporate debtor; the supply was to be carried out in time bound manner within a span of one month from the date of issuance of the work order. Further, the supply of the jute bags was to be as per the quality prescribed, failing which, the amount of penalty was to be recovered from the suppliers.

(iv) The supply was made by the operational creditor amongst others in the year 2012 as required. However, the Food Corporation of India was not satisfied with the quality of the jute bags supplied and accordingly deducted such payments from the payments made to the corporate debtor. Thereafter, the corporate debtor in turn proportionately deducted such amount of payment from the payments made to the operational creditor. Therefore, from a total payable amount as agreed upon of Rs 37,84,27,404/- payment was made of Rs 36,10,11,651/- deducting an amount of Rs 37,89,660/- towards penalty for delay, Rs 3,84,000/- for non-supplied quantity of jute bags, Rs 57,573/- for torn jute bags and Rs 1,31,84,520/- for deduction made by the Food Corporation of India towards poor quality material supplied.

(v) Vide communication dated 12.10.2015, the Food Corporation of India directed the corporate debtor to not to reduce amount of

payments to be made to the Directorate General of Supplies and Disposals, Kolkata, and to instead recover an additional amount of Rs 41,20,663/- from the private suppliers. Accordingly, proposed proportionate deduction of Rs 17,99,494/- was sought to be made against the operational creditor.

(vi) Being aggrieved by the order of the corporate debtor under the direction of Food Corporation of India, the operational creditor had approached the Hon'ble High Court of Madhya Pradesh by way of writ petition no. 12892 of 2015.

(vii) On 04.04.2017 Hon'ble High Court passed a judgment, directing that

"in view of the limited prayer made by the learned counsel for the petitioner, the petition filed by the petitioner is disposed off with a direction to the effect that in case the petitioner approaches the respondent authorities along with a copy of the order passed today and a copy of the petition within 15 days from today, the concerned authority shall consider and decide the representation filed by the petitioner expeditiously and in accordance with the law.

It is made clear that this court has not expressed any opinion on the merits of the case and has made observation only in respect of the undisputed amount that has been determined by the authorities and therefore the respondent authorities would be at liberty to examine the matter keeping all facts and facades into consideration and thereafter take a decision in accordance with the law.

The petitioner, if aggrieved, would be at liberty to take up proceedings provided under the provisions of law."

(viii) The amount claimed to be in default is disputed. There is an arbitration clause in the contract between the operational creditor and the corporate debtor and therefore, if at all there is any claim made by the operational creditor it shall be referred for arbitration. The same was observed by the Hon'ble High Court of Madhya Pradesh, but since

there was no reply made by the corporate debtor to the representation of the operational creditor, the matter was not referred for arbitration.

(ix) The supply was made in the year 2012-13. The entire supply was to be made within 45 days of issuance of work in the said year. Merely because a response to the representation was made by the corporate debtor on 07.04.2016, the same would not extend the period of limitation in favor of the operational creditor.

(x) In the subsequent years, the corporate debtor has entered into contracts and fulfilled them financially. Moreover, such application cannot lie against a government owned and run company.

5. The submissions made in the rebuttal affidavit of the Operational Creditor are also summarized hereunder:

(i) The corporate debtor has raised frivolous and non-existing grounds for the purpose of avoiding legitimate payment of the admitted operational debt payable to the operational creditor.

(ii) The outstanding operational dues are valid and not time barred and the insolvency application is complete in all form.

(iii) The sequence of the events are as follows:

a. 13.07.2012- Default occurred on the part of the corporate debtor.

b. 20.11.2013- part payment of Rs 63,62,775/- was made by the corporate debtor in the bank account of the operational creditor.

c. 07.04.2016- the outstanding debt of Rs 1,13,85,026/- was admitted/acknowledged by the corporate debtor through a letter addressed to the operational creditor.

d. 13.12.2017- demand notice claiming operational debt of Rs 1,13,85,026/- was issued and served upon the corporate debtor.

6. We have heard the learned counsels appearing from both sides and have perused the relevant documents available on record. It is noted that there was a business relationship between the operational creditor and the corporate debtor. As per the work orders, jute bags were provided by the operational creditor against which invoices were raised by the operational creditor amounting to Rs 37,84,27,404/-. The corporate debtor paid Rs 36,10,11,651/- to the operational creditor. As per communication dated 07.04.2016 made in a response to the petition filed by the operational creditor in the Hon'ble High Court of Madhya Pradesh, the corporate debtor informed the operational creditor that the amount deducted was in the view of the quality of the goods supplied by the operational creditor. Afterward, a demand notice dated 13.12.2017 was issued to the corporate debtor. In view of the above observations, it is clear that the corporate debtor has raised an issue with the quality of goods provided by the operational creditor prior to the issuance of the Demand Notice. The disputes projected before us require thorough inquiry before a proper forum. This Adjudicating Authority cannot undertake that exercise in its limited jurisdiction in hearing of application under section 9 IBC. This is a case of pre-existing dispute on the outstanding dues claimed by the operational creditor; and as such section 9 application cannot be admitted. Even otherwise, the reply dated 07.04.2016 of the Corporate Debtor was not at all any acknowledgement of debt. Rather with that reply the Corporate Debtor has simply informed the Operational Creditor that the amount deducted was on account of poor quality of goods supplied by the Operational Creditor. As such the limitation period cannot get extended on the strength of such reply. The present application is filed beyond the limitation period and as such not maintainable.

7. As a result, the application, i.e., TP/144/2019, CP(IB)/101/MP/2018 is rejected and disposed of with no cost. The Registry is directed to serve a copy of this order to the Applicant and the Corporate Debtor.

-Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-Sd-

Dr. MADAN B GOSAVI
MEMBER (JUDICIAL)