

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 3017/ND/2019

[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 Vishakarma Tool Works

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/s Mor Mukat Marketing Private Limited & Ors.

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 12 . 04 . 2022

CORAM:

MR. DHARMINDER SINGH
HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA
HON'BLE MEMBER (TECHNICAL)

ORDER

Per-Smt. Sumita Purkayastha, Member (Judicial)

This is an application filed by M/s. Vishakarma Tool Works the applicant/operational creditor seeking (for brevity Operational Creditor) to

IB- 3017/(ND)/2019



initiate CIRP against the Respondent company/Corporate Debtor (for brevity Corporate Debtor) M/s Mor Mukat Marketing Private Limited & Ors., under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 30,31,780/- on account of selling pet moulds and injection moulds and various other plants and machinery of various description to the corporate debtor. The details of transactions leading to the filing of this petition as averred by the applicant are as follows: -

- a. The Operational creditor is involved in the business of manufacturing and selling pet and injection moulds and various other plants and machinery of various description.
- b. It is submitted that the corporate debtor has time and again accepted all the deliveries without any demur or protest but failed and neglected to make payments against the same goods.
- c. Further it is stated that for the plants and machinery supplied, invoices were raised by operational creditor bearing Invoice for an amount of Rs. 1108740/-, Rs. 395760/-, Rs.244800 /- and Rs. 2473449/- and 3,59,040/- dated 05.04.2016, 25.04.2016, 28.03.2016, 26.08.2016 and 22.11.2016 respectively.
- d. The applicant sent demand notice under Section 8 of the code on 12.09.2019 calling upon the corporate debtor to pay the total amount of Rs. 30,31,789/-. The Copy of demand notice along with postal receipts and the tracking reports has been annexed.

2. The Corporate Debtor in its reply to the application submits that:

IB- 3017/(ND)/2019

- a. The corporate debtor ordered various moulds and machine parts from the operational creditor and the first order by the corporate debtor was perfectly fine and the total invoice amount was remitted to the operational creditor. Thereafter, the corporate debtor placed an order for which the operational creditor raised 3 invoices bearing nos. 021, 001 and 002 dated 28.02.2016, 05.04.2016 and 25.04.2016 for an amount of Rs. 2,40,000/-, Rs. 3,95,760/- and Rs. 11,08,740/- respectively and the said 3 invoices were sent by the corporate debtor for generating SUVIDHA Incoming Form so that goods can be transported from one state to another.
- b. It is submitted that moulds were defective and did not stand even the minimum standards of the corporate debtor and due to the defective moulds the PET bottles manufactured by the corporate debtor were defective. Further, the operational creditor even after admitting the defects in the moulds and moreover even after accepting to take back the defective moulds later on refused to take back the defective moulds. Furthermore, the moulds were neither replaced as promised by the operational creditor nor repaired by it.

- c. It is further submitted that the operational creditor instead of replacing the moulds and machine parts sold to the corporate debtor started pressurizing the corporate debtor for providing the operational creditor with FORM C which is just a declaration in terms of payment of the Central Sales Tax.
3. In this regard, the applicant has denied the allegations made in the reply of the corporate debtor and further submitted in rejoinder that:
 - a. In respect of quality of the products defective: It is submitted that the corporate debtor has not even able to identify which batch of products were defective, leave alone any substantiation with authentic documents.
 - b. Further it is submitted that the goods were sent to the corporate debtor only after the approval of the test sample by the representative of the corporate debtor.
4. We have heard the matter and perused the case records. The case of respondent is that dispute was raised about quality of the goods supplied by the operational creditor. However, if the goods were sold by the operational creditor were defective, the corporate debtor has made payments during the financial year 2016-17 in form of advance of Rs. 2,55,000/- of the goods supplied by the operational creditor. The respondent has only placed whatsapp messages to create a dispute between the parties, however, the chat messages are selective and there is nothing else on record i.e. debit note or any other corroborative

evidence to prove the existence of dispute between the parties regarding defective goods supplied by the applicant.

5. The part payments made by corporate debtor leaves no doubt that the default has occurred for the payment of the operational debt to the applicant and the so-called dispute raised by the corporate debtor is merely a moonshine dispute as laid down in “**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**”, the Hon’ble Supreme Court observed:

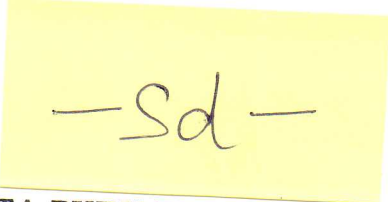
“It is clear, therefore that once the Operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.”

6. Therefore, in the given facts and circumstances, it can be concluded that the applicant has established its claim which is due and payable by the corporate debtor. The present application is admitted.

7. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Pankaj Kumar Singhal, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N00532/2017-18/11561 and email id. aprassociatesllp@gmail.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
8. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Pankaj Kumar Singhal to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
9. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

IB- 3017/(ND)/2019

10. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



—Sd—

SUMITA PURKAYSATHA
MEMBER (T)



—Sd—

DHARMINDER SINGH
MEMBER (J)