



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

Item No.05
IB-3077/ND/2019

IN THE MATTER OF

Radhe Shaym Sharma Operational Creditor/Applicant

Versus

Gokul Polymers Pvt. Ltd. Corporate Debtor/Respondent

SECTION

U/s 9 IBC code 2016

Order pronounced on: 17.08.2023

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open court vide separate sheets.

IB-3077/ND/2019 stands ***dismissed.***

SD/-

**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

SD/-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**



THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-3077/ND/2019

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

RADHEY SHYAM SHARMA

Registered Office: -

**G-102, UDYOG VIHAR, CGHS, PLOT NO. 12,
SECTOR - 22, DWARKA, DELHI - 110077**

.....Operational Creditor

Versus

GOKUL POLYMERS PRIVATE LIMITED

Registered Office: -

C-31 BHAGWAN DASS NAGAR, NEW DELHI -110026

..... Corporate Debtor

Delivered on: 17.08.23

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

Appearances:

Operational Creditor : Mr. Dhruvajit Saikia, Ms. Sanya Arora, Advocates

Corporate Debtor : Mr. Saurabh Sharma, Advocate



ORDER

Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The instant application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, Mr. Radhey Shyam Sharma is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Gokul Polymers Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Corporate Debtor placed various job orders upon Operational Creditor pursuant to which the Operational Creditor supplied raw material to the Corporate Debtor. The Corporate Debtor is engaged in the business of manufacturing of artificial leather for footwear industry and also deals in sale/purchase of polymers.

b) It is further submitted that, during the course of business the Operational Creditor supplied the material/goods (Matte Fabric) delivered the same in accordance with the job Orders and Operational Creditor supplied material (matte fabric) at the manufacturing unit of Corporate Debtor.



- c) It is averred that, the Operational Creditor issued various bills from 06.03.2017 till 30.11.2017, but the Corporate Debtor failed to make payments of bills. The Operational Creditor has supplied raw material 'goods' to the Corporate Debtor to the tune of Rs. 25,53,718/-. The Operational Creditor further submitted that, Corporate Debtor has also made a part payment of Rs. 9,50,000/-. The Operational Creditor having no recourse, and in compelling circumstances, issued a demand notice dated 20.09.2019 under section 8 of 'the Code', 2016 in Form 3 for an amount of Rs. 25,53,718/- along with interest at the rate of 24 % from the date of pending invoices. The Corporate Debtor vide letter dated 03.10.2019 replied to the demand notice.
- d) It is averred that, after repeated reminders Corporate Debtor has failed to pay the dues.

3. Per contra, Corporate debtor has raised one contention: -

I) The Corporate Debtor has, inter alia, raised the contention based on 'pre-existing' dispute. To support its contention, the Corporate Debtor has also placed on record certain correspondence through e-mail dated 30.04.2018 wherein it raised issues regarding the quality of goods.

4. We have heard the arguments advanced by Ld. Counsels appearing for Operational creditor as well as for the Corporate Debtor and also perused the record.



5. The Operational Creditor's claim is based on the facts that, raw material to the tune of Rs. 25,53,718/- were supplied to the Corporate Debtor. During the course of the business the Corporate Debtor made a part payment of Rs. 9,50,000/- against the material supplied, however, material was found to be defective. The Corporate Debtor has raised its main defence on the issue that there exists a Pre-existing dispute between the parties.

6. As regards to the issue of pre-existing dispute, the statute uses the expression 'existence of a dispute'. The word 'dispute' has been defined in Black's Law Dictionary in the following manner: -

"Dispute. A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other. The subject of litigation; the matter for which a relation to which jurors are called and witnesses examined. See Cause of action; Controversy; Justiciable controversy; Labour dispute."

7. The term 'dispute is also defined in Section-5 (6) of IB Code, 2016 as under.

(6) "dispute includes a suit or arbitration proceedings relating to-

(a) the existence of the amount of debt;

(b) the quality of goods or service; or

(c) the breach of a representation or warranty;



8. In the present case, the Corporate Debtor raised the issue of a pre-existing dispute as its main defence and placed on record, an email dated 30.04.2018.

The extract of the above mentioned email is reproduced below for reference: -

We have the rejected material of 280 gram matte with quantity of 17055 mts as per attached details and for collecting the rejected material you were promising to send vehicle to our factory, even after reminding again and again you did not collect. So please collect the rejected material of 280 gram black matte with quantity of 17055 mts on urgent basis as we will not going to use it at any cost.

9. The email sent by the Corporate Debtor to the Operational Creditor points out the issue of quality of goods supplied to the Corporate Debtor. It can be seen from the sent email that Corporate Debtor was not satisfied with the quality of goods supplied to it. The above mentioned e-mail also highlights a fact that Corporate Debtor has requested Operation Creditor again and again to collect the rejected material and specifically mentioned that the above sent material is of no use for the Corporate Debtor. On perusal of the documents produced by the parties, it is clear from the correspondence between the parties that there is an undeniable controversy with respect to the dispute on the quality of the raw material. This e-mail was sent prior to the issuance of demand notice u/s 8 (1) of the Code dated 20.09.2019 by the Operational Creditor. Considering the facts and circumstances as reflected from the record,



we are of the considered opinion, that the dispute which existed between the Operational Creditor and the Corporate Debtor prior to issue of the demand notice u/s 8 (1) about the disputed quality of raw material, requires detailed inquiry and investigation by a proper forum and this Adjudicating Authority having a summary jurisdiction is not that forum. Hence, we hold that there is a pre-existing dispute pending in between the Operational Creditor and the Corporate Debtor.

10. As there is evidence on record of a pre-existing dispute in the present case which was duly notified by the Corporate Debtor to the Operational Creditor in terms of the provisions of Section – 8 (2) of the Code, the defence cannot be said to be spurious, mere bluster, plainly frivolous or vexatious as it clearly emerges from the contemporaneous correspondence between the parties. Therefore, this Adjudicating Authority is of the consequent view that the Judgement of the Hon'ble Supreme Court in the case of '**Rajratan Babulal Agarwal Vs. Solartex India Private Limited (Civil Appeal 2199 of 2021)**' squarely applies to the facts of the attendant circumstances of the case. The relevant extract are given verbatim for reference:

The Supreme Court Bench, comprising of Justice K.M. Joseph and Justice Hrishikesh Roy, while adjudicating an appeal filed in Rajratan Babulal Agarwal vs Solartex India Pvt. Ltd. & Ors., has held that the standard with reference to which a case of a pre-existing dispute under the IBC must be employed, it cannot be



*equated with the principle of preponderance of probability, which guides a civil court at the stage of finally decreeing a suit. The Bench observed that on 30.10.2016 an email was sent to the Operational Creditor by STDPL, which is a sister-concern of the Corporate Debtor, by making express reference to Corporate Debtor. **The said email raised issues relating to the quality of the coal and pictures were attached for reference. The Bench opined that the NCLAT had erred in not taking the said email into consideration while determining existence of dispute.** While placing reliance on the Mobilox judgment, **it was observed that IBC does not enable the Operational Creditor to put the Corporate Debtor into insolvency resolution process prematurely over small amounts of default. It is for this reason that it is enough that a dispute exists between the parties.***

The Bench further observed that it cannot be oblivious to the limited nature of examination of the case of the Corporate Debtor projecting a pre-existing dispute. Overlooking the boundaries of the jurisdiction can cause a serious miscarriage of justice besides frustrating the object of the IBC It was held that NCLAT had erred in its finding that there was no pre-existing dispute. The appeal was allowed and the NCLAT judgement was set aside. Accordingly, the petition under section 9 was rejected.



11. In view of the aforesaid factual and legal position, we conclude that there is 'Pre-existence of dispute' which was raised by the corporate debtor time and again much prior to the service of demand notice under section 8 (1) of IBC and the same was also duly notified by the Corporate Debtor in terms of provisions of Section – 8 (2) of the Code. Therefore, we deem it appropriate to reject this application filed under section 9 of the IBC, 2016 by the Operational Creditor/Applicant herein.

12. Accordingly, the instant Application bearing **IB-3077/ND/2019** is **hereby dismissed. No orders as to cost. A copy of this order is to be marked to the parties and also to IBBI for record.**

13. The order is pronounced by this Adjudicating Authority in open court.

SD/-

ATUL CHATURVEDI

MEMBER (T)

SD/-

BACHU VENKAT BALARAM DAS

MEMBER (J)