IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH
KOLKATA

C.P (IB) No.1336/KB/2019

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

P B Holotech (India) Private Limited, having its registered office at 8C, Maharshi Devendra Road, 6th Floor, Room No. 40, Kolkata-700007.

… Operational Creditor

Versus

In the matter of:

Farista Vanijya Private Limited, CIN: U51909WB2008PTC124314 having its registered office at N.H.31, Tinmile hat P.O. Sonapur hat, P.S. Chopra Soanpur hat, Uttar Dinajpur, Pin- 733214.

…Corporate Debtor

Date of hearing :10/05/2022

Order Pronounced on : 05/07/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

1. Mr. Om Narayan Rai, Adv.] For Operational Creditor
2. Mr. Prashat Agarwal, Adv.

1. Mr. Shaunak Mitra, Adv.] For the Corporate Debtor
3. Mr. Saurav Jain, Adv.]

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **P B Holotech (India) Private Limited,** through its authorised representative Mr. Shyamal Kumar Biswas, vide Board Resolution dated 11/06/2019 (Annexure-A) (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **Farista Vanijya Private Limited,** having its registered office at N.H.31, Tinmile hat P.O. Sonapur hat, P.S. Chopra Soanpur hat, Uttar Dinajpur, Pin- 733214, (hereinafter referred as the Corporate Debtor).

3. It is submitted in the petition that the Operational Creditor and the Corporate Debtor had business relationship for a long time. The Operational Creditor upon receiving orders from the Corporate Debtor used to sale, supply and deliver adhesive labels of agreed descriptions to the Corporate Debtor upon agreed terms and conditions as enumerated at the back side of the invoice.

4. It is submitted that the Corporate Debtor is indebted to the Operational Creditor for a principle sum of Rs.20,50,572/- along with interest of Rs.8,64,419/- along with further interest at the rate of 24% per annum. The Corporate Debtor has till date failed and neglected to pay the amount despite repeated demands.

5. It is submitted that the Corporate Debtor for some obvious mala fide reasons withheld the payments of the following invoices raised upon it with mal intent to enrich itself unjustly.

6. It is submitted that Corporate Debtor, however, made part payment of Rs.13519 against the invoice no. 383 dated 17/05/2017 and Rs.1,09,363/- on 17/07/2017 which amount was adjusted and balance amount of Rs.20,50,572/- exclusive of interest is due and payable to the Operational Creditor.

7. The Operational Creditor has further submitted that the Corporate Debtor received goods sold, supplied and delivered to it without any objection or demur and whatever about the quality or quantity of the goods supplied.

8. It is submitted that the goods were utilized by the Corporate Debtor but till date it failed to clear the dues to the tune of Rs.20,50,572/- exclusive of interest . It is further submitted that the copy of the Ledger and invoices annexed with the petition would make it crystal clear that such goods were sold, supplied and delivered to the Corporate Debtor from May, 2017 to September, 2017 and the Corporate Debtor always assured and promised that the dues would be cleared very soon. It is submitted that the Corporate Debtor thereafter cited financial crisis due to the loss suffered by it in its business and sought time again and again from the Operational Creditor to clear the dues and in view of the good relationship between the parties, time was allowed by the Operational Creditor. It is submitted that in May /June, 2018, the Corporate Debtor again approached the Operational Creditor purchasing adhesive lables and also promised to clear the earlier dues in tranches along with the invoices that would be raised thereafter. Relying upon the assurance and promise of the Corporate Debtor as true and genuine, the Operational Creditor thereafter sold supplied and delivered goods of agreed descriptions to the Corporate Debtor under 12 invoices total amounting to Rs.5,46,008.25 and quite surprisingly the Corporate Debtor failed and neglected to clear the earlier dues of Rs. 20,50,572/-as had been promised by the Corporate Debtor to clear the same in tranches along with subsequent

bills and instead made payment of Rs.5,46,006.29 only towards liquidation of subsequent 12 invoices raised upon it from 29/06/2018 to 03/10/2018 and kept the earlier dues pending. The Operational Creditor felt something fishy in the matter and started regularly pursuing for payment and thereafter, stopped making further sale and supply of goods to the Corporate Debtor.

9. It is submitted that requests and reminders for payments were sent to the Corporate Debtor on telephone calls but several attempts by the Operational Creditor to meet the Corporate Debtor were rendered futile by the Corporate Debtor and its Officers avoid making payment to the Operational Creditor.

10. It is submitted that the Operational Creditor sent electronic mail on March 30, 2019 thereby falsely and unlawfully attempted to create a sham, bogus and frivolous dispute in the matter. Upon receipt of such electronic mail, the Operational Creditor was constrained to issue a notice in Form-3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 dated 23rd April, 2019 by registered post with A/D to the Corporate Debtor at its registered office demanding a sum of Rs. 29,18,991/- along with interest @ 24% per annum from the date of respective invoices till the date of notice. The Notice was duly served by the Corporate Debtor but in its reply dated 25/05/2019 again the Corporate Debtor falsely reiterated the same false, frivolous and bogus stand that was taken by it in its email dated **March 30,2019**. It is submitted that the outstanding amount is an admitted amount but the Corporate Debtor has omitted to pay the said amount without any reasonable cause or excuse.

11. It is submitted that in these circumstances, there is statutory presumption under the law that the Corporate Debtor is unable to pay the debts and therefore, it is necessary to initiate CIRP against the Corporate Debtor.

12. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.

13. **In the reply affidavit** filed by the Corporate Debtor through one of its

Directors namely Niraj Mittal, submitted that the application filed by the Operational Creditor is an abuse of process of law and therefore, is not maintainable because there is gross suppression of material facts and the claim of the Operational Creditor is barred by law. It is submitted that there is no debt as claimed and is not recoverable from the Corporate Debtor by the Operational Creditor.

14. It is submitted that the application is ex-facie barred and not in compliance with the rules and regulations and the mandatory provisions of Section 9(3)(b) and 9(3)(c) have not been complied. There is also no record of default with any information utility, which is a pre-condition.It is submitted that the application has been filed with fraudulent intent.

15. It is submitted that the Operational Creditor failed to maintain the agreed terms and conditions which shows the malafide intention of the Operational Creditor. <u>The rates charged by the Operational Creditor were higher than the other suppliers</u> and at same time, the Operational Creditor has charged the Corporate Debtor for transportation of goods also which were not supposed to be charged by the Operational Creditor as per agreed terms. It is submitted that there are serious and genuine pre-exiting dispute in respect of the claim of the Operational Creditor .In fact, much prior to even a demand notice issued by the Operational Creditor, the Corporate Debtor had in several meetings and discussions notified the Operational Creditor of several breaches by the Operational Creditor of the terms and conditions between the parties. But the Operational Creditor had failed to suitably remedy the issues and grievances raised by the Corporate Debtor. It is submitted that the Corporate Debtor had issued an email dated 30th March, 2019, placing on record in writing the following facts:-

i. The goods i.e adhesive labels supplied by the Operational Creditor were of inferior quality in terms of printing, quality of paper and glue;

ii. The rates charged by the Operational Creditor were higher than that charges by other suppliers and despite assurances by the Operational Creditor to revise the same downwards, the Operational Creditor reneged on its promise and continued to bill at the older, higher rates:

iii. The bills were accordingly returned by the Corporate Debtor for necessary revision by the Operational Creditor but the Operational Creditor wrongfully failed and neglected to make necessary revisions;

iv. That the Operational Creditor had always unjustifiably delayed in making delivery of goods which caused business loss to the Corporate Debtor;

v. That the Operational Creditor had wrongfully raised bills including transportation charges though the Corporate Debtor had not agreed to pay and, in fact, had not been made to pay any transportation charges in earlier bills.

16. The Corporate Debtor further submitted the email dated 30th March, 2019 (Annexure-A) is admitted and there is no explanation given for not replying to the same. It is submitted that the notice has been issued in suppression of material facts and records for the unjust and illegal benefits of the Operational Creditor.

17. It is submitted that the payment of all the invoices issued in the Financial Year 2018-2019 was made and the rate charged by the Operational Creditor in this period was as per the agreed terms between the parties, so the Corporate Debtor without any mala fide intention made the payment of all the invoices and it is submitted that prior to the issuance of Demand Notice, there were subsisting disputes between the parties and therefore, the claim of the Operational Creditor cannot be adjudicated by this Adjudicating Authority. It is denied that the Corporate Debtor is in default or that any payment has been withheld for any mala fide reasons. It is denied by the Corporate Debtor that the goods were received without any objection. It is submitted in the reply by the Corporate Debtor that the subsequent invoice

value of Rs.5,46,006.29 was paid off as the said invoices were raised at agreed rate and it is denied that subsequent transactions were on the basis of any promise or assurance by the Corporate Debtor to pay any purported earlier dues.

18. **In the Rejoinder**, the Operational Creditor reiterated and reaffirmed the averments of the petition . It is denied that the application suffers from any gross suppression of material facts or that the claims made therein are contrary to or barred by law. It is denied that there is no compliance of mandatory provisions of section 9 of IBC and regulations framed thereunder. It is denied that the Corporate Debtor had sent any email along with calculation sheet after adjusting all differences and ledger copy and requested to reconcile the books of account and that as per the balance shown in the books of account , the Operational Creditor was called several times to collect the same. It is submitted that the calculation sheet mailed on April 16, 2019 after adjusting the alleged differences along with a ledger copy has been sent by the Corporate Debtor with a sole intent to do mischief and with mal intent to shirk away from the financial liability towards the operational creditor. It is submitted that the Corporate Debtor has as per its own convenience prepared the calculation sheet and ledger to suit its purpose and malafides and such calculation sheet and ledger has been prepared by the Corporate Debtor post receipt of goods from the Operational Creditor to debar the Operational Creditor from getting its legally enforceable dues by hook and crook. It is denied that the Corporate Debtor failed to maintain the agreed terms and conditions. It is denied that the rates charged by Operational Creditor were higher than the other suppliers. The Corporate Debtor in an illegal manner debited sums which were already paid to the Operational Creditor for the goods sold and supplied to the Corporate Debtor during the Financial Year 2015-2016, 2016-2017 and 2017-1018 on 07/05/2018 i.e. in the Financial Year 2018-2019. There is neither any document on record to show that such payments made during such payments made during those Financial Years were without prejudice or were made under protest. It is submitted that there

19. It is submitted that there is no clarity as to why the Corporate Debtor did not protest when invoices were raised on it and as to why the Corporate Debtor did not make the payment in terms of the invoices. It is denied that prior to even a demand notice being issued by the Operational Creditor, the Corporate Debtor had in several meetings and discussions notified the Operational Creditor of several breaches by the Operational Creditor. It is further denied that the Operational Creditor had failed to suitably remedy issues and grievances raised by the Corporate Debtor, the Corporate Debtor issued email dated 30th March, 2019 placing on record in writing certain facts. It is denied that goods supplied by the Operational Creditor were of inferior quality or the rates charged were higher than that charged by other suppliers or that the bills were returned by the Corporate Debtor for necessary revision or that the Operational Creditor wrongly failed and neglected to make necessary revision. It is submitted that the dues of the Operational Creditor are genuine and legally enforceable and due and the defence of the Corporate Debtor is moonshine, frivolous and baseless.

20. In this case, notice under section 8 of the Code was given by the Operational Creditor to the Corporate Debtor on 23rd April, 2019 claiming a sum of Rs.29,18,991/- but on 16th April, 2019, the Corporate Debtor had written to the Corporate Debtor as under:-

> *" To*
> *M/s P.B. Holotech (I) Pvt.Ltd.*
> *8C, Maharshi Devendra Road*
> *6th Floor, Room No.40*
> *Kolkata-700007*
> *Dear Sir,*
> *Please refer to our earlier mail and verbal talks please note that we are ready to settle your bills as per agreed terms in which we placed you order and on the basis of which you started billing on us. We were always regular in our payments and also we trust on your bill which we presumed to be as per our mutual understanding. However, you unilaterally changed the basis.*
> *Further, when you come to know that we have also started procuring goods from other vendors, you had renegotiated the deal at lower rate but this time the quality of supply was deteriorated as we mentioned in our earlier letter.*
> *However, we are ready to make the payment as per our ledger. If you*

> *feel you can collect the payment as full and final against all our outstanding till date.*
> *We are enclosing herewith our ledger copy as well as detailed calculation sheets for the differences.*
> *Regards.*
> *For Paschim Banga Pharmaceutical*
>
> *2 attachments*
> 1. *Ledger PB Holotech 2018-19.pdf*
>   *225K*
> 2. *PB Holo_ Calculation sheet.pdf*
>   *1240K"*

21. It was informed by the Corporate Debtor that the quality of goods supplied had deteriorated as was mentioned in its earlier letter.

22. The Corporate Debtor has in its reply referred to various letters written by the Corporate Debtor to the Operational Creditor, viz. letter dated 30th March, 2019 and 16th April, 2019.

23. In both these letters, the Corporate Debtor had raised the issue of quality of goods being inferior in terms of printing, quality of paper and glue. It was also mentioned in the letter dated 30th March, 2019 that the rate charged by the Operational Creditor was higher than other supplier, which was promised to be revised, for which the Operational Creditor had issued the bills at the old rates. The Corporate Debtor had, therefore, returned the bills issued by the Operational Creditor after making necessary correction in that, requesting the Operational Creditor to send revised bills. It was written by the Corporate Debtor to the Operational Creditor that they would start giving order only when the Operational Creditor assured that quality of paper, printing and glue would be upto mark. The Corporate Debtor had further complained of delayed delivery of goods which had caused business loss to the Corporate. Another issue relating to charges on account of transportation was also raised in the said letter.

24. In view of these two letters issued before the service of notice under Section 8 of the Code by the Operational Creditor, there is a clear case of pre-existing dispute between the parties and, therefore, this petition is not

maintainable and is therefore, rejected.

25. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this, the 05th day of July, 2022

PJ