



THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-2818/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:

M/s. RAJ PACKAGINGS

Registered Office: -

**F-14, Brij Industrial Area,
Bharatpur, Rajasthan - 321001**

.....Operational Creditor

Versus

JAGPIN BREWERIES LIMITED

Registered Office: -

**C-115, Mansarovar Garden,
Ground Floor, New Delhi – 110030**

..... Corporate Debtor

Delivered on: 12.09.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

**Appearances:**

Operational Creditor : Mr. Abhishek Anand, Advocate

Corporate Debtor : Mr. Ashish Verma, Mr. Shivankar, Advocates

ORDER**Per: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

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, M/s. Raj Packagings is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., Jagpin Breweries 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 Applicant is engaged in the business of manufacturing and supplying PET bottles. The Corporate Debtor is an India based company engaged in the business of processing and trading of beer, country liquor, and rectified spirit. The PET bottles were used by the Corporate Debtor for the purpose of filling the country liquor.

b) The Corporate Debtor used to place orders to Operational Creditor for supply of PET bottles and in turn Operational Creditor used to raise invoices for the supply orders and Corporate Debtor used to deduct the amounts towards the damaged / rejected bottles and thereafter, make the payment to the Operational Creditor. Thus, it is contexted by The Operational Creditor

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that it is not in dispute that the Corporate Debtor was deducting the amount towards the damaged PET bottles.

c) On September 26, 2014, the last supply was made by the Operational Creditor against the purchase order placed by the Corporate Debtor and on November 21, 2014, Operational Creditor received last payment from the Corporate Debtor of Rs. 3,00,000/-.

d) Further, on 02.08.2019 Operational Creditor issued a Demand Notice for Rs. 96,63,564/- (Rupees Ninety Six Lakh Sixty Three Thousand Five Hundred Sixty Four only) to the Corporate Debtor under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016, which was delivered to Corporate Debtor as well as its Directors. The Corporate Debtor vide letter dated 16.08.2019 replied to the Demand Notice.

3. In response to the Demand Notice the Corporate Debtor has raised various contentions: -

I. The Corporate Debtor submitted that, the claim against the corporate Debtor is illegal and whimsical and without any basis and hence falls under the definition of 'Pre-existing Dispute'. It is submitted by the Corporate Debtor that, PET bottles which were supplied by the Applicant were of inferior quality as per the specifications and standards. The country liquor could not be bottled due to defects and small holes found in the supplied PET bottles. The Corporate Debtor had suffered heavy losses on account of the extra caps and labels, which were wasted on account of the same. It is further submitted by the Corporate Debtor that for a long time, 15-20 trucks with the damaged goods/bottles were stationed on their premises, which were of no use. The Corporate Debtor has placed on records various letters to prove the existence of a 'Pre-existing Dispute' between parties prior to Section 8 Demand Notice.



4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the facts that, the Operational Creditor used to raise invoices against the Orders placed by the Corporate Debtor. However, as on date, the payments towards the remaining invoices stands due. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of the Operational Debt, the Applicant had issued Demand Notice dated 02.08.2019 for Rs. 96,63,564/- (Rupees Ninety Six Lakh Sixty Three Thousand Five Hundred Sixty Four only) under section – 8 of IBC, 2016 and served at the registered office of the Corporate Debtor. The Corporate Debtor vide letter dated 16.08.2019 replied to the Demand Notice and submitted that the amount claimed against the Corporate Debtor is unlawful and irrational and hence falls under the definition of 'Pre - existing Dispute' within the meaning of the IBC, 2016.

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. The Corporate Debtor raised the issue of 'Pre - existing Dispute' as its main defence and placed on record letter dated 24.04.2015. The relevant extract of the said letter is reproduced below for reference: -

Sir,

On the above subject matter we have to inform you that the supply of the PET bottles which has been made by you, the same being damaged upto a great extent as per the standard and due to holes in the bottles, the country made liquor could not be filled, from which we have suffered huge loss of Cap, Label etc. of the country made liquor. Your goods of about 15-20 trucks has been lying damaged with us which is not of any use for us. In this regard you have been informed so many times on phone and you had also given the assurances of lifting this goods but you have not taken any action for lifting the bottles.

Thus, it is amply clear from the above sent letter that, the bottles which were supplied by the Operational Creditor were not up to the mark and were badly damaged. It can be seen from the sent letter that Corporate Debtor was not satisfied with the quality of goods supplied to it. The above mentioned letter 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.



9. The Ld. Counsel for the Applicant has vehemently argued that, PET bottles which were defective were excluded by the Operational Creditor from the invoices which was raised by the Corporate Debtor and submitted that, invoices which are raised only pertains to the genuine PET bottles which were not defective. The plea of Corporate Debtor regarding the 'Pre-existing Dispute' is nothing but a moonshine defence and placed on record judgment passed by the Hon'ble National Company Law Appellate Tribunal in the matter of **Deepak Modi V. Shalfeyo Industries Pvt. Ltd. 2023 SCC OnLine NCLAT 169** wherein it has been held that:

13...There may be plausible reasons for SGB Infra Ltd. to ask the Corporate Debtor to remove the flooring but fact remains that the Corporate Debtor had accepted the granite slabs supplied by the Operational Creditor without raising any dispute or objection. On this score itself we are of the opinion that such plea of the Corporate Debtor regarding dispute can be termed as moon shine defence. On this plea there is no reason to accept as if there was pre-existing dispute in between the Operational Creditor and Corporate Debtor.

Thus, while referring to the judgement of Hon'ble NCLAT, it can be observed that the Corporate Debtor has accepted the granite slabs supplied by the Operational Creditor and on that reasoning Hon'ble NCLAT came to a conclusion that after accepting goods if an issue of a Pre-existing Dispute is raised then it would be called as a moonshine defence. To prove the existence of a moonshine defence the Operational Creditor must prove that the Corporate Debtor has accepted the goods. On the contrary, while perusing the record we found letter dated 11.06.2015 sent by Regional Officer M.P Pollution Control Board to the Corporate Debtor and the same is placed on record. The relevant extracts are reproduced below for reference: -



Subject: Regarding disposal of unused material.

On the above subject matter it is to state that the Junior Scientist of this office has inspected the industry on 11.05.2015. During inspection House Keeping has not been found satisfactory, unused pat bottles and bottle of glass have been found stored in heavy quantity at open spaces of the industry premises. In this regard you are directed that you take action forthwith for the disposal of these bottles in a proper manner and inform this office and make improvement in the house keeping.

Regional Officer


M.P. Pollution Control Board

10. The aforementioned letter makes it abundantly clear that the Corporate Debtor dumped defective materials on its site, more significantly, did not utilise or consume the faulty PET bottles so, argument advanced by the Ld. Counsel for the Applicant that the issue raised by the Corporate Debtor is a moonshine defence is nothing but a feeble argument which is neither tenable in the eyes of law nor on facts. The PET bottles which were defective were excluded by the Operational Creditor and invoices pertains to the genuine PET bottles which were not defective remains still in question. On perusal of the documents produced by the parties it is clear from the correspondence between the parties that there is an undeniable discrepancy with respect to the dispute on the quality of goods between the parties. All the letters/evidence which are produced on record were sent prior to the demand notice dated 02.08.2019. Hence, we hold that there is a pre-existing dispute pending in between the Operational Creditor and the Corporate Debtor.



11. 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.

12. 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.



13. Accordingly, the instant Application bearing **IB-2818/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.**

SD/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

SD/-

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