



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-506/(PB)/2022

*Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6
of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules,
2016.*

In the matter of -

EON ELECTRIC LIMITED

THROUGH RESOLUTION PROFESSIONAL
MS. RITU RASTOGI
D-1 B, 9A, D BLOCK JANAKPURI,
NEW DELHI-110058

...Applicant/Operational Creditor

Versus

LITEON ELECTRICALS LLP

F 80, SAURABH VIHAR,
HARI NAGAR EXTENSION JAIT PUR ROAD,
BADARPUR,
NEW DELHI, SOUTH DELHI DL 110044

...Respondent/Corporate Debtor

CORAM:

SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)



Counsel for the Petitioner : Adv Prafful Saini and Adv Harshit Khare
Counsel for the Corporate Debtor : Advocate Prashant Katara

ORDER

PER – Mahendra Khandelwal, Member (Judicial)

Date: 27.08.2024

1. The present application has been filed by the Petitioner i.e., EON ELECTRIC LIMITED (hereinafter referred to as the Operational Creditor) through its Resolution Professional, Ms. Ritu Rastogi, the OC is already undergoing CIRP by the virtue of an order dated 13.10.2020 passed by National Company Law Tribunal, Chandigarh Bench, to initiate Corporate Insolvency Resolution Process (“CIRP”) in accordance with Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) against the Respondent i.e., Liteon Electrical LLP (hereinafter referred to as the Corporate Debtor).

2. The present application has been filed in light of the alleged default on the part of the Respondent in clearing the debt of INR 2,44,34,631/- being the total amount due towards supply of electronic materials to the corporate debtor as on 06.08.2021.



3. The particulars of transactions which are germane for the adjudication of the present dispute, as averred by the Applicant/Operational Creditor, have been reiterated as under –

- i. The Present Application has been filed by the Applicant/Operational Creditor, i.e., EON ELECTRIC LIMITED ("Operational Creditor") against Liteon Electrical LLP ("Corporate Debtor").
- ii. Eon Electric Limited / Operational Creditor is a company undergoing CIRP by virtue of order dated 13.10.2020 passed by National Company Law Tribunal, Chandigarh Bench. Further, vide order dated 22.03.2021, the Adjudicating Authority appointed Ms. Ritu Rastogi to administer the CIRP of the Operational Creditor.
- iii. Liteon Electricals LLP/ CD is a Limited Liability Partnership ("LLP"), incorporated under the provisions of Limited Liability Partnership Act, 2008(Registration No. LLPIN AAQ-9147) and has its registered office at F - 80, Saurabh Vihar, Hari Nagar Extension Jait Pur Road, Badarpur South Delhi, New Delhi-110044.
- iv. The OC supplied electronic material to the CD and received payments for the said material, the same was reflected in the Ledger maintained in respect of accounts of the CD.
- v. The OC also maintained a running account in respect of the electronic material supplied to the CD. Between 11.12.2019 and



30.09.2020, the OC continued to raise invoices for goods supplied, which aggregated to an amount of INR 2,44,34,631. The said amount is duly reflected in the ledger account maintained by the OC.

- vi. As a consequence of the aforementioned invoices raised by the OC against the material supplied to the CD, till 20.03.2020, the CD made ad-hoc payments, in response to the correspondences between by the OC to the CD. However, after 20.03.2020, till the date of filing the present petition no payments had made to the OC, consequently resulting in an outstanding operational debt of Rs. 2,44,34,631/- in favor of the OC.
- vii. In light of the delay and the standard procedure followed by the OC an interest of 2% per annum was levied on the principal amount by. Consequently, a total outstanding amount of Rs. 2,44,34,631/- (Rs. Two Crore Forty Four Lakh Thirty Four Thousand Six Hundred and Thirty One/-). was levied as material cost, and the same was due and payable by the CD towards the OC.
- viii. The Resolution Professional for the OC has made several correspondences to the CD, in pursuance of resolving the issues pertaining to the outstanding liabilities of the CD towards the OC. However, the said correspondences availed no resolution.
- ix. Consequently, the OC issued a demand notice dated 31.03.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016



which was sent through e-mail at the email address mentioned in the MCA-Master Data maintained in respect of the CD.

- x. That the CD responded to demand notice dated 31.03.2022 through its letter dated 10.04.2022; however, in the said letter the CD has failed to substantiate –

- a. *Payment of unpaid operational debt by sending or attaching any document or invoice;*

- b. *Existence of any dispute or record of the pendency of suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.*

- x. In its letter dated 10.04.2022, the Corporate Debtor had made several assertions such as payment to third party on behalf of Corporate Debtor, defective material, etc., however, the Corporate Debtor has failed to attach any bank statement / invoice to substantiate those assertions.

- xii. In light of the above, the OC filed the present application before this AA.

4. The Corporate Debtor has filed its corresponding reply and the germane contentions to the present dispute have been summarized as under -

- i. It has been contended by the CD that OC by the virtue of its Notice dated 22.07.2021 called upon the Corporate Debtor to pay and



amount of INR 2,43,24,963/- as dues under various alleged invoices raised by the OC upon the CD, within a period of 15 days.

- ii. As a consequence of the Notice issued by the OC the CD issued a Reply Letter dated 25.11.2021 to the OC after reconciliation of its Accounts with that of the OC. That the CD informed that payments aggregating to INR 1,92,27,267/- had been made at the request made by the OC (before the initiation its CIRP), to the creditors of the OC i.e., M/s Kapoor Industries and M/s Dixon Technologies.
- iii. Further, the CD vide its Reply dated 10.04.2022 again denied the allegations of non-payment put forth by the OC and re-iterated that the CD had made payments to the tune of INR 1,92,27,267/- to the creditors of the Operational Creditor under its authorizations.
- iv. Additionally, it has been averred by the CD that the CD has placed in record, copies of the receipts received by the OC against the payments made to M/s Kapoor Industries and M/s Dixon Technologies (India) Limited.
- v. In light of the fact that the OC had already received the Letter dated 25.11.2021 which disputed the claims made by the Operational Creditor prior to the issuance of the Demand Notice under Section 8 of the Code, the present Petition is not entitled to be admitted by this Adjudicatory Authority under Section 9(5)(ii)(c) of the Code.
- vi. The OC has claimed an alleged amount of Rs. INR 2,44,34,631/-. With regards to the said claim the CD had contended that it has



already paid an amount of Rs. 1,92,27,267/- to the creditors of the OC in accordance with the authorizations of the OC. Consequently, in accordance with Section 4 of the Code, the minimum amount of default for filing an Application for the initiation of CIRP under the Code is Rs. 1,00,00,000/- and since the amount in the captioned petition, after adjusting the amounts paid by the Respondent on the behest of the Operational Creditor, is below the said threshold it is liable to be dismissed.

5. The Operational Creditor has filed its rejoinder to the reply and the germane contentions to the present dispute have been summarized as under -

- a. The Operational Creditor followed a procedure, wherein every letter invoice or document issued had a reference number before it was issued. However, in the alleged authorization letters, there are no reference numbers which raises suspicion that the alleged letters are not authentic. Moreover, no information as to mode of receipt of these alleged Authorization Letters has been provided by the Corporate Debtor.
- b. Further, the Resolution Professional for Operational Creditor on receipt of Reply from the Corporate Debtor sought clarifications from Mr. Vivek Mahendru and Mr. K. B. Satija regarding alleged Authorization letters vide email dated 03.09.2022. That reply to email dated 03.09.2022 was received on 07.09.2022 whereby Mr.



Vivek Mahendru affirmed that certain authorizations were issued by him. Further, the suspended director failed to reply sufficiently that whether there was any board resolution authorizing him to sign such alleged authorization letters on behalf of the Corporate Debtor.

- c. Moreover, Mr. Vivek Mahendru also failed to provide any proof of dispatch copy of email whereby alleged Authorization Letters were issued to Corporate Debtor. It is pertinent to mention that Mr. K B Satija failed to reply to the email sent by the Resolution Professional of the Operational Creditor.
- d. Additionally, Mr. Vivek Mahendru in email dated 07.09.2022 stated that he does not recollect the existence of any Board Resolution authorizing him to sign the alleged Authorization Letters. It was further stated that Mr. Vivek Mahendru and Mr. K.B. Satija are authorized to sign documents on behalf of the Company under Section 21 of the Companies Act, 2013. That the same is wrong understanding of provisions of the Act as Section 21 of the Companies Act, 2013 clearly states that documents/contracts can be signed by key managerial persons or officers of the company when duly authorized by the Board in that behalf.
- e. It is further pertinent to mention here that all these alleged Authorization Letters were issued on behalf of Operational Creditor after notice of application initiation CIRP was served upon ex-management of Corporate Debtor,



OBSERVATIONS AND FINDINGS

6. We have perused the documents filed by the Operational Creditor as well as Corporate Debtor and have heard the arguments made by the counsels appearing for both the parties.

7. Consequently, in light of the contentions made by the OC, and the reply given by the CD against the said contentions read in conjunction with the rejoinder filed by the OC, it is pertinent to refer to the contention made by the CD pertaining to the disputes with regards to the payments made to the creditors of the OC against the invoices raised by the OC.

8. In pursuance of adjudication of the the present application it is pertinent to note that the stipulated minimum threshold for filing an application under section 9 of the IBC, 2016 has been set as INR 1 Crore by the virtue of the MCA notification dated 24.03.2020. In the present case it has been contended by the respondent/CD that the in light of the authorization letters issued to the respondent/CD by the creditors of the OC sanctioning payment to third parties (i.e., the creditors of the OC) against the money owed to the OC, when the amount already paid to the aforesaid third parties is adjusted against the claim made by the OC, the said claim falls below the threshold mandated threshold in accordance with section 9 of the IBC.



9. In light of the aforesaid contention made by the CD it is pertinent to refer to the authorization letters issued to the CD by the creditors of the OC, the said letters have been reproduced as under -

Dixon®
The brand behind brands

Dixon Technologies (India) Ltd. 34

Date: - 25 -11-2021

To,
M/s Liteon Electricals LLP
F-80, Saurabh Vihar,
Jaitpur Road, Badarpur,
Delhi,

It is to confirm that we have received a sum of Rs.1,01,86,013/- (Rs. One Crore One Lac Eighty-Six Thousand Thirteen Only) from Liteon Electricals LLP on behalf of M/s Eon Electric Ltd for the supplies made till 30.09.2020 and adjusted the outstanding of M/s Eon Electric Ltd with the same amount.

For Dixon Technologies (India) Ltd
For Dixon Technologies (I) Ltd

(Authorised Signatory)
Authorised Signatory

Encl:- Ledger of relevant party i.e. Eon Electric Ltd

Regd. Office: B-14 & 15, Phase-II, Noida-201305, (U.P.) India, Ph.: 0120-4737200
E-mail : info@dixoninfo.com • Website: http://www.dixoninfo.com, Fax: 0120-4737263
CIN:L32101UP1993PLC066581

TRUE COPY

HK Kapoor Industries Ref. No.
Dated

Mfd. & Trading : All Type of Electric & Electronic Items
12/7, Site IV Sahibabad Industrial Area, Sahibabad 201010 U.P. (INDIA)
E-mail : kaprizer.led@gmail.com

ANNEXURE R-5 33

Date – 31st March 2021

M/s Liteon Electricals LLP
F-80,Saurabh Vihar,
Jaitpur Road,Badarpur, Delhi,

It is to confirm that we have received a sum of Rs.90,41,254/- (Rs. Ninty Lac Forty One Thousand Two Hundred Fifty Four Only) from You during the year 2020-21 on behalf of Eon Electric Ltd for the supplies made to till 30.09.2020 and adjusted the outstanding of Eon Electric Ltd with the same amount.

For Kapoor Industries
For KAPOOR INDUSTRIES

(Authorised Signatory)
Partner

Encl:- Ledger of relevant party i.e. Eon Electric Ltd

TRUE COPY



10. From the aforesaid letters it can be clearly inferred that the creditors to the OC have accepted payment from the CD and adjusted the said payment received by them against the amount owed to the OC. Consequently, when the amount already paid to the OC, i.e., INR 1,92,27,267/- (by the virtue of the payments to the third parties) is deducted from the amount claimed by the OC i.e., INR 2,44,34,631/- (Rupees Two Crore Forty-Four Lakh Thirty-Four Thousand Six Hundred Thirty-One Only), the claim amount comes down to INR 52,07,364/-. The said claim amount i.e., INR 52,07,364/- falls below the aforesaid stipulated threshold of INR 1 Crore and consequently, the present application is liable to be dismissed in light of the aforesaid claim amount falling below the stipulated threshold under section of the IBC, 2016.

11. In addition to the aforesaid payments made to the creditors of the OC, the CD has also stated that certain invoices raised by the OC were barred in light of section 10-A of the IBC, 2016. Section 10-A has been reiterated as under –

“[10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period,



not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.”

12. With reference to the aforesaid contention, it is pertinent to refer to the invoices raised by the OC, which fall under the ambit of the aforesaid provision i.e., section 10-A of the IBC, a list of the said invoices has been reproduced as under -

Invoice date and page	Due on [T + 90]
07/01/2020 @ 101	07/04/2020

13/01/2020 @ 102	13/04/2020
12/10/2020 @ 102A	12/01/2021
21/10/2020 @ 103	21/01/2021
22/01/2020 @ 104	22/04/2020
27/01/2020 @ 105	27/04/2020
29/01/2020 @ 106	29/04/2020
30/01/2020 @ 107	30/04/2020
31/01/2020 @ 108	01/05/2020
31/01/2020 @ 109, 110, 111	01/05/2020
14/02/2020 @ 112	14/05/2020
19/02/2020 @ 113, 114	19/05/2020
03/03/2020 @ 115	03/06/2020
17/12/2019 @ 116	17/03/2020 only invoice wherein 10A not applicable for the amount Rs.54,550/-
25/02/2020 @ 117	25/05/2020
14/03/2020 @ 118	14/06/2020
23/06/2020 @ 119	23/09/2020
26/06/2020 @ 120	26/09/2020
31/07/2020 @ 121, 122	31/10/2020
14/08/2020 @ 123	14/11/2020
19/08/2020 @ 124, 125	19/11/2020
20/08/2020 @ 126	20/11/2020
24/08/2020 @ 127	24/11/2020
31/08/2020 @ 128	01/12/2020
09/09/2020 @ 129	09/12/2020

12/09/2020 @ 130	12/12/2020
10/09/2020 @ 131	10/12/2020
17/09/2020 @ 132	17/12/2020
22/09/2020 @ 133	22/12/2020
24/08/2020 @ 298	24/11/2020

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24/08/2020 @ page 299	24/11/2020
29/02/2020 @ page 460	29/05/2020



13. It has already been stated by the CD/respondent that the aforesaid invoices which are barred by the virtue of section 10-A of the IBC, 2016, amount to INR 1,83,90,370/-. When the total amount raised by the virtue of the aforesaid invoices is deducted from the total claim amount i.e., INR 2,44,34,631/-, the total claim amount comes down to INR 60,44,261/-.
14. It can be clearly inferred from the aforesaid that the amount claimed by the OC when adjusted against the invoices barred by section 10-A of the IBC, 2016 falls below the minimum threshold in accordance with section 9 of the IBC, 2016.
15. Therefore, in light of the fact that the claim amount falls below the minimum threshold for filing an application under section 9 of the IBC, 2016, *the present application is liable to be dismissed owing to the aforesaid grounds.*
16. At this juncture it is also pivotal to refer to Section 9(5) of the IBC, 2016, the said section has been reiterated as under –

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–



(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) the application made under sub-section (2) is complete;

(b) there is no 3 [payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if –

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;



(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

17. In conjunction with the aforesaid provision of the IBC, 2016, it is pertinent to refer to the landmark precedent laid down by the Hon'ble Supreme Court in in *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited 2018 1 Supreme Court Cases 353*, wherein it was observed by the Hon'ble Supreme Court that in the instance of a pre-existing dispute between the Applicant/OC and the Respondent/CD the NCLT shall reject an application filed under section 9 of the IBC, 2016. The germane excerpt i.e., Para 40 of the aforesaid judgement reads as under -

*“40. 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 the 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 requires 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. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. ***So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.***”

18. Further, we must refer to the decision taken by the Hon’ble Supreme Court in SABARMATI GAS LIMITED VS SHAH ALLOYS LIMITED, C.A. No.-001669 – 2020 wherein the aforementioned precedent i.e., *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited* was reaffirmed by the Hon’ble Supreme Court, the germane expert from the said precedent has been reiterated as under -



“Certainly, when the expression ‘pre-existing dispute’ is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8, IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as ‘pre-existing dispute’. In that view of the matter once we find that the Tribunals have rightfully held that there existed a ‘pre-existing dispute’ between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC.”

19. From the aforementioned provision i.e., section 9(5) and the judicial precedents it is evident that it has been established that in the instance where there is a pre-existing dispute pertaining to the default by the CD and/or any payments made in lieu of the amount due towards the OC, an application in such circumstances is liable to be rejected by this Adjudicating Authority in light of the pre-existing dispute between the OC and the CD.

20. In the present case it can be clearly inferred from the petition, reply and the rejoinder that there was a pre-existing dispute between the OC and the CD, the existence of the aforesaid pre-existing dispute can be established



from the fact that in para no. 4 of the rejoinder, filed by the petitioner/OC, it has been contended that the authorization letters issued to the respondent/CD pertaining to the payment of the outstanding amount due towards the OC, were forged/non-authentic. The germane excerpt from the rejoinder filed the OC/Applicant has been reiterated as under –

“Further, the Resolution Professional for Operational Creditor on receipt of Reply from the Corporate Debtor sought clarifications from Mr. Vivek Mahendru and Mr. K. B. Satija regarding alleged Authorisation letters vide email dated 03.09.2022. That reply to email dated 03.09.2022 was received on 07.09.2022 whereby Mr. Vivek Mahendru baselessly affirmed that certain authorisations were issued by him without providing any details thereto or any proof of such authorisation letters being issued. Further, the suspended director failed to reply sufficiently that whether there was any board resolution authorising him to sign such alleged authorisation letters on behalf of the Corporate Debtor. Moreover, Mr. Vivek Mahendru further failed to provide any proof of dispatch copy of email whereby alleged Authorisation Letters were issued to Corporate Debtor. It is pertinent to mention that Mr. K B Satija failed to reply to the email sent by the Resolution Professional of the Operational Creditor.”

21. At this juncture it is pertinent to note that the pre-existing dispute, pertains to the purported authorization letters issued by the creditors of the



OC to the CD, authorizing the CD to pay the amount due towards the OC to the creditors of the OC.

22. With regards to the aforesaid dispute, it can be clearly observed that the aforesaid dispute has a material effect on the claim of the OC, owing to the fact that if it is established that the CD was authorized to pay the contended dues towards the OC, to the creditors of the OC, then the claim of the OC would fall below the stipulated threshold which is mandated in accordance with section 9 of the IBC. Moreover, this Adjudicating Authority cannot establish the veracity of the said authorization letters which are central to the pre-existing dispute. Consequently, it the present petition is liable to be dismissed on the grounds of the pre-existing dispute between the OC and the CD.

23. In context of the aforesaid pre-existing dispute between the OC and the CD, it is pertinent to note that the OC/Applicant has contended that the aforementioned authorization letters placed in record by the CD are not authentic and the veracity of the said letters has been disputed by the OC. Consequently, with regards to the dispute pertaining to the veracity of the authorization letters placed in record by the CD it is pivotal to refer to the precedent laid down in *Rakesh Kumar V. Flourish Paper & Chemicals Ltd.*



(Company Appeal (AT)(Insolvency) No. 1161 of 2022) by the Hon'ble, the relevant portion of the said precedent has been reproduced as under –

“It has also been rightly observed that disputes surrounding claims and counter-claims cannot be adjudicated or determined by the Adjudicating Authority given their summary jurisdiction.”

24. At this juncture, it is pivotal to state that the dispute with respect to forgery cannot be decided by this Adjudicating Authority. It is settled law that proceedings before NCLT are summary in nature and adversarial evidence cannot be led and appraised by this Tribunal.

25. This Adjudicating Authority is not expected to ascertain the veracity of documents in a summary proceeding, if the Tribunal starts adjudicating such of issues, then the purpose of the statute of enacting speedy disposal by the mechanism will be defeated. Therefore, the Applicant may explore other legal remedies with regards to the dispute/s pertaining to the veracity of the aforesaid authorization letters.

26. Therefore, from the aforesaid observations and findings we found that the claim filed by the OC falls below the stipulated threshold in accordance with section 9 of the IBC, 2016 i.e., the amount claimed by the OC when adjusted against the amount already paid to the third parties at the on the basis of the authorization letters issued by the OC, falls below the stipulated



threshold and; the amount claimed by the OC when adjusted against the invoices raised by the OC, which are barred by the virtue of section 10-A also falls below the stipulated threshold.

27. In the light of the above, this Adjudicating Authority ***dismisses*** the present application filed by Operational Creditor. However, the claim under any other law, if permissible, can be pursued by the Petitioner as prescribed under that law.

-SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)