

In the National Company Law Tribunal
Mumbai Bench.

CP No.1556/I&BC/NCLT/MB/MAH/2017

Under Section 9 of Insolvency & Bankruptcy Code, 2016

In the matter of

Present:

Vibrant Global Trading Private Limited : Petitioner/Operational Creditor

V/s

Stationery Point (India) Limited : Respondent/Corporate Debtor.

Heard on 16.02.2018
Order delivered on: 13.04.2018

Coram:

Hon'ble Shri M.K. Shrawat, Member (Judicial)
Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

For the Petitioner(s) : 1. Mr. Jaideep Khattar a/w
2. Mr. Kanwar Vivswan, i/b
Khaitan & Co.

For the Respondents : 1. Mr. C.A. Haresh P. Shah,
2. Mr. Shankar Kushid, Managing Director.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. A Petition was filed on Form No.5 on 01.11.2017 by the Petitioner/Operational Creditor M/s. Vibrant Global Trading Private Limited, Registered Office at: Unit No.202, Tower 'A' Peninsula Business Park, Senapati Bapat Marg, Lower Parel, Mumbai 400013 invoking the provisions of Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor M/s. Stationery Point (India) Limited, Registered Office at: B-31/201 Saraf Chowdharynagar, Thakur Complex, Kandivali (East), Mumbai – 400101 for an outstanding Operational Debt of ₹24,57,293/- (Principal) Plus Interest @ 21% [per annum in accordance with purchase orders, details as under:-

Date	Due Date	Particulars	Debit Amount
24/09/2014	10/10/2017	Stationary Point India Ltd.	1259101.00
		(Material Supplied Polyester Film)	
24/10/2014	10/10/2017	Stationery Point India Ltd	1198492.00
		(Material Supplied, Polyester Film)	
Total Interest			2457593

2. Brief particulars of the claim is as under:-

2.1. The Petitioner/Operational Creditor supplied Polyester Film – 12 Micron material for a total quantity of 17,372.50 kgs. on 24.09.2014 and 24.10.2014 and raised invoices on the Corporate Debtor for ₹12,59,101/- and ₹11,98,492/- respectively totalling to ₹24,57,593/-.

2.2. According to the Petitioner, three cheques were given by the Debtor in payment of the First Invoice for ₹12,59,101/-. However, all the three cheques were dishonoured by the Debtor's Bankers stating that the payments were stopped by the Drawer. As the Debt amount was still unpaid, the Petitioner/Operational Creditor issued a Legal Notice dated 19.12.2014 stating that the three cheques dated 25.10.2014 for ₹5 lakhs, dated 29.10.2014 for ₹2,59,101/- and dated 31-10-2014 for ₹5 lakhs against the First Invoice for ₹12,59,101/- were dishonoured by the Corporate Debtor's Bankers and returned the cheques unpaid stating that the **payments were stopped by the drawer**. Thereupon the Petitioner requested the Corporate Debtor several times through telephonic message and electronic mail for release of the outstanding payments against the two Invoices to make payment of both the Invoices and alleged that the Debtor had deliberately and intentionally not paid the outstanding undisputed, legal, valid dues to the Petitioner.

2.3. According to the Respondent Debtor, the claim of the Petitioner was **denied** stating that the material supplied against both the Invoices were of inferior quality; therefore, a Debit Note was raised on 10-11-2014 on the Operational Creditor. Further stated that the Debit Note was also sent by e-mail on 10-11-2014. Further, in reply to the Demand Notice dated 12.10.2017, Respondent Debtor stated that the "*dispute was already in existence within the meaning of section 5(6) which we are bringing to your notice as required under the provisions of section 8(2)(a) of the Code.*" The Respondent

Debtor has amply demonstrated the existence of dispute prior to the Demand Notice in Form No.3 reproduced below:-

Sr. No	Date	Particulars	Dispute	Remark
1	10.11.2014	E-mail with Debit Note for Rs.49,96,845/- resulting in amount of ₹25,39,252.87 is due to us. Alongwith ledger copy	Supply was sub-standard material which resulted in to rejection of sale	No dispute by you, in this regard till date.
2	14.11.2014	Letter to Allahabad Bank	Instruction to stop the payment	-
3	19.12.2014	Your Legal Notice through Advocate Jahangir Associates	For recovery of outstanding	No reference to the Debt Note dated 10/11/2014 referred above
4	19.01.2015	Our Reply to the legal notice of Jahangir Associates	Disputed the contents and raised demand vis-à-vis the Debit Note	-
5	29.01.2015	Your Legal Notice u/s. 138(b) rws 141 and 142 of Negotiable Instrument Act, 1881 by Advocate Sunil D'Souza	Alleged dishonour of cheques allegedly issued vis-à-vis supply by you	Deposited after sending Debit Note on 10/11/2014
6	03.02.2015	Our reply to above notice dated 29/01/2015	Disputed the quality of material supplied.	-
7	26.10.2015	Our Statutory Notice for Winding up u/s. 424 of the Companies Act, 1956	Calling upon for payment of ₹49,96,845.87 as against the Debit Note	-
8	05.11.2015	Your reply through Mulla And Mulla And Graigie Blunt & Caroe	Disputed our Debit Note for sub-standard material	First time made a reference to the Debit Note for sub-standard supply of material.

FINDINGS :-

3. From the facts narrated *supra*, it is evident that **there existed a dispute** between the parties much prior to sending of the Notice of Demand in Form No.3 dated 12.10.2017. In this connection the decision of the Hon'ble NCLAT in a similar case (Vimal Organics Limited, New Delhi-110092 Vs. Anya Polytech & Fertilizers Pvt. Ltd., Delhi-110015 in Company Appeal (AT)(Insolvency) No. 269 of 2017 in Case No. (IB)-370(ND)/2017) it was held that there was 'existence of dispute'; as a consequence, the Petition was dismissed.

3.1 It is important to place our observation on record that much prior to the issuance of the Statutory Notice as prescribed U/s 8 of I&B Code, stated to be issued on Form No.3 on 12.10.2017, there was a Legal Notice issued by the alleged Creditor on 19.12.2014 for the claim and recovery of the outstanding Debt. In the said Notice it was pointed out that the Cheques issued in the year 2014, three in number (mentioned *supra*), could not be encashed because the payment was stopped. In the Notice it was informed that the Creditor shall be constrained to take legal action U/s 138 of the Negotiable

Instruments Act, 1881. Immediately thereafter on 19.01.2015 the Respondent Debtor had given a detailed reply and enclosed Debit Note dated 10.11.2014 of ₹49,96,845/-. It was informed that due to defective material supplied the finished product valued at ₹49,96,845/- was rejected. As a consequence, a Debit Note was stated to be issued. The Liability was denied. Now on incorporation of Insolvency Code, on 12.10.2017 issued the Notice U/s 8 which was replied on 23.10.2017, reiterated therein the nature of the dispute, Debit Note issued and the denial of the Liability. On these facts our attention has been drawn on the Case Law of Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited Civil Appeal No.9405 of 2017 dated 21.09.2017 wherein vide Para 40, an observation has been made 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 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 truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application."

4. Having considered the totality of the facts and circumstances mentioned above, the existence of **dispute prior to issue of Demand Notice** is established. Accordingly, the Petition **does not deserve Admission**.

5. Accordingly this **CP 1556/I & BC/NCLT/MAH/2017 stood Dismissed**. No costs.

BHASKARA PANTULA MOHAN
Member (Judicial)

SD/-
M.K. SHRAWAT
Member (Judicial)

Date : 13.04.2018.
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