

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

CP (IB) No.480/MB/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Powermax Fitness India Pvt. Ltd.

Having its registered address at 808,
B-Wing, 8th floor, Lotus Trade Center,
New Link Road, D.N. Nagar, Andheri
West, Mumbai- 400012.

...Operational Creditors/Applicant

V/s

Sparnod Fitness Equipment Pvt. Ltd

Having its registered address at A/25,
2nd floor, Royal Industrial, 5B,
Naigoan Cross Road, Wadala,
Mumbai- 400031.

...Corporate Debtor/Respondent

Order Dated: 18.12.2023

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Sanjiv Dutt, Hon'ble Member (Technical)

Appearances:

For the Operational Creditor: Counsel for Petitioner

For the Corporate Debtor: Counsel for Respondent

ORDER

Per: Reeta Kohli, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 480/MB/2021 filed by **Powermax Fitness India Pvt. Ltd.**, the Operational Creditors/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Sparnod Fitness Equipment Pvt. Ltd.**, Corporate Debtor/ Respondent.
2. The Operational Creditor is a Manufacturer and supplier of Gym equipment and sports articles. Application is filed by Operational Creditors claiming the total outstanding amount of Rs.2,83,57,320/- effective from 8/02/2020.
3. The Operational Creditor supplied and delivered gym equipment and sports articles to the Corporate Debtor against the purchase orders by raising invoices. The Operational Creditor has raised invoices from time to time since 2014 for the goods sold. The present Petition is filed concerning goods sold from April, 2019 to July, 2020 to the Corporate Debtor by the Operational Creditor. The Operational Creditor raised several invoices to the Corporate Debtor against the goods sold. These goods sold were amounting to Rs.2,83,57,320/- which remained outstanding as on the date of filing of the petition.
4. The Operational Creditor further submitted that the Corporate Debtor had requested for submission of the ledger account of the Operational Creditor. Pursuant to the request, the Operational Creditor tried to

share the data of the Ledger account, but due to the COVID pandemic, remote access was given to its employees which led to the Operational Creditor's data falling easy prey to illegal hacking activities due to which they lost all its data. Therefore, the Operational Creditor submitted an interim ledger based on the limited data it was able to collate and the same was duly informed to the Corporate Debtor. Thereafter, some payments were received from the Corporate Debtor during the period between June, 2020 and August, 2020. The payments made were amounting to Rs.25,00,000/- and Rs.12,50,000/- on 25.08.2020 and 28.08.2020 dates respectively (Exhibit G-7) as per the ledger account maintained by the Operational Creditor. Therefore, the case of the Operational Creditor is that post the receipt of the above payment, the Corporate Debtor has neglected to make any further payment. The outstanding amount at the time of filling of petition is stated to be Rs. 2,83,57,320/-

5. The Operational Creditor further submits that on its request to share the Ledger Account of the Corporate Debtor, the Corporate Debtor shared the same on 25.08.2020. The Corporate Debtor never objected to the showing outstanding amount of Rs.2,31,22,393/- to be paid to the Operational Creditor.
6. Pursuant to the above, the Operational Creditor sent multiple follow-ups for payment of the amount due and also warned the Corporate Debtor of the imposition of interest for non-payment and delayed payment. Subsequent to the above, the Corporate Debtor for the first time objected on the quality of the goods supplied vide its email dated 21.09.2020.

7. It is pertinent to state that the Operational Creditor further has accounted for all the payments made by the Corporate Debtor and found that some entries regarding the due payment were missing in the ledger account shared by the Corporate Debtor. Additionally, two payments of Rs.25,00,000 and Rs.6,00,000/- vide entries dated 26.06.2020 and 30.06.2020 respectively which are shown in the ledger account of the Corporate Debtor were in fact never received by the Operational Creditor. On perusal of the above, the Operational Creditor vide its emails dated 15.09.2020 and 05.10.2020 respectively brought the said facts to the notice of the Corporate Debtor but the Corporate Debtor failed to reply to the same. Subsequently, the Operational Creditor again vide its email dated 5.10.2020 demanded the Corporate Debtor to pay the outstanding amount of Rs.2,83,57,320/-
8. Pursuant to non-payment of the amount due by the Corporate Debtor, the Operational Creditor sent a Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 dated 19.11.2020 under Rule 3 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016. The said notice was duly received by the Corporate Debtor. The Corporate Debtor replied to the said Demand Notice through their Advocate on 14.12.2020 denying all the claims made by the Operational Creditor and further neglecting to make the payment of the outstanding dues. Hence, this petition was preferred by the Operational Creditor.
9. The Corporate Debtor in its reply to the present petition submits that the Operational Creditor has deliberately overlooked its email dated 09.06.2020 in which, the Operational Creditor has specifically

mentioned that Rs. 2,86,37,227/- was due and payable. Pursuant to that email, the Corporate Debtor has paid amount of Rs.25,00,000/- and Rs.12,50,000/- on 25.08.2020 and 28.08.2020 respectively. The said amount was paid by the Corporate Debtor during the period between 26.05.2020 and 28.08.2020. The Operational Creditor has itself admitted that the above amount has been paid by them and their ledger account details confirms these payments. Thus, the Operational Creditor has failed to provide correct computation of the amount claimed in the present petition as the above two payments are not taken into consideration while claiming the amount of Rs. 2,83,57,320/-.

10. The Corporate Debtor further states that it has objected to the quality and standard of the goods supplied by the Operational Creditor several times, but the Operational Creditor had failed and neglected to improve the same. Out of such several objections, one of these has been sent by email dated 21.09.2020. The Corporate Debtor in the said email has categorically tried to draw the Operational Creditor's attention towards the quality and standard of goods and has also contended that on various occasions, Operational Creditor had supplied damaged/defective/sub-standard stock to Corporate Debtor. All these defective goods which were supplied to Corporate Debtor over the course of time were lying in the godown of the Corporate Debtor. The Operational Creditor even after receiving the said email dated 21.09.2020 regarding the defective quality of goods had neither refuted the contents of said email nor taken delivery of defective goods till date, though these were worth more than Rs.1,06,99,099/-. Hence, the Corporate Debtor points out that on this ground alone, the computation of due amount by Operational Creditor is incorrect and is factually wrong.

11. According to the Corporate Debtor, the poor quality and sub-standard goods supplied by the Operational Creditor had also resulted in the filing of the consumer complaints by some of the consumers of the Corporate Debtor. One such case is Consumer Complaint No.203 of 2019 which is pending before the Ld. District Consumer Disputes Redressal Forum, Kurukshetra. Hence, it is contended that there is a genuine pre-existing dispute between the parties.

Findings

12. During the course of arguments, the Operational Creditor has relied upon its interim Ledger account of period from 1.04.2019 to 25.08.2020. The entries in this ledger account for the period from 01.04.2019 to 30.07.2020 reflecting the outstanding amount of Rs. 2,31,22,393/-. Further the Operational Creditor has also furnished copy of its Ledger Account subsequently retrieved in the books of the Corporate Debtor for the period from 01.04.2020 to 31.03.2021 showing amount due to the Operational Creditor amounting Rs.2,83,57,320/-.The Corporate Debtor points out that sums of Rs.25,00,000/- and Rs.12,50,000/- were paid to the Operational Creditor on 25.08.2020 and 28.08.2020 respectively which have been accounted for by the Operational Creditor in the above Ledger Account of the Corporate Debtor. On the other hand, the case of the Corporate Debtor is that in view of the substandard goods supplied by the Operational Creditor the same are lying in his godowns for the Operational Creditor to lift the same. Rather it is the Corporate Debtor who is incurring demurrage charges on account of using the space. The Corporate Debtor too has raised his claim against the Operational Creditor. Without getting into the merits of the contentions disputing

the due amount it is evident that the debt so alleged is not a crystallized debt. Hence not appropriate for adjudication before this forum.

13. The Corporate Debtor has referred to the email dated 21.09.2020 wherein they have raised concern over the quality and standard of goods being defective/damaged and of sub-standard supplied by the Operational Creditor. The above concern was raised by the Corporate Debtor much prior to the issuance of the Demand Notice on 19.11.2020. The Corporate Debtor has also relied upon the Consumer Case No. 203 of 2019 filed by a consumer of the Corporate Debtor wherein the Corporate Debtor had supplied defective goods sold to it by the Operational Creditor. This establishes beyond all reasonable doubt that the Operational Creditor had supplied defective goods.
14. We find merit in the submission of the Corporate Debtor that there was a pre-existing dispute between the parties on account of sub-standard quality of goods supplied by the Operational Creditor. The Corporate Debtor has relied upon e-mails exchanged between the parties to substantiate its contention that there was an existing dispute between the Operational Creditor and the Corporate Debtor with regard to the quality and standard of goods supplied by the Operational Creditor much prior to the issuance of the Demand Notice under section 8 of Insolvency and Bankruptcy Code. The extract of the email is as under: -

12/12/2020

Gmail - Fwd: Ledger statement

ANNEX - IV EXHIBIT "C"



powermax fitness <powermaxfitness@gmail.com>

Fwd: Ledger statement

Mon, Sep 21, 2020 at 2:26 PM

accounts (Tejas) <tejas.powermax@gmail.com>
To: Sujata Singh <sujata.singh@powermaxfitness.net>
Cc: info@sparnofitness.in, Rakesh Agrawal <info@powermaxfitness.net>, shraddha.waim@powermaxfitness.net,
powermax fitness <powermaxfitness@gmail.com>, PRAKASH KOTHARI <pkkassociates7@gmail.com>

Dear Sujata,

As agreed between us we are not liable to pay any interest on outstanding amount for material supplied by you.

On various occasions we have received damaged/ defective/ sub-standard stock supplied by you, which is lying with us for a very long duration and due to which we are incurring huge expenses which are fully recoverable from you till date stock is lying with us. Therefore you are requested to pick your damaged/ defective/ sub-standard material within seven working days from the date of this mail / letter.

On account of above defective supplies, one of the customer from Kurukshetra, Haryana has filed legal case against us regarding the defective / sub-standard material supplied. The legal cost and other cost to defend the litigation including claim amount, if any shall be fully recovered from you.

Thanks & Regards,

Tejas D. Mahajan.
Accounts Dept.

Sparnod Fitness Equipment Pvt. Ltd.

15. We find that there is a real and genuine pre-existing dispute between the parties which is far from being a patently feeble legal argument or an assertion of fact unsupported by evidence. It is also observed that the Operational Creditor has also failed to file an affidavit under section 9(3)(b) of IBC *to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt* which is a prerequisite for filling a petition under Section 9 of IBC. The Corporate Debtor has further contended that the amount so claimed by the Operational Creditor is also disputed and cannot be termed as the crystallized amount. A reference was made to the judgment of the Hon'ble Apex Court in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited* wherein it has been held that "*what 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 must reject the application”. Therefore, applying the above test or criterion laid down by the Hon’ble Supreme Court to the case on hand, this Bench has no option except to hold that there was a “**pre-existing dispute**” between the parties and there is no merit in the above Company Petition which deserves to be ‘**dismissed**’ on that score alone.

16. In view of the foregoing findings, the present C.P.(IB) No. 480/MB/2021 filed by Powermax Fitness India Pvt. Ltd, the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 on 30.04.2021 for initiating CIRP in case of Sparnod Fitness Equipment Pvt. Ltd, the Corporate Debtor is hence **rejected**.

However, the rejection of this petition shall not cause any prejudice to the right of the petition before any other judicial forum for recovery of amount due in the eyes of law.

The Registry is directed to serve copy of the order on the parties.

SD/-

SANJIV DUTT

MEMBER (TECHNICAL)

SD/-

REETA KOHLI

MEMBER (JUDICIAL)