

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.302
CP(IB)/200(AHM)2022

Order under Section 9 IBC

IN THE MATTER OF:

Vrajpack Industries

.....Applicant

V/s

Marmola Vitrified Private Limited (Formerly Known As
Simola Vitrified Private Limited)

.....Respondent

Order delivered on: 22/03/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)

Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet

Sd/-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**IN THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL**

AHMEDABAD BENCH

COURT-2

C.P. (IB) No. 200 of 2022

In the matter of:

M/ s. Vrajpack Industries

8-A, National Highway,
Haripar Kerala Road,
Near Lemica Paper Mill,
Morbi - 363 642 (Gujarat).
Through its Partner
Jatin Vallabhbhai Dharsandiya

.....Applicant

VERSUS

M/s. Marmola Vitrified Private Limited

(U26933GJ2010PTC059914)

A Company incorporated under the
Provisions of the Companies Act, 1956 &
having its Registered Office at:

M/s. Marmola Vitrified Private Limited
Survey No 614,
Old Ghutu Road, At Ghutu
Morbi, Gujarat - 363642
India.

(Formerly known as
M/ s. Simola Vitrified Pvt. Ltd.)

.....Respondent

Order pronounced on: 22.03.2024

Coram: Mrs. Chitra Hankare, Member(J)
Dr. Velamur G Venkata Chalapathy, Member(T)

Appearance:

For the Applicant : Mr. Devashish Trivedi, Advocate
For the Respondent : Mr. Chaitnya J. Patel, Advocate

JUDGMENT

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process in respect of M/s. Marmola Vitrified Private Limited (Formerly known as M/s. Simola Vitrified Pvt. Ltd.) [hereinafter referred to as the 'Corporate Debtor'] under the Insolvency and Bankruptcy Code, 2016.
2. The applicant is a partnership firm registered under MSME and engaged in manufacturing and selling of corrugated boxes. The respondent placed oral purchase orders which were supplied by the applicant. Various tax invoices were issued. The respondent failed to pay amount of Rs.1,00,81,443/- towards goods supplied with further interest of Rs.4,18,877/-. Thus, the total amount of debt as on 30.04.2022 is Rs. 1,05,00,320/-. The date of default is mentioned as 30.10.2021 as the first invoice the Corporate Debtor failed to make payment is dated 30.07.2021 with credit of 90 days. While last unpaid invoice is dated 20.02.2022. Demand notice was issued on 19.05.2022 which was not replied by the

respondent. Hence, applicant prayed for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

3. The respondent contested the application by filing reply denying all the allegations. It has submitted that applicant has suppressed material facts and has no cause of action to file the application. The respondent company is solvent and just going through temporary financial stress. It has further stated that there was oral settlement between them. As per the settlement talks respondent has paid Rs.19,47,441/- on 01.08.2022. While the remaining amount was agreed to be paid within one year. He has further stated that there is ambiguity in the number of partners of the applicant. The demand notice is barred in law and without cause of action there is no clarity with respect to outstanding amount. Hence, prayed for dismissal of application.
4. Heard both the Ld. Counsels and also perused the written submissions filed by the respondent. Respondent relied upon the following judgments:
 - (i) The Hon'ble NCLAT, New Delhi in Company Appeal No. 1227 of 2019.
 - (ii) Hon'ble High Court of Karnataka in Jyothi Limited Vs. Boving Fouress Limited in Company Petition No. 48 of 1998.

(iii) (iii) The Hon'ble NCLAT Principal Bench, New Delhi in Company Appeal No. 1152 of 2022 in case of Rohit Motawat Vs. Madhu Sharma.

5. From the pleading, it appears that the contract between the parties and supplied goods is not disputed. The respondent only submitted that there was settlement talks and out of settlement, amount of Rs.19,47,441/- were paid to the applicant. The respondent nowhere stated that what was the complete amount of settlement. He has also stated remaining amount is to be paid after one year. There is nothing on record to show that any such settlement was materialised between the parties. The respondent only relied upon email dated 17.10.2022. This application is filed on 04.07.2022, thus, if any settlement was arrived upon after filing of the petition it should be in writing and also to be brought to the notice of the Tribunal. It is pertinent to note that respondent has nowhere stated the amount of settlement, if any, between them and the applicant clearly denied any such settlement took place. The respondent filed affidavit mentioning that after filing of the present petition they have made payment of entire principle amount and produced copy of ledger and bank statement as no principle amount is due and payable the petition will not survive.

6. As against this the applicant filed affidavit in rebuttal stating that total amount of debt due was Rs.1,00,81,443/- with interest of Rs.4,18,877/- as on 30.04.2022. It is further stated that the ledger account and bank statement produced by the respondent shows the entries for Rs.15,00,000/-, Rs.15,00,000/-, Rs.5,00,000/-, Rs.20,00,000/- & Rs.25,36,924/-. It does not show debt entry of Rs.21,56,578/- dated 01.08.2022. The Operational Creditor further stated that the tri-party agreement entered between the Operational Creditor and Corporate Debtor and M/s. Anand Properties Finance Limited. According to said agreement M/s. Anand Properties Finance Limited was required to be recovered balance on behalf of Operational Creditor from Corporate Debtor and then debit the amount in the bank account of Operational Creditor. According to them only an amount of Rs.19,47,441/- is paid by the company but no payment of Rs.21,56,578/- is deposited in their account. It is further submitted that out of the principle amount outstanding payment of Rs.89,129.51/- is still outstanding and the Corporate Debtor has filed false affidavit. The Operational Creditor also submitted that the interest of Rs.17 lakhs is also due and payable by the Corporate Debtor. Thus, from the affidavit filed by applicant it is admitted fact that Corporate Debtor has made some payment after filing of the application

and the principle amount of Rs.89,129.51/- is only outstanding with interest upon it amounting to Rs. 17 lakhs. According to respondent though it was agreed in tri-party agreement that the 3rd party M/s. Anand Properties Finance Limited will pay all the amount with interest but it has failed to honour its contractual liability and thus, there is a difference of Rs.89,129/-. It is further submitted that by the respondent that during arguments they have assured that they will pay the said amount but the Operational Creditor denied. Hence, certain amount is paid to the Operational Creditor. The application now remains for recovery of only some remaining debt amount and interest thereon. The spirit of IBC is for resolution of debt and not for recovery. In such circumstances, application is not maintainable.

7. Hence, we pass the following order:

ORDER

C.P.(IB) No. 200 of 2022 is rejected.

Sd/-
DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

Sd/-
CHITRA HANKARE
MEMBER (JUDICIAL)

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