

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI
IB-1028(ND)/2020

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:

M/S Shree Jindal Soya
Having its office at: -
18, Chander Lok Enclave, Pitampura,
New Delhi- 110034

...Operational Creditor/Petitioner Company

Versus

M/S Proful Oils Pvt. Ltd.
Having its Registered office at: -
Shop No LG-6, Plot No.31,
Road No.44, Vikas Tower,
DDA Complex, Rani Bagh,
Pitampura
New Delhi 110034.

...Corporate Debtor/Respondent Company

Order Delivered on: 01.04.2021

Coram:

Shri. P.S.N. PRASAD
Hon'ble Member (Judicial)
DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

For the Applicant: Advocate Rohan Kothari.
For the Respondent: Ms. Nandita Bajpai.



ORDER

As per P.S.N. PRASAD, Hon'ble Member (Judicial)

1. This is a petition filed by “M/S Shree Jindal Soya” (the petitioner/operational creditor) seeking to initiate CIRP against the Respondent company /Corporate Debtor “M/S Proful Oils Pvt. Ltd,” under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor in settling the amount of Rs. 2,69,71,509/- towards the goods supplied.
2. The case of the Operational Creditor are as:
 - i. The Operational Creditor is a leading name in the import and trading of various types of Edible Oils and has created a niche for itself in the market since more than past two decades.
 - ii. High Seas Sale Agreement dated 11.02.2019 was executed between the Operational Creditor and the Corporate Debtor. The Operational Creditor supplied Crude Palm Oil to the Corporate Debtor in terms of the said High Seas sale agreement and subsequently raised an invoice bearing No. 29/2018-19 dated 11.02.2019 for an amount of Rs. 7,56,60,000/-.
 - iii. That the goods were supplied as per agreed terms and were duly received by the Corporate Debtor. Further, the goods had been to the entire satisfaction of the Corporate Debtor and no dispute whatsoever

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was raised by the Corporate Debtor with regard to the said goods or the Invoice Bearing No. 29/2018-19 dated 11.02.2019.

- iv. However, despite thereof, the Corporate Debtor failed to make the full payment towards the aforesaid invoice and on rigorous follow ups by the Operational Creditor, only a part payment of Rs. 5,45,33,392/- was made by the Corporate Debtor to the Operational Creditor on various dates against the total invoice value of Rs. 7,56,60,000/-
 - v. The Operational Creditor waited for clearance of its outstanding amount of Rs. 2,11,26,608/- which is legally due and payable by the Corporate Debtor since 11.02.2019.
3. The operational-creditor on 10.07.2020 sent a demand Notice to the Corporate-debtor to pay outstanding debt amount a sum of Rs.2,69,71,509/- (along with the interest). On 24.07.2020 the Corporate Debtor has replied to the said demand notice.
4. The Corporate debtor (respondent) has filed its reply to the main petition and raised certain objections against the claim of the applicant. The following objections have been raised by the respondent:
- i. That the supply made by the Petitioner against the alleged Invoice No. 29/2018-19 dated 11.02.2019 was of inferior quality and unfit for home consumption. It is further submitted that the dispute regarding quality of



the oil supplied by the petitioner was raised on several occasions and were duly communicated to the Petitioner orally and through written communication dated 04.05.2019.

- ii. Further it is stated that the Respondent Company has suffered huge financial loss and loss of goodwill and reputation. Despite various reminders the Petitioner has failed miserably to take steps before the Overseas Supplier to compensate the said loss and accordingly, a counter claim of Rs. 50 Crores was raised on the petitioner, which remains unpaid till date. The said facts have not been denied by the petitioner.
- iii. The respondent has also placed reliance on the judgement passed by Hon'ble Supreme Court of India in the matter of Mobilox Innovations Private Limited vs Kirusa Software Private Limited (2018) 1 SCC 353. The Relevant Para of the Judgement is reproduced below:

"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

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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.”

5. Further it is submitted by the respondent that an Arbitrator was appointed to adjudicate the dispute between the parties and the Ld. Arbitrator dismissed the claim raised by the Petitioner vide Arbitral Award dated 24.09.2019. Further, the Arbitral Award dated 24.09.2019 was challenged by the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Court, Chandigarh, which is pending adjudication.
6. Heard the parties and perused the case records.
7. The claim of the applicant is not admitted by the respondent in fact there are certain issues which should be adjudicated before ascertaining the claim of the applicant.
8. In the case of K. Kishan vs Vijay Nirman Company Private Limited (2018) 17 SCC 662 the Hon'ble Supreme Court has held that the pendency of a

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petition under Section 34 of the A& C Act comes within the purview of dispute. The Relevant Para of the Judgement is reproduced below:

“We repeat with emphasis that under our Code, insofar as an operational debt is concerned, all that has to be seen is whether the said debt can be said to be disputed, and we have no doubt in stating that the filing of a Section 34 petition against an Arbitral Award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an Award, continues even after the Award, at least till the final adjudicatory process under Sections 34 & 37 has taken place.”

9. In respect of definition of “dispute” in the Code, Hon’ble Supreme Court has held in the case of *Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.* 2018 1 SCC 353 inter-alia that:

“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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 the extent indicated above. So long as a dispute truly exists in fact and is not

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spurious, hypothetical or illusory, the adjudicating authority has to reject the application.” (emphasis given).

10. In the present case an Arbitrator was appointed to adjudicate the dispute between the parties and the Ld. Arbitrator dismissed the claim raised by the Petitioner vide Arbitral Award dated 24.09.2019. Further, the Arbitral Award dated 24.09.2019 was challenged by the Petitioner under Section 34 of the Arbitration and Conciliation Act, 1996 before the District Court, Chandigarh, which is pending adjudication.
11. In the factual background it is seen that there has been no admission of operational debt by the respondent. In fact, there is a pendency of the Section 34 petition under the Arbitration & Conciliation Act, 1996 reflects the pre-existing dispute between the parties.
12. There was existence of dispute much prior to the issuance of notice under Section 8 of the Code. Respondent has raised dispute with sufficient particulars. The amount of claim raised by the applicant clearly falls within the ambit of disputed claim. The claim of dispute suggests the need of elaborate investigation. In the facts it is reiterated that existence of genuine dispute in the present case cannot be ruled out.



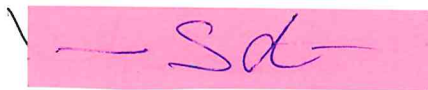
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13. As per Section 9 (5) (ii) (d) of the Code provides that adjudicating authority shall reject the application if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility.

14. For the reasons stated above this petition fails and the same is rejected.

15. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Applicants before any other forum shall not be prejudiced on account of dismissal of instant application.

Let the copy of the order be served to the parties.



(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)



(P.S.N PRASAD)
MEMBER (JUDICIAL)