IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 1

ITEM No 131
CP(IB) 555 of 2019

Order under Section 9 IBC

IN THE MATTER OF:

Subhash Chandra Goyal Sole Proprietor of Goyal Enterprises ....**Applicant**
V/s
K B Ispat Pvt Ltd ....**Respondent**

Order delivered on ..01/12/2021

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Ajai Das Mehrotra, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the IRP/RP :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(AJAI DAS MEHROTRA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Sweta

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

CP (IB) No.555/9/NCLT/AHM/2019

(Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of:

Mr. Subhash Chandra Goyal
Sole Proprietor of M/s Goyal Enterprises
D-707, Signature-II
Sarkhej- Sanad Road,
Saekhej Ahmedabad

..Operational Creditor

Versus

M/s. KB Ispat Private Limited
(CIN NO. U27310GJ2010PTC063359)
Survey No. 15/3, Bhavnagar- Vallabhipur Highway
Near Ghangli,
Village- Maglana
The- Sihore
District- Bhavnagar

Registered address at;
Plot No. 93A, Gita Chowk
Krishnagar, Bhavnagar, Pin 364001

...**Corporate Debtor**

Reserved on 15.11.2019

Date of Pronouncement of Order 01.12.2021

Coram: MADAN B. GOSAVI, MEMBER(J)
AJAI DAS MEHROTRA, MEMBER (T)

Appearance:

Ld. Adv. Kunal P. Vaishnav along with Ld. Advocate Mr. Vivek H Patel appeared for the operational creditor.
Ld. Sr. Adv. Mr. Tushar Hemani along with Ld. Adv. Ms. Vaibhavi Parekh

ORDER

[Per Bench]

1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IBC 2016**") by Mr. Subash Chandra Goyal sole proprietor of M/s Goyal Enterprises requesting to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against the Corporate Debtor, M/s KB Ispat Private Limited for the default amount of Rs. 26,89,290/-.

2. The Operational Creditor has submitted that it had business relations with the Corporate Debtor from September 2018. In all 42 consignments were delivered to the Corporate Debtor, each invoice being around Rs. 5 to 12 lakh, and all the consignments were supplied to the Corporate Debtor and invoices were raised with valid GST Number.

3. The Operational Creditor further submitted that the goods were supplied to the Corporate Debtor and three invoices were raised in the impugned transaction by the operational creditor for the total amount of Rs. 26,89,290/- on 04.05.2019 and the amount of all the three invoices was to be paid by 05.05.2019. It is also submitted by the Operational Creditor that Corporate Debtor has raised three debit notes against the said invoices which were received on 11.05.2019. The total amount claimed from the Operational Creditor by the Corporate Debtor in these three debit notes was Rs. 3,32,459/- .The applicant has submitted that the debit notes issued by the Corporate Debtor are merely to show the pre-existing dispute without any valid ground.

4. The operational creditor further submitted that after non-payment of operational debt by the Corporate Debtor, the Operational Creditor had issued a demand notice as required under section 8 IB Code on 01.07.2019, and the same was received by the Corporate Debtor on 06.07.2019 along with supporting evidence. The corporate debtor neither paid the due amount nor replied to the demand notice within 10 days

from the date of receiving the Demand Notice. The corporate debtor intentionally sent an undated letter to the operational creditor which was received on 22.07.2019 after the statutory period of 10 days from the date of receiving the demand notice. Hence, the letter received from the corporate debtor is of no consequence. It was merely fictitious ground created by the Corporate Debtor to avoid making the payment of default debt of the operational creditor.

5. The Corporate Debtor appeared and submitted that the present petition is an arms twisting. Tactics to pressurize the respondent company to accept an unreasonable and fallacious claim. There is a pre-existing dispute as per the alert circular dated 25.03.2019 issued by the Office of Commissioner of Central Goods Service Tax and Central Excise, Kolkata South Commissionerate (hereinafter referred to as **"Commissioner of GST"**). As per the alert circular issued by the Commission of GST, M/s Rathank Retails Private Limited was found to be a non-existent and fictitious company that passed a huge amount of irregular Input Tax Credit to various recipients throughout India without

physical supply of goods. The Operational Creditor was purchasing the material from the aforesaid bogus company. The apprehension of the Corporate Debtor is that it is likely to face problem in claiming Input Tax Credit, as the Corporate Debtor has purchased goods of approximately Rs. 3.3 Crores from the operational creditor of which Input Tax Credit of RS. 59.47 lakhs is due. As per the alert circular, ITC availed by the receipients are required to be disallowed, alongwith interest and penalty as per law. The Corporate Debtor further submitted that it is still ready to pay the due amount to the Operational Creditor on the condition that the Operational Creditor gives the Bank guarantee which covers the amount of GST till their assessment is over. The said proposal was also given to the Operational Creditor by the letter undated received by the Operational Creditor on 22.07.2019 in response to the demand notice.

6. The Corporate Debtor has further submitted that there is a pre-existing dispute as per Section 5(6) of the IB Code as apparently the Operational Creditorit has procured goods from a tainted supplier and there is likelihood of the

Corporate Debtors' ITC claim being disallowed, in view of the alert circular dated 25.03.2019, issued by The Commissioner of GST.

7. The Operational Creditor has submitted that the contention of Pre-existing dispute for bogus GST invoice is baseless. In all 42 Consignments were supplied to the Corporate Debtor since its business relations with the Corporate Debtor, all the Consignment supplied to the corporate debtor are purchased from persons/ parties other than M/S Rathank Retails Private Limited. Moreover, the Operational Creditor has regularly filed GST Return and at no point of time Input Tax Credit of the Operational Creditor has been disputed. It is also submitted that at no point in time claim amount of Operational Creditor is disputed by the Corporate Debtor. The issue of likely problem in getting Tax Credit has created by the Corporate Debtor merely as an eyewash to avoid payment of the legal claim of the Operational Creditor.

8. We have heard the Ld. Counsels of the Operational Creditor as well as the Corporate Debtor and have gone through the

records. It appears that the Operational Creditor has supplied the impugned goods worth Rs. 3,89,87,276/- (including GST of Rs. 59,47,211/-) to the Corporate Debtor .In the last supply it had raised three invoices on 04.05.2019 of Rs. 26,89,290. It is an admitted fact that the amount pertaining to the last 3 invoices remains to be paid. As as per the alert circular issued by the Commissioner of GST, M/s Rathank Retails Private Limited was declared a fictitious company which had supplied goods to the Operational Creditor. It is a bonafide claim of the Corporate Debtor that the Input Tax Credit paid must be assessed undisputedly. The Corporate Debtor had, in its letter received by the Operational Creditor on 22.07.2019, has admitted the debt and was ready to pay the due amount on providing the Bank guarantee till the assessment. Though the letter in respect to the dispute of ITC was received by the operational creditor after 10 days after the i.e. statutory period of reply to the demand notice as per section 8 of IB Code, the dispute seems to real and genuine. It is the benafide right of the Corporate Debtor that the amount paid for GST must be assessed without any complication. The objection of the

Operational Creditor in respect that no such agreement was made by and between the Operational Creditor and Corporate Debtor for giving the Bank guarantee for GST dispute is not well founded. Such a situation arose after Rathank Retails Private Limited was declared as a fictitious company. Such situation was not in picture since the inception of the business relations with the Operational Creditor.

9. The contention of the Operational Creditors that all the 42 consignments delivered to the Corporate Debtor were purchased from other than the aforesaid fictitious company, and the Operational Creditor used to attach the original suppliers invoice along with its invoice was also not born by record, as not even a single invoice of the original supplier has been attached by the Operational Creditor in the petition. On the other side, the Corporate Debtor is still ready to pay the alleged due amount of the Operational Creditor on giving the Bank Guarantee till the assessment of ITC. The apprehension of the Corporate Debtor is genuine, as if the transactions of the Operational Creditor prove to be

non-genuine, the Corporate Debtor would have bear to the additional GST along with interest and penalty. In view of the above, pre-existing dispute under section 8 (2) (a) of Ib Code fully established. The petition of the Operational Creditor for initiation of CIRP under section 9 of IB Code is rejected.

10. Accordingly, CP(IB) No. **555/9/NCLT/AHM/2019** is dismissed & disposed of.

(Ajai Das Mehrotra)
Member (Technical)

(Madan B.Gosavi)
Member (Judicial)

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