

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA**

CP (IB)/04/KOB/2021

(Under Section 9 of Insolvency and Bankruptcy Code, 2016)

Order delivered on: 06.10.2021

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)
Hon'ble Mr. Rajesh Sharma (Technical)

Mr. Kamalesh Gupta
(Proprietor of Srija Polymers)
Sy. No. 261, Muppireddypally Village,
Kallakal (V), Toopran Mandal,
Medak, Telangana- 502 336

... Operational Creditor

Versus

M/s Blaze Polypacks (India) Private Limited
9/160, Gunny Street, Calicut,
Kerala 673 001

... Corporate Debtor

Appearance -

For Operational Creditor
For Corporate Debtor

... Nidhi Sam John, Advocate
... Merin Taliath, Advocate

Per: Rajesh Sharma, Member (T)

1. This application has been filed by the proprietor of M/s. Srija Polymers, **Mr. Kamalesh Gupta** (hereinafter referred as 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the 'I & B Code') for initiating Insolvency Resolution Process against **M/s Blaze Polypacks (India) Private Limited** (hereinafter referred as 'Corporate Debtor') stating that the Corporate Debtor is liable to pay a total sum of Rs. 2,01,284/- (Rupees

Two Lakh One Thousand Two Hundred and Eighty-Four Only) including the interest @ 24% per annum interest of Rs. 86, 664/- (Rupees Eighty-Six Thousand Six Hundred and Sixty-Four Only). The Operational Creditor had issued the invoice in the name of M/s. Blaze Polypacks (India) Private Limited from 04.01.2018 till 05.08.2020 in respect of outstanding invoice dated 28.12.2017.

2. The Corporate Debtor is a private limited company incorporated on 08.04.2009, having CIN No. U24134KL2009PTC024045. The registered office of the Corporate Debtor is stated to be at 9/160, Gunny Street, Calicut, Kerala-673 001, State of Kerala and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. The Authorised Paid-up Share Capital of the Corporate Debtor Company is Rs. 1,85,00,000/- (Rupees One Crore Eighty-Five Lakhs Only) and Paid-up Share Capital is Rs. 1,75,57,160/- (Rupees One Crore Seventy-Five Lakh Fifty-Seven Thousand One Hundred and Sixty Only).

Submissions by the Operational Creditor:

3. It is stated that the Operational Creditor is the manufacturer of Master Batch (CP) and Filler (SP). The Corporate Debtor raised purchase order via mail dated 22nd December 2017 for the supply of Fillers and PP Enhancer, and the Operational Creditor had supplied the same to the Corporate Debtor and there was no dispute at the time of delivery of the

goods or thereafter relating to the quantity and quality of goods but the Corporate Debtor failed to make the payment for the outstanding invoice dated 28.12.2017. The Operational Creditor had raised an invoice amounting to Rs. 6,59,920/- (Rupees Six Lakh Fifty-Nine Thousand Nine Hundred and Twenty Only) being the remaining outstanding, till the date of demand notice i.e.,05.08.2020 but after the issue of demand notice Corporate Debtor had credited Rs. 25,000/- (Rupees Twenty-Five Thousand Only) on 20.08.2020 in the account of the Operational Creditor and left with the principle outstanding of Rs. 1,14,620/- (Rupees One Lakh Fourteen Thousand Six Hundred and Twenty Only). The Corporate Debtor is also liable to pay an interest @ 24% per annum on the outstanding as Rs. 86,664/- (Rupees Eighty-Six Thousand Six Hundred and Sixty-Four Only), as per the terms of outstanding invoice from the due date of the invoices till the date of the demand notice.

4. The Operational Creditor stated that after giving several reminders, the Operational Creditor issued the statutory demand notice in Form 3 along with Form 4 dated 05.08.2020 as required under Section 8 of the IBC, 2016 and the certified copy of Form 5A issued by Bank where deposits are made or credits are received normally by the Operational Creditor in respect of Corporate Debtor, reflecting credit amount received by the Operational Creditor from the Corporate Debtor during previous three years. Therefore, the present application has been filed by the Operational Creditor to initiate Corporate Insolvency Resolution

Process against the Corporate Debtor under Section 9(6) of Insolvency and Bankruptcy Code, 2016.

Submissions by the Corporate Debtor:

5. The Corporate Debtor stated that the Operational Creditor had been in business relationship with the Corporate Debtor for several years. All the payments with respect to the Corporate Debtor's purchase orders have been cleared and there is no unsettled amount pending in this regard from the Corporate Debtor to the Operational Creditor. It is also stated that the Corporate Debtor had raised a purchase order dated 22.12.2017. The Operational Creditor had supplied partly defective goods and the same had been entered in the delivery note. Further to the same the Corporate Debtor had also raised the issue directly to the Operational Creditor regarding the defective goods. The Operational Creditor raised an invoice on 28.12.2017 for an amount of Rs. 6,59,620.00/- (Rupees Six Lakhs Fifty-Nine Thousand Six Hundred and Twenty Only) and in the terms of the dispute raised, the Operational Creditor had sent a representative to verify the same in January 2018 and on assessing the defective goods, it was agreed that the defective goods would be collected and the balance amount of Rs. 5,20,000/- (Rupees Five Lakh and Twenty Thousand Only) only needs to be paid for the full and final settlement of the invoice. In furtherance to the same the Corporate Debtor had made effective payment of the amount of Rs. 5,20,000/- (Rupees Five Lakh and Twenty Thousand Only).

6. It is also stated that the Corporate Debtor had on several occasions asked the Operational Creditor to collect the defective goods as he specifically stated that he has no use of the same. However, the same was not collected and remained in the Corporate Debtor's godown since 2017. The Operational Creditor delayed the collection as he was fully aware that the material cannot be reused which had only scrap value. The Corporate Debtor informed to the Operational Creditor that they would scrap the defective materials and pay back the scrap value to the Operational Creditor. In furtherance to the same and based on the terms agreed to collect, one of the employees of the Respondent agreed to collect the scrap materials and paid Rs. 25000/- for the scrap as on 20.08.2020.
7. It is also stated that this application is not maintainable stating that that the Operational Creditor has availed the benefit of IBC simply to recover individual debt due to them under a contract, thereby misusing the provisions of the Code and has degraded the powers vested with the NCLT on IBC matters.
8. To fortify the above arguments the learned counsel for the Corporate Debtor, has referred to the following case laws and sought dismissal of the application: -
- Swiss Ribbons Pvt. Ltd & Another Vs. Union of India & Others (Writ Petition (Civil) No. 99 of 2018).
 - K. Kishan Vs. Vijay Nirman Co. Pvt. Ltd. (Civil Appeal No. 21824 of 2017).
 - S.T. Sahib Vs. Hassan Ghani Sahib (AIR 1957 Mad 646).

Rejoinder by the Operational Creditor

9. The Operational Creditor filed rejoinder stating that the outstanding debt and default are supported with proper documents in the application. It is also stated that the allegation regarding the supply of defective goods have been raised for the first time and are not supported by any letter or e-mail issued by the Corporate Debtor to the Operational Creditor. The demand notice dated 05.08.2020 was issued to the Corporate Debtor and its five directors and they had received the demand notice as evidenced by postal track reports. The Corporate Debtor failed to raise any existence of dispute or any pendency of suit or arbitration and send a statutory reply as envisaged by Section 8(2) of the IBC within the stipulated time.
10. The allegation that a representative was send by the Corporate Debtor to the Operational Creditor to verify the defects in January, 2018 is refuted as the same is an afterthought to circumvent the ensuing liability arising out of invoice. They denied that there were any defective goods supplied and no such grievance was raised by the Corporate Debtor at any point of time.
11. The allegation that there was an agreement between the parties that defective goods will be collected by the Operational Creditor and the Corporate Debtor had only to pay a balance amount of Rs. 5,20,000/-as full settlement is not correct as this is not substantiated by any communication in writing or that no such agreement is produced. The cooked-up story that the payment of Rs. 25,000/- made

on 20.08.2020 was the proceeds from the 'scrap value' of alleged defective goods is an afterthought to get over the admission of the debt.

12. It is also stated that the veracity as well as legitimacy of the invoice under reference cannot be disputed by the Corporate Debtor since they have been making payments as evidenced by ledger account and the payment of Rs. 25,000/- made by the Corporate Debtor on 20.08.2020 as stated in the counter affidavit is fastening the burden of acknowledging the liability upon it.
13. We have heard the arguments advanced by the learned counsel for the Operational Creditor and the learned counsel for the Corporate Debtor. The main argument advanced by the learned counsel for the Corporate Debtor is the maintainability of this application before this Tribunal in view of Notification No. 1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs.
14. In view of the above, before going to the merits of this case, we have to decide as to whether this application filed on 18.01.2021 claiming default of an amount as on 05.08.2020 is maintainable or not?
15. Even if we take the date 28.12.2017 i.e. the last invoice date, this application filed on 18.01.2021 is barred by limitation as 3 years from 28.12.2017 expired on 27.12.2020.
16. In view of the Notification No. 1205(E) dated 24.03.2020 issued by the Ministry of Corporate Affairs specified the Rupees One Crore as the minimum amount of default and that the amount claimed which is below Rupees One Crore, this application cannot be entertained.

17. To get further clarity on this issue, we have gone through the Notification S. O. 1205 (E) dated 24.03.2020 which reads as under: -

“S.O. 1205(E). —In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section”.

18. In this connection Section 10A is also quoted below: -

Section 10A: Suspension of initiation of corporate insolvency resolution process.

¹[10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified² in this behalf: Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]

19. It is profitable to preface the discussion with reference to four significant dates which have a bearing on the present proceedings:

- 28 December 2017 – last invoice of outstanding amount
- 4 January 2018 – date of default is stated to be made
- 5 June 2020 – date on which Section 10A was inserted in the IBC.
- 05 August 2020 – Statutory Demand Notice in Form 3 & Form 4 as required under Section 8 of the IBC issued by the Operational Creditor to the Corporate Debtor.
- 20 August 2020 – The Corporate Debtor had credited Rs. 25,000/- (Rupees Twenty-Five Thousand Only) in the account of Operational Creditor.

20. In the light of the above findings, we came to the conclusion that the last date of payment of Rs. 25,000/- (Rupees Twenty-Five thousand Only) was made on 20.08.2020, this will come under the preview of Section 10A of IBC, 2016.

21. Accordingly, this application CP(IB)/04/KOB/2021 is dismissed.

Dated this the 6th day of October, 2021

Sd/-
(Rajesh Sharma)
Member (Technical)

Sd/-
(Ashok Kumar Borah)
Member (Judicial)

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