

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

CP (IB) 1016/IBC/MB/2019

Under section 9 of the Insolvency &
Bankruptcy Code, 2016

In the matter of

Mr. Vijal A. Jain

Proprietor of EPPAJ INDIA and having
its office at –

At 66/72, Manahar Building, Dadiseth
Agiyari Lane, Ground Floor, Kalbadevi
Road, Mumbai-400002

...Operational Creditor

Versus

Shree Daksh Jyot Silk Mills Pvt. Ltd.

[CIN: U99999MH1988PTC047141]

Reg. Office at: Survey No. 20, 695/2/5,
New Mulchand Compound, Katai
Village, Bhiwandi, Thane-421302

... Corporate Debtor

Order Pronounced On: 13.02.2020

Coram:

Hon'ble Shri Bhaskara Pantula Mohan, Member (J)

Hon'ble Shri Shyam Babu Gautam, Member (T)

For the Petitioner: Mr. Jeetendra Ranawat, Advocate

For the Respondent: Mr. R. K. Sharma, Advocate

Per: Shri Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Company Petition is filed by Mr. Vijal A. Jain, Proprietor of EPPAJ INDIA (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against

Shree Daksh Jyot Silk Mills Pvt. Ltd. (hereinafter called “Corporate Debtor”) on the ground that the Corporate Debtor committed default in payment of the dues to the Operational Creditor invoking the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The Operational Creditor is a a proprietorship concern represented by its proprietor, Mr. Vijal A. Jain. The Applicant sold, supplied and delivered goods to the Respondent. The Corporate Debtor is a company incorporated on 25.04.1988 bearing CIN: U99999MH1988PTC047141 and having authorized share capital Rs. 10,00,00,000/- and paid up share capital of Rs. 8,38,03,000/-.
3. The Operational Creditor time to time sold, supplied and delivered to the Corporate Debtor Plastic Sheets and Box Goods under twelve bills, during the period between 18.10.2014 to 14.02.2015 for an aggregate amount of ₹7,15,940 and raised the following invoices (**Exhibits C” to “C-11”** of pp. 13-24 of the Petition).

Invoice No./Bill No.	Date of Invoice	Amount in ₹
147	18.10.2014	84,298/-
153	28.10.2014	78,485/-
163	05.11.2014	22,234/-
167	07.11.2014	1,02,275/-
171	12.11.2014	35,320/-
176	24.11.2014	71,850/-
186	04.12.2014	39,917/-
212	19.12.2014	76,453/-
213	25.12.2014	51,282/-
222	08.01.2015	40,592/-
229	23.01.2015	32,145/-
257	14.02.2015	79,089/-
Total outstanding amount		₹7,15,940/-

4. The counsel for the Petitioner further mentioned that the Respondent paid a sum of ₹40,000/- vide Cheque No. 110087 dated 16.02.2016 to the Applicant. Accordingly, the Petitioner has adjusted the said amount to the running account of the Respondent, leaving an outstanding amount of ₹6,75,940/- as due and payable under the said invoices, along with further interest @ 12% from the date of filing till realization of the payment which is described in Particulars of claim. (**Exhibits “B”** of page 12 of the Petition).
5. The Respondent issued a cheque dated 12.01.2016 for a sum of ₹44,298/- to the Applicant. On presentation of the said cheque, it got dishonored for the reason *“Payment Stopped by drawer”* (**Exhibits “D” & “D-1”** of pp. 25-26 of the Petition).
6. Ld. Counsel of the Petitioner also mentioned that the Operational Creditor sent the confirmation of Accounts on 01.04.2015 to the Corporate Debtor. The Corporate Debtor accepted and acknowledged the said confirmation of accounts. (**Exhibits “E”** at page 27 of the Petition).
7. The Operational Creditor stated that the Applicant delivered the said goods through transport and Respondent acknowledged receipt of the challans and Respondent never raised the grievances with respect to quality, quantity and size whatsoever till date.
8. The counsel for the Operational Creditor further stated that a demand notice dated 16.10.2018 under Section 8 of the Code, wherein a demand was made for payment of the unpaid operational debt due on the Corporate Debtor was duly sent which was received by the Corporate Debtor. There was no reply to this Demand Notice.

9. The Operational Creditor has annexed the following documents in support of the contentions made by them:
- i. True copy of the Corporate Debtor's Master data as available on the website of the Ministry of Corporate Affairs.
 - ii. Invoices dated 18.10.2014, 28.10.2014, 05.11.2014, 07.11.2014, 12.11.2014, 24.11.2014, 04.12.2014, 19.12.2014, 25.12.2014, 08.01.2015, 23.01.2015 and 14.02.2015.
 - iii. Copy of the Demand Notice dated 16.10.2018 along with postal receipt.
 - iv. Affidavit of Operational Creditor under section 9(3)(c) of the Code.
 - v. Copy of the Affidavit in reply/rejoinder dated 19.11.2019 of the Operational Creditor Mr. Vijal Jain.
 - vi. Copies of the Dishonored cheque and Memo.
 - vii. Copy of the Bank Account, Income Tax Returns and Balance Sheet of the Applicant Company.
 - viii. Copies of the Bank Statement.
 - ix. Copies of Invoices raised by the Applicant on the Respondent.
10. The Corporate Debtor has filed a reply dated 10.06.2019 to the Petition and filed before this Tribunal on 03.06.2019, in which it has been stated that the Operational Creditor, with malicious intention had created a cause of action vide alleged issuance of notice dated 16.10.2018, which itself reflects that the alleged dispute pertains to the years 2014 & 2015. However, the said demand notice is not received by the corporate debtor and therefore the present proceeding is time barred and is filed after expiry of limitation period of three years.
11. The Operational Creditor has further submitted that it had also issued a Notice dated 02.01.2017 through his Advocate *inter-alia* calling upon the corporate debtor to pay the alleged amount and upon failure to pay the same would face legal action u/s 434 of Companies Act, 1956 and also a civil suit for recovery of dues.

However, the Operational Creditor failed to initiate any such proceeding for the reason best known to them and thereafter created a fresh cause of action vide issuance of notice dated 16.10.2018 with the same demand, being well aware that the debt is time barred and cannot be entertained by the Tribunal.

12. The corporate debtor has further submitted that the pleadings of the operational creditor also reveal that a cheque dated 12.01.2016 bearing no. 110088 issued by the corporate debtor for an amount of ₹44, 298/- was dishonored but towards this action the operational creditor also failed to and/or neglected to initiate a legal proceeding u/s 138 of Negotiable Instruments Act. Therefore, the operational creditor utterly failed and neglected to approach with legal remedy within time limits.

ORDER

13. We have heard both the parties and after perusal of all the documents submitted by them, there remains no doubt that the invoices were raised in favour of the Corporate Debtor. Also, the goods were accordingly delivered.
14. Demand Notice dated 16.10.2018 was also duly served on the Corporate Debtor. There was no response to the Demand Notice.
15. The Corporate Debtor has admitted in its reply that the goods in question were indeed supplied by the Operational Creditor. However, it has been contended that the good were of inferior quality. The Corporate Debtor's contention that it had raised grievances in respect of the inferior quality of goods supplied by the Operational Creditor, is not borne by any documents on record.
16. Therefore, it can be concluded that it is an admitted liability and also that the documents submitted by the Operational Creditor are

enough to establish the debt upon the Corporate Debtor and hence the contentions made by the Corporate Debtor cannot be relied. Also, it defaulted in repaying the debt. Also, the amount of debt is much above the minimum required amount of Rs.1,00,000/- Hence, all the requisite conditions for admission of a petition under Section 9 have been found to be fulfilled and therefore, this petition deserves to be admitted.

17. Therefore, this Bench having been satisfied with the Petition filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this petition declaring moratorium with the directions as mentioned below:

- (a) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the

Central Government in consultation with any financial sector regulator.

- (d) That the order of moratorium shall have effect from 13.02.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Mr. Vimal Kumar Agarwal, having his registered office at Shop No. 11 and 12, Krishna Kunj Building, above HDFC Bank, 150 feet road, Bhayander (W), Mumbai-401101 and having Registration No: IBBI/IPA-001/IP-P00714/2017-18/11247 as an interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code.

18. Accordingly, this Petition is admitted.

19. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

SD/-
SHYAM BABU GAUTAM
Member (Technical)

SD/-
BHASKARA PANTULA MOHAN
Member (Judicial)

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