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IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

IBA/66/2020

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of ***M/s. Jeyyam Global Foods Private Limited***

M/s. Maximus People Solutions Private Limited
Rep. by its MD Mr. A. Krishnan,
B44 Twincourtz Apartments,
Anna Nedunchalai, Kandavanchavadi,
Perungudi, Chennai 600 096.

... Operational Creditor

-Vs-

M/s. Jeyyam Global Foods Private Limited,
No.37, (Old No.19), Padmavathiyar Road,
Gopalapuram,
Chennai – 600 086

... Corporate Debtor

Order pronounced on 2nd September 2021

CORAM :

R. SUCHARITHA, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)

For Operational Creditor : R. Rajesh, Advocate
For Corporate Debtor : S. Yogalakshmi, Advocate

O R D E R

Per: **R.SUCHARITHA, MEMBER (JUDICIAL)**

1. Under consideration is an Application filed by **M/s. Maximus People Solutions Private Limited** *(hereinafter referred to as "Operational Creditor")* under Section 9 of IBC, 2016 seeking thereof to initiate Corporate Insolvency Resolution Process against

M/s. Jeyyam Global Foods Private Limited *(hereinafter referred as "Corporate Debtor")*

2. From Part I of the Application, it is seen that the Operational Creditor is a Private Limited Company. From Part II of the Application, it is seen that the Corporate Debtor is also a Private Limited Company incorporated on 24.03.2008 and the Registered office of the Corporate Debtor as per the Application is stated to be situated at No.37 (Old No.19), Padmavathiyar Road, Gopalapuram, Chennai 600 086. From Part III of the Application, it is seen that the Operational Creditor has proposed the name of the IRP and also the written consent of the IRP is filed in Form 2.

3. Part IV of the Application discloses the details of the Operational Debt from which it is seen that the Operational Creditor has claimed that a sum of Rs.52 lakh is due and payable by the Corporate Debtor as on 31.03.2018. Part V of the Application discloses the details about the list of documents attached with the Application in order to prove the operational debt as follows:-

(a) Terms of Agreement for professional fee and bonus payment for the financial years 2015-16, 2016-17 and 2017-18.

(b) MOU dt. 21.02.2018.

(c) Certified Copy of the Board Resolution dt. 18.09.2019 authorizing submission of application to Hon'ble

National Company Law Tribunal, Chennai for initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

4. Learned Counsel for the Operational Creditor submitted that they have provided management consulting services to the Corporate Debtor and that the Operational Creditor was instrumental in setting up a factory for the Corporate Debtor in the year 2014-15. Upon commencing the business of the Corporate Debtor, it was submitted that the Corporate Debtor approached the Operational Creditor once again to provide management consulting services to the Company for a period of three years from 2016 to 2018 and accordingly two agreements were entered into between the parties viz. (i) Terms of Agreement for Professional Fee and (ii) Terms of Agreement for Bonus payment for each Financial Year are as given below entered into separately i.e., 1st April 2015 to 31st March 2016, 1st April 2016 to 31st March 2017, 1st April 2017 to 30th June 2017 and 1st July 2017 to 31st March 2018.

5. It was submitted by Learned Counsel for the Operational Creditor that based on the terms and conditions, the Operational Creditor has provided the consultancy service to the Corporate Debtor commencing from 01.04.2015 and ending to 31.03.2018 and it was also submitted that towards the consultancy service, the

Corporate Debtor has made a part payment in respect of both the agreements.

6. Learned Counsel for the Operational Creditor has submitted that the Corporate Debtor deferred in making payments to the Operational Creditor, which resulted in outstanding of Rs.52 lakh as on 31.03.2018 and hence both the parties have entered into a Memorandum of Understanding dated 21.02.2018, wherein it was unconditionally agreed by the Corporate Debtor to settle the total due amount as on 31.03.2018 to the Operational Creditor including the service tax, as applicable during the Financial Year 2018-19. Thereafter, it was submitted, that the Corporate Debtor had failed to honor its commitment, despite the admission of liability under the MOU dated 21.02.2018 and thereby committed a default in the payment of a sum of Rs.52 lakh to the Operational Creditor.

7. Hence, it was submitted that the Operational Creditor has issued a Demand Notice in Form 3 as stipulated under Section 8 of the IBC, 2016 on 24.10.2019 to the old Registered Office address of the Corporate Debtor. It was also submitted that another Demand Notice in Form 3 was sent to the new Registered Office address of the Corporate Debtor on 16.11.2019 and thereby calling upon the Corporate Debtor to settle the outstanding debt of Rs.52

lakh with 12% interest per annum from the date of default committed in making payment.

8. It was also submitted by the Learned Counsel for the Operational Creditor that notice was duly served upon the Corporate Debtor and that the Operational Creditor did not receive any reply from the Corporate Debtor, in spite of two notices sent and in this connection it is also seen that the Operational Creditor has filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016, wherein it has been disclosed that the Corporate Debtor has not raised any dispute and nor paid the operational debt to the Operational Creditor. Under such circumstances, it was submitted by the Learned Counsel for the Operational Creditor that the debt and default on the part of the Corporate Debtor is proved and hence sought for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

9. The Respondent has filed a counter. The Learned Counsel for the Respondent submitted that the Respondent Company is engaged in the business of manufacturing, supply of various food products across Tamil Nadu and parts of Karnataka and the Respondent during the year 2014-2015 was in a transition stage and changed their business structure from LLP to a Private Limited Company and after considering the above circumstances, the

Corporate Debtor was looking for a Management Consultant to facilitate the growth of the Company and at that time one Mr. A. Krishnan, Managing Director of the Operational Creditor had made the representation as they had adequate expertise in the field of Information Technology and based on the above representations made, the Corporate Debtor had decided to engage the services of the Operational Creditor on a long term basis from the year 2015.

10. However, it was also submitted that there was an agreement between the parties as that a professional fee of Rs.72 lakh shall be paid during the engagement period in consideration of deliverables provided by the Applicant with a combination of fixed pay and variable pay. Further it was submitted that after agreeing to the above commercials and parameters, Mr. A. Krishnan had expressed disinterest for the appointment of the Additional Director and thereafter the commercials were reworked to Rs.48 lakh and the same was fully paid for the period 2015-2016.

11. However, subsequently it was submitted that the Corporate Debtor has discovered that the Applicant did not possess required skill towards the Information Technology and found that the entire IT operations were performed in a haphazard manner. It was submitted by Learned Counsel for the Corporate Debtor that for the period 2016-2017 there was no written agreement entered

between the parties and for the period 2016-2017 the Corporate Debtor had paid a sum of Rs.43,20,000/- in the name of the two business entities viz., M/s. Maximus People Solutions Private Limited and M/s. Maximus Business Services at the instance of Mr. A. Krishnan.

12. Further, it was submitted that Mr. A. Krishnan provided the service and the Operational Creditor Company and the other entities were used only for the billing purposes and receiving payment. This act on the part of the Operational Creditor was deliberately to evade the applicability Service Tax / GST. It was submitted by the Learned Counsel for the Corporate Debtor that the Operational Creditor had failed to discharge their duties as agreed in the Agreement and blamed the Company's Management to revisit the scope of their business. Thereafter, it was submitted that the commercials were revised for the year 2017-2018 by entering into a fresh agreement for a sum of Rs.40 lakh for the remaining period of 9 months in the Financial Year 2017-2018.

13. The Learned Counsel for the Corporate Debtor submitted that they have paid professional fees Rs.25,62,000/- to M/s. Maximus Business Services and a sum of Rs.20,40,000/- to M/s. Maximus Business Solutions Private Limited totalling a sum of Rs.46,02,000/-. Thereafter, it was submitted that a Memorandum

of Understanding was executed on 21.02.2018 entered into between the Operational Creditor and the Corporate Debtor for a payment of Rs.52 lakh in lieu of an earlier commitment for equity participation in the new Company and some ongoing work during the Financial Year 2018-2019. It was submitted that after signing the MOU, the Operational Creditor represented by Mr. A. Krishnan communicated his intention to resign from the engagement citing personal reasons and to relieve him from his duties by 31.03.2018. It was also submitted that as per the Memorandum of Understanding, one of the conditions is as follows:-

> "The mode and schedule of payment of this money have been discussed and the parties agree to arrive at a mutually agreeable schedule of payment before end of March, 2018 and it is payable during 2018-19 financial year".

14. It was submitted by the Learned Counsel for the Corporate Debtor that due to the resignation of Mr. A. Krishnan, the MOU was not acted upon and it became void *ab initio*. Further, the Operational Creditor represented by Mr. A. Krishnan has sent an e-mail dated 07.01.2019 to the Corporate Debtor demanding the debt as agreed under the MOU. In response to the same, it was submitted that the Corporate Debtor has sent a reply letter dated 10.01.2019 to the Operational Creditor, disputing the liability and without taking into consideration the existence of disputes and also concealing the same, the Operational Creditor has sent a demand notice in Form 3.

15. It was also submitted by Learned Counsel for the Corporate Debtor that dispute between the parties had arisen before the issuance of the Demand Notice and as such in order to bolster the said argument the Learned Counsel for the Corporate Debtor has pressed into service the following judgments:-

a) *MCL Global Steel (P) Limited and another -V- Essar Projects India Limited and another - 2017 (5) TML 11475 – National Company Law Appellate Tribunal.*

b) *Mobilox Innovations Private Limited -Vs- Kirusa Software Private Limited.*

c) *Ahluwalia Contracts (India) Limited -vs- Raheja Developers Limited Company Appeal (AT) (Insolvency) No.703 of 2018.*

d) *M. Ravindranath Reddy V. G. Kishan and Others, 2020 SCC Online NCLAT 84.*

e) *Macquarie Bank Limited V. Shilpi Cable Technologies Limited (2018) 2 SCC 674.*

16. Under such circumstances, it was submitted by the Learned Counsel for the Corporate Debtor that the present Application filed by the Operational Creditor under Section 9 of the IBC, 2016 is liable to be dismissed.

17. The Operational Creditor has filed the Rejoinder wherein it is stated that a written agreement entered between the Operational Creditor and the Corporate Debtor for all the three years and the

same is reflected in the MOU dated 21.02.2018 and it is false on the part of the Corporate Debtor to state that Mr. A. Krishnan, who provided the service and the billing was made in the name of the Operational Creditor Company. Further it was also submitted by the Learned Counsel for the Operational Creditor that the contention of the Corporate Debtor that Mr. A. Krishnan communicated his intention to resign from the engagement citing personal reason is also false and baseless and not supported by any documentary evidence and that the MOU clearly shows that the amount of Rs.52 lakh is payable by the Corporate Debtor to the Operational Creditor is only for the current engagement period i.e., up to 31.03.2018. Hence the question of resignation of Mr. A. Krishnan does not arise.

18. However, it was also submitted by Learned Counsel for the Operational Creditor that none of the judgments relied upon by the Corporate Debtor in the reply has any direct relevance to the fact of the present case and that the Operational Creditor by way of MOU has duly recognised that a sum of Rs.52 lakh is due and payable to the Operational Creditor. Further, it was also submitted that the reply alleged to be made by the Corporate Debtor dated 10.01.2019 does not state any dispute with regard to the claim made by the Operational Creditor and it was made in the *malafide* intention to defeat the claim of the Operational Creditor and if at all

the Corporate Debtor raises any genuine dispute, they would have replied to the Demand Notice issued by the Operational Creditor dated 16.01.2019 itself and the very fact that the Corporate Debtor has not replied to the same demonstrates that they are attempting to convert the reply dated 10.01.2019 into a dispute, which is not sustainable. Under such circumstances, the Learned Counsel for the Operational Creditor states that the contention raised by the Corporate Debtor is required to be brushed aside and hence prayed for admission of the present Application.

19. We have heard the submissions made by both the parties. From the submissions made by both the parties, the issue which arises for consideration before this Tribunal is that whether there has been any dispute arisen between the parties before issuance of the Demand Notice by the Operational Creditor. In order to better address the said issue, it is necessary to refer the terms of the document based upon which the present Application is being filed and the Memorandum of Understanding that had been entered into between both the parties, is extracted hereunder:-

MEMORANDUM OF UNDERSTANDING

This document outlines the understanding reached at Salem, on 21st February 2018, between **M/s. Jeyyam Global Foods Private Limited,** a private limited company incorporated under the Companies Act and carrying on business from SF No.32-34, Devitipatti, Omalur Taluk, Salem – 636 351, represented by its Managing Director **Mrs. Thilagavathy Saravanan,** w/o. K. Saravanan, residing at 122, Rasi Nagar, Jagiramma Palayam, Salem, hereinafter mentioned as the

Promoter, in the remaining part of this agreement, which expression shall unless it is repugnant to the context or meaning thereof mean and include its successors and assignees of the one part and M/s. **Maximus People Solutions Pvt Limited**, a management consulting services company incorporated under the companies act and carrying on business from B44, Twincourtz Apartments, Anna Nedunchalai Road, Perungudi, Chennai - 600 096, represented by the Managing Director **Mr. A. Krishnan,** s/o. Arunachalam, hereinafter called **"the Consultant"**) of the other part.

The Promoter has been engaging the Consultant to provide services for the said company on certain terms and conditions since April 2015 and continuing through the financial year 2017-18. Deferred and bonus payments out of these engagements have been accrued and there were discussions between both the parties as to how these payments shall be paid at the end of the current engagement period, on 31st March 2018. Both the parties hereby agree to the following:

1. That the total amount due at the end of the current engagement period, i.e., 31st March, 2018 is Rs.52,00,000/- (Rupees fifty two lakhs only) Service Tax, if applicable, shall be inclusive.

2. That the total amount as described above, shall be paid during the financial year 2018-19, without any further conditions.

3. The mode and schedule of payment of this money have been discussed, and the parties agree to arrive at a mutually agreeable schedule of payment, before end of March, 2018.

4. Both the parties shall remain committed to each other's wellbeing and work with full spirit and fulfil the commitments made there

Signed this 21st day of February 2018

Sd/...
S. Thilagavathy,
Managing Director,
Jeyyam Global Foods Pvt. Ltd.

Sd/...
A. Krishnan,
Managing Director,
Maximus People Solutions Pvt. Ltd.

20. From the submissions made by the Learned Counsel for the Corporate Debtor it is seen that after signing the MOU, the Operational Creditor has sent an e-mail dated 07.01.2019 to the Corporate Debtor demanding the payment as agreed in the MOU, to which the Corporate Debtor has sent a detailed reply on 10.01.2019 wherein they have disputed the amount which is payable by the Corporate Debtor soon after entering into the MOU dated 21.02.2018. The Operational Creditor who is represented by its Managing Director Mr. A. Krishnan, has expressed his inability to continue and resigned from the post with effect from 31.03.2018 onwards. The operative portion of the said reply dated 10.01.2019 is extracted hereunder:-

> "An Memorandum of Understanding was executed, for Rs.52 lacs as indicated above towards your Performance Bonus and Retention Bonus as alternative and in lieu of earlier commitment of equity participation on the new company and the agreed deliverables out of which some were time bounded and some ongoing for the work to be done during the financial year 2019.
>
> In Feb 2018, after the MOU is signed off, you communicated your intention to resign quoting your personal reasons and you wish to get relieved by 31st March 2018. However, you agreed to help in the closure of DT initiatives on Sales function, write and submit the complete job descriptions for all the positions in the Company and ensure PMS implementation in the system.
>
> Consequent to the resignation submitted by you and got relieved on 31st March 2018, your contract was not extended beyond 31st March 2018. Hence the MOU entered in Feb 2018 has become null and void and the Company has no dues to you as on date".

21. Thus, it is seen from the above extracted portion of the reply given by the Corporate Debtor as early as on 10.01.2019, the Operational Creditor had expressed their dissatisfaction in relation to the resignation submitted by the Managing Director in and by which they have stated that the MOU entered into between the parties has become null and void and that the Corporate Debtor has no due payable to the Operational Creditor as on date. From the reply given by the Corporate Debtor, it is proved that there exists a dispute between the parties and the said dispute is not hypothetical or illusionary. Further, the submission of the Operational Creditor that the Corporate Debtor has not replied to the Demand Notice would not overshadow the fact that there exists a real dispute between the parties. .

22. Thus, this Adjudicating Authority is of the view that there is a pre-existing dispute between the parties even before the issuance of the Demand Notice and as such the present Application filed by the Operational Creditor is liable to be dismissed and accordingly, stands **dismissed**. No costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

Raymond