

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH, COURT-I**

**CP (IB) 1968/MB/C-I/2018**

Under Section 9 (3) (b) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

**E.I Dupont India Private Limited**

**(CIN: U24299HR1998PTC034086)**

7<sup>th</sup> Floor, Tower C, DLF Cybergreens, Sector-25-A, DLF City Phase-III, Gurgaon Haryana (HR) 122002.

...Operational Creditor

Versus

**Miltech Industries Private Limited**

**[CIN: U74950MH1982PTC027274]**

F-27/1, MDC Industrial Hingna Road, Nagpur (MH) 440016.

... Corporate Debtor

**Order Delivered on 25.11.2022**

***Coram:***

Hon'ble Member (Judicial) : Justice P.N. Deshmukh (Retd.)

Hon'ble Member (Technical) : Shyam Babu Gautam

***Appearances:***

For the Operational Creditor : Shreyas Shrivastava, Counsel

For the Corporate Debtor : Fatima Barodawalla, Counsel

**ORDER**

*Per: Justice P.N. Deshmukh, Member (Judicial)*

1. The present Company Petition is filed by Mr. Samar Bhatia, on behalf of **E.I. Dupont India Private Limited** (hereinafter referred to as the “**Operational Creditor**”) 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 seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”) against **Miltech Industries Private Limited** (hereinafter referred to as the “**Corporate Debtor**”).
2. The Corporate Debtor is company incorporated under the Companies Act, 1956 and has its registered office at F-27/1, MDC Industrial Hingna Road, Nagpur (MH) 440016. Its Company Identification Number (CIN) is **U74950MH1982PTC027274**. Therefore, this Bench has the jurisdiction to entertain this Petition.
3. The **total amount of debt** claimed is **Rs.1,32,87,596.24/-** (Rupees One Crore Thirty Two Lakh Eighty Seven Thousand Five Hundred and Ninety Six and Twenty Four Paise Only) and the **date of default is 10.08.2016**.

**Submissions made by the Ld. Counsel of the Operational Creditor by the way of Petition:**

4. It is the case of the Operational Creditor that he had supplied goods to the Corporate Debtor. The invoices raised by the Operational Creditor against the Corporate Debtor are annexed to the Petition as Annexure C.

5. The proof of delivery of goods dispatched by the Operational Creditor from 13.05.2016 to 23.07.2016 are annexed as Annexure D to the Petition.
6. Statement of bank account where deposits are made or credits are received by the Operational Creditor in respect of the Debt of the Corporate Debtor is annexed as Annexure I to the Petition.
7. The Operational Creditor submits that default has been occurring since 10.08.2016 when the payment against the first invoice raised by the Operational Creditor dated 12.05.2016 was defaulted. The account is a running one and the last default was committed on 11.05.2017, wherein payment against invoice dated 10.02.2017 by the Operational Creditor was defaulted by the Corporate Debtor. The list containing the dates of default of the invoices are given in Part IV of Form 5 in the Petition.
8. It is further submitted by the Operational Creditor that the Corporate Debtor via an e-mail dated 20.03.2017 acknowledged the payments due to the Operational Creditor. A copy of the e-mail is annexed as Annexure F to the Petition.
9. Owing the continuous defaults, the Operational Creditor issued a notice dated 30.05.2017 to the Corporate Debtor regarding payment of debt due. A copy of the same is annexed as Annexure E to the Petition.

**Submissions made by the Ld. Counsel of the Corporate Debtor by the way of Affidavit in Reply:**

10. The Corporate Debtor has raised a dispute with regard to the quality of the goods supplied by the Operational Creditor to the Corporate Debtor. The issue of supply of defective material was brought to the knowledge of Mr. Anuradha (Technical Staff) and Mr. Sauvik Das (Sales Staff) and the responsible team of the supplier Operational

Creditor company in terms of the evidence on record as per notice of dispute. The dispute referred to in the notice of dispute is the email dated 21.08.2015 from the Corporate Debtor to the Operational Creditor, which was duly acknowledged and replied by the Operational Creditor vide emails dated 24.08.2015 and again confirmed vide email dated 24.10.2015. All this evidence was before the Operational Creditor before the notice of demand was issued in the matter. That the emails of the dispute are annexed and marked as Annexure-2 with the Petition.

11. The second dispute is that due to the inferior quality and low standard goods supplied by the Operational Creditor, the Corporate Debtor's production got delayed, supplied sub-standard goods to its customers resulting in rejection of goods and loss of orders and loss of customer too, which ultimately has resulted in production loss, reputation loss and business loss to the Corporate Debtor.
12. The supplies to one of the customers i.e. Haworth, of the Corporate Debtor got delayed due to the loss of almost 4 months in the testing of material and changing of the mould/machine and re-servicing of other customer's orders. One of the reasons for delay was short supplies from the Operational Creditor despite repeated requests from the Corporate Debtor to send additional supplies. Eventually the Corporate Debtor lost this customer due to above delays in supplies during FY 2015-16. This was a foreign customer and all supplies to this customer were exports. The quantum of business from this customer to the Corporate Debtor was Rs.50-60 lakhs per month, which the Corporate Debtor lost mainly due to delayed supply which was caused due to loss of time in re-servicing of other customer's orders due to rejection of material. This customer also debited some air freight charges due to delayed shipments in the account of the Corporate Debtor, as the customer

mentioned in an email dated 20.06.2016 that the unnecessary freight charges were paid only due to unprofessional operations by the Corporate Debtor. In the same email they have also mentioned that the Corporate Debtor have been delaying shipments since more than a year. This customer finally stopped business with the Corporate Debtor in the month of July 2016, and an email to this effect was received from the customer on dated 04.07.2016. Another thread of emails dated 19.06.2015 and 20.06.2015 are enclosed which shows the requests made by the Corporate Debtor to Operational Creditor for increasing the supplies. The loss of profit due to loss of business from this customer in past 2 years has been estimated at Rs.2.00 crores. All the above mentioned emails and rejection documents with this customer are annexed and marked as Annexure-3 to the Petition.

13. Further, one of the customers i.e. Ordinance Factory rejected many of the supplies of the Corporate Debtor during FY 2015- 16, which was mainly due to use of the defective material supplied by the Operational Creditor. The Corporate Debtor lost more than 4 months in re-servicing the orders again and again for this customer. The mails and rejection documents with this customer are annexed and marked as Annexure-4 to the Petition.
14. The Corporate Debtor is having long customer-supplier relationship with the Operational Creditor. The Corporate Debtor has been procuring material from the Operational Creditor since last more than 15 years and never ever there has been payment issues between them. The payments of the Corporate Debtor have always been quite good and the material supplies have also been good. The issue of defective material was raised by the Corporate Debtor vide email dated 21.08.2015. The same has not been re-produced here for the sake of

brevity. A copy of the e-mail dated 21.08.2015 has been annexed as Annexure-2 to the Petition.

15. Considering the long relationship with the customer, the Corporate Debtor continued its payments to the Operational Creditor, on its verbal assurance that the rejection of material and the quantification of loss would be dealt with and settled later on.
16. On 24.10.2015 the Corporate Debtor vide email had communicated to the Operational Creditor that payment for one invoice will be kept on hold and other invoices will be cleared.
17. The Operational Creditor insisted vide its reply email dated 24.10.2015 that payments are to be made invoice wise and rejection shall be treated separately. The Operational Creditor also mentioned that due payments shall not be linked with rejection of material.
18. The Corporate Debtor vide its reply mail dated 24.10.2015 said that rejection of material is directly related to payment and that since the bills for rejected material have already been cleared, the Corporate Debtor will have to hold some other bills for payment. It was also mentioned that the material was rejected for instability.
19. The Operational Creditor vide its reply mail dated 24.10.2015 once again acknowledged the issue of defective material by mentioning at:  
"Also please note that as already mentioned in earlier mail that as long as our material specification meets sales specification we are not responsible for the performance after moulding, having said that I have assured you to look into the issue and do whatever best can be done, but it needs some time. If you cannot believe on us, you can hold the payment and please do not expect any support on credit term in future as it won't be possible for us to go to our credit team and request for support."

20. Thereafter in the month of March 2017, as the Operational Creditor was following up too much for payment, the Corporate Debtor once again approached the Operational Creditor vide telephone to quantify and settle the issue of defective material as the Corporate Debtor had suffered huge losses, as the defective material caused rejection of orders, delay in order servicing and ultimately one of the major exports customer loss. The Operational Creditor confirmed that they are ready to settle the same and offered to settle the dues at Rs.1 Crore instead of Rs.1,35,64,465.99 purportedly being claimed by the Operational Creditor to being due. The Operational Creditor further assured that they will even continue supplying the material and requested the Corporate Debtor to make some payments for the time being against the agreed settlement amount of Rs. 1 Crore. The Corporate Debtor, looking at the long association and in order to buy peace and avoid any litigations in the matter, despite incurring losses on account of inferior quality of goods supplied by the Operational Creditor agreed to the settlement offer purely in good faith, with a mutual understanding that the settlement is conditional to the issue of loss and damages being dealt with separately. Thereafter the Corporate Debtor, in accordance with its part of the agreed settlement and upon request of the Operational Creditor paid an amount of Rs. 20.00 lakhs during the period from 31.03.2017- 15.04.2017 against the settlement amount of Rs. 1.00 Crore offered by the Operational Creditor with the bonafide belief that the Operational Creditor will resume supplying material to the Corporate Debtor.
21. The Corporate Debtor complied with his part of the settlement, but the Operational Creditor, in complete breach of trust and the terms of settlement, failed to supply any material to the Corporate Debtor after

receiving the amount of Rs. 20.00 lakhs as was assured by the Operational Creditor. Despite being at fault and committing gross breach of trust the Operational Creditor, abusing the provisions of the Code, the Operational Creditor has gone ahead and issued a demand notice to the Corporate Debtor.

22. It is a matter of record that there existed considerable dispute amongst the parties w.r.t. the inferior quality of goods as well as loss caused to the Corporate Debtor.
23. The Operational Creditor having committed complete breach of trust violating the terms of settlement by filing the present petition before the Tribunal, the Corporate Debtor further submits that the terms of settlement being violated by the Operations Creditor and thus no longer subsisting and binding on the Corporate Debtor, the Corporate Debtor is entitled to a counter claim to the tune of Rs. 20.00 lakhs which was paid by the Corporate Debtor in terms of the settlement which now has been reneged by the Operational Creditor. This, apart from the pre-existing disputes mentioned above, also constitutes a dispute amongst the parties warranting dismissal of the present petition as per law. The Corporate Debtor is in the process of initiating appropriate proceedings under law against the Operational Creditor towards breach of terms of settlement, breach of trust as well as recovery on an amount of Rs. 20.00 lakhs recovered fraudulently by the Operational Creditor from the Corporate Debtor.
24. The Operational Creditor has not placed all the facts before this Tribunal and hence their application is liable to be rejected.
25. The Hon'ble National Company Law Appellate Tribunal, New Delhi, in Company Appeal No. 237 of 2018 in the matter of *GAC Logistics Pvt. Ltd. Vs. Al Nafees Frozen Food Exports Pvt. Ltd.* has held that the

proceedings under section 9 of Insolvency and Bankruptcy Code, 2016, have rightly been rejected by NCLT on the ground of "existence of dispute". A copy of judgement is annexed and marked as Annexure-8 to the Petition.

26. In the above judgement reliance has been placed on the decision of Hon'ble Supreme Court in the matter of *"Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited"* [(2018) 1 SCC 353], wherein it was held that:

*"40. It is clear from the above that the 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 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 Indies the uses dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application"*.

27. In the same judgement of *GAC Logistics Pvt. Ltd. Vs. Al Nafees Frozen Food Exports Pvt. Ltd.* reliance has also been placed on the decision of Hon'ble Supreme Court in the matter of *"Innoventive Industries Limited Vs. ICICI Bank and Ors."* [(2018) 1 SCC 407], wherein it was held that:

*"29. The scheme of Section 7 stands in contrast with the scheme Under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the Invoice mentioned in Subsection (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code."*

That from the above decision it is clear that if the dispute is frivolous and unsupported by any evidence, the spurious defence is to be rejected.

That the above judgements are annexed and marked as Annexure-9.

28. It is clear in the present matter that the sub-standard/defective goods were supplied by the Operational Creditor to the Corporate Debtor, which is clearly accepted also by the Operational Creditor.
29. It is also contended that pursuant to the demand notice served upon the Corporate Debtor, a reply has been sent to the Operational Creditor, wherein it is contended that since there is a pre-existing dispute as between the Operational Creditor and the Corporate Debtor in relation to the quality of material supplied, the petition per se is not maintainable.
30. This clarifies that the Corporate Debtor now is not required to pay any amount to the Operational Creditor. On the contrary, the Corporate Debtor now shall file a recovery suit on the Operational Creditor.

**Findings:**

31. We have heard both the parties and perused the records.

32. We note that disputes regarding inferior quality of goods were raised by the Corporate Debtor vide e-mails dated 21.08.2015 and 24.08.2015 which are well prior to the Section 8 notice which was issued by the Operational Creditor on 22.11.2017 and hence the same constitute as pre-existing disputes. The dispute regarding the inferior quality of goods was also acknowledged by the Operational Creditor vide an e-mail dated 24.08.2015 and further on 24.10.2015.
33. It is a well settled law that where there exists a pre-existing dispute, a petition filed under Section 9 of the Code deserves to be dismissed.
34. Considering the same, the Adjudicating Authority hereby deems fit that the present petition be dismissed.
35. The petition bearing **CP (IB) 1968/MB/C-I/2018** filed by **E.I. Dupont India Private Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Miltech Industries Private Limited**, the Corporate Debtor, is **dismissed**.

Sd/-

**SHYAM BABU GAUTAM**  
**Member (Technical)**

25.11.2022

DSB

Sd/-

**JUSTICE P.N. DESHMUKH**  
**Member (Judicial)**