



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 245/9/JPR/2019

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S ADVAITYA DYE CHEM

...Operational Creditor/Applicant

Versus

PRAYAG POLYTECH PRIVATE LIMITED

...Corporate Debtor/Respondent

MEMO OF PARTIES

M/S ADVAITYA DYE CHEM

R/o 206 Parth Empire, Opp. Rambaug Police Station,
Maninagar, Ahmedabad, Gujrat- 380008

...Applicant

VERSUS

PRAYAG POLYTECH PRIVATE LIMITED

CIN: U28994RJ1982PTC012328

R/o C-587, Phase-1, Industrial Area,
Bhiwandi, Alwar, Rajasthan – 301019

...Respondent

For the Applicant : Akarsh Mathur, Adv.
For the Respondent : Virendra Ganda, Sr. Adv.
Amodini Raina, Adv.



Ayandeb Mitra, Adv.
Bhaskar, Adv.
Kartikeya Sharma, Adv.

Order Pronounced On:29.03.2023

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. The present application has been filed by M/s Advaitya Dye Chem through its authorised signatory Mr. Babubhai Ganeshbhai Patel ('Operational Creditor'/ 'Applicant'), seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against Prayag Polytech Private Limited ('Corporate Debtor'/ 'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, M/s Advaitya Dye Chem, is a Partnership concern engaged in the manufacturing of pigments and related work. Their registered office is located at 206 Parth Empire Opp. Rambaug Police Station Maninagar, Ahmedabad, Gujarat-380008.
3. The Corporate Debtor, Prayag Polytech Private Limited, is a private limited company incorporated under the Companies Act, 1956, on 16.08.1982, having CIN: U28994RJ1982PTC012328. The Respondent has its office situated at -c-587, Phase-1, Industrial Area, Bhiwandi, Alwar, Rajasthan-301019. The Corporate Debtor has an Authorised Share Capital



of Rs. 15,00,00,000/- (Rupees Fifteen Crores Only) and Paid-Up Share Capital of Rs. 7,94,93,700/- (Rupees Seven Crore Ninety-Four Lakh Ninety-Three Thousand and Seven Hundred Only).

4. The details of the transactions leading to the filing of this Application are averred by the Applicant *vide* Diary No. – 1989/2019 dated 19.09.2019 are as follows:

a. The Corporate Debtor approached the Applicant for the purchase of the goods. Accordingly, the Applicant supplied the pigment yellow 191 & pigment yellow 17 material as per the requirement of the Corporate Debtor. Subsequently, the Applicant has issued various invoices and challans dated 19.09.2018 to 10.12.2018 as mentioned below:

Sr. No.	Invoice No./Challan No.	Date	Name of the Buyer/Consignee	Description of Goods	Total Invoice Rs.
1.	0343/0343	19/09/2018	Prayag Polytech Pvt. Ltd.	Pigment Yellow 191 Total Qty. 750 Kgs. Rate Rs. 800.00/Kgs.	7,08,000.00
2.	0399/0399	20/10/2018	Prayag Polytech Pvt. Ltd.	Pigment Yellow 17 Total Qty. 2500 Kgs. Rate Rs. 540.00/Kgs.	15,93,00.00
3.	0468/0468	01/12/2018	Prayag Polytech	Pigment	6,37,200.00



			Pvt. Ltd.	Yellow 17 Total Qty. 1000 Kgs. Rate Rs. 540.00/Kgs	
4.	0479/0479	10/12/2018	Prayag Polytech Pvt. Ltd.	Pigment Yellow 17 Total Qty. 1000 Kgs Rate Rs. 540.00 Kgs.	6,37,200.00
Total Amount					35,75,400.00

- b. The Applicant, in pursuance of the above cause of action, issued a Demand Notice dated 03.09.2019 for the payment of money alongside interest is Rs. 40,04,448.00/- (Rupees Forty Lakh Four Thousand Four Hundred Forty-Eight Only). Copy of the Demand Notice dated 03.09.2019 along with the postal receipts is annexed as Annexure – 1 of the Application.
- c. The aforementioned details, as reflected in Part IV of the Application, are as follows:

Part IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	Total Principal Amount Debt is Rs. 35,75,400/- (Rupees Thirty-Five Lakh Seventy-Five Thousand Four Hundred Only)
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2.	Amount claimed to be in default and the date on which the default occurred	Principal Amount Rs. 35,75,400/- Interest Amount Rs. 9,11,727/- Total Amount Claimed: Rs. 44,87,127/- Date of Default: 03.11.2018
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5. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its reply *vide* Dairy No. 2548/2019 dated 01.11.2019, stating as follows:

- a. The Applicant does not qualify within the definition of an operational creditor under section 5(20) of the Code. The Applicant has not furnished any demand notice under section 8 of the Code.
- b. The Respondent submits that the petition has been instituted without proper authority. Further, the retirement deed dated 01.04.2017 attached to the petition is not registered. The petition has been filed on the basis of an invalid letter of authority.
- c. The Respondent stated that there is an existence of a dispute between the parties in relation to the quality of goods supplied by the Applicant to the Respondent. Copy of the E-mail dated 08.08.2019 and 19.09.2019 between the Applicant and Respondent are annexed as Annexure-3 of the Reply.
- d. The Respondent *vide* aforementioned E-mails informed that the pigments supplied by the Applicant were found defective due to the color variation,



- heat stability, and poor FPV, and further it is contended by the Respondent that the said defects could not be detected at the earlier stage when the goods were supplied by the Applicant to the Corporate Debtor.
- e. The goods which were supplied by the Applicant are altered significantly in quality parameters from the samples tendered prior to procurement of purchase order. It is worth mentioning that the supply of inferior-quality goods resulted in a substantial loss of revenue to the Respondent.
 - f. Further the Respondent submits that the Petitioner's demand does not qualify to be claimed under Section 3(6) of the Code and thereby the same cannot be recognized as a debt under the Code. In view thereof, the question of default under Section 3(12) does not arise as no debt has become due and payable.
 - g. There is non-compliance of Section 9(3) of the Code as it is already pointed out that there is an existence of a dispute and the Applicant has filed an affidavit under Section 9(3)(b) of the Code, without disclosing the said facts.
6. The Applicant filed its rejoinder *vide* Diary No. 2982/2019 dated 18.12.2019 and has submitted that:
- a. It is pertinent to note that the Respondent has failed to analyse the demand notice on page no. 8 of the Petition filed by the Applicant which was prepared as per Form-3 of the Code and produced on the Corporate



Debtor in time and the same was served to the Respondent by registered A.D. dated 03.09.2019.

- b. The Applicant submits that the present petition has been filed with the proper letter of authority duly signed and stamped by all the partners of the firm authorizing Mr. Babubhai Ganeshbhai Patel to file the petition to initiate CIRP against the Corporate Debtor.
 - c. Further the Applicant also denies that there is an existence of a dispute between the Applicant and the Corporate Debtor.
7. The Respondent filed their written submission *vide* Diary No. 3523/2022 dated 02.12.2022 wherein relied on the following judgments:
- a. *Vidarbha Industries Power Limited v. Axis Bank Limited, Civil Appeal No. 4633 of 2021*
“17. The Hon’ble Supreme Court in *Vidarbha Industries Power Ltd. Vs Axis Bank Ltd*. 2022 SCC online SC 841 has observed that even if there is as ‘debt’ and ‘default’ the Adjudicating Authority use its discretion in admitting/rejecting an application. In the instant case, the Adjudicating Authority has rightly rejected the Application on this ground too.”
 - b. *Neeraj Jain, Director of M/s Flipkart India Private Limited Vs Cloudwalker Steaming Technologies Private Limited & Anr., Company Appeal (AT)(Ins.) No. 1354 of 2019*
 - c. *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited, (2018)1 SCC 353*



*d. Swiss Ribbons Private Limited and Another V. Union of India & Ors.
(2019) 4 SCC 17*

*e. Consolidated Construction Consortium Ltd. Vs Hitro Energy Solutions
Private Limited (2022) 7 SCC 164*

*f. M/s Aggarwal Veneers Vs Fundtonic Service Pvt. Ltd. CA (AT) (Ins) No.
968 of 2020*

8. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, and the Documents enclosed with the Application.
9. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in the state of Rajasthan; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the cause of action arose in 2018, and the Application was filed before this Adjudicating Authority in 2019. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
10. Before we come to the facts of the present case, the statutory scheme with regard to the Application under Section 9 needs to be recapitulated. Section 8 of the Code requires the Operational Creditor on the occurrence of default to deliver a Demand Notice on unpaid Operational Debt. Section



8(2) provides that Corporate Debtor within a period of 10 days of the receipt of the Demand Notice bring to the notice of the Operational Creditor existence of dispute if any.

11. We have a number of judgments showing light on the aspect of pre-existing dispute under Section 9 of the Code. Conjoint reading of Section 8 and Section 9 of the Code shows that an Operational Creditor can trigger the CIRP when there is an undisputed debt and a default in payment thereof. In the present case the Corporate Debtor had raised dispute with respect to the quality of the goods supplied by the Applicant *vide* e-mails dated 08.06.2019 and 19.09.2019. Copy of the E-mail dated 08.06.2019 is attached as Annexure-3 of the Reply is reproduced below for ease of reference:

-----*“From: Milan Aggarwal-----*
Sent: Thursday, August 08, 2019 6:42PM
To: Advaitya Dye Chem
Cc: Advaitya Dye Chem
Subject: RE: Request to release payment

Dear Sir,

We would like to update you about the quality issue on the supplies made by you for the pigment.

You have made suppliers from Advaitya Dye Chem and Khatu Shree.

The pigments supplied are found to be defective under the color variation, heat stability and the poor FPV>

We have received huge claims from our overseas custoemer which we are attending as of now to settle.



Meantime, please note that whatever claims we will settle, we seek your support on the same as the claims are only due to the poor quality of good supplied by you.

Milan aggarwal

Director

Prayag Polytech P. ltd.” (Sic.)

12. The above e-mail exchanged between the parties, much prior to the Demand Notice dated 03.09.2019 indicate that there was pre-existing dispute between the parties regarding the claim made by the Operational Creditor. The e-mail dated 08.08.2019 sent by the Corporate Debtor to the Operational Creditor clearly mentioned that the goods supplied are found to be defective under the color variation, heat stability and poor FPV. Thus, there is a dispute regarding the quality of goods prior to the date of the Section 8 notice, henceforth the dispute was clearly pre-existing.
13. In the above reference, we need to notice the judgment of the Hon’ble Supreme Court in the context of the pre-existing dispute. The classic case on the subject is the judgment of the Hon’ble Supreme Court in “*Mobilox Innovations Private Limited vs. Kirusa Software Private Limited- (2018) 1 SCC 353*”. The Hon’ble Supreme Court in the above case had occasion to interpret Section 8 and Section 9 of the IBC. It was laid down that the dispute must exist before the receipt of the Demand Notice or invoice. The Hon’ble Supreme Court in the above case has noticed various judgments and enunciated the law, in para 51 of the judgment as follows: -



“51. It is clear, therefore, that 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 indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

14. Further in the judgment of the Hon’ble Supreme Court in *“Kay Bouvet Engineering Ltd. vs. Overseas Infrastructure Alliance (India) Pvt. Ltd.- (2021) 10 SCC 483”*. The Hon’ble Supreme Court again reiterated and explained the principle laid down in *Mobilox (supra)*. In para 21 again the law was reiterated in following words: -

“It is thus clear that once the “Operational Creditor” has filed an application which is otherwise complete, the adjudicating authority has to reject the application under Section 9(5)(ii)(d) of IBC, if a notice has been received by “Operational Creditor” or if there is a record of dispute in the information utility. What is required is that the notice by the “Corporate



Debtor” must bring to the notice of “Operational Creditor” the existence of a dispute or the fact that a suit or arbitration proceedings relating to a dispute is pending between the parties. All that the adjudicating authority is required 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 a mere bluster. It has been held that however, at this stage, the Court is not required to be satisfied as to whether the defence is likely to succeed or not. The Court also cannot go into the merits of the dispute except to the extent indicated hereinabove. It has been held that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has no other option but to reject the application.”

15. The correspondence between the parties herein clearly shows that a dispute had already arisen between the parties after the alleged goods were rendered supplied by the Applicant, which were not up to mark as mentioned by the Corporate Debtor. The exchange of e-mails between the parties is enough to show that there was pre-existing dispute with respect to the goods supplied by the Applicant. Further, in view of the order of the Hon’ble Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited* we are not inclined to commence CIRP of the Corporate Debtor.
16. In view of the foregoing, inter-alia pre-existing disputes between the parties, we have no option but to reject the prayer of the Operational Creditor to initiate proceedings under Section 9 of IBC.



17. Hence, the Application is Dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016, and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.
18. Accordingly, CP No. (IB)245/9/JPR/2019 is dismissed.

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DEEP CHANDRA JOSHI
(JUDICIAL MEMBER)

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PRASANTA KUMAR MOHANTY
(TECHNICAL MEMBER)