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

IBA/420(CHE)/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 **SVE Engineers Private Limited**

GMV Engineering Private Limited,
S8/17, SIPCOT Industrial Park,
Vengadu Village, Pillaipakkam Post,
Sriperambadur Taluk,
Kancheepuram District,
Tamil Nadu - 602015. ... *Operational Creditor*

Vs.

SVE Engineers Private Limited,
1/1, Jayabaratham Street,
Directors Colony,
Kodambakkam, Chennai - 600024. ... *Corporate Debtor*

Order Pronounced on ***30th November 2022***

CORAM:

Dr. DEEPTI MUKESH MEMBER (JUDICIAL)
SAMEER KAKAR, MEMBER (TECHNICAL)

For Operational Creditor: Mr.A.R.Karunakaran, Advocate
For Corporate Debtor: Mr.G.Meganathan, Advocate

ORDER

Per: **SAMEER KAKAR, MEMBER (TECHNICAL)**

This Application has been filed by one **GMV Engineering Private Limited** *(hereinafter referred to as 'Operational Creditor')* through Mr.P.B. Ravikumar, duly authorized by Board Resolution dated 17.01.2018, a copy of which is annexed at page 2 of the application, on 05.02.2020 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **SVE Engineers Private Limited** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare a moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Operational Creditor is a Private Limited Company having its Registered address as S8/17, SIPCOT Industrial Park, Vengadu Village, Pillaipakkam Post, Sriperambadur Taluk, Kancheepuram District, Tamil Nadu - 602015. The application has been signed by Mr. P.B. Ravikumar, who has been authorized by Board Resolution dated 17.01.2018.

3. Part II of the Application describes the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a private limited company incorporated under the Companies Act, 1956 on 22.04.1998 with CIN: U36999TN1998PTC040362 the registered office of the Corporate Debtor is situated at 1/1, Jayabaratham Street, Directors Colony, Kodambakkam, Chennai - 600024.

4. From Part-III of the Application, it is seen that the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.12,61,040/- and is also liable to pay 24% interest per annum on the above-said claim from 2017 till the realisation of the debt.

6. Part V of the application describes the particulars of Operational Debt, documents, records and evidence of default. The following documents have been attached with the application: -

a) Purchase Order bearing No.SVEPL/PT499/428 dated 10.01.2017.
b) Proforma Invoice dated 18.08.2017 bearing No.018/2017-18.
c) E-mails dated 09.05.2017 and 29.07.2017, exchanged between the Applicant and the Respondent.

7. It was submitted by the Ld. Counsel for the Operational Creditor that the Corporate Debtor had approached the Operational Creditor in January 2017 for the manufacture and supply of an Air Slide for boiler components (hereinafter referred to as equipment) and had placed a purchase order bearing No.SVEPL/PT499/428 dated 10.01.2017 for the same for the cost of Rs.16,90,940/-. As per the purchase order, the terms are agreed upon as follows,

a) 20% advance along with the order
b) 10% against drawing approval
c) balance 70% against the proforma invoice before dispatch.

8. It was further submitted that the Corporate Debtor had paid two tranches as per the above terms i.e., 20% as advance and 10% against drawing approval. On receipt of the same, the Operational Creditor procured the raw materials for the manufacturing of the ordered equipment and manufactured the same as specified by the Corporate Debtor.

9. After completing the manufacturing of the abovesaid equipment the Operational Creditor arranged for the inspection of the said equipment on 27.05.2017. In the inspection, the Corporate Debtor was satisfied with the equipment and had accepted the same was in accordance with the specification. Thereafter, the Corporate Debtor promised the Operational Creditor that it will send instructions for the dispatch of the equipment. Consequently, the proforma invoice dated 18.08.2017 was raised by the Operational Creditor for the balance 70% payment.

10. It was further submitted that after many e-mails and reminders the Corporate Debtor failed to pay the balance amount of Rs.12,61,040/- and hence the Operational Creditor sought to initiate CIRP against the Corporate Debtor.

11. The Corporate Debtor in the counter submitted that the manufacturing and supply of Air Slides were subcontracted to the

Operational Creditor. Further, contended that the said equipment was neither manufactured as per the specifications nor delivered as per the terms & conditions agreed upon and was also rejected by the Principal Buyer during the inspection.

12. It was further contended that this application was dismissed by this Tribunal for non-prosecution on 11.01.2021. Thereafter this application was restored by this Tribunal vide order dated 01.11.2021 in IA/243(CHE)/2021. Further added that amount claimed in this application is below the threshold limit specified in Section 4 of IBC, 2016 as amended with the proviso.

13. It was further submitted that the Operational Creditor had already filed the same claim before the MSME Facilitation Council on 04.06.2018, which was dismissed by the Chairman of the said Council on 07.06.2019, stating that "*the material was not supplied and the invoice was not raised, liability has not arisen and the council decided to dismiss the case*".

14. Having heard the submissions and on perusal of the documents, it is seen that the Demand Notice under Form-3 was sent to the Corporate Debtor on 11.10.2019. In the proceedings dated 07.06.2019, initiated against the Corporate Debtor by the Operational Creditor before the MSME Facilitation Council, it was ordered as follows,

"After going through the submissions made by both sides, the Council Concluded that as the material was not supplied and invoice was not raised, liability had not arisen. Hence, as the case did not come under the purview of the MSMEFC, the Council decided to dismiss the case."

Reading the above clarifies that order *supra* achieved finality on 07.06.2019, and the same is not challenged till date. This order is much before the issuance of the Demand Notice. Moreover, the said order observes that the alleged material was not supplied to the Corporate Debtor and the corresponding invoice was also not raised by the Operational Creditor. Since the restored application IBA/420(CHE)/2020 was filed on 05.02.2020, Notification No.S.O.1205(E) dated 24.03.2020 where the minimum amount of default to apply before this Tribunal is increased from 1 lakh to 1 crore will not apply to the present case.

15. From the above findings it is perceptible that there is a pre-existing dispute also between the Operational Creditor and the Corporate Debtor and the said dispute is recorded in the order by the MSME Facilitation Centre. This case is covered by the decision of the Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*** wherein it was held as follows,

"40. 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."

16. In view of the above, we conclude that this application deserves to be rejected for devoid of merits. Accordingly, this application in IBA/420(CHE)/2020 is **dismissed** and disposed of. Copy to the parties and IBBI for the record.

– Sd –

SAMEER KAKAR
MEMBER (TECHNICAL)

– Sd –

DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Gopishankar. D