

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL PRINCIPAL
BENCH, NEW DELHI**
Company Appeal (AT) (Ins.) No. 920 OF 2020

IN THE MATTER OF:

Orient Abrasives Ltd.

...Appellant

Versus

Fairmate Chemicals Pvt. Ltd.

...Respondent

For Appellant:

Mr. Sandeep Grover, Ms. Tarang Agarwal, Ms. Ankita Arora, Advocates

For Respondents:

Mr. Dhruvajit Saikia, Mr. Sameer Rastogi, Advocates

O R D E R

(Per: Justice Rakesh Kumar Jain)

22.08.2022: This appeal is directed against the order dated 19.08.2020 by which Company Petition No. (IB) 654/9/NCLT/AHM/2019 filed at the instance of the Appellant was dismissed only on the ground that the demand notice was issued by the Appellant through an advocate who had no authority.

2. Shorn of unnecessarily details, the Appellant filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (in short 'Code') against the Respondent (Corporate Debtor) after serving upon the statutory demand notice under Section 8 of the Code through SRA Consulere dated 12.04.2019. The application has been dismissed by the Adjudicating Authority solely on the ground that the advocate who has served the demand notice had no authority.

3. Counsel for the Appellant has drawn our attention towards the resolution dated 11.02.2019 (Annexure A-9) as per which the Appellant Company had empowered Mr. V. Shashidharan, Chief Financial Officer and

Ms. Amrita Chaudhri authorised representative of the Company to jointly or severally sign, file and execute application(s), petition(s), reply(s), rejoinder(s) etc. pursuant thereto, Ms. Amrita Chaudhri, vide email dated 04.04.2019, (Annexure A-10) asked the law firm, refer to above, to serve demand notice under Section 8 of the Code upon the Corporate Debtor/Respondent. Thereafter, in order to file the application under Section 9 of the Code, another resolution was passed on 08.07.2019 empowering Mr. V. Shashidharan, Chief Financial Officer and Mr. Parthiv Thakker, authorised representative of the Company to jointly or severally sign etc. on behalf of the Company before the NCLT and to sign, file and execute application(s) etc. Pursuant thereto, the application under Section 9 was filed on 12.08.2019.

4. Counsel for the Appellant has, thus, submitted that the demand notice was served by the aforesaid law firm on the specific directions of the authorised person and in support of his contention has relied upon a decision of this Tribunal rendered in the case of Mohit Minerals Ltd. Vs. Nidhi Impotrade Pvt. Ltd., CA (AT) (Ins) No. 905 of 2020 to contend that if the demand notice is delivered by an advocate duly instructed by the Operational Creditor then it would be a valid demand notice for the purpose of initiation of CIRP. He has further submitted that the Adjudicating Authority has dismissed the application filed under Section 9 of the Code on the aforesaid ground despite the fact that no such objection was taken.

5. Be that as it may, Counsel for Respondent has submitted that the resolution dated 11.02.2019 is not for the purpose of initiating the proceedings under the Code and the demand notice dated 12.04.2019, issued pursuant to

the email dated 04.04.2019 (Annexure-A10) is without authority of the Company. He has rather submitted that the resolution dated 08.07.2019 is specific for the purpose of initiating proceedings against the Respondent before the Tribunal which is much after the date of demand notice dated 12.04.2019 and therefore, it cannot be applied back to rectify the issuance of demand notice dated 12.04.2019 which was without any authority. He has not relied upon any precedent in support of his submissions to contend that if the notice is issued by an advocate, duly authorised, then it shall not be deemed to be a valid notice under Section 8 of the Code.

6. We have heard Counsel for the parties and perused the record with their able assistance.

7. Before we discuss about the merit of the case it would be relevant to refer to the resolution dated 11.02.2019 (Annexure-A9), email dated 04.04.2019 (Annexure -A10) and resolution dated 08.07.2019 (Annexure A-A8) which are reproduced for a quick reference.

The Resolution dated 11.02.2019:

Orient Abrasives Limited

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE
4TH MEETING OF THE BOARD OF DIRECTORS OF THE ORIENT
ABRASIVES LIMITED FOR THE YEAR 2018-2019 HELD ON
MONDAY, 11TH FEBRUARY, 2019 AT 12.30 P.M. AT LAWRENCE
& MAYO HOUSE, 3RD FLOOR, 276, D. N. ROAD, FORT, MUMBAI
– 400001

"RESOLVED THAT the Company do initiate suitable legal action against M/s. Fairmate Chemicals Private Limited, for recovery of money thereunder, in the appropriate Court of Law in India.

RESOLVED FURTHER THAT Mr. V. Shashidharan, Chief Financial Officer and/or Ms. Amrita Chaudhri, Authorised Representative of the Company, be and are hereby jointly and/or severally authorized to sign, file and execute application(s), petition(s), reply(ies), rejoinder(s), vakalatnama(s), declaration(s), affidavit(s),

appeal(s), suit(s), caveat(s), plaint(s), complaint(s), give/submit evidence(s) and/or amendment(s) thereto and/or any other related documents/letters; to appoint advocate(s), to represent and remain present before the court for and on behalf of the Company and to do and cause to be done all the necessary things, acts and deeds as may be thought fit in the interest of the Company.”

RESOLVED FURTHER THAT a certified true copy of this resolution be given to the concerned authority under signature of any one of the directors of the Company to give effect to the aforesaid resolution."

For ORIENT ABRASIVES LIMITED

HEMUL SHAH
DIRECTOR
(DIN: 00058558)

Email dated 04.04.2019:

From: Amrita amrita@ashapura.com
Date: Thursday, 4 April 2019 at 10:43
To: 'Mansi Patel' mansi.patel@sraconsulere.com
Cc: shrikant.gharat@sraconsulere.com>, devendraorak@ashapura.com, Shashidharan V' shashidharan@oalmail.co.in, 'Parthiv Thakkar' parthiv@ashapura.com
Subject: Demand Notice under Insolvency & Bankruptcy Code

Dear Sir/Madam,

As per our telephonic discussion, we need to take legal action against the Fairmate Chemicals Pvt Ltd for non-payment of outstanding. Despite of many reminders to get the pending payments, our team have received no response from their side.

We therefore, request you to draft of a Demand Notice under Insolvency & Bankruptcy Code and send the same for our perusal & approval.

Please find attached herewith the following documents, for your reference:-

- 1) Ledger account of this party
- 2) Pending invoices
- 3) Purchase orders
- 4) E-mail correspondences
- 5) Statement of outstanding

Thanks & regards,

Amrita Chaudhari
Sr. Executive - Legal

X

X

X

The Resolution dated 08.07.2019:

Orient Abrasives Limited

CERTIFIED TRUE COPY OF THE RESOLUTION PASSED AT THE 2ND MEETING OF EXECUTIVE COMMITTEE OF THE DIRECTORS OF ORIENT ABRASIVES LIMITED FOR THE 'FINANCIAL YEAR 2019-20 AT ITS MEETING HELD ON MONDAY, 8TH JULY, 2019 AT 11.30 A.M. AT JEEVAN UDYOG BUILDING, 3RD FLOOR, 278, D. N. ROAD, FORT, MUMBAT- 400001

"RESOLVED THAT the Company do initiate appropriate proceedings against M/s. Fairmate Chemicals Private Limited. under the provisions of the Insolvency and Bankruptcy Code, 2016 read with the Companies Act, 2013 and Rules and Regulations framed thereunder, for recovery of amount due to the Company and accordingly do hereby initiate legal action by filing winding up petition before National Company Law Tribunal (NCLT).

RESOVED FURTHER THAT Mr. V. Shashidharan, Chief Financial Officer and/or Mr. Parthiv Thakkar, Authorised Representative of the Company, be and are hereby jointly and/or severally authorized to sign and issue the Demand Notice(s) as required pursuant to Insolvency & Bankruptcy Code and are further authorized to represent and appear for and on behalf of the Company before the National Company Law Tribunal (NCLT) and to sign, file and execute application(s), petition(s), reply(ies), rejoinder(s), vakalatnama(s), declaration(s). affidavit(s), appeal(s), suit(s), caveat(s), plaint(s), complaint(s), give/submit evidence(s) and/or amendment(s) thereto and/or any other related documents/letters; to appoint advocate(s), to represent and remain present before the court for and on behalf of the Company and to do and cause to be done all the necessary things, acts and deeds as may be thought fit in the interest of the Company."

RESOLVED FURTHER THAT a certified true copy of this resolution be given to the concerned authority under signature of any one of the directors of the Company to give effect to the aforesaid resolution."

Certified True Copy

For ORIENT ABRASIVES LIMITED

HEMUL SHAH
DIRECTOR (DIN: 00058558)”

8. The issue is involved in this case is as to whether a demand notice issued by an advocate, on the instructions of the Operational Creditor, is a valid notice?

9. This issue is no more res-integra in view of the decisions of this Tribunal in the case of Mohit Minerals Ltd. (Supra) and the decision of Hon’ble Supreme Court in the case of Macquaire Bank Limited Vs. Shilpi Cable Technologies Limited, [(2018) 2 SCC 674]. The only objection raised by the Respondent which has to be dealt with is as to whether there was an authority vested in Ms. Amrita Chaudhri to have instructed the law firm for the purpose of issuance of notice under Section 8 of the Code?

10. In our considered opinion, the resolution dated 11.02.2019 in which all the powers have been bestowed upon Ms. Amrita Chaudhri to initiate legal proceedings and in pursuance thereof, she has instructed the law firm (Advocate) to issue demand notice upon the Corporate Debtor/Respondent for the purpose of initiation of CIRP under Section 9 of the Code. Insofar as, the resolution dated 08.07.2019 is concerned, it was for the purpose of filing the necessary application before the Tribunal after the demand notice. The Appellant, after the resolution dated 08.07.2019 filed the application under Section 9 of the Code on 12.08.2019 and has thus, not violated any law much less the issue regarding the authority having been bestowed upon the person’s named in the resolution. No other point has been raised.

11. In view of the aforesaid facts and circumstances, the present appeal is hereby allowed and the impugned order dated 19.09.2020 is set aside. The matter is remanded back to the Adjudicating Authority to proceed with the application under Section 9 of the Code in accordance with law. The parties are directed to appear before the Adjudicating Authority on **12th September, 2022.**

12. The registry is directed to send the copy of this order to the concerned Adjudicating Authority for information.

[Justice Rakesh Kumar Jain]
Member (Judicial)

[Dr. Alok Srivastava]
Member (Technical)

SC/RR