

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-I, MUMBAI BENCH**

C.P. No. 4104/IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016
In the matter of

**SACH TELECOM PRIVATE LIMITED
CIN: U32300DL2009PTC189267**

Having registered office at:
WZ-3079, Mahindra Park, Rani Bagh,
New Delhi 110034.

.... Operational Creditor/Petitioner

Vs

**M/s. SHREE SANT KRIPA APPLIANCES
PRIVATE LIMITED**

(CIN: U32109PN2006PTC128465)

Registered office at: SYSKA House, Office no.
S-5, 5th floor, S. No. 2 Sakorenager, New
Airport Road, Near Anand Residency,
Pune, Maharashtra 411 014.

..... Corporate Debtor/Respondent

Order delivered on: 12.01.2024

Coram:

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance :-

For the Operational Creditor : Mr. Anand Chhibbar, Senior Counsel a/w
Mr. Kunal Kanungo, Advocate
Mr. Vaibhav Sahni, Advocate

For the Corporate Debtor : Mr. Shailen Bhatia, Advocate a/w
Mr. Umang Mehta, Advocate
Mr. Arnav Chatterjee, Advocate

ORDER

[Per: Justice (Retd.) V. G. Bisht, Member (J)]

1. This is an application filed by Operational Creditor/Petitioner under section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as "IB Code" for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Resolution Process ("CIRP" for short).

Brief facts:-

2. The Operational Creditor is private limited Company engaged in the distribution and marketing of Mobiles, Accessories and electronic items in the state of Haryana and Delhi. The Operational Creditor is also distributor of associates concern of Corporate Debtor namely M/s. Shree Sant Kripa Accessories Private Limited since 2015. According to it, he had made an advance payment of Rs. 13,65,61,057/- (Thirteen Crores Sixty-Five Lakhs Sixty-One Thousand and Fifty-Seven Only) to Corporate Debtor during the period between 02.06.2015 and 31.10.2015. These payments were made on the request and requirement of the Corporate Debtor but latter failed to supply the goods and enter into in formal agreement. However, after various discussions and requests, the Corporate Debtor agreed to return the entire money taken as advance from the Operational Creditor. Accordingly, the Corporate Debtor has till dated returned Rs. 2,25,00,000/- (Two Crores Twenty-Five Lakhs Only) to the Operational Creditor in between April, 2016 and August, 2016 and balance of Rs. 11,40,61,057/- is still outstanding. Since the last amount of Rs. 1,25,00,000/- was paid by the Corporate Debtor on 01.08.2016 the date of default is therefore 01.08.2016 as no payment was received by the Operational Creditor thereafter.

3. The Operational Creditor also sent a demand notice dated 08.11.2018 to the Corporate Debtor which was duly replied in the form of denial. Another demand notice dated 04.06.2019 was then delivered at the registered office of the Corporate Debtor which was again similarly replied. Therefore, the present petition.
4. By way of an affidavit-in- reply the Corporate Debtor contends that one Shree Sant Kripa Accessories Pvt. Ltd. a Group Company of the Corporate Debtor (hereinafter referred to as the “Group Company”) and Operational Creditor had an arrangement wherein Operational Creditor was acting as Super Stockiest for the Group Company. The said Group Company is a dealer and distributor of the products being SYSKA Gadget Secure and SYSKA Mobile Accessories within the territory of India. The Group Company of the Corporate Debtor had from time to time transferred goods amounting to the tune of Rs. 20.76 Crores (approx.) during the period June, 2015 to November, 2016 to the Operational Creditor. However, the Operational Creditor made gradual transfer of payments against such supply of goods to the account of the Corporate Debtor instead of the account of the Group Company which supplied the goods. The Group Company informed the Operational Creditor that the said amounts would be adjusted to the outstanding of the Group Company. The Operational Creditor on some occasions confirmed to the said adjustment via e-mails (Annexure – ‘B-1’ to ‘B-4’). Thus, it is clear that the Operational Creditor has itself admitted that alleged amounts which are the subject matter of the present petition are to be treated as payments towards the goods which were supplied by Group Company and therefore, there is no question of any advance payment being made or of existence of any alleged Operational Debt as alleged.

5. Besides, according to the Corporate Debtor the Operational Creditor has already filed suit for Rendition of Accounts and the same is pending in the Court of Civil Judge (Senior Division), Karnal. The matter is already sub-judice between the parties and further establishes that the claim is disputable.
6. Lastly, the Corporate Debtor has raised the point of limitation by contending that since the last payment was made on 01.08.2016 and the fact that the present petition has been filed only after 14.11.2019 the same is clearly barred by limitation.
7. For the aforesaid reasons, the petition is liable to be dismissed, concluded Corporate Debtor.
8. Mr. Anand Chhibbar, learned Senior Counsel for the Operational Creditor, invited our attention and submits that there is clear cut admission of the unpaid debt by the Corporate Debtor vide its reply dated 12.06.2019 (Annexure-9) in response to the demand notice dated 04.06.2019 and hence it cannot be said that present petition is barred by limitation.
9. Learned Senior Counsel also invited our attention to paragraph 7 of the reply of the Corporate Debtor dated 22.11.2018 (Annexure-7) in response to the demand notice dated 08.11.2018, thereby admitting the debt in clear terms and therefore it is wrong on the part of Corporate Debtor to say that the liability is not an operational debt. As far as the filing of the Civil Suit is concerned, according to the learned Counsel the suit is filed against sister concern of the Corporate Debtor and not against the Corporate Debtor. That being so, it also rules out the factum of existence of dispute between the parties. Learned Counsel for the Operational

Creditor has also filed the written submissions along with the relevant citations in support thereof.

10. Mr. Shailen Bhatia, learned Counsel for the Corporate Debtor, on the other hand, strenuously submits that the present petition is hopelessly barred by law of limitation in as much as the last purported payment was made on 01.08.2016 whereas the present petition appears to have been filed on 14.11.2019. Admittedly, since the present petition is not filed within (3) three years the same is liable to be dismissed.
11. The next defence of the learned Counsel is that at the very outset their already exist a dispute viz. a Civil Suit No. 4424/2018 between the parties and pending before the Karnal District Court. This suit was filed on 13.11.2018 i.e. already one year before the filing of the present petition and therefore in the light of judgment of the Hon'ble Apex Court given in the case of ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*** in ***Civil Application No. 9405 of 2017*** dated ***21.09.2017*** the present petition is liable to be dismissed.
12. Apart from the oral submissions the learned Counsel has also filed written submissions along with the requisite judgments in support thereof.
13. We have heard Counsel appearing for both sides. Perused the record, written submissions and judgments.
14. We propose to advert to the point of limitation first which has been vehemently argued by the learned Counsel for the Corporate Debtor that as per averments made in the petition by the Operational Creditor the last payment was made by the Corporate Debtor on 01.08.2016. This being so the petition ought to have been filed

before 01.08.2019. Admittedly, the present petition has been filed only after 14.11.2019 and is thus barred by limitation. To counter this submission learned Counsel for the Operational Creditor during the course of argument invited our attention to the reply of the Corporate Debtor and more particularly paragraph 6 at page no. 79 (Annexure-A-9) wherein the Corporate Debtor admitted the claim of R. 55 Lakhs. Therefore, the present petition is not barred by limitation due to admission of Rs. 55 lakhs by the Corporate Debtor, impressed upon us by the learned Counsel.

15. It would be useful to refer (Annexure A-9) which is dated 12.06.2019 and in fact is reply in response to the demand notice dated 04.06.2019 issued by the Operational Creditor. Paragraph 6 is relevant in as much as according to the Operational Creditor in the said para the Corporate Debtor has given clear cut admission of the un-paid debt.

Paragraph 6 is reproduced for ready reference -

“6. That as per the account books of our client a small sum, not more than Rs. 55,00,000/- (Rupees Fifty-Five Lakhs Only) is due to your goodself but cannot be paid for the following reasons:

- (a) Your goodself has availed various schemes from our clients company but did not reconcile the statement.*
- (b) Before the account can be finalised your goodself being a superstockist has to provide NOC certificates from the market i.e., from all the distributors/retailers appointed under him.*

16. The plain reading for the paragraph 6 of the reply makes it quite clear, at the outset, that the Corporate Debtor having regard to its account books admitted that a small sum, not more than Rs. 55 Lakhs is due to Operational Creditor. Thus, needless to say, there

was an unequivocal acknowledgement of debt to the extent of Rs. 55 Lakhs. If the date of reply is to be reckoned which is 12.06.2019 then by all means the present petition is well within the period of limitation although the date of default pleaded is 01.08.2016 based on the purported last payment made by the Corporate Debtor. We therefore find no merit in the objection that the present petition is barred by limitation.

17. Next equally important objection raised by the Corporate Debtor is about the existence of a prior dispute between the parties. As per the reply of the Corporate Debtor Shree Sant Kripa Accessories Pvt. Ltd. is its Group Company and the Operational Creditor was acting as a Super Stockiest for the product of the Group Company and not for the Corporate Debtor. It is further case that the Group Company of the Corporate Debtor had from time to time transferred goods to the Operational Creditor to the tune of Rs. 20.76 Crores (approximately) during the period June, 2015 to June, 2016. However, Operational Creditor made gradual transfer of payments against such supply of goods to the account of the Corporate Debtor instead of the account of the Group Company which supplied the goods. According to the Corporate Debtor the Operational Creditor was insisted multiple times to make the said payments only to the account of Group Company and when the Group Company informed the Operational Creditor that the said amount would be adjusted to the outstanding of the Group Company, the Operational Creditor on some occasions confirmed to the said adjustment via e-mails dated 23.09.2015, 24.09.2015, 26.09.2015 and 27.08.2015 and categorically admitted and directed the Corporate Debtor to adjust the said payment against the outstanding of the said Group Company. In order to vindicate

and bring home the point, the Corporate Debtor has filed those e-mails at (Annexure-'B-1' to 'B-4').

18. We have carefully perused the e-mails and find substance in the submission of the Corporate Debtor. These e-mails are not rebutted in any manner by the Operational Creditor. This *prima facie* shows that the transaction was between the Operational Creditor and the Group Company of the Corporate Debtor. Admittedly, as per the Operational Creditors' own case there was no formal agreement between the Operational Creditor and the Corporate Debtor.
19. Be that as it may, we also would like to go through demand notices and replies responded thereto by the Corporate Debtor. The first such demand notice is dated 08.11.2018 (Annexure-6) reiterating all the averments made and noted by us from the petition. The reply (Annexure-7) given by the Corporate Debtor is dated 22.11.2018. The Corporate Debtor has also re-iterated the stand as taken by him in his affidavit-in-reply. It is also pointed out at the concluded part of para 3 of the reply notice that the Operational Creditor had availed various discount schemes from it but never reconciled the exact amount to be paid in the case this definitely gives a semblance of difference/grievance raised by the Corporate Debtor.
20. Paragraph 6 of the said reply also gives details of the goods supplied to the Operational Creditor by the Corporate Debtor. Similarly, paragraph 7 points out that there may be some amount due from the Operational Creditor but the said amount will become due only once the accounts are reconciled and Operational Creditor gives NOC from the market. The Corporate Debtor further showed readiness to settle the matter subject to the conditions that the

Operational Debtor requires to reconcile the books of accounts with the Operational Creditor's books of accounts pertaining to exact discount schemes availed by the Operational Debtor and that the Operational Debtor required no objection certificate (NOC) from retailers/distributors to the effect that there are no claims/dues to the Operational Creditor in the market.

21. The second demand notice (Annexure A-8) dated 04.06.2019 is similarly replied (Annexure A-9) by the Corporate Debtor on 12.06.2019. It also points out at paragraph 2 about the pendency of the Civil Suit of Rendition of account in the Court of Civil Judge (Senior Division), Karnal. Then we come to paragraph 6 of the reply which we have earlier noted while discussing the point of limitation and also extracted hereinabove.
22. If the replies of both the notices are anything to go by then in all fairness we must hold that their indeed exist a prior dispute between the parties. It may be that there was some sought of acknowledgement as regard to the debt amount, then that was subject to clauses 7 (i) (ii) of the first reply and Sub clauses (a) and (b) of clause 6 of the second reply, which we have already reproduced hereinabove.
23. It does not require much prescience to note that there are differences in respect of the debt amount between the parties and that is why in both the reply notices the Corporate Debtor emphasised and stressed on the reconciliation of account. Interestingly, it appears to us that and is rightly pointed out by the Corporate Debtor, as the Operational Creditor was not clear in its mind as to the precise debt amount it filed Civil Suit No. 442/2018 for rendition of account against the Group Company. However, there is also no dispute to the fact that during the pendency of the

said suit an application for impleadment of the necessary party i.e. the Corporate Debtor came to be filed and Corporate Debtor accordingly is now arrayed as defendant no. 2. The present petition came to be filed only after more than one year of filing of the suit for rendition of account.

24. In nutshell, the matter is already sub-judice between the parties and the claim/rival claims are disputable. As a necessary corollary, we must hold the existence of prior dispute apparent from the replies noted hereinabove of the Corporate Debtor followed by the filing of suit for rendition of account by the Operational Creditor.
25. For the aforesaid reasons, we are not inclined to admit the petition and the same is liable to be dismissed.
26. Hence, the following order.

ORDER

- i) Company Petition No. **4104/2019** filed under section 9 of I & B Code, 2016, filed by SACH TELECOM PRIVATE LIMITED, Operational Creditor against M/S. SHREE SANT KRIPA APPLIANCES PRIVATE LIMITED, Corporate Debtor for initiating Corporate Insolvency Resolution Process is **dismissed**.
- ii) We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not

be prejudiced on the grounds of dismissal of the present petition.

- iii) Pending IAs'/MAs', if any, in the present Company Petition stand **disposed of**.
- iv) File be closed and consigned to record.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Sapna