

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 701/MB-IV/2021

Under Section 9 of the I&B Code, 2016

In the matter of:

Rameshwar Textile Mills Limited

[CIN: U17110MH1988PTC048546]

...Operational Creditor/Applicant

V/s

Avon Lifestyle Private Limited

[CIN: U36992MH1997PTC106816]

...Corporate Debtor/Respondent

Order Dated- 18.08.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances:

For the Applicant(s) : None Present.

For the Corporate Debtor(s) : Mr. Himanshu Vidhani a/w Ms. Roselin
Alex i/b Khaitan & Co., Advocates

ORDER

Per: Kishore Vemulapalli, Member Judicial

1. This is an Application being C.P. (IB) No. 701/MB/C-IV/2021 filed on 01.05.2021 by Mr. Rajeshkumar Rameshwardayal Bansal, Director of

Rameshwar Textile Mills Limited, the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the matter of Avon Lifestyle Private Limited, Corporate Debtor.

- 1.1 The total amount of debt claimed by the Operational Creditor is of Rs.6,75,61,015/- (including interest amount of Rs. 3,24,89,256/-) against the supply of said goods and invoices raised by the Operational Creditor.
 - 1.2 The Operational Creditor has filed Board Resolution dated 22.04.2019 in support of authorization in favour of signatory of this Application authorising him to file the present company application on behalf of the Operational Creditor.
 - 1.3 The date of default as mentioned by the Applicant in part IV of the Petition is 28.01.2020 i.e. the date of default confirmed by the payment collecting bank vide email dated 28.01.2020.
2. The Operational Creditor herein is engaged in the business of supplying various type of school bags. The Corporate Debtor is one of the leading manufacturers, supplier and wholesalers of promotional umbrellas and customised travel luggage bags in India and abroad since 1997.

- 2.1 The Operational Creditor submits that Corporate Debtor had approached the Operational Creditor for purchase of aforesaid products of different specifications and quantity manufactured by the Operational Creditor, as and when required by the Corporate Debtor, and supplies were made on the basis of the instruction issued by the Corporate debtor from time to time.
 - 2.2 The Operational Creditor duly raised 14 (Fourteen) invoices against the supply of said goods, amounting to Rs.6,75,61,015/-.
 - 2.3 The Demand notice dated 19.02.2020 in Form 3 of IBC was issued to the Corporate Debtor claiming the principal amount with interest @24% from the date of respective invoices till the date of demand notice.
3. The Corporate Debtor has filed Affidavit in Reply dated 23.03.2022 stating that none of the invoices had been received by the Respondent basis which the Applicant has sought payment under the Demand Notice and clarified the payment status of the invoices, which have been received by the Respondent.
 - 3.1 The Corporate Debtor further states that the principle amount payable under the Alleged Invoices is Rs. 3,50,71,759/-; and the purported interest claimed is Rs. 3,24,89,256/- is not due and payable to the Applicant, under the Alleged Invoices or towards

interest as alleged by the Applicant or otherwise. The calculation as per the invoices that are dated, inter alia, 19th February 2016, 20th February 2016, 22nd February 2016, 23rd February 2016, 25th February 2016, 3rd March 2016 and 1st April 2016 totalling Rs. 3,50,71,759/- as principal and Rs. 3,24,89,256/- as interest. However, the Applicant has only annexed 14 invoices out of the 15 invoices mentioned in the calculation sheet, bearing Invoice Nos. 131 to 137, 139 to 144 which are dated 3rd March 2016 except one invoice (bearing Invoice No. 128) which is dated 20th February 2016.

3.2 The total amount of these 14 invoices comes to Rs 3,45,58,003/-, while the outstanding claimed by the Applicant is Rs 3,35,71,759/-. From the documents annexed to this Reply, it is evident that the Respondent has made payment of over Rs 3,45,58,003/- to the Applicant. As such, there is no correlation between the invoices which the Applicant has mentioned in its calculation at page 12 of the Petition and the actual invoices annexed to the Petition. As such, alleged invoices dated 19th February 2016, 22nd February 2016, 23rd February 2016, and 25th February 2016, 1st April 2016 are not annexed to the Petition.

3.3 The Corporate Debtor in reply further states that, apart from the abovementioned 14 invoices, there is one more invoice, which the Applicant contends to be outstanding, i.e. Invoice No. 56. The Respondent denies receipt of Invoice No. 56 dated 01.04.2016 for the alleged amount of Rs. 15,00,000/- as claimed by the Applicant (at page 12 of the Petition). The Applicant has not placed on record the said Invoice No. 56 or the receipt of the said invoice thereof by the Respondent.

3.4 The Respondent submits that the total amount of Rs. 3,45,58,003/- as claimed under the 14 invoices, bearing Invoice Nos. 128, 131 to 137, 139 to 144, have been duly paid. The Applicant has provided no basis to claim the said interest amount of Rs. 3,24,89,256/-. In any case, there was never any agreement for payment of any interest whatsoever. Also, none of the invoices / documents that the Applicant has annexed to the Petition have any mention of interest payable on the amounts purportedly invoiced. Further, in the calculations provided in Annexure I to the Petition, there is no mention of the rate(s) of interest applied, or the actual interest calculations provided.

3.5 The Respondent submits that this instant Petition has been filed only on 21.05.2021. The Alleged Invoices, under which the

Applicant have claimed amounts under the Petition, are dated 3rd March 2016, with the exception of a single invoice dated 20th February 2016 (Invoice No. 128). In the circumstances thereof, more than 3 (three) years have elapsed since these alleged claims became due and are therefore clearly barred by the law of limitation.

- 3.6 The Corporate Debtor denied that the operational debt of Rs. 6,75,61,015/- has been acknowledged by the Respondent. The Applicant has stated that the latest default has been confirmed by the "payment collecting bank" vide email dated 28.01.2020. However, the said email is in no way a confirmation of any amounts whatsoever due from the Respondent. The payment collecting bank is actually the Applicant's bank which by its email dated 28.01.2020 is merely confirming that there has been no receipt of payments from Axis Bank for certain collection bills. This email is neither addressed to the Respondent nor any of its representative. In fact, there has never been any confirmation by the Respondent of any amounts due to the applicant, much less the amounts actually claimed by it under the instant Petition.
4. The Operational Creditor filed Rejoinder dated 14.12.2022 annexing copies of bank letter dated 05.07.2022 stating the details outstanding

amount against bill of exchange dated 29.12.2015 and 09.02.2016, Invoices , proof of delivery and interest calculation sheet.

- 4.1 The Operational Creditor states that the interest on delayed payment is normal business practice in the industry.
- 4.2 The Operational Creditor further states that until the bank informs that the amount is received, it is due and payable and limitation starts from the date of communications from the intimation from bank. The bank issued letter in February 2021 and July 2021 confirming that the amount is still outstanding and hence the present petition is within limitation.
- 4.3 The Operational Creditor vide Additional affidavit dated 02.08.2021 placed on record the letter received from M/s. Karur Vyasa Bank confirming the outstanding amount against two bill of exchanges amounting to a total of Rs. 3,45,46,393/-. The Operational Creditor states that the true confirmation from their bankers with regard to the entire outstanding bills is intentionally not produced by the Corporate Debtor and made false submissions in the affidavit that the entire amount due to the Operational Creditor is paid by them.
5. This Bench heard both the Counsel, and perused the material available on record.

- 5.1 It is undisputed fact that the payment against the supply of goods were to be made upon presentation of bill of exchange, along with invoices, by the Operational Creditor's bank to the Corporate Debtor's Bank. The Operational Creditor claims that its Bank had sent an email dated 28.01.2020 advising it outstanding payments against certain bill of exchanges, and the Operational Creditor submitted a bank letter dated 05.07.2022 stating the details outstanding amount against bill of exchange dated 29.12.2015 and 09.02.2016 to substantiate its claim for the outstanding in this petition.
- 5.2 The Corporate Debtor was asked to submit the certificate from its Bank confirming the payments against the invoices claimed as due and in default in the present petition. The Corporate Debtor submitted the same, and a copy thereof was served to the operational creditor also. The said letter of the Corporate Debtor's Bank confirms that payment against these invoices, except one invoice, was already made by the Corporate Debtor's Banker upon its presentation to it for collection by the Operational Creditor's Bank. The one invoice, which is not mentioned in the said confirmation, was raised in 2016, and the Corporate Debtor has claimed that such invoice was neither sent to it nor was presented to its Bank for payment, as was the agreed mode of

settlement of invoices raised by the Operational Creditor. Hence, this Bench feels that the operational debt in relation to remaining 14 invoices has already been paid, and the Operational Creditor has failed to prove its case in relation to these invoices. As regards one invoice, there is a dispute as to its delivery to the Corporate Debtor or its banker. Nonetheless, the claim under such invoice is barred by limitation, as the present petition was filed on 1.5.2021.

5.3 The Operational Creditor was not represented on 20.07.2023, when the matter was reserved for orders, and also on the last date of hearing i.e. 14.07.2023. The Corporate Debtor has already placed on record the confirmation in relation to payment of invoices, having been made by their bank on presentation by the Applicant's bank, from its bankers i.e. the payee bank. Out of 15 invoices, all invoices except one invoice, have been paid, and the pending invoice was raised in 2016, hence claim in relation to such invoice is barred by limitation. This Bench feels that the Corporate Debtor has proved that the amount claimed as debt in default in the present petition has already been paid, since the Operational Creditor has not rebutted the facts stated in the payee bank's certificate, placed on record by the Corporate Debtor.

- 5.4 This Bench does not find any merit in the contention of the Applicant that the period of limitation shall commence from the date of email sent by its Bank to the Applicant advising outstanding bills of exchange, as Section 18 of the Limitation Act contemplates acknowledgement of debt the debtor, and the Applicant ought to have known from its books of accounts also whether these bills of exchange, stated in the email dated 28.01.2020, are pending. Nonetheless, the records of the Applicant or the third party can not extend the period of limitation as canvassed before us.
- 5.5 In view of the above facts, this Bench is of the considered view that the present petition deserves to be dismissed, as not maintainable.

ORDER

This Application being C.P. (IB) No. 701/NCLT/MB/C-IV/2021 filed under Section 9 of I&B Code, 2016, filed by Rameshwar Textile Mills Limited, Operational Creditor/Applicant against Avon Lifestyle Private Limited, Corporate Debtor for initiating Corporate Insolvency Resolution Process is Dismissed.

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.

Sd/-

Prabhat Kumar
Member (Technical)
//LRA Akshata//

Sd/-

Kishore Vemulapalli
Member (Judicial)