BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

C.P. (I.B) No. 68/NCLT/AHM/2019

Coram: **HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL**
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.03.2020

Name of the Company: Asian Minerals
V/s
New Vardhman Vitrified Pvt Ltd

Section : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

The Order is pronounced in the open court vide separate sheet.

Chockalingam

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 20th day of March, 2020

MANORAMA KUMARI
MEMBER JUDICIAL

BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B.) No. 68/NCLT/AHM/2019

In the matter of:

Asian Minerals
Having its address at:
Vaghasiya GIDC, Nr. Toll Plaza,
8-A, National Highway,
At Vaghasiya, Tal: Wakaner

...Petitioner
(Operational Creditor)

Versus

New Vardhman Vitrified Private Ltd.
Having its Registered Office at:
Plot No.2/52, Rupal Industrial Area, Opp: Manahar Dying, Damroli Road, Surat – 394221.

...Respondent
(Corporate Debtor)

Order delivered on 20th March, 2020.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Mr. Lalit Patel for the Petitioner.
Advocate Mr. Utpal M. Panchal for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member(Technical)]

1. The present Petition is filed by Asian Minerals under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IB Code' for short) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('IB Rules' for short) for initiation of Corporate Insolvency Resolution

Process against the Corporate Debtor, New Vardhman Vitrified Private Limited for the recovery of the unpaid Operational Debt due.

2. The Petitioner is a partnership firm having place of business at Vaghasiya GIDC, Nr. Toll Plaza, 8-A National Highway, At Vaghasiya, Taluka Wankaner. The present Petition is filed through Shri Rajeshbhai Mavjibhai Chaniyara, one of the Partners of the Petitioner to initiate Corporate Insolvency Resolution process with respect to the Corporate Debtor.

3. It is submitted by the Petitioner that the Respondent Company, New Vardhman Vitrified Private Limited having its registered address Plot No.2/52, Rupal, Industrial Area, Opp: Manahar Dying, Damroli Road, Surat and was incorporated on 11.07.2011 with Corporate DIN No. U26933GJ2011PTC066282, having Authorized Share Capital of Rs. 35,00,00,000/- and Paid up Share Capital of Rs. 34,38,77,630/-.

4. The Petitioner has claimed Rs.80,56,472/- towards good supplied. The Petitioner has issued Demand Notice dated 20.11.2018 for Rs.80,56,472/- alongwith the invoices for which the amount is due from the Corporate Debtor. The date of default is mentioned as 60/90 days of delivery of goods.

5. It is submitted by the Respondent that the present petition is filed by one of the Partner Mr. Rajeshbhai Mavjibhai Chaniyara. It is further be noted that mother of Rajesh Jivraj Likhiya (one of the Promoters of Respondent Company) and father of Partner Rajeshbhai Mavjibhai Chaniyara are real brothers and sisters. Thus, it gets established beyond reasonable doubt that Rajesh Jivraj Likhiya who is one of the existing directors of the Respondent Company is in relation

and therefore a relative to Rajeshbhai Mavjibhai Chaniyara (Partner of Petitioner Firm.)

6. It is further submitted by the Respondent that Investment Agreement dated 02.11.2012 was also entered and signed by Jayesh Mavjibhai Chaniyara (with NITCO & others) who is a real brother of the Petitioner who has filed Petition on behalf of the Partnership Firm.

7. It is submitted by the Respondent that prior to 01.05.2017, Mr. Rajesh Jivraj Likhiya, Managing Director of Respondent Company was in exclusive charge of running the entire day to day business affairs. The said act of entrusting responsibility to NITCO by Board was confirmed in Minutes of Meeting wherein Mr. Rajesh Jivraj Likhiya himself is a signatory.

8. It is submitted by the Respondent that NITCO was requested by the Board to operate the Plant w.e. 01.05.2017. NITCO on taking this responsibility and completing due diligence process brought to the notice of the Board several malfunctioning and irregularities vis.a.vis huge outstanding towards sales collection and irregular purchases made during the period prior to 01.05.2017. The same were also effected without following the due process of law.

9. It is submitted by the Respondent that the Board was compelled to take such a decision as huge outstanding were long overdue and pending to be realized by the then MD Rajesh Jivraj Likhiya for sales effected by him. The same is recorded in the Minutes of the Meeting dated 30.08.2018 that an amount of Rs. 5 crores is to be realized for sales effected by Rajesh Jivraj Likhiya.

10. It is submitted by the Respondent that the Petitioner had reproduced the Statement of Accounts for the alleged invoice period September 2017 – September 2018. As per the ledger of the Respondent Company for the said period, nil payment is outstanding and payable as per our records.

11. It is submitted by the Respondent that as stated herein above with effect from 01.05.2017, the responsibility of operating the Plant was given to NITCO whose registered and corporate office are both situated in Mumbai.

12. It is submitted by the Respondent that Rajesh Jivraj Likhiya, Ashok Patel and Rajeshbhai Mavjibhai Chaniyara inter alia their relatives for vexatious and malafide motives day after day started interfering with the production activities of the Respondent Company. NITCO as a last resort filed a Criminal Complaint before the Superintendent of Police, Morbi on 24.08.2018.

13. It is further submitted by the Respondent that in the said Criminal Complaint dated 24.08.2018, specific averment was made that Rajesh Jivraj Likhiya has purchased materials during the last more than five years including the Petitioner Company, Patel Chemicals and Blue Star, etc. without obtaining the approval of Board of Directors and shareholders and such transaction were not separately disclosed in audited financial statement of the Respondent Company as mandatorily required under the Companies Act.

14. It is submitted by the Respondent that Rajeshbhai Mavjibhai Chaniyara, Rajesh Jivraj Likhiya and Ashok Patel simultaneously started misbehaving with the employees of the Respondent Company sand started playing mischief. Hence, the former lady employee of the Respondent Company was

constrained to file a Criminal Complaint before Wakaner Police Station, Dist. Morbi on 29.08.2018 being CR No. II 268/18 on 29.08.2018 under Section 114, 504 and 506(2) of Indian Penal Code.

15. It is submitted by the Respondent that Rajesh Chaniyara filed a false and frivolous complaint before the Wankaner Police Station stating concocted incident.

16. It is submitted by the Respondent that it shall not be out of place that Mr. Rajesh Mavjibhai Chaniyara on behalf of the Petitioner firm has filed another application before this Hon'ble Tribunal on behalf of M/s. Patel Colour Chem being CP(IB) No.70/NCLT/AHM/2019.

17. Heard Learned Lawyer for both the sides and also seen the documents annexed to the petition.

Findings

18. The Demand Notice is issued by Advocate. Authorization papers authorizing the Advocate to issue notice has not been filed. Hence, the demand notice is issued by the Advocate without proper authorization from Operational Creditor.

19. On perusal of the record, it is found that there is inter se rivalry between the Operational Creditor and Corporate Debtor. On perusal of the document, it is evident that the Corporate Debtor is related to the Operational Creditor and because of the serious rivalry there is / are many complaints / cases as well as FIR filed by the Petitioner against the officer of the Respondent. Not only this, but it is also a matter of record that Petitioner has also filed another company petitions being No. CP(IB) 68 of 2019 and CP(IB) 70 of 2019 for and on behalf of Asian Minerals and M/s. Patel Colour Chem respectively. That

itself shows that there is / are some pre-existing disputes between the party(s) resultantly filing of various complaints / cases as well as I & B petitions.

20. The very conduct of the Applicant as well as the records shows the malafide intention. Under such circumstances and to reach a just decision, it requires vigorous trial which is possible only before other forum as the objective of the IB Code is resolution and not recovery and / or to use as arm twisting weapon.

21. While going through the record and pleadings as well as the arguments so advanced by the parties, it is found that the petitions filed are nothing but the outcome of the personal vendetta and the application is filed with an object to take revenge which is against the objective of the IB Code. For the sake of brevity, **"the objective of the IB Code"** is reproduced here below:-

1. The objective of the IB Code

As evident from the long title of the IB Code, it is for reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders. The recent ordinance explicitly aims to promote resolution over liquidation.

2. *The objective of the IB Code is* ***Resolution.***

The purpose of resolution is ***for maximisation of value of assets of the Corporate Debtor*** *and thereby for all* *creditors. It is not maximisation of value for a stakeholder or a set of stake holders such as creditors and* ***to promote entrepreneurship, availability of credit and balance the interests.*** *The first order objective is resolution. The second order objective is maximisation of value of assets of the Corporate Debtor and the third order objective is promoting entrepreneurship, availability of credit and balancing the interests. This order of objective is sacrosanct.*

22. The Hon'ble NCLAT in **Naveen Luthra Vs. Bell Finvest (India) Ltd. / Advance Logistics & Trading India (P) Ltd.** observed that.........

It is not recovery: Recovery is an individual effort by a creditor to recover its dues through a process that has debtor and creditor on opposite sides. When creditors recover their dues one after another of simultaneously from the available assets of the firm, nothing may be left in due course. Thus, while recovery bleeds the Corporate Debtor to death, resolution endeavours to keep the Corporate Debtor alive. In fact, the IB Code prohibits and discourages recovery in several ways.

It is not liquidation: Liquidation brings the life of a corporate to an end. It destroys organisational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The IB Code, therefore, does not allow liquidation only on failure of corporate insolvency resolution process. It rather facilitates and encourages resolution in several ways.

From the IB Code, it will be evident that the corporate insolvency resolution process is not a litigation and are not decided by court of law. Now the Adjudicating Authority deals with the matter of insolvency, which in its first stage is required to take steps for resolution of the Corporate Debtor. Therefore, the Adjudicating Authority being not a court of law and as the Adjudicating Authority do not decide a money claim or suit. It cannot exercise any of the power vested under Section 3 or 4 of the Usurious Loans Act, 1918.

23. Under the facts and circumstances as narrated above, it is amply clear that the instant application is filed with some mala fide intentions and to take revenge and / or to settle the score of the internal disputes arising out of business rivalry.

24. In the result, the instant application is dismissed. No order as to cost. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration of the provision of IB Code, 2016.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Dated this the 20th day of March, 2020

PC