

**. IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB 1462/ND/2018**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

ROYALE RESINEX PVT. LTD.

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

GREATECH TELECOM TECHNOLOGIES PVT. LTD.

...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON: 31.07.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

MEMO OF PARTIES**IN THE MATTER OF:****Royale Resinex Pvt. Ltd.**

(Through its director Mr. Neeraj Aggarwal)

Registered Office:

502, Aggarwal City Plaza -1,
Cyber Plaza, Netaji Subhash Place,
Pitampura
New Delhi -110034

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

Greatech Telecom Technologies Pvt Ltd.

Registered office

54-A, Sainik Farms Khanpur,
New Delhi -110062

...RESPONDENT/ CORPORATE DEBTOR

FOR THE APPLICANT : Mr. Gourav Arora, Adv.

FOR THE RESPONDENT : Ms. Nimta Passi, Adv.

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Royal Resinex Pvt. Ltd. (for brevity 'Applicant') through Mr. Neeraj Aggarwal, the Director of the applicant company, duly authorized vide Board Resolution of the applicant dated 20th May 2019, with a prayer to initiate the Corporate Insolvency process against Greatech Telecom Technologies Private Limited for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated on 19.01.2010 under the provision of Companies Act, 1956 bearing CIN No. U24222DL2010PTC198171 having its registered office at 502, Aggarwal City Plaza, Cyber Plaza , Netaji Subhash Place, New Delhi- 110034. The authorized share capital of the company is Rs. 5,00,00,000/- and the paid-up capital of the company is Rs.80,07,860/- The applicant is involved in the business of selling poly propylene.
3. The Corporate Debtor is a private limited company incorporated on 0/12/2004, under the provisions of Companies Act, 1956 bearing CIN No. U64203DL2004PTC131153 and having its registered office at 54-A, Sainik Farms, New Delhi – 110062. The Authorized Share Capital of the company is 1,00,00,000/- and the paid-up share capital of Rs 1,00,00,000/-.The company is engaged in wholesale of the business of Non Woven Fabrics and handbags and other ancillary products.

4. The applicant submits that the corporate debtor approached the applicant for supply of poly propylene which the applicant supplied material as per the demands of the corporate debtor, accordingly the invoices were raised by the applicant.
5. The applicant submits that without any prior intimation the corporate debtor stopped conducting business and did not pay the outstanding dues.
6. The applicant submits that several oral communications were exchanged between the parties but the corporate debtor failed to pay the outstanding amount and interest thereupon. Thereafter, the applicant submits that a suit for recovery for Rs. 16,44,500/- being the unpaid invoices amount, was instituted against the corporate debtor, before the Rohini Court, Delhi bearing Civil Suit No. 575402 of 2016, titled "M/S Royale Resinex Private Limited Versus M/S Greatech Telecom Private Limited" wherein Sh. Prashant Kumar, Ld. ADJ Rohini Court, Delhi and on 08.09.2016 the court was pleased to decree the suit in favour of the applicant herein. The said suit was filed for recovery of entire claim against the unpaid invoices, as recorded in the decree.
7. Thereafter the applicant submits that an Execution Petition bearing No.7 of 2017 was filed before the Rohini Court, Delhi wherein the Ld. ADJ was pleased to order attachment of Bank Accounts of the corporate debtor and an amount of Rs. 9218/- was recovered from the said attachment account. Thereafter the Ld. ADJ issued a transfer certificate of the said decree to the South West District as the immovable properties of the corporate debtor falls under the jurisdiction of South west District.
8. The applicant submits that on 06.04.2019, a demand notice under Section 8 of the I&B code calling upon the corporate debtor to pay the total outstanding amount of Rs.25,04,630/- (including the Decree amount of Rs.

16,44,550 along with interest of Rs. 8,50,944/- calculated @ 12 %p.a. from 28.04.2015 to 06.04.2019 and Cost Awarded of Rs. 18,404 was issued on Corporate Debtor.

9. The applicants submit that despite service of the said demand notice no response was received from the corporate debtor also no payment was made by the corporate debtor.
10. The Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of this application which was duly delivered to the Corporate Debtor as per service affidavit.
11. As per Form V, the total debt outstanding is Rs.24, 59,941/- including cost and interest @ 12% p.a. which is calculated till 27.05.2019. The principal amount claimed herein is Rs 16,44,500/- along with the interest calculated as per the Judgment and Decree is Rs. 8,05,805/- i.e. 12% p.a. w.e.f. 28.04.2015 to 27.05.2019 and Cost of suit Rs. 18,404/-
12. The Corporate debtor in reply to the said application has raised the following objections :
 - a) The application is not - maintainable as there is a pre -existing dispute qua the liability claimed by the applicant.
 - b) The corporate debtor has approached the Hon'ble Delhi High Court against impugned judgment and decree dated 08.09.2016 by way of filling appeal and the same is pending for adjudication. Further, the corporate debtor submits that the applicant has filed an execution petition before the Ld. ADJ -05, Saket Court, new Delhi, which is also pending adjudication.
 - c) There exist a dispute regarding the terms of payment including set off and the corporate debtor has approached the applicant to settle the

matter, further the corporate debtor submits that the amount of Rs. 10,02,957/- was only due and payable in the name of the subsidiary firm Royale Industries and no dues are payable to the applicant.

d) The applicant is not an operational creditor within the meaning of the Insolvency and Bankruptcy Code.

13. The applicant in its rejoinder raised the following objection and submits

a) That the corporate debtor has failed to provide a proper authority letter.

b) The Appeal filed by the corporate debtor before the Hon'ble Delhi High Court is barred by limitation as the diary number mentioned by the corporate debtor is of March 2017 and impugned order is of 08.09.2016, further that the applicant has not received any notice till date neither any stay order against decree is served.

c) The applicant denies that the corporate debtor can be allowed to claim set off against the total outstanding as on date.

d) The applicant has denied the averments of settlement made by the corporate debtor and submits that in the name of settlement the corporate debtor is willing to pay only the principal amount in spite of delay of 5 years which shall cause wrongful loss to the applicant.

14. Considering the documents on records and submissions of counsels, we observe that there was no pre-existing dispute between the parties with regards the debt which has become due and remained unpaid for more than 1 Lakh as the corporate debtor has failed to present any document to support its averment.

15. The corporate debtor has not placed on record any communication or document which exhibits the plausible dispute between the parties. There is no merit in the so-called dispute raised by the corporate debtor as mere reply filed by the corporate debtor to the present application, is unable to establish any pre-existing dispute of genuine nature. On the contrary the

decree for recovery of dues passed by the Ld. ADJ Rohini Court, New Delhi dated 08.09.2016, belies its story of dispute and confirms the admission of liability of the corporate debtor. This leaves no doubt that the default has occurred for the payment of the operational debt for which the invoices were raised by the applicant and the so called dispute raised by the corporate debtor is merely a moonshine dispute as laid down In “**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**”, the Hon’ble Supreme Court observed that *“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 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 required 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.”*In view of the above observation it can be concluded that the dispute raised by the corporate debtor, is spurious, plainly frivolous and unable to categorize as genuine dispute as reproduced above. Hence, contention of the corporate debtor, of a pre existing dispute without any evidence and merit is a clear after thought to defeat the claim of the applicant.

16. Therefore, in the given facts and circumstances, the present application is complete and the Applicant has established its claim which is payable and due by the corporate debtor. In the light of above facts and records, the present application is admitted, in terms of section 9 (5) of IBC, 2016.

17. The Applicant has filed its bank statement from the period 01.04.2019 to 30.04.2019 stating that the amount claimed or any part thereof, has not been received by the applicant nor had any person, on its behalf had received in any manner the amount due to them as required u/s. 9(3)(c) of I & B Code. The Applicant has filed an affidavit under section 9(3)(b) dated 06.02.2020 affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
18. The date of decree passed by the Ld. ADJ Rohini Courts New Delhi is 08.09.2016, as the date of default and the present application is filed on 06/06/2019. Hence the application is not time barred and filed within the period of limitation.
19. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
20. Since the Applicant has not named the Insolvency Resolution Professional, this Bench appoints Mr. Manish Kumar Aggarwal ,having email id: manishshikha68@gmail.com and registration no. IBBI/IPA-002/IP-N00916/2019-20/12929 as the Interim Resolution Professional, subject to the condition that no disciplinary proceedings are pending against him. The IRP is required to file consent Form-2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule 2016 and make disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulation 2016, within a period of one week from this order.
21. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Manish Kumar Aggarwal, to meet out the expenses and perform the functions assigned to him in accordance with

regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the applicant.

22. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
23. A copy of the order shall be communicated to the Applicant and the Corporate Debtor as well as to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)