

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.201

TP 53 of 2019 [CP(IB) 628 of 2019]

Proceedings under Section 9 IBC

IN THE MATTER OF:

Vectus Industries Ltd

.....Applicant

V/s

Sigma Chemtrade Pvt Ltd

.....Respondent

Order delivered on 26/08/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)

Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

**Dr. MADAN B. GOSAVI
MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

**TP 53/NCLT/IND/2019
CP(IB)/628/NCLT/AHM/2019**

(An application under section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of:

VECTUS INDUSTRIES LIMITED

CIN: U25202MP200PLC019781

262, Jiwaji Nagar, Thatipur,

Gwalior – 474 011,

Madhya Pradesh, India...Applicant/Operational Creditor

Versus

SIGMA CHEMTRADE PRIVATE LIMITED

CIN: U24119MP2007PTC019722

Sigma House, 170/22,

R.N.T. Marg, Film Colony,

Indore – 452 001,

Madhya Pradesh, India

...Respondent/Corporate Debtor

Order Reserved On: 02.06.2022

Decided On: 26.08.2022

Coram:

Madan B.Gosavi, Member (Judicial)

Kaushalendra Kumar Singh, Member (Technical)

Advocate who appeared in this case:

For Applicant- Ld. Adv. Divyakant Lahoti

For Respondent- Ld. Adv. Manoj Munshi a.w Ld. Adv. Mr.
Chirnajeev Saboo.

ORDER

1. This instant application is filed by Vectus Industries Limited (the Applicant/Operational Creditor) through its Managing Director Atul Ladha Under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**'the Code'**) read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Code, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against Sigma Chemtrade Private Limited (Corporate Debtor). The amount of debt in default is stated to be Rs 2,494,158/- [Principal amount Rs 18,00,000/- and interest is Rs 694,158/- for delayed payments]. The date of default is stated to be 13.06.2017. The Applicant Operational Creditor Vectus Industries Limited is an ISO 9001:2015 certified water storage and piping solutions provided company having its CIN NO: U2520MP2007PLC019781, its registered office is at 262, Jiwaji Nagar, Thatipur, Gwalior – 474 011, Madhya Pradesh, India.

2. The Corporate Debtor is a private limited company incorporated under the provisions of the Companies Act, 1956, having CIN: U24119MP2007PTC019722, its registered office at Sigma House, 170/22, R.N.T. Marg, Film Colony, Indore – 452 001, Madhya Pradesh, India.

3. The averments made by the Operational Creditor in its application and presented/argued by the learned counsel Mr. Ld. Adv. Divyakant Lahoti are summarized hereunder:

i. The Applicant/Operational Creditor had entered into a contract with the Corporate Debtor on 03.11.2016 for the purchase of 300 MT (+/- 10%) of S-PVC in Big Bags at the rate of USD 950/PMT CIF NHAVA SHEVA. The copy of the contract dated 03.11.2016 is attached in Annexure-1 to the application.

ii. As Per the terms of the contract, the port for loading the raw material (S-PVC) could be any port in the U.A.E. The Corporate Debtor in furtherance of the above-mentioned contract, chartered 12 containers on 10.11.2016 of 40 ft each through one Perma Shipping Line India Pte. Ltd. The consignment was divided into two parts and both the consignment is shipped from Perma Shipping Line India Pvt. Ltd. on 10.11.2016. Both the consignments landed on the Nhava Sheva Port (CIF) on 16.11.2016. As per the general trade practice, the Corporate Debtor was required to supply the Operational Creditor the shipment documents at least 4 days prior to the arrival of the shipment, so that the timely documentation can be done and no extra charges (Ground rent, Detention charges., etc) could be levied on the Operational Creditor. The 14 days free period which is given for port discharge expired on 30.11.2016. The Operational creditor received the documents from the corporate Debtor on 03.12.2016 after a delay of 17 days from the arrival of the shipment.

iii. After the completion of due paperwork, the shipment was finally released on 17.12.2016 but due to the delay on part of the Corporate Debtor, the Operational Creditor had to pay detention charges and ground rent charges for the period from 30.11.2016 to 17.12.2016 respectively. M/s. M R Shipping Pvt. Ltd and Apollo Logisolutions Limited were engaged for custom clearance and handling of raw material at the port. The details of amounts paid for the same are stated to be as under.

(a) Detention Charges.

Invoice Nos 130495, 130497

Period 30.11.2016 to 17.12.2016 Amount Rs 17,47,324/-

(b) Ground Rent Charges.

Item Nos. 148,149

Period 16.11.2016 to 17.12.2016 Amount Rs 6,80,800/-

iv. The Operational Creditor has paid the amount in full towards the shipment as per the terms of the contracts. However, as regards these extra charges incurred by it. The Operational Creditor and the Corporate Debtor participated in a meeting on 13.06.2017 for an amicable settlement. As a result, it was agreed by both the parties that the Corporate Debtor shall pay the Operational Creditor an amount of Rs 18,00,000/- in lieu of the detention charges paid by the operational creditor and as a gesture of goodwill, the Operational creditor shall waive the ground rent charges paid by it, due to the delay on the part of Corporate Debtor.

v. In furtherance of the settlement a debit note was issued by the Operational Debtor on 13.06.2017 against the Corporate Debtor on account of detention charges of an amount of Rs 18,00,000/- incurred by the Operational Creditor. Further, the Corporate Debtor has also issued a Credit Note bearing no. SCPL/IND/CN/091 for an amount of Rs 18,00,000/- on 13.06.2017, with a remark "*Being refund/compensation extended against high seas contract terms and conditions towards additional cost charged to you by the shipping line.*" The copy of the credit note as marked as Annexure 13 to the application is placed on record.

vi. The Applicant/Operational Creditor, vide email dated 03.12.2018, 02.01.2019, 15.01.2019, and 15.02.2019. had repeatedly requested the Corporate Debtor to release the payment of Rs 18,00,000/- as per Credit Note dated 13.06.2017. The Corporate Debtor, while admitting the liability and existence of credit, had requested that the amount be adjusted in the forthcoming supplies. However, the Operational Creditor

categorically refused such adjustment as the credit note dated 13.06.2017 envisaged no such term or mode of payment.

xiii. The Corporate debtor finally sent a Demand Notice under Section 8 of the Code on 21.05.2019 through Speed Post to their respective address and the same was delivered on 23.05.2019. To this Corporate Debtor replied vide its letter dated 28.05.2019 However the Corporate Debtor has not brought to the notice of the Operational Creditor any *bonafide* existing dispute rather the Corporate Debtor had admitted the liability and only had objected to the mode of payment of debt.

xiv. Following that the Operational Creditor has preferred the present petition under Section 9 of the IBC.

4. In the context, the defense placed by the Corporate Debtor in its affidavit in reply and submissions made thereon and as presented/argued by the learned Counsel. Mr. Ld. Adv. Manoj Munshi is summarized hereunder:

i. There is an existence of dispute which is reflected in the facts stated by the Operational Creditor in its application.

ii. The application filed by the Operational Creditor is misconceived and abuse of process of law as the payment shown to be outstanding does not pertain to supply of any goods or services by the Operational Creditor to Corporate Debtor ; and in the absence of the any operational debt the section 9 petition is not maintainable.

iii. The Credit Note dated 13.06.2017 does not give any right to claim the amount mentioned. The said credit note was issued not for any payment, but it was issued for the purpose of future accommodation whereby upon placing the orders for the purchase

of imported goods through Corporate Debtor on High Seas Basis, the benefits to the extent of the amount mentioned in the credit note was to be provided.

iv. The Credit note was issued to accommodate the loss suffered due to additional cost paid to the shipping line to which Corporate Debtor was not responsible and liable, but agreed to issue a credit note to accommodate the loss of Operational Creditor as it was equally beneficial to Corporate Debtor as allowable deduction under Income Tax.

v. Various communication was exchanged between Operational Creditor and Corporate Debtor through emails and also through various telephonic conversations wherein Operational Creditor has sought the trade inquiries for purchase of material through Corporate Debtor, however, it did not place the order for the reasons best known to the Operational Creditor. Therefore, amount of credit note could not be adjusted. The objective of issuance of the credit note on 13.06.2017 was certainly not to make any payment towards the same but to provide the incentive for the future trades.

vi. The Operational Creditor had not annexed any invoice. Even the credit note dated 13.06.2017 was not issued by the Operational Creditor but it was issued by the Corporate Debtor to accommodate compensation by way of discount in future deals. Moreover the Corporate Debtor did not annexed the covering letter dated 13.06.2017 through which that credit note was forwarded stating therein categorically :-

a) *“Kind Attn: Mr. Atul Ladha*

Please find enclosed herewith credit note number SCPL/IND/CN/091 dtd 13.06.2017 for Rs 18,00,000-

towards compensation extended against additional cost paid by you to shipping line.

Please note that this credit note has been issued as per your meeting with our Mr. Vijay Goyal in your office, wherein we agreed to give you extra discount in future deals, to makeup the extra cost of Rs 18,00,000/- borne by you in payments to shipping line. As per your request to issue credit note for this amount, we are sending the same herewith.

This credit note will be valid for a period of three years.

Kindly Acknowledge receipt of the same.”

5. Heard the Learned counsel from both sides and perused the records. It is noted that there was a business relationship between Operational Creditor and Corporate Debtor. The Operational Creditor had placed an order for the purchase of a product S-PVC 67S from the Corporate Debtor and for that, a HIGH SEAS sale contract dated 11.11.2016 was entered between them. The Corporate Debtor being the seller had also issued a HIGH SEAS bill invoice no SCIT/2061 dated 11.11.2016. A copy of the said contract and invoice has been placed on record by the Operational Creditor as rebuttal documents. The payment on such purchases is made by the Operational Creditor (being buyer) and as such, there is no dispute thereon.

6. The issue is of the charges that Operational Creditor has paid as detention charges and ground rent charges at the time of custom clearance and release of the shipment on its arrival at the Indian port. As stated by the Operational Creditor, the detention and ground rent charges paid by it, on account of delay made by the Corporate Debtor in providing the requisite documents for release, amounted to Rs 24,28,124/- against which on negotiation the Corporate Debtor had

agreed to share the expense to the extent of Rs 18,00,000/- ; and for that the Operational Creditor issued a debit note and the same was confirmed by issuance of the said credit note by the Corporate Debtor. It is, thus, noted that the debt amount under reference relates to the supply of the goods and as such the same is to be taken as operational debt and as such the plea so taken by the Corporate Debtor that the outstanding amount cannot be considered as operational debt is quite misplaced and not acceptable.

7. Then the issue for consideration is as to whether there is any existence of genuine dispute on the matter. The content of the said credit note does not make any mention of the mode of payment. Rather the particulars as mentioned in the credit note clearly reflects that it was issued being refund/compensation extended against HIGH SEAS contract terms and conditions towards additional cost charged to Operational Creditor by shipping line. The credit note is dated 13.06.2017. As per the affidavit in reply filed by the Corporate debtor, the said credit note was issued along with a covering letter of the same date. Based on that covering letter, a plea is taken by the Corporate Debtor that the additional cost to the extent of Rs 18,00,000/- as mentioned in the credit note was to be paid as extra discount on future deals. In the context while submitting the rejoinder, the Operational Creditor, has submitted that the said covering letter referred to by the Corporate Debtor was never received by it and rather the said credit note dated 13.06.2017 was sent to it by the Corporate Debtor vide email dated 30.06.2017. A copy of the said email has been filed on 24.06.2020 as rebuttal documents and placed on record. The perusal of this email shows very clearly that the said credit note was forwarded to the Operational Creditor through that mail. For ready reference the content

of the email issued by one Mr Jayesh Vyas Manager imports of the Corporate Debtor is given here under:

“Dear Mr Gupta
Good evening

This had reference to the above subject, please attached herewith credit note for your ready reference and your needful.”

The subject as mentioned in the email document is “credit note” and the same founds are attached to that mail. After considering the submissions made from both sides in this regard, we are of the view that in our limited jurisdiction under the IBC Act, it would not be possible for us to reach to a conclusion as to whether the credit note under reference was sent by the Corporate Debtor to the Operational Creditor vide the said covering letter dated 13.06.2017 or the said email dated 30.06.2017. Be as it may, we are of the view that the outstanding debt, being related to the extra charges that the Operational Creditor had to pay to the shipping line due to a delay on the part of the Corporate Debtor in providing the required documents timely to release the shipment and the Corporate Debtor having accepted to share those charges to the extent of Rs 18,00,000/- by way of issuing credit note, would fall within the scope and meaning of “operational debt” and the Corporate Debtor would be under obligation to discharge the liability of payment. To that, the Corporate Debtor has made a default. The application is within limitation period and completes otherwise. As such it deserves to be admitted. Accordingly, the following order is made.

ORDER

I). Corporate Debtor of sigma chemtrade private limited is admitted in CIRP. and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree, or order in any court of law, tribunal, arbitration panel, or other authority;

(ii) transferring, encumbering, alienating, or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

II). The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.

III). The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoints **Mrs. Chhaya Gupta having Registration No. IBBI/IPA-002/IP-N00984/2020-2021/13133** to act as an IRP under Section 13(1) (c) of the CODE.

IV). The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with the management of the Corporate Debtor are under a legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter, or any other person required to assist or co-operate with IRP, do not assist or co-operate. IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

V). This Adjudicating Authority directs the IRP to make public announcements of the initiation of the Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.

VI). It is further directed that the supply of goods/services to the Corporate Debtor Company, it continues, shall not be terminated or suspended, or interrupted during the moratorium period.

The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of Rs. 1,00,000/- to the IRP within one week from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof

of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.

VII). The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional, and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.

VIII). Accordingly, TP 53 (MP) 2019 [CP (IB) 628/AHM/2019] is allowed.

-SD-

Kaushalendra Kumar Singh
Member (Technical)

-SD-

Madan B Gosavi
Member (Judicial)

Abhijit-PS