

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

**CP (IB) No. 446/MB-IV/2021**

Under Section 9 of the I&B Code, 2016

In the matter of:

**ABSOLUTE TRADE INTERNATIONAL  
LIMITED**

[IDENTIFICATION NO: 19850008-000-04-20-4]

...Operational Creditor/Applicant

V/s

**ORBIT ELECTRO DOMESTICS (INDIA)  
PRIVATE LIMITED**

[CIN: U29300MH2005PTC157557]

...Corporate Debtor/Respondent

**Order Dated: 09.05.2023**

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Present.

For the Respondent(s) : Present.

**ORDER**

***Per: Kishore Vemulapalli, Member (Judicial).***

1. This is an Application being CP (IB) No. 446/MB-IV/2021 filed on 16/03/2021 by ABSOLUTE TRADE INTERNATIONAL 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 ORBIT ELECTRO DOMESTICS (INDIA) PRIVATE LIMITED, Corporate Debtor.

2. The total amount claimed by the Operational Creditor as specified in the Part IV of the Company Petition is Rs. 1,54,91,523.79 {USD 211,922.35 (US Dollars One Hundred and Forty-Eight Thousand One Hundred and Forty-Five and cents Seventy Only)}, which fell due in terms of various Invoices for service provided to the Corporate Debtor, along with interest on Principal amount from 23<sup>rd</sup> March, 2018 to 31<sup>st</sup> December, 2020 is due and payable by the Corporate Debtor. It is further stated in the application that -

- 2.1. Absolute Trade International Ltd. (hereinafter referred to as 'Operational Creditor') is a company duly incorporated in accordance with the laws of the Hong Kong S.A.R. (Special Administrative Region) and is engaged in the business of Household Appliances. It is in the list of top suppliers of Hong Kong S.A.R and is one of the leading sellers of Home Appliances and Kitchen Appliances.

- 2.2. In or around 2008, Orbit Electro Domestic (India) Private Limited, (hereinafter referred to as 'Corporate Debtor') approached the Operational Creditor for obtaining the rights to import and distribute 'Orbit' branded products in India (Products). The said products exclusively belong to the Operational Creditor along with its trade-marks, licenses and other intellectual property rights with respect to the said brand.

- 2.3. The Operational Creditor and the Corporate Debtor entered into a Distributorship Agreement dated 01.01.2018, whereby the Operational Creditor appointed the Corporate Debtor as the exclusive and sole distributor for the sale of the Products within the territory of India, from

the date of the said Agreement. It was further agreed that the Corporate Debtor shall use its best efforts to sell and promote the sale of Products in the territory of India.

- 2.4. The Operational Creditor issued several Sale Confirmation Orders vide emails and accordingly, the Operational Creditor commenced the supply of the Products as per the agreed specifications to the Corporate Debtor, as and when the Sale Confirmation Orders were issued and confirmed by the Corporate Debtor.
- 2.5. Subsequent to the issuance of the Sale Confirmation Orders by the Operational Creditor and the supply of the Products to the Corporate Debtor, the Operational Creditor also issued the packing list and bill of lading to the Corporate Debtor in relation to the supply and delivery of the Products. The said packing list and bill of lading were also acknowledged by the Corporate Debtor through telephonic conversation.
- 2.6. The Corporate Debtor had duly received and acknowledged the Products. Subsequent to the confirmation of the Sales Confirmation orders by the Corporate Debtor, and the supply of the Products, the Operational Creditor raised Invoices upon the Corporate Debtor from 23.01.2018 to 15.06.2018 towards the Products supplied to the Corporate Debtor. The Sales Confirmation document issued by the Operational Creditor also provided for the payment of interest on default in payment towards the invoices, i.e. 18 % p.a.
- 2.7. Despite having received the said Products supplied by the Operational Creditor, the Corporate Debtor failed and evaded to make the payment towards the amount as per the invoices. After repeated reminders, the Corporate Debtor made a part payment of the same.
- 2.8. Pursuant to the supplies of products, the Corporate debtor was liable to make a total payment of USD 211,922.35 (US Dollars One Hundred and

Forty Eight Thousand One Hundred and Forty Five and cents Seventy Only), equivalent to Approx. INR 1,54,91,523.79/- (Rupees One Crore Fifty-Four Lakhs Ninety-One Thousand Five Hundred and Twenty-Three and Seventy Nine Only) (hereinafter referred to as Total Outstanding Amount) towards the outstanding principal amount and the interest accrued on the principal amount at the rate of 18% p.a. The Operational Creditor issued several reminder emails to the Corporate Debtor during the period from 25.05.2019 to 02.01.2021 calling upon it to make the payment towards the total outstanding amount.

- 2.9. In view aforementioned defaults and indifference of the Corporate Debtor to the several email reminders addressed by the Operational Creditor, the Operational Creditor was constrained to issue a statutory Demand Notice dated 13.01.2021 under Section 8 of the Insolvency & Bankruptcy Code, 2016, through its Advocates, thereby calling upon the Corporate Debtor to make payment to the Operational Creditor of an amount of USD 211,922.35 (USD Two Hundred and Eleven Thousand Nine Hundred and Twenty Two and Thirty Five cents only) amounting to approx. Rs. 1,54,91.523/ (Rupees One Crore Fitty: Four Lakhs Ninety-One Thousand Five Hundred and Twenty-Three Only) towards the Products supplied by the Operational Creditor to the Corporate Debtor.
- 2.10. After the receipt of the Demand Notice issued by the Operational Creditor, the Corporate Debtor approached the Operational Creditor through a telephonic call on 29.01.2021 and thereby agreed that the Corporate Debtor is indeed indebted to the Operational Creditor towards afore-stated amount. However, the Corporate Debtor, shared an alleged copy of a ledger of account with the Operational Creditor through email

dated 20.01.2021, which did not reflect the correct amount due and payable to the Operational Creditor.

- 2.11. Upon the receipt of the said email dated 20.01.2021 along with the ledger of accounts, the Operational Creditor through its Advocate Notice dated 01.02.2021 brought the correct facts and figures on record and once again called upon the Corporate Debtor to pay the Total Outstanding Amount to the Operational Creditor, failing which the Operational Creditor shall initiate appropriate proceedings before the appropriate forum against the Corporate Debtor.
- 2.12. Thereafter, on 08.02.2021, the Corporate Debtor replied to the aforementioned notice dated 01.02.2021 and for the first-time inter-alia averred with a malafide intention that the claims of the Operational Creditor are disputed by the Corporate Debtor. It is to be noted that the Corporate Debtor never disputed the said Outstanding Amount, before the issuance of the Notice dated 01.02.2021 or the demand notice dated 13.01.2021, neither when the Operational Creditor had issued several reminder emails and messages to the Corporate Debtor towards the payment of the total outstanding amount.
3. The Corporate Debtor in its affidavit in reply dated 2.2.2022 has categorically stated that, the amount claimed by the Operational Creditor is not an Operational Debt as per Section 5(21) of the Insolvency & Bankruptcy Code, 2016 ("Code"); the Operational Creditor has issued 5 invoices in the name of M/s. Shiv Shanti & Sons i.e. Invoice No. 06346/2018 for USD 18,030/-, Invoice No. 06333/2018 for USD 9,286.20/-, Invoice No. 06356/2018 for USD 15,416/-, Invoice No. 06353/2018 for USD 11,926.20/-, and Invoice No. 06339/2018 for USD 12,006/-; and M/s. Shiv Shanti & Sons filed Bill of Entry before the Customs Authorities for the import of the goods under these invoices, and accordingly cleared the goods from the Customs and taken

delivery thereof. M/s. Shiv Shanti & Sons vide their letter dated 5th July 2018 addressed to the Branch Manager of M/s. Bharat Co-Operative Bank submitted the Original Bills of Entry for the import remittance to be made to the Operational Creditor under the said 5 invoices. The Operational Creditor issued Proforma Invoice No. P/1083/17 dtd.12.12.2017, Invoice No. P/1085/17 dtd.12.12.2017 and P/1084/2017 dtd.12.12.2017 in the name of M/s. Shiv Shanti & Sons to enable M/s. Shiv Shanti & Sons to make advance payment. M/s. Shiv Shanti & Sons made advance payment of USD 19,400/- under transaction reference No.0003FIADV170833 to the Operational Creditor through Bharat Co- Operative Bank Ltd., Mumbai. It is further stated that only one Invoice No. 06332/2018 for USD 13,316/-, instead of USD 27,097/- as claimed in the petition, was issued by the applicant to the Corporate Debtor. The Corporate Debtor has filed a ledger account of the Operational creditor in its books of accounts, which shows that a sum of Rs. 10,61,204.05 is payable as on 31.03.2021 to the Operational Creditor and not the amount claimed in the petition.

4. The Operational Creditor filed additional affidavit dated 18.02.2022 pursuant to order dated 11th January 2022 of this Bench and submitted that the Operational Creditor had issued Sales confirmation upon the Corporate Debtor and the same were also confirmed by the Corporate Debtor. It is further stated that somewhere in 2018, by way of a request of Mr. Rajeev Shukla, the Director of the Corporate Debtor, the Operational Creditor issued the another set of invoices with a lower value to the Shiv Shanti & Sons along with the packing list an bill of lading. The invoices raised in name of Shiv Shanti & Sons on lower value is for the Corporate Debtor to escape tax liabilities. The Operational Creditor has filed e-mail communications to substantiate this contention.

5. This Bench heard both the counsel(s) and perused the material available on record.

5.1. There is no dispute that the Corporate Debtor was engaged in import of Home Appliances from the Operational Creditor since 2017 and has acknowledged consignments having received from the operational creditor. The dispute between the parties is in relation to 5 invoices issued in name of Shiv Shanti & Sons as well as one Invoice no. 6232/2018 in name of Corporate Debtor, which are stated to have been issued at lower value than the agreed price at behest of Corporate Debtor. It is contention of the Operational Creditor that these invoice(s) were issued in name of Shiv Shanti & Sons at lower value as well Invoice no. 6232/2018 at the request of the Corporate Debtor who wanted to reduce its tax outgo on the imports under such invoice(s). The e-mails communications placed before this Bench as annexure to this affidavit confirms the fact that the goods were billed to Shiv Shanti & Sons on the directions of the Corporate Debtor and also the fact that the invoices were issued for a lesser value than agreed between the parties to enable the Corporate Debtor to reduce taxes on import of such goods and also to reduce payment of tax on subsequent sale of such goods in India. Though, this Bench finds that all such sales confirmations are issued in the name of Corporate Debtor and name of Shiv Shanti & Sons as notified party or consignee is stated in any sales confirmation, but it is clear from the e-mails communications that the goods were billed in name of Shiv Shanti & Sons at the request of the Corporate Debtor.

5.2. Now the question arises, whether the Corporate Debtor can be fastened the obligation to pay in respect of goods shipped and billed in name of Shiv Shanti & Sons, even if it was at the request of the Corporate Debtor, this Bench is of considered view that this requires adjudication of claims and it

cannot be said that there exists an undisputed operational debt, except a sum of Rs. 10,61,204.05/- acknowledged as payable by the Corporate Debtor in its books of account, which is less than the threshold limit prescribed u/s 4 of the Code. Accordingly, this Bench feels that this petition is not maintainable on ground of existence of dispute in relation to debt claimed in default by the Operational Creditor.

5.3. Having said so, this Bench further feels that the Corporate Debtor has consciously indulged in evasion of custom duty and GST by adopting this mechanism, which also require investigation by the appropriate agencies. This modus operandi may also involve contravention of provisions of FEMA, which may be looked into by the appropriate agencies on a complaint by the Operational Creditor, it is a case of under-invoicing and use of fake firms to evade local taxes in India.

6. In view of the foregoing, this Bench is of considered view that this Petition deserves to be dismissed as not maintainable under the Code.

### **ORDER**

7. The petition bearing CP (IB) No. 446/MB-IV/2021 filed by ABSOLUTE TRADE INTERNATIONAL LIMITED (“the Operational Creditor”), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against ORBIT ELECTRO DOMESTICS (INDIA) PRIVATE LIMITED (“the Corporate Debtor”), is **Dismissed**.

8. 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

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

**CP (IB) No. 446/MB-IV/2021**

---

other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.

Sd/-

**PRABHAT KUMAR  
MEMBER (TECHNICAL)**

**09.05.2023.**

Sd/-

**KISHORE VEMULAPALLI  
MEMBER (JUDICIAL)**