



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No.105
IB/615/ND/2020

IN THE MATTER OF:

T.J Communications Pvt. Ltd.

...

Applicant

Versus

M/s Bajaj Appliances Ltd.

...

Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 18.10.2023

CORAM:

MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

IB/615/ND/2020 stands dismissed.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-615(ND)/2020

**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:

M/s. T.J. Communications Private Limited
.... **Operational Creditor/Applicant**

Vs.

M/s. Bajaj Appliances Limited
.... **Corporate Debtor**

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 18.10.2023

ORDER

**PER: SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
MEMBER (JUDICIAL)**

The instant application is filed by M/s. T.J. Communications Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') incorporated under the provisions of the erstwhile Companies Act, 1956 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a



prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Bajaj Appliances Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs.25,34,285/- (Rupees Twenty Five Lakh Thirty Four Thousand Two Hundred and Eighty Five only) which includes Principal amount being Rs.24,60,471/- (Rupees Twenty Four Lakh Sixty Thousand Four Hundred and Seventy only) and interest at the rate of 18% per annum amounting Rs.73,814/- (Indian Rupees Seventy Three Thousand Eight Hundred Fourteen only).

2. The Corporate Debtor M/s. Bajaj Appliances Limited having CIN: U729192DL2000PLC105205 incorporated under the provisions of the Companies Act, 1956 having its registered office situated at Unit No. 1205, 12th Floor, D-Mall, Netaji Subhash Place, Pitampura, New Delhi – 110034. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi and this Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Briefly stated the facts of the present case as averred by the applicant are that the applicant had executed C&F Agreement with the Corporate Debtor as per which the applicant was allotted a C& F Agency from the Corporate Debtor and had stored LED TVs of the Corporate Debtor from 18.03.2019 to 02.08.2019. The applicant and the Corporate Debtor, after a lapse of nearly 6 months, had decided to terminate the C&F agency of the Punjab circle.
4. Further, the applicant submitted that after the termination of the C&F Agency, the Corporate Debtor had picked up all its goods/products from



the godown of the applicant. The applicant added that the stock was lifted by the authorized courier company in the presence of authorized official of the Corporate Debtor after the products were duly inspected by the authorized official. The Applicant had made numerous requests to the Corporate Debtor to release the due payment via emails, personal requests, telephonic requests etc. The Corporate Debtor had duly acknowledged the said outstanding debt vide email also, however, did not release any payment.

5. The Applicant had sent the statutory Demand Notice under Section 8(1) of the Code, 2016, which was duly delivered to the Corporate Debtor. However, the said Demand Notice had some calculation errors and accordingly, a fresh statutory Demand Notice dated 02.12.2019 was issued to the Corporate Debtor. The Applicant had received a reply to the notice dated 27.11.2019 & dated 02.12.2019, whereby, the Corporate Debtor instead of replying to the averments in the Demand Notice regarding its accepting the due pending amount, has raised a baseless and frivolous story, in order to project a pre-existing dispute.
6. Furthermore, the Applicant had received a Legal Demand Notice from the Corporate Debtor which was received by the Applicant on/around 28.11.2019, wherein vide the said legal demand notice the Corporate Debtor had attempted to project a frivolous dispute having pre-existed without supporting the same with any evidence, whatsoever. The Applicant had sent a Reply cum-Legal Notice to legal notice dated 25.11.2019 (sent by the Corporate Debtor) and the same was received by the Corporate Debtor on/around 28.11.2019. The Applicant had categorically pointed out the levelling of a frivolous pre-existing dispute as also regarding their admission via e-mails of the outstanding dues.



7. This Adjudicating Authority in its order dated 07.07.2023 had observed that, “the reply filed by the Corporate Debtor is not reflected on e-portal of this Tribunal However, Counsel for the Operational Creditor has already received the copy of reply and based on the copy of the reply, he has filed rejoinder. The said rejoinder is traceable on e-portal of the Tribunal. In the interest of justice and fair play, Learned Counsel for the Operational Creditor may assist the Tribunal by filing the copy of Corporate Debtor's reply so as to reflect the same on e-portal of the Tribunal and to enable this Adjudicating Authority to consider not only Section 9 application but also the reply of the Corporate Debtor and then to adjudicate upon the matter”. The Applicant in compliance of this Adjudicating Authority’s order dated 07.07.2023 had vide affidavit dated 24.07.2023 placed on record the reply dated 18.11.2021 as filed by the Corporate Debtor.
8. In the reply filed by the Corporate Debtor, the Corporate Debtor submitted that the Applicant had caused huge losses to the Corporate Debtor as it failed to complete its stipulated obligations as the Applicant failed to even complete its initial investment of Rs. 51,00,000/- against stock. It was submitted that out of the agreed amount, the Applicant had only paid Rs. 21,00,000/- and failed to pay the remaining amount of Rs. 30,00,000/- despite having agreed to the same vide agreement dated 18.03.2019.
9. Further, it was submitted that the Applicant had failed to act in terms of the C&F agreement dated 18.03.2019 and upon termination of the said agreement, the Applicant telephonically demanded exorbitant amounts despite being in default and demanded refund of security amount along with unauthorized arrears of rent and electricity. It was also submitted as a strategy to receive the goods back, the Corporate Debtor had promised to pay the demands of the Applicant.



10. Also, as a result of the poor performance of the Applicant, the Corporate Debtor was constrained to warn and inform the Applicant of its failure to perform through numerous telephonic conversations. However, the Applicant herein gave no response and subsequently, the Corporate Debtor sent legal-cum-demand notice dated 25.11.2019 through its counsel to Applicant terminating the C & F Agency despite which the Applicant herein did not return/restore the stock of the Corporate Debtor in proper condition as the goods were found to be damaged.
11. The Applicant had filed its rejoinder, wherein the Applicant rebutted the submission of the Corporate Debtor and submitted that the email dated 02.08.2019 establishes clearcut admission on part of the Corporate Debtor to disburse the amount, however, now to escape the present proceedings, the Corporate Debtor is making the concocted story.
12. This Adjudicating Authority through its order dated 28.07.2023, had after noting that the Corporate Debtor is not present at the time of hearing of the matter, had set the Corporate Debtor ex-parte.
13. We have heard the Learned Counsel for the Applicant. The application, reply, rejoinder and written submission relied upon are meticulously perused.
14. The essential ingredients which have to be satisfied for the present matter to be admitted as per the Section 9 of the Code, as outlined above, and in particular the mandate of Section 9(5) of the Code, 2016 are (i) Whether there is an “operational debt” as defined exceeding the pecuniary threshold limit as envisaged under Section 4 of the Code, 2016 (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and (iii) Whether there is existence of a dispute between the parties or the



record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute? If any one of the aforesaid conditions is lacking, the Application would have to be rejected.

15. We notice that in the present facts of the case, the present application under Section 9 of the Code, 2016 was filed on 25.02.2020 and registered on 26.02.2022, therefore, the threshold limit of Rs.1 Lakh as envisaged under Section 4 of the Code, 2016 before the Notification No. S.O. 1205(E), dated 24.03.2020 will be applicable in the present case. From the submissions, we noted that the Corporate Debtor has defaulted in making payments as per the CFA agreement dated 19.03.2019 entered between the applicant and the Corporate Debtor.
16. As is borne out of the record, notice of first Statutory Demand Notice issued under Section 8(1) of the Code, 2016 bears the date 27.11.2019, however, as per the postal receipt, the first Statutory Demand Notice was issued to the Corporate Debtor on 29.11.2019 only. Therefore, this Adjudicating Authority is not inclined to accept 27.11.2019 as the date of issue of the first Statutory Demand Notice. The date of issue of the First Statutory Demand Notice will be the date on which the Demand Notice was issued to the Corporate Debtor through post i.e., 29.11.2019. The tracking report of both the Demand Notices are not placed on record by the Applicant, therefore, the date of delivery of the first or the second statutory Demand Notice is not established.
17. Pertinently, the Corporate Debtor had issued a Legal Demand Notice dated 25.11.2019 to the Applicant, which as per the Applicant's own admission in the present application, was received on/around 28.11.2019. The relevant part of the Legal Demand Notice dated



25.11.2019 issued by the Corporate Debtor to the Applicant is reproduced below:-

“7. That you, the addressee was supposed to make investment or Rs.51,00,000/- (Rupees Fifty One Lacs Only) as per Agreement dated 18-03-2019 out of which you paid only Rs.21,00,000/- (Rupees Twenty One Lacs Only) and you failed to pay the remaining amount of Rs. 30.00,000/- (Rupees Thirty Lacs Only) to my client. That on behalf of this commitment of investment, my client make a big structure i.e. Rs.56000/. per month rent for 3500 square feet godown as well as Electricity bills or that godown and employment of sales team as well along with 1.5% commission in every month on surety amount of Rs.21.00,000/- (Rupees Twenty One Lacs Only). Because of all these steps, the company faced a huge loss in the area assigned to you.

9. That after termination of the C & F agency you, the addressee returned the goods/ articles of my client and when the same were returned to my' client and after inspection it was discovered that the goods were badly handled and due to which they got damaged. Hence, my client suffered a huge loss and sent a notice/information regarding the damaged condition or the goods to you. The addressee vide courier dated 11.10.2019, and also informed to you, the addressee that the responsibility or the damaged goods/ articles is of you, the addressee.”

18. Thus, we hold that the Legal Demand Notice dated 25.11.2019 issued by the Corporate Debtor was delivered to the Applicant before the issue of the First Statutory Demand Notice by the Applicant on 29.11.2023 as clearly established by the proof of dispatch filed by the Applicant.

19. We do not feel adequately persuaded to subscribe to the submission made by the Applicant that the e-mail correspondence dated 02.08.2019,03.08.2019 subsumes all the disputes since prima-facie the e-mail indicates the Corporate Debtor undertakes to pay the pay-out for the month of March, May and July aggregating to Rs.2,15,115/-. The relevant portion of the e-mail correspondence is extracted below:-



On Sat, Aug 3, 2019 at 1:59 PM HR - Bajaj Appliances Ltd

<hr@bajajappliances.org> wrote:

Dear sir,

As per final discussion we are ready on following points :-

1. Rent for the month of August will be paid.
2. For the 60 days period the Intrest cost of 1% will be paid by company.
3. Salary for the backend guy will not be considered.

This is the finalise please approve so that we can lift the material and close the process.

On Fri, Aug 2, 2019 at 6:23 PM tushar Sharma <tushar.s@ksons.co.in> wrote:

Hi

The following points are missing

1. Rent for the month of August & September has to be paid as we have a notice period of 2 months as per agreement.

We will try to get one month waiver from landlord & will communicate to you by tomorrow as we were waiting for your confirmation.

2. Salary of backed guy for June & July is not mentioned , we already removed him from 1st August so claim is for 2 months Rs 40000

3. For the 60 days period the Intrest cost of 1.5 % has to be paid by company as mentioned in agreement

Rest things mentioned in trailing mail is ok.

Naveen ji,

Kindly give your final go ahead so that we can proceed accordingly

Regards

Toshar

On Fri, Aug 2, 2019 at 5:10 PM HR - Bajaj Appliances Ltd

<hr@bajajappliances.org> wrote:

Dear Sir,

For your information please, kindly go through the below mentioned points:-

1. We are closing the Punjab branch with immediate effect.
2. Payout for the month of March , 2019 (22965.00), May, 2019 (96075.00) and July, 2019 (96075.00) **Total Rs. 215115.00** will be paid in the month of August , 2019
3. The whole stock will be picked by tomorrow (03/08/2019)
4. The security deposit amount (21 Lakhs) will be paid in 60 days.

Bajaj Appliances Limited

web : www.bajajappliances.in

Customer Care No. :1860 1211 852
011- 65150372

(Extract of e-mail correspondence between the parties)

20. A wholesome perusal of the e-mail Correspondence dated 02.08.2019, 03.08.2019, 30.08.2019, 04.09.2019, gives an impression to this Adjudicating Authority that some negotiations were going on between the parties consequent to the termination of the C& F Agreement and therefore, the said e-mail correspondence cannot be considered as an acknowledgement of debt on the part of the Corporate Debtor.



21. The Hon'ble Supreme Court in judgment **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353**, has clearly laid down the law that the 'existence of dispute' must be Pre-Existing' i.e. it must exist before the receipt of the Demand Notice or invoice as the case may be. In 'Mobilox Innovations' (Supra) the Hon'ble Supreme Court has observed as follows;

“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.”

22. Going by the test of existence of dispute, we are of the considered view that there is sufficient evidence on record to exhibit a 'Pre-Existing Dispute' between the parties prior to the issuance of the Demand Notice dated 27.11.2019, but actually issued to the Corporate Debtor on 29.11.2019 in respect of the terms and conditions of their business transactions governed by C&F Agreement dated 19.03.2019.

23. Keeping in mind the settled position that IBC bestows only summary jurisdiction upon this Adjudicating Authority and once plausibility of a pre-existing dispute is shown, it is not required of us to make further



detailed investigation nor are we required to pre-determine whether the dispute is likely to resolve in favour of the Corporate Debtor. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. It is well settled that in a Section 9 proceeding, the Adjudicating Authority is not to enter into final adjudication with regard to existence of dispute between the parties regarding the operational debt. As the facts of the instant case lead us to the inescapable conclusion that there is pre-existence of dispute between the applicant and the Respondent, the Section 9 application ought not to have been admitted in terms of the judgment of the Hon'ble Supreme Court in Mobilox supra.

24. Resultantly, the present application (Company Petition No. (IB)-615 (ND)/2020) being devoid of merits stands dismissed, with no order as to the costs.

File be consigned to records.

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**