

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-I, MUMBAI BENCH**

C.P. No. 2997/IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016
In the matter of

**M/S. SUJATA CONSTRUCTIONS &
ENGINEERING CONTRACTOR**

Having registered office at:
C/o M. K. Deshpande Bldg. 166/A,
Shastri Nagar, Behind Hegadewar
Hospital Jawahar Colony,
Aurangabad – 431 001.
... Operational Creditor/Petitioner

Vs

RV Lifesciences Limited

(CIN: U24230MH1991PLC063442)
Registered office at: Plot No. H-19,
M.I.D.C, Waluj, Aurangabad 431133.
..... Corporate Debtor

Order delivered on: 14.02.2024

Coram:

Hon'ble Justice (Retd.) Sh. Virendrasingh Bisht, Member (Judicial)
Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearance :-

For the Operational Creditor : Mr. Prashant Thakre, PCS
For the Corporate Debtor : Mr. Rahul Totala, Advocate

[Per: Justice (Retd.) V. G. Bisht, Member (J)]

1. This is an application filed by Operational Creditor/applicant under section 9 of the Insolvency &

Bankruptcy Code, 2016 (hereinafter referred as “IB Code” for short) against Corporate Debtor/Respondent, for initiating Corporate Insolvency Process (“CIRP” for short).

Brief facts:-

2. The Operational Creditor is engaged in the services of the construction of residential house, school building, religious institutes and factory buildings etc. and also provides construction materials. The Corporate Debtor, on the other hand, is engaged in the pharmaceutical business. The Operational Creditor had supplied civil construction material to Corporate Debtor for the site located at H-19, MIDC, Waluj, Aurangabad – 431136, Maharashtra.
3. According to the Operational Creditor inspite of continuous follow up and reminder to the Corporate Debtor to release the payment of Rs. 6,58,17,906/- (Rupees Six Crores Fifty-Eight Lakh Seventeen Thousand Nine Hundred Six Only) the Corporate Debtor released only Rs. 2,98,36,033/- (Rupees Two Crore Ninety Lakhs Thirty-Six thousand and Thirty-Three Only) and the remaining amount of Rs. 3,59,81,873/- (Rupees three Crores Fifty-Nine Lakhs Eighty-One Thousand Eight Hundred and Seventy-Three Only) is yet to be paid. Therefore, the demand notice dated 10.04.2019 came to be issued which was replied by the Corporate Debtor vide its reply dated 29.04.2019 alleging the invoices to be concocted, fabricated and barred by law of limitation.
4. The Operational Creditor then sent a counter reply to the Corporate Debtor’s reply dated 29.04.2019 and denied the contentions of the Corporate Debtor. Apart from giving

explanations to the points raised by the Corporate Debtor, the Corporate Debtor further replied to these explanations offered by the Operational Creditor and raised the same issues. According to the Operational Creditor, the total operational debt is to the tune of Rs. 3,59,81,873/- and due date of default is 14.09.2013 as per part IV of the petition. Therefore, the present petition.

5. The Corporate Debtor has resisted the petition on number of grounds. According to it, firstly, the notice is not valid in law in as much as the same was signed by the Practicing Company Secretary D. S. Momaya and Mr. Nitin Yedshikar as its Proprietor. Although, Mr. Nitin Yedshikar was fully aware that he is not proprietor and thus could not have authorised Mr. D. S. Momaya, CS to issue the demand notice.
6. The Corporate Debtor alleges that invoices bearing RB No. 11 dated 15.08.2013, RB No. 9 dated 11.06.2012 and RB No. 10 dated 28.11.2012 are forged and fabricated documents in as much as the said invoices were never submitted and acknowledged and therefore did not reflect in the audited financial statement of the Corporate Debtor. The Corporate Debtor also claims that petition is barred by law of limitation as alleged invoices are fabricated and never acknowledged.
7. The Operational Creditor by way of rejoinder has denied that the invoices are fabricated and never acknowledged by the Corporate Debtor nor the invoices are barred by limitation. In as much as the invoices are acknowledged by S.B.S. and Associates (Architects, Engineers, Structural

Consultants & Values) which was the third party appointed by the Corporate Debtor to check the quantity supplied by the supplier and to provide the certificate of quantity for each bill and on the basis of this certificate Corporate Debtor used to release the payment of the supplier.

8. By way of sur-rejoinder, the Corporate Debtor has denied all the contentions raised by the Operational Creditor in its rejoinder.
9. By way of further affidavit dated 05.07.2022 the Operational Creditor has filed additional documents (Exhibit-A & B) i.e. Running Bill no. 9 & 10 respectively dully signed by the authorised representative of the Corporate Debtor. Pursuant to the directions given by this Tribunal on 31.10.2023, the Operational Creditor again filed additional affidavit in order to show how the present petition is within limitation and also enclosed various documents viz. work order (Annexure-3) invoices (Annexure-4), cheques issued by the Corporate Debtor (Annexure-5) and copy of the ledger account of the statement of the Operational Creditor (Annexure-6).
10. Heard, Mr. P. S. Thakre, CS for the Operational Creditor and Mr. Rahul Totala, Advocate for the Corporate Debtor.
11. Perused the record.
12. The main thrust of argument of the learned Counsel for the Corporate Debtor is twofold. Firstly, invoices in question are fabricated and were never acknowledged by the Corporate Debtor. Secondly, the petition is hopelessly barred by law of limitation in as much as in the words of Operational

Creditor the date of default was 14.09.2013 whereas the petition came to be filed on 01.08.2019. We will deal with these objections accordingly.

13. The first invoice bearing RB No. 11 is at page no. 34 of the petition and is dated 15.08.2013 wherein, the amount in words and figures are misleading. It appears that the total amount of Rs. 42,83,289/- was later on changed to Rs. 41,86,885/-. On the other hand, the justification given by the Operational Creditor is that as there was reduction in the service taxes by Rs. 1,93,208/-. The net amount plus services taxes and VAT worked out to Rs. 41,86,885/-.
14. Similarly, invoice bearing RB No. 9 at page no. 40 of the petition dated 01.10.2013 was wrongly claimed in the name of the ATRA Pvt. Ltd. and later on the words "LAB PVT. LTD" was scored out. In this regard, according to the Operational Creditor, the date was corrected because the bill was generated on 11.06.2012 but as the Corporate Debtor confirmed that it would pay later, the bill was not sent and was actually sent on 01.10.2013 by scratching the date of 11.06.2012. Similarly, it was typographical mistake showing as "ATRA LAB PVT. LTD".
15. The third invoices i.e. RB No. 10 is dated 23.11.2012 and at page no. 41 of the petition mentions as 01.11.2013 after scoring out the date 23.11.2012. According to the Operational Creditor, the date was corrected because the bill was generated on 23.11.2012 but as the Corporate Debtor was assured to make payment later on the bill was not sent and was actually sent on 01.11.2013.

16. It is pertinent to note that no such clarification is forthcoming either from the demand notice or from any of the notices preceding the demand notice, whereby the Operational Creditor had claimed the amounts involved in the above noted invoices. Thus, there appears to be prima-facie justification in the stand taken by the Corporate Debtor.
17. This brings us to second objection i.e. date of default. Part IV of the petition clearly shows that due date was 14.09.2013 whereas, the petition is admittedly filed in 2019. This is controverted by the Operational Creditor by advancing twofold submissions. One, invoices are not barred by law of limitation as the invoices were acknowledged by S.B.S and Associates, a third party appointed by the Corporate Debtor to check quality supplied by the Supplier and provide certificate of the quality for each bill and on the basis of this certificate, the Corporate Debtor used to release the payment of the Operational Creditor. The acknowledgement of the invoices is filed on record at (Annexure-1) of the rejoinder to the written submission/affidavit in reply given by the Corporate Debtor.
18. We have perused the so-called acknowledgement as page 45 and 46 of the petition which is a letter written by SBS & Associates to the Corporate Debtor in respect of checking of RA Bill no. 9 & 10. It is quite pertinent to note from contents of the letter that they had only checked the quantities in the said respective bills of the Operational Creditor and nothing beyond that.

19. In our considered opinion, the amount so involved in the respective bills was never certified by S.B.S Associates. Moreover, these certifications are of dated 25.07.2012 and 13.03.2013.

20. Apart from above, the Operational Creditor again by way of additional affidavit contends that Corporate Debtor had issued a cheque dated 31.12.2016 for Rs. 1 Lakh and same was credited in its account on 03.01.2017. Thus, the said payment constituted an acknowledgment on the part of the Corporate Debtor and the petition under Section 9 of I & B Code was rightly filed on or before 03.01.2020. To counter these submissions, learned Counsel for the Corporate Debtor invited our attention to the letter (Exhibit-10) dated 30.12.2019 written by the Operational Creditor regarding confirmation of its accounts for the period 01.08.2013 to 30.12.2018. This letter is dated 30.12.2018 along with table of the computation of the default by Corporate Debtor in the books of the Operational Creditor. This letter clearly shows the invoices numbers RA No. 9, 10, 11 and the closing balance is shown as Rs. 3,59,81,873/- whereas annexure-6 in the additional affidavit filed by the Operational Creditor, the ledger account at page 43 shows that an amount of Rs. 1 Lakh was received by it on 03.01.2017 which is clarified by the Operational Creditor on the very additional affidavit at para 11 but the same was missing from the earlier correspondences including the confirmation of the account (Annexure-10) filed on record by the Corporate Debtor.

21. It is also pertinent to note from the additional affidavit filed by the Operation Creditor that on 31.12.2016 the Corporate Debtor purportedly issued cheque of Rs. 1 Lakh in favour of the Operational Creditor, the xerox copy of which is filed (Annexure- B) at page 31 and at the bottom there are endorsements showing that said cheque was cancelled and dishonoured and against this NEFT was done on 03.01.2017 by the Corporate Debtor. This finds supports from the statement of account of the Operational Creditor filed at page 33 of the additional affidavit.
22. Assuming for the sake of the argument that petition is filed within the period of limitation based on the last payment made by the Corporate Debtor i.e. on 03.01.2017 still the facts remain that the Corporate Debtor had raised serious dispute in respect of subject invoices from time to time and more particularly by way of reply dated 29.04.2019 in response to the demand notice served by the Operational Creditor. The Corporate Debtor clearly claimed that the invoices are fabricated and false and also pointed out during the course of the argument which we have already referred to in our earlier part of discussion. Thus, on the ground of the pre-existing dispute between the parties in respect of the subject invoices, we hold that the present petition is not liable to be admitted and therefore needs to be dismissed.
23. In view of above, we pass the following order.

ORDER

- 1) Company Petition No. 2997/2019 filed under section 9 of I & B Code, 2016, filed by **M/s. Sujata Constructions and engineering Contractors**, Operational Creditor/Applicant against **RV Lifesciences Limited** Corporate Debtor for initiating Corporate Insolvency Resolution Process is **dismissed**.
- 2) 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 other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition.
- 3) Any other pending IAs'/MAs' if any, in the present Company Petition stand **disposed of**.
- 4) File be closed and consigned to record.

Sd/-
PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-
JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)

Sapna