

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III**

C.P. No. 3443/IBC/MB/2019

Under Section 9 of the Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy (Application to
Adjudication Authority) Rule 2016)

In the matter of

M/s Shri Sadguru Traders

A Proprietary Firm of Vinay Mohanlal
Shah

Regd Office: A-299, TTC,
MIDC Industrial Area,
Village Mahape, Navi Mumbai -
400701

...Operational Creditor

Vs

**M/s Gajalee Coastal Foods Pvt.
Ltd.**

A Company registered under the
Companies Act, 1956

Regd Office: 14, Kadamgiri Complex,
Hanuman Road, Vile Parle (East),
Mumbai – 400057

Admin Office: Amrapali Shopping
Centre, V.L. Mehta Road, JVPD
Scheme, Vile Parle (West), Mumbai –
400049.

.....Corporate Debtor

Reserved for order on: 07.09.2022

Order Pronounced on: 12.10.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Petitioner: Mr. Yogendra M. Kanchan, Advocate

For the Respondent: Mr. Nausher Kohli, Advocate

Per: *Shri H.V. Subba Rao, Member (Judicial)*

1. This Company petition is filed by *M/s Shri Sadguru Traders* (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *M/s Gajalee Coastal Foods Pvt. Ltd.* (hereinafter called "Corporate Debtor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for resolution of a sum of Rs. 49,57,924/- (Rupees Forty Nine Lakhs Fifty Seven Thousand Nine Hundred Twenty Four Only) being an Operational Debt due and payable by the Corporate Debtor towards the unpaid invoices amount for the food and spicy items supplied by the Operational Creditor to the various branches of the restaurants of the Corporate Debtor situated at Vile Parle branch, Versova branch, M.I.D.C. branch and Phoenix Mills branch at Mumbai.

2. **The brief facts of the case are as follows:**

- i. The Operational Creditor is a Sole Proprietary Firm of the said Mr. Vinay Mohanlal Shah and the said Operational

Creditor is involved in the wholesale business of supply of food grains.

- ii. The Corporate Debtor had placed various purchase orders to the Operational Creditor requesting supply of various food grains and grocery items. Wherein the Operational Creditor supplied the goods and thereafter raised the various invoices.
 - iii. The Corporate Debtor has made certain part payments towards some of the invoices and the last part payment of Rs. 1,70,000/- was made on 24.12.2018.
 - iv. On 15.05.2019 the Operational Creditor issued demand notice dated 15.05.2019, under to the Corporate Debtor, calling upon the Corporate Debtor to make the balance unpaid principle amounts of several unpaid invoices for a sum of Rs. 49,57,924/- (Rupees Forty Nine Lacs Fifty Seven Thousand Nine Hundred Twenty Four Only). The Corporate Debtor replied to the said Demand Notice vide reply dated 28.05.2019.
 - v. The Corporate Debtor has failed to raise the notice of existence of dispute and also failed to make the payment stated in the demand notice.
 - vi. Therefore, the Operational Creditor has filed the present application under Section 9 of the I.B. Code, 2016 to recover the total debt amount of Rs. 49,57,924/- (Rupees Forty Nine Lacs Fifty Seven Thousand Nine Hundred Twenty Four Only).
3. The Corporate Debtor filed affidavit in reply of Mr. Madhukar S. Shetty, the authorized representative of the Corporate Debtor opposing the above Company Petition. The main contentions raised by the Corporate Debtor is on limitation and pre-existing dispute, their reply submitted and states that:

- i. The Operational Creditor had issued a notice dated 15.05.2019 to which the Respondent replied letter dated 28.05.2019 gave an informative reply and sought time to give detailed reply.
- ii. The Respondent states that the amounts claimed by the OC is not due and payable by the CD., if the accounts are audited and finalized and various amounts paid by the CD by cash, bank transfer (NEFT) and credit notes for goods which were of substandard were returned to the Applicant are taken into consideration.
- iii. The Corporate Debtor submitted that the goods such as rice, masala and all other various items, used in the preparation of cooking of coastal foods, were ordered and purchased from the OC. Corporate Debtor further states that they had maintained high quality standard of coastal foods, therefore requiring high quality of goods supplied to them, However, the quality of goods supplied by the OC were substandard and of inferior quality making their reputation to be hampered.
- iv. The Respondent further states that after scrutinizing the accounts and the records maintained by the OC, it has been now noticed that in respect of various different bills raised by the OC, the payment has been made in cash by the CD however it seems that the OC have deliberately not given any credit for the said amount which has been received by them.
- v. The Respondent states that after it was noticed about the Operational Creditors that they are supplying inferior quality of goods in various different restaurants owned by the Corporate Debtor, it was noticed that the Staff of the CD have acted in collusion and connivance with the representatives of the OC and therefore Corporate Debtor

immediately stopped business transaction with the Operational Creditors.

- vi. On letter dated 28.05.2019 have specifically requested the OC to provide the details and particulars of the accounts and to grant them inspection however for the reasons best known to the OC, the said inspection was not granted to the CD which clearly shows that the OC have approached this bench not with clean hands but tried to prejudice the minds of this bench on the basis of the false, frivolous and bogus documents.
- vii. The Corporate Debtor / Respondent contends that this company petition is filed in respect of the certain goods allegedly sold in the year 2016. And that there are certain bills/invoices, which are of May 2016, June 2016, July 2016 and August 2016 claimed in respect of the said bills are hopelessly barred by law of limitation and therefore even there are certain bills of 12.01.2015 i.e the majority of the invoices relied upon by the Petitioner are all dated 3 years prior to the filing of the Petitions.
- viii. The Respondent further contends that the Petitioner supplied food grains to the Respondents' restaurant located Lower Parel, Vile Parle, MIDC and Versova. Undisputedly, each and every restaurant would have independent and distinct requirements as to quality and quantity. The location of all 4 restaurants are different from one another. However, the Petitioner has clubbed over 382 no. of Invoices in the Petition and filed one composite petition which is impermissible in law.
- ix. Further that the Petitioner has failed to produce any Purchase Orders in support of the Invoices raised by it. In any contract for purchase and supply, there must be a trail established by contemporaneous records such as Purchase Orders, forms, returns, VAT returns, Output

taxes etc. However, no such document has been produced along with the present Petition.

4. In response to the above reply filed by the Corporate Debtor the Operational Creditor also filed rejoinder contradicting the pleas raised by the Corporate Debtor in their reply. The relevant Para's contradicting the rejoinder are as follows:

Para. 7

The Operational Creditor states he denies that the Operational Creditor at any point of time has supplied sub-standard quality of goods to the Corporate Debtor and, therefore, there was no question for both the parties to allegedly agree that the Operational Creditor shall not supply inferior quality of goods as falsely alleged under affidavit under reference. I deny that the credit note has been issues on account of returned of sub-standard goods. I say that credit not have been issued on account of excess quality of goods which have been returned by the Corporate Debtor to the Operational Creditor. I say that defence of inferior / sub-standard quality of the goods, raised by the Corporate Debtor under affidavit in reference is nothing but incorrect and the false statement made on oath with the knowledge and with intention to avoid payment for liability of the price of the goods. Admittedly, nothing has been mentioned whether the Corporate Debtor has returned the said alleged inferior quality goods. Very fact that the Corporate Debtor had utilized the goods falsified the case put up by them regarding inferior quality of goods. I further say that the false and concocted story about alleged supply of sub-standard goods is taken up for the first time in their reply dated 28th May, 2019, which is nothing but an afterthought as lastly, part payment was made on 24.12.2018.

Para. 8

The Operational Creditor states that prior to demand notice dated 15.05.2019 issued by the Operational Creditor under Section 8 of the IB Code 2016, there was no communication/intimation by the Corporate Debtor to the Operational Creditor about the alleged supply of sub-standard goods. In fact the part payment made is in itself contradictory to the allegation of sub-standard goods. The said allegation is maliciously adopted to avoid the payment of admitted debts. I repeat and reiterate that at no point of time I have received any intimation or communication from the Corporate Debtor about the alleged supply of sub-standard goods.

Para.11

The Operational Creditor states that the present application / petition under Section 9 of the IB Code is very much maintainable and is also within limitation. The debt amount claimed by the Operational Creditor is within the period of limitation as last part payment of sum of Rs. 1,70,000/- was paid by the Corporate Debtor to the Operational Creditor on 24.12.2018, as reflected in the ledger account of the Corporate Debtor maintained by Operational Creditor of all four branches.

Para. 14

The Operational Creditor save and except the amounts received by cheques / NEFT / Demand Drafts from the Corporate Debtor pertaining to purported cash payments in the "Paid Amount Summery Statement" which is annexed in the affidavit in reply of the Corporate Debtor are false and bogus. Further the Corporate Debtor has not made a single whisper about the part payment of Rs. 1,70,000/- and has not challenged the ledger account and statement of debtor outstanding annexed and relied by the Operational Creditor along with the application.

FINDINGS / OBSERVATIONS

- i. Heard the submissions on both sides and perused the material available on record.
- ii. As stated in the reply, the Corporate Debtor is resisting the admission of the above Company Petition mainly on two grounds:
 - a. *Limitation*
 - b. *Pre-existing disputes*
- iii. Since limitation is the most important aspect that goes to the root of the matter, let us decide the above issue in the first instance. The same Operational Creditor filed another Company Petition bearing No. 3768/2019 against the Corporate Debtor's another restaurant "Hotel Jal Tarang (P) Limited" claiming an amount of Rs. 6,48,704/- which was also dismissed vide separate order today.
- iv. The present Company Petition is filed claiming an amount of Rs. 49,57,924/- (Rupees Forty Nine Lacs Fifty Seven Thousand Nine Hundred Twenty Four Only) the alleged Operational Debt due and payable by the Corporate Debtor being the unpaid amount due towards the supply of certain food and spicy items supplied to the Corporate Debtor's restaurants situated at various arears in Mumbai by the Operational Creditor. The Operational Creditor annexed the details of the invoices under different headings as follows:
 - a. "Debtors Outstanding Statement of the Corporate Debtor as on 17.08.2019" for Lower Parel Branch under Exhibit 'H' at Page No. 56 of the Company Petition. The Operational Creditor claimed the amounts under different invoices covering from 12.01.2015 till 21.02.2018.
 - b. "Debtors Outstanding Statement of the Corporate Debtor as on 17.08.2019" for MIDC Branch under Exhibit 'I' at Page No. 58 of the Company

Petition. The Operational Creditor claimed the amounts under different invoices covering from 07.06.2016 till 21.02.2018.

- c. “Debtors Outstanding Statement of the Corporate Debtor as on 17.08.2019” for Vile Parle Branch under Exhibit ‘J’ at Page No. 60 of the Company Petition. The Operational Creditor claimed the amounts under different invoices covering from 21.10.2015 till 24.02.2018.
- d. “Debtors Outstanding Statement of the Corporate Debtor as on 17.08.2019” for Versova Branch under Exhibit ‘K’ at Page No. 67 of the Company Petition. The Operational Creditor claimed the amounts under different invoices covering from 03.05.2016 till 21.02.2018.
- v. The Operational Creditor in Part 4 of the Company Petition mentioned as if the debt fell due on 24.12.2018 i.e. the date on which part payment of Rs. 1,70,000/- was made on 24.12.2018 and thus, the Operational Creditor computed the period of filing the above Company Petition from 24.12.2018 for invoices from 2015 till 24.02.2018.
- vi. In order to decide the above issue, it is important to look at Article 14 of the Limitation Act which deals with the period of limitation for price of goods sold and delivered.

Article 14-

Description of suit	Period of limitation	Time from which period begins to run
For the price of goods sold and delivered where	Three year	The date of the delivery of the goods.

no fixed period of credit is agreed upon.		
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It is very clear from the above Article that the above Company Petition has to be filed within 3 years from the date of default of the respective invoices after excluding the credit period if any.

- vii. It is the submission of the Counsel appearing for the Operational Creditor that even though certain invoices preceding 3 years presenting the company petition are barred by limitation, the above Company Petition can be admitted in respect of the unpaid invoices that are within the limitation and thus prayed for the admission of the above Company Petition.
- viii. The learned counsel appearing for the Corporate Debtor opposed the above argument of the Operational Creditor contending that even if the aforesaid Invoices (which are ex-facie barred by limitation) are to be excluded, the Petition would still not be maintainable in view of the decision of the Hon'ble NCLAT in Next Education India Private Limited vs. K12 Techno Services Private Limited. In Company Appeal No. 98/2019 where it was observed and held as under:

Para- 13. Whether the 'Operational Creditor' can change the 'date of default' by confining the invoices to a later period, when the Demand Notice under section 8 includes all the invoices from the date of default and the 'debt amount' is crystallized based on the invoices.

Para- 21. As can be seen from Section 8, reproduced above, the moment there is an occurrence of a default, copy of an invoice demanding payment of the amount involved in the default is to be delivered by way of a Demand Notice to the 'Operational Creditor'. Form III gives the details of the invoices. In the instant case, the 'Operational Creditor' has

*given the details of invoices from (pages 399 to 406 of Volume II) and has also crystalized the amount at Rs. 2,39,85,521.35/-, which is unpaid from 2011. Therefore, the argument of the Learned Counsel for the 'Operational Creditor' that the period should be confined only from 2015 to 2017 cannot be sustained. The Tribunal cannot confine to one or other invoice if the Applicant has relied on all the invoices to arrive at the amount of Rs. 2,39,85,521.35/- in the Demand Notice under Section 8. **We are of the view that the Tribunal does not have jurisdiction in these Insolvency Proceedings to cut-short the invoices which would cause recurring dates of cause of action as it is not a suit for recovery.***

- ix. In view of the aforesaid reasons coupled with the above law laid down by the Hon'ble NCLAT mentioned (supra) this bench is of the considered view that there is no merit in the above Company Petition and the same deserves to be dismissed as barred by limitation.
- x. Since this Bench is dismissing the above Company Petition on the main issue of limitation, the other issue with regard to pre-existing disputes need not be dealt.
- xi. Accordingly, the above Company Petition is **dismissed**.

Sd/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

Sd/-
H.V. SUBBA RAO
MEMBER (JUDICIAL)