

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH (Court-I)  
KOLKATA**

I.A. (IB) No. 1078/KB/2019

and

CP (IB) No. 373/KB/2018

*A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.*

**In the matter of :**

**Maple Overseas Trade Private Limited  
[CIN: U51900MP2013PTC031169]**

*...Operational Creditor*

*Versus*

**Exotica Ventures Private Limited  
[CIN: U45400WB2011PTC169466]**

*...Corporate Debtor*

Order reserved on: 15 July, 2022

Order pronounced on: 06 September, 2022

**Coram:**

**Shri Rohit Kapoor** : **Member (Judicial)**

**Shri Balraj Joshi** : **Member (Technical)**

**Appearances (through hybrid mode):**

For the Operational Creditor : Mr. Anand Prabhawalkar, Advocate

For the Corporate Debtor : Ms. Manju Bhuteria, Advocate  
Ms. Rajshree Kajaria, Advocate  
Ms. Sarvaprita Mukherjee, Advocate

**COMMON ORDER**

**Per Balraj Joshi, Member (Technical)**

1. This Court convened through hybrid mode.

**CP (IB) No. 373/KB/2018**

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) by Maple Overseas Trade Private Limited (“Operational Creditor”), a company incorporated under the provisions of the Companies Act, 1956 and represented by its Director, Ms. Rashmi Garg,

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authorised by a Board Resolution dated 08 December 2017, seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against Exotica Ventures Private Limited (“Corporate Debtor”).

3. The Corporate Debtor is a company limited by shares incorporated on 16 November 2011, having CIN: U45400WB2011PTC169466, under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at DK1102, DLF Galleria, Premises No. 02-124, Plot No. BG/8 Action Area I, New Town, Paraganas South, Kolkata-700156, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
4. The present petition was filed on 14 March 2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 46,68,629.99 (Rupees Forty-Six Lakh Sixty-Eight Thousand Six Hundred and Twenty-Nine and paise ninety nine only) which comprises of a sum of Rs.27,24,938/- (Rupees Twenty Seven Lakh Twenty Four Thousand Nine Hundred and Thirty Eight only) as the Principal sum and an interest component @ 18% per annum totaling to Rs. 19,43,691.99/- (Rupees Nineteen Lakh Forty-Three Thousand Six Hundred and Ninety One Paise Ninety Nine only) till 30 November 2017.
5. The learned Counsel for the Operational Creditor states as follows: -
  - a. The Operational Creditor is in the business of manufacture and sale of soya refined oil and soya products. The Corporate Debtor is a manufacturer of poultry feed, and Soya DOC is one of the essential raw materials as it is rich in natural nutrients,
  - b. The Operational Creditor from 05 January 2015 to 03 April 2015 provided Soya DOC to the Corporate Debtor and accordingly raised invoices; annexed with the petition and marked at pages 28 to 30 and pages 31 to 189.
  - c. The total amount of debt claimed by the Operational Creditor is Rs.27,24,938/- (Rupees Twenty Seven Lakh Twenty Four Thousand

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Nine Hundred and Thirty-Eight only) along with interest of Rs.19,43,691.99/- (Rupees Nineteen Lakh Forty Three Thousand Six Hundred and Ninety-One and Ninety-Nine Paise) @ 18% per annum totaling to Rs.46,68,629.99 (Rupees Forty-Six Lakh Sixty-Eight Thousand Six Hundred and Twenty Nine and Ninety Nine Paise) which is above the threshold limit prescribed at the relevant time.

- d. The Operational Creditor sent a demand notice to the Corporate Debtor dated 26.09.2017 which was delivered on 03.10.2017; annexed with the petition and marked at pages 22 to 27.
  - e. The Corporate Debtor replied to the Demand Notice on 04.11.2017 wherein the Corporate Debtor has stated that nothing is due and payable.
  - f. The Corporate Debtor has merely denied its liability and have claimed that all the bills have been paid after deductions. The Corporate Debtor contends that a sum of Rs.27,61,170/- was deducted on account of quality issue but the Operational Creditor was not aware of such deduction.
6. Apart from the aforementioned documents, the Operational Creditor has placed the following documents on record:
- g. Copies of invoices; annexed to the petition and marked as Annexure 1 Exhibit B at pages 31-189.
  - h. Copies of emails; annexed to the petition and marked as Annexure I Exhibit E at pages 194-222;
  - i. Copies of bank statements; annexed to the petition and marked as Annexure II: Exhibit C at pages 231-248.
  - j. Copy of Bank Certificate dated 02.02.2018; annexed and marked as Annexure II Exhibit F at page 261

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7. The Operational Creditor has filed an affidavit under section 9(3)(b) of the Code stating that no notice has been given by the Corporate Debtor in relation to any dispute.
8. The Corporate Debtor filed its reply affidavit. The learned Counsel for the Corporate Debtor has raised four points:
  - a. Dispute as the existence of amount of debt under section 5(6)(a) of the Code**
    - ii. The learned Counsel placed reliance on several emails dating from 05 September 2016 till 26 September 2016 wherein the Corporate Debtor has time and again repeated that there is no outstanding dues; annexed and marked as Annexure C (coll.) of the Reply.
    - iii. In respect of bills referred to in sl. .nos. 7 and 8 at page 28 of the petition, the transportation charges were paid by the Corporate Debtor on behalf of Operational Creditor; invoices annexed and marked as Annexure E at pages 216 to 220 of the Reply.
    - iv. The transportation cost was thus deducted while making payment of the invoices raised by the Operational Creditor. Invoices dated 31.03.2015 being sl. nos.38, 39 and 40 were subsequently revised on 03.04.2015 which were sent by email dated 03.04.2015; copies are annexed at pages 221 to 223 of the Reply.
    - v. The learned Counsel submitted that payments of these bills have already been made. The last payment was made by Corporate Debtor on 25.07.2015 and the payment cleared on 27.07.2015 which is reflected in the chart filed and marked as Annexure B at pages 23 to 24 of the Reply.

**b. Dispute as to quality of goods Section 5(6)(b) of the Code**

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- i. The specifications of the goods (poultry feed) required to be supplied, can be ascertained from the Purchase Order at page 4 of the Supplementary Affidavit filed by the Corporate Debtor.
  - ii. The practice followed was that on delivery of goods at Corporate Debtor's factory, a sample was taken and tested at the Corporate Debtor's laboratory and the Laboratory Test Result was printed on the Goods Received Note ("GRN"). Two copies of GRNs were given to the OC's transporter, the learned Counsel further submitted that a comparison of the Test Result imprinted on each GRN with the specifications would show the discrepancy.
  - iii. The Operational Creditor has referred to a GRN which corresponds to the invoice dated 05.01.2015 which has the least discrepancy. It is thus a case of contemporaneous disputes raised against each and every consignment of goods supplied by the Operational Creditor, on which ground alone the petition is liable to be dismissed. The Learned Counsel placed reliance on: *Mobilox Innovation v. Kirusa Software Private Limited 2018 (1) SCC 353* (paras 48, 50, 51, 56 and 57), *K. Kishan v. Vijay Nirman MANU/SC/0872/2018* (paras 14, 15), *Sangeeta Goel v. Roidec India Chemicals Private Limited (2020) 219 Com. Cases 545* (paras 11, 12 and 16), *Suman Chakraborty v. Anhui Technology Imp. & Exp. Co. Ltd. MANU/L/0006/2020* (paras 6 and 8).
  - iv. The learned Counsel stated that in case of defective goods supplied, it is not necessary for the buyer to reject the goods. The buyer has the option to claim damages in a proceeding by the seller claiming price of goods sold and delivered as has been done here:, he placed reliance on *Aectra Refining And Manufacturing Inc. V. Exmar N.V. (1994)1 Weekly Law Report 1634*.
- c. **Contradictory case of the petition warranting dismissal**

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- i. In the Rejoinder, the Operational Creditor at paragraph 6 page 6, has alleged that it had not received any GRN from the Corporate Debtor and then at paragraph 7 page 8 of the Rejoinder it is stated as follows:

*"After the goods are delivered to the corporate debtor, goods received notes were made over which form part of the petition".*

- ii. The learned Counsel submitted that contradictory case made out by any party, results in rejection thereof by a Court of Law and placed reliance on *Steel Authority of India Ltd. v. Union of India (UOI) and Ors. AIR 2006 SC 3229* and *Mati Lal Poddar v. Judhistir Das Teor and Ors. (1915) 22 CLJ 254*, (para 3).
- d. The Corporate Debtor is financially solvent and is operating its business on a very large scale. The turnover and net worth of the Corporate Debtor for the financial year ending 2021-2022 is Rs.2765.90 Lakh and Rs.243.38 Lakh respectively. The Corporate Debtor is a commercially solvent, profitable and running concern. There is no averment by the Operational Creditor that the Corporate Debtor has lost its substratum or that the Corporate Debtor is commercially insolvent The learned Counsel placed reliance on *Jignesh Shah and Another vs. Union of India and Another, (2019) 10 SCC 750* (paras 31 to 37)

***Rejoinder on behalf of the Operational Creditor to the reply of the Corporate Debtor***

9. With respect to the aspect of limitation, it is submitted that the Company Petition was filed within three years from the date of the last supply made on 31.03.2015 and the Company Petition was filed on 14.03.2018.
10. The Corporate Debtor has relied on an email dated 15.02.2015 exchanged between the Corporate Debtor and Mr. Kailash Chandra Garg indicating the quality parameters of the goods to be supplied, but Mr. Kailesh Chandra Garg is no entity of the Operational Creditor and hence the mail cannot be said to be communicated to the Operational Creditor.

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11. Hence, the contention of the Corporate Debtor reflects to be a moon shine defence as held by the Hon'ble Supreme Court in Mobilox Innovations Private Limited v. Kirusa Software Private Limited (paragraph 51).

12. The learned Counsel has placed reliance on

- a. **Shyam Metalics & Energy Ltd. v. Aanchal Ispat Ltd. reported in (2020) 117 Taxman.com 987 (NCLT- Kolkata) .** - In almost identical facts before this Bench, the application filed by the Operational Creditor was admitted.
- b. **Dynamic Cables Ltd. v. India Power Corporation (Bodhgaya) Ltd. reported in [2020] 117 Taxmann.com 845 (NCLT, Kolkata):** In support of contention that for non-communication of existence of any dispute by the Corporate Debtor to the Operational Creditor, the application under section 9 deserves to be admitted. (Para 8)
- c. Naveen Kumar Dixit v. Jaswant International (P.) Ltd. reported in (2019) 107 Taxmann.com 427 (NCL-AT)
- d. Blend Colors (P.) Ltd. v. Vast Industries (P.) Ltd. reported in (2020) 116 Taxmann.com 445 (NCLT -Mum)
- e. Creative Infraheights P. Ltd v. JBK Developers P. Ltd. reported in [2020] 120 Taxman.com 266 (NCLT- New Delhi).
- f. Shanti Chemtrade (P.) Ltd. v. S.K. Dyeing & Finishing Mills (P.) Ltd. [2020] 118 Taxmann.com 249 (NCLT-New Delhi)

13. Therefore, mere denial of payment by the Corporate Debtor without communicating the existence of dispute as to quality of goods supplied cannot be considered as "Dispute" within the meaning of Section 5(6) of the Code. If bare denial of claim is labelled as dispute then Sections 8 & 9 of the Code would become redundant, which was not the intent of the legislature.

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14. I.A. (IB) No. 1078/KB/2019 has been filed the Corporate Debtor, Exotica Ventures Private Limited against Rashmi Garg, Shreyansh Garg, Directors of Maple Overseas Trade Private Limited and Maple Overseas Trade Private Limited seeking for the following reliefs:

- a. *Sanction be granted under section 340 of the Code of Criminal Procedure, 1973 to prosecute Rashmi Garg and Shreyansh Garg for committing offences of perjury under sections 193 and 195 of the Indian Penal Code, 1860;*
- b. *Direction be made to impose suitable punishment and fine upon Rashmi Garg and Shreyansh Garg;*
- c. *Record findings against the alleged operational creditor, Rashmi Garg and Shreyansh Garg in respect of the acts of perjury committed by them and forward the complaint to the Chief Metropolitan Magistrate or any other learned Magistrate of the 1<sup>st</sup> Class having appropriate jurisdiction to take appropriate jurisdiction to take appropriate steps on the basis of such complaint;*
- d. *Take sufficient security, not less than Rs.1 Crore, from the alleged Operational Creditor, Rashmi Garg and Shreyansh Garg for securing their appearance before the concerned Magistrate and in the alternative arrest the Directors of the alleged Operational Creditor including Rashmi Garg and send them as accused into the custody of the concerned Magistrate.*

15. The Applicant in the present case i.e. the Corporate Debtor in the main Company Petition has advanced the following grounds for admitting the application :

- a. that the section 9 petition filed by Maple Overseas Trade Private Limited, the Operational Creditor is misconceived, false, frivolous, baseless and not tenable.

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- b. The Operational Creditor has filed rejoinder to the reply of the Applicant in the main Company Petition which has been affirmed by Rashmi Garg in which the Operational Creditor has made various false and frivolous statements. The Operational Creditor aided and abetted by Rashmi Garg have committed offences as referred to in section 195(1)(b) of the Indian Penal Code, 1860.
- c. Several false statements have been made and several false evidence have been given in the Company Petition by the Operational Creditor.
- d. The Operational Creditor denied that there was any agreement between the Operational Creditor and Corporate Debtor as to the specifications of the Soya DOC which was to be supplied to the Corporate Debtor. The specifications were provided in the email correspondence dated 18.02.2015.
- e. The Operational Creditor has stated that none of the godown receipt notes has an imprint of the laboratory report as claimed by the Corporate Debtor whereas the Operational Creditor has itself annexed a godown receipt note in the Company Petition at page 189 of the Company Petition which corresponds to the invoice at page 32 of the Company Petition and bears a stamp of the laboratory report.
- f. Apart from Rashmi Garg, Shreyansh Garg is also responsible for the statements made in the Company Petition and the rejoinder and have committed acts of perjury. The acts of the Directors of the Operational Creditor attracts the provisions of section 191 and 193 of the Indian Penal Code, 1860 and warrants an enquiry to be made into the offense as referred to in section 195(1)(b) of the Indian Penal Code, 1860.

***Issues***

**16.** The issues to be considered are:

- g.** whether there was a pre-existing dispute?

*h.* Whether payments have been made to the Operational Creditor?

*Analysis and Findings*

17. Heard the learned Counsel for the Operational Creditor and the Corporate Debtor and perused the records.
18. It is not in dispute that the Operational Creditor supplied Soya DOC to the Corporate Debtor. The last payment has been made on 27.07.2015 of a sum of Rs.10,00,000/- (Rupees Ten Lakh only) which is evident from the Bank Account statement that has been annexed with the Company Petition at page 238.
19. The main contention of the Corporate Debtor in brief is that the total amount of the forty bills was Rs.3,37,20,315/- (Rupees Three Crore Thirty-Seven Lakh Twenty Thousand Three Hundred and Fifteen only) out of which Rs.26,130/- (Rupees Twenty Six Thousand One Hundred and Thirty only) was deducted as the Corporate Debtor had made payment of the transportation charges. A further deduction of Rs.27,61,170/- (Rupees Twenty-Seven Lakh Sixty One Thousand One Hundred and Seventy only) was deducted on account of quality issue and the balance amount of Rs.3,09,33,015/- (Rupees Three Crore Nine Lakh Thirty-Three Thousand and Fifteen only) was paid to the Operational Creditor.
20. The Corporate Debtor has relied on various emails and GRNs and laboratory Test Reports to show the deficiency in quality of products.
21. The email to which the Corporate Debtor has relied on to show that the specifications of Soya DOC were informed to the Operational Creditor has been challenged by the Operational Creditor who has submitted that Kailash Garg is not concerned with the affairs of the Operational Creditor. On perusal of the email correspondences filed by the Operational Creditor, at page 195 of the Company Petition, the email has been addressed to Mr. Kailash Garg and the Operational Creditor has placed reliance on the email. Each and every email has also been sent to "Kailash". We are of the view that the Operational Creditor has taken two different stands, it has accepted emails sent to

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“Kailash” when it has been beneficial to the Operational Creditor and objected to the same when it is not beneficial to the Operational Creditor which is a classic case of approbation and reprobation.

22. The Corporate Debtor had given the specification of the Soya DOC to be supplied in the email.
23. With respect to the pre-existing dispute, the Corporate Debtor had sent an email which has been addressed to Mr. Kailash Garg on 11 February 2015 about the quality of products and that the claim was settled in half, and on 28.02.2015 wherein a calculation chart has been given for the deductions made for transportation and weight shortages. Thereafter, the Corporate Debtor has made payments to the Operational Creditor through RTGS and cheques as is evident from the emails correspondences that have been filed by the Operational Creditor.
24. Hence, there were pre-existing disputes with regard to the quality and weight of Soya DOC provided. The Corporate Debtor has filed another series of emails from 05.09.2016 to 26.09.2016 wherein the Operational Creditor has requested the Corporate Debtor to pay the outstanding amount and the Corporate Debtor has time and again reiterated that all the dues have been paid, in these emails the Operational Creditor has not mentioned the amount due or given a statement but has rather asked the Corporate Debtor to look into its accounts.
25. From the above it is clearly brought out that there is existence of pre-existing dispute hence, the Company Petition is liable to be rejected.
26. With respect to I.A. (IB) No. 1078/KB/2019, Rashmi Garg in the rejoinder has denied any agreement taking place in 2013 and the Corporate Debtor has not provided any document to show that there were any talks with respect to the supply of Soya DOC. Next, Ms. Rashmi Garg has denied the clause about laboratory tests which is not mentioned in any of the emails as well. In the email dated 18.02.2015, the Corporate Debtor has given the quality parameters, the quantity, rate, payment and packing but there is no reference

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with regard to the laboratory quality check of the Soya DOC to be done on receipt of the product. Hence, we do not think it fit to grant the reliefs as sought for by the Corporate Debtor.

27. In view of the above observations, I.A. (IB) No. 1078/KB/2019 and **CP (IB) No. 373/KB/2018** are hereby dismissed. The applicant herein is however at liberty to resort to other remedies that may be available to him under the law.

28. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Balraj Joshi  
Member (Technical)

Rohit Kapoor  
Member (Judicial)

Order signed on the 06<sup>th</sup> day of September 2022

GGRB(LRA)