IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD

COURT - II

CP (IB) 216/NCLT/AHM/2020

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Shree Durga Iron and Steel Co. Ltd. **Applicant/ Operational Creditor**

Versus

Rawalwasia Textile Industries Private Limited **Respondent/ Corporate Debtor**

Order Pronounced on: 07/07/2022

Coram:

DR. DEEPTI MUKESH
HON'BLE MEMBER(JUDICIAL)
AJAI DAS MEHROTRA
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Shree Durga Iron and Steel Co. Ltd.
Registered Office at:
403, Vyapar Bhavan
49, P.D' Mello Road
Mumbai 400 009 **… Applicant/Operational Creditor**

Versus

Rawalwasia Textile Industries Private Limited
Registered Office at
Office No. 104, 1st Floor, Raghuvir Textile Mall
Aai Mata Road
Dhumbal, Parvat Patia
Surat
Gujarat State - 395 010 **… Respondent/Corporate Debtor**

Appearance:

For Applicant : Mr. Vishal Dave, Advocate
For the Respondent : Mr. Manoj Harit, Advocate

ORDER

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Pawankumar B. Agarwal, Director of **Shree Durga Iron & Steel Company**

Limited (for brevity 'Applicant') authorised vide Board Resolution dated 03.01.2020 with a prayer to initiate the Corporate Insolvency process against **Rawalwasia Textile Industries Private Limited** (for brevity 'Corporate Debtor').

2. The Applicant is a limited company incorporated under the provisions of Companies Act, 1956, duly registered with the Registrar of Companies, Mumbai having identification No. U27100MH1985PLC037513, having registered office at 403, Vyapar Bhavan, 49, P.D' Mello Road, Mumbai 400 009. The applicant is engaged in supply of steam coal (non-coking).

3. The corporate debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 27.01.1988, duly registered with Registrar of Companies, Ahmedabad, Gujarat State with CIN: U17110GJ1988PTC010302 and having registered office at Offie No. 104, 1st Floor, Raghuvir Textile Mall, Aai Mata Road, Dhumbhal, Parvat patia, Surat, Gujarat State-395 010. Authorised share capital of the corporate debtor is Rs. 2,60,00,000/- and paid up share capital of the company is Rs. 2,55,81,700/-

4. The applicant submits that a High Seas Sale Agreement dated 24.05.2014 was entered into between the applicant and the corporate debtor. As per the said agreement, 4000 metric tons Indonesian Steam Coal (Non-coking) was supplied to the corporate debtor on 15.09.2014 and an invoice for Rs. 1,63,29,680.00 was raised by the applicant. Consignments as per four bills of lading each for 1000 metric tonne of non-coking coal were delivered on 22.08.2014. The applicant raised debit note dated 24.12.2014 for Rs. 11,46,072/- on the corporate debtor towards stevedoring charges.

5. The applicant submits that Summary Suit was filed against the corporate debtor vide Suit No. 331 of 2017 and Hon'ble Bombay High Court passed decree in favour of the applicant for an amount of Rs. 2,45,78,804.55 vide order dated 14.12.2018.

6. The applicant further submits that according to decree dated 14.12.2018 of the Hon'ble Bombay High Court, the corporate debtor has to pay a total sum of Rs. 2,45,78,804.55 to the applicant along with future interest @ 12% per annum from 15th December, 2018 till date of realisation. The default is on account of unpaid invoice, debit

note and costs arising out of Hon'ble Bombay High Court's decree dated 14.12.2018.

7. The applicant further submits that through Advocate's letter dated 13.12.2019 corporate debtor was called upon to pay aggregate sum of Rs. 2,45,78,804.55 with further interest @ 12% per annum on principal amount of R. 1,74,75,752/- from 15.12.2018 till realisation of payment.

8. The applicant issued demand notice in form 3 dated 31.01.2020 under the provisions of the IB Code which was duly delivered at the registered office of the corporate debtor on 04.02.2020. The applicant has annexed to the application copy of track consignment report evidencing that the notice was delivered at the registered office of the corporate debtor.

9. The applicant filed application under Section 9 of the IB Code. As per part IV form 5 an amount of Rs. 2,68,59,749.28 (Rupees two crores sixty-eight lacs fifty-nine thousand seven hundred forty-nine and twenty-eight paise only) is payable by the corporate debtor as on

15.01.2020. A table setting out the computation of the aforesaid amount annexed to the application is reproduced hereunder:

Particulars	Amount (Rs. In lacs)
Principal amount	1,74,75,752.00
Interest from 23.12.2015 to 14.12.2018 @ 12%	62,51,052.55
Costs	8,52,000.00
Amount as per decree dated 14.12.2018	2,45,78,804.55
Further interest from 15.12.2018 to 15.01.2020 @ 12%	22,80,944.73
Total	**2,68,59,749.28**

10. The Corporate Debtor filed affidavit in reply inter alia stating that:

- The present application is untenable and deserves to be dismissed on following grounds:

  a) the mandate of Section 9 (3) (c) is violated;

  b) Blatant violation of stipulation under Section 9 (3) (b);

  c) The invoice dated 15.09.2014 and debit note dated 24.12.2014 are manifestly beyond the period of limitation on the date of verification of the application i.e. 24.2.2020;

  d) The applicant has attempted to cross the bar of limitation by taking resort to the decree dated 14.12.2018;

- The corporate debtor is filing an appeal to challenge the decree before the Division Bench of the Hon'ble High Court;

- There was a dispute between the applicant and corporate debtor with regard to the invoiced quantity of 4000 metric tonne of Coal. The corporate debtor had lifted only 633.94 metric tonne Coal due to poor quality, dispute was raised vide email dated 15th October, 2014 and the contract was cancelled;
- Poor quality of the coal was admitted as per test report dated 29.09.2014 which was done at the instance of the applicant;
- As the corporate debtor had paid invoice dated 15.09.2014 in advance, the applicant had returned an amount of Rs. 80.00 lacs on 21.10.2014;
- No debt is due or payable to the applicant as on the date of presentation of the instant application. The applicant has failed to provide any evidence of delivery of 4000 metric tons of coal.

11. The applicant filed written submissions stating that:

- As per decree dated 14.12.2018 passed by the Hon'ble Bombay High Court, the applicant is a creditor as per Section 3 (10) of the IB Code;
- There is no pre-existing dispute with regard to the claim;
- The amount of default has crystallised on 14.12.2018 when the Hon'ble Bombay High Court passed the decree;

- The date of decree is the date of default, therefore, the instant application is not barred by limitation;

12. Corporate Debtor filed written submission inter alia stating that:

- The decree dated 14.12.2018 passed by the Hon'ble Bombay High Court in a Summary Suit No. 331 of 2017 is challenged in Statutory Appeal No. 3043 of 2020 which is pending adjudication;
- Delay condonation application filed by the corporate debtor was considered by the Hon'ble Bombay High Court conditionally and the corporate debtor had duly complied with the order by depositing Bank Guarantee worth Rs. 1.00 crore;
- The alleged operational debt against the invoice dated 15.09.2014 is beyond limitation as the application is filed on 22.02.2020;
- The instant application is not maintainable only on the basis of Decree passed by the Hon'ble Bombay High Court;
- The corporate debtor had communicated to the applicant on 15.10.2014 the issues relating to quality of the coal supplied and had rejected the cargo;
- At the behest of the applicant, analysis of cargo was conducted and the applicant had confirmed the claim of quality issues;
- After email dated 15.10.2014 communicating quality issues and rejection of the cargo, the applicant had returned Rs. 80,00,000/- on 21.10.2014 and return of said advance amount is evidenced in the reply filed by the corporate debtor;
- In case of existence of dispute, the application needs to be rejected by the authority;

- Existence of dispute is evidenced by email sent by corporate debtor on 15.10.2014 rejecting the cargo, so also that the decree is sought to be executed is under challenge before the Appellate Authority;

13. The registered office of the corporate debtor is situated in Surat, Gujarat and, therefore, this Tribunal has jurisdiction to entertain and try this application.

14. As per part IV, Form 5 date of default is Hon'ble Bombay High Court's decree dated 14.12.2018 and the application is filed on 28.02.2020. Therefore, the application is not barred by limitation.

15. Heard submissions and perused the documents on record. A specific dispute has been raised by the corporate debtor vide email dated 15.10.2014 whereby the corporate debtor stated as under:

> *"We regret to state that you had sold us the cargo with a guaranteed sulphur content of 1% max but the actual sulphur content is in approx. 1.3%, if you wish we can go for joint analysis of the cargo, hence your cargo stands rejected and we reserve the right to claim all losses."*

The above mail also communicated that the applicant is welcome to go for a joint analysis of the cargo and the analysis of cargo has confirmed the claim of the corporate debtor.

The existence of dispute is evidenced by email sent by the corporate debtor to the applicant on 15.10.2014 rejecting the cargo.

16. The corporate debtor has contended that out of the invoiced quantity of 4000 metric tons coal, the corporate debtor lifted only 633.94 metric tonne due to poor quality of the goods. The corporate debtor has brought on record copy of debit note raised by the corporate debtor dated 31.01.2015 evidencing that a sum of Rs. 92,62,987/- was debited to the account of the applicant towards rejected 3149.130 metric tons coal.

17. As discussed above it clearly reflects that there was a specific dispute about the poor quality of goods supplied by the applicant. The corporate debtor has brought on record documents to substantiate its arguments that before issuance of demand notice dated 31.012020, there was a genuine dispute raised vide email dated 15.10.2014 with regard to quality of the goods supplied by the applicant. We are

supported by the judgement of the Hon'ble Supreme Court in the matter of *"Mobilox Innovative Private Limited vz. Kirusa Software Private Limited"* that in case of genuine dispute raised by the corporate debtor, the application cannot be admitted. Relevant portion of the judgement of the Hon'ble Supreme Court in the matter of *"Mobilox Innovative Private Limited vz. Kirusa Software Private Limited"* is reproduced below:

> *"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the 'existence' of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.*

18. The corporate debtor has brought on record documents to substantiate its claim that there was a pre-existing dispute relating to quality of the coal supplied by the applicant and the corporate debtor had rejected the cargo. Moreover, after the email dated 15.10.2014 communicating the quality issues and rejection of the cargo, the applicant had returned Rs. 80,00,000/- to the corporate debtor on 21.10.2014 and return of said advance amount is evidenced in the reply filed by the corporate debtor. Under the facts and circumstances and as discussed above we are of the considered view that there was a pre-existing dispute with regard to the quality of goods supplied by the applicant, therefore, the instant application deserves to be rejected.

19. With the above observations, the application is dismissed and disposed of.

AJAI DAS MEHROTRA	**DR. DEEPTI MUKESH**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

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