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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

CP(IB)/01(CHE)/2022

*(Filed under Section 9 of the Insolvency & Bankruptcy Code, 2016
Read with Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

*In the matter of **EDAC Engineering Limited***

Sunrise Industries (India) Limited

CIN No. U17119GJ1992PLC017745,
Block No. 30, Village Garadhia,
Jarod- Samlaya Road,
Savli Baroda – 391520,
Gujarat

... Operational Creditor

-vs-

EDAC Engineering Limited

CIN No. U45201TN1987PLC014584,
97-Mount Road, Madras – 600032.
Tamilnadu – 600032.

... Corporate Debtor

*Order pronounced on **15th February 2023***

CORAM:

**JUSTICE (RETD.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Applicant: Mr. Piyush Luktuke, Advocate

For Respondent: Mr. Dev Eshwar, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by the Operational Creditor
namely Sunrise Industries (India) Limited under Section 9 of the

Insolvency & Bankruptcy Code, 2016 seeking commencement of the Corporate Insolvency Resolution Process (CIRP) on the Corporate Debtor namely EDAC Engineering Limited.

2. From Part -I of the Application, it is seen that the Operational Creditor is a company having CIN No. U17119GJ1992PLC017745, registered office at Block No. 30, Village Garadhia, Jarod- Samlaya Road, Savli Baroda – 391520, Gujarat.
3. The Corporate Debtor is a company having CIN No. U45201TN1987PLC014584. The Company was incorporated on 26.06.1987 and the Authorised Share Capital of the Corporate Debtor is Rs. 197,20,00,000/- and Paid-up Share Capital of the Corporate Debtor is Rs. 167,39,34,000/-. The registered office of the Corporate Debtor is situated at 97-Mount Road, Madras – 600032. Tamilnadu – 600032.
4. From Part-IV of the Application discloses that the total amount of debt as claimed is Rs.1,36,13,785/- and that the said debt fell due on 18.04.2018.
5. The operational debt arises due to 5 purchase / work orders received from the Corporate Debtor against which certain part payments have been made.
6. The Table-A appended at page No. 18 of the Applicant's typed set is as follows: -

Table-A

[Amount in Rupees]

Sr. No.	Invoice No.	Invoice Date	Invoice Amount	Amount Received	Pending Amount	Due Date	Over Due days as on 20/09/2021	Interest @ 24% p.a.	Total Dues
1	SIILSC17-18/132	09/09/2017	749055	12696	736359	09/10/2017	1443	698672	1435031
2	SIILSC17-18/131	09/09/2017	4822631	2304026	2518605	09/10/2017	1443	2389839	4908444
3	SIILSC17-18/318	19/01/2018	1796536	-	1796536	19/01/2018	1341	1584102	3380638
4	SIILDS17-18/434	29/05/2018	359062	-	359062	29/03/2018	1272	300314	659376
5	SIILSC18-19/03	18/04/2018	1796536	24795	1771741	18/04/2018	1252	1458555	3230296
Total Due Calculation			9523820	2341517	7182303			6431482	13613785



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From the table it is evident that the total invoices amount was Rs.95.23 lakhs, of which the Operational Creditor has received Rs.23.41 lakhs and pending principal amount receivable is Rs.71.82 lakhs. The Operational Creditor claims unpaid interest calculated @ 24% per annum amounting to Rs.64.31 lakhs and thus total dues of Rs.136.14 lakhs.

7. It is seen from the application that tax invoices are attached from page Nos. 19-25 of the Applicant's typed set.
8. Demand notice under Section 8 was sent by the Operational Creditor on 20.09.2021. The original receipt by the post office is

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attached at page No.93. The said Demand Notice was delivered on 27.09.2021 and the track consignment report is attached at page No.51.

9. It is submitted that certificate dated 12.11.2021 is placed at page No. 53 which is issued by Bank of Baroda, Vadodara. A perusal of the said certificate reveals that the Operational Creditor has received the last payment from the Corporate Debtor on 11.07.2018 and this Application was filed before this Tribunal on 22.11.2021. The Applicant Counsel submitted that taking into consideration the suo-moto order of Supreme Court extending the limitation in Miscellaneous Application No. 21 of 2022 in Miscellaneous Application No. 665 of 2021 in suo motu Writ Petition (C) No. 3 of 2020, the present Application is within the limit as prescribed.

10. The Respondent had filed Counter Affidavit vide SR.No.1432 dated 02.03.2022.

11. The main objections taken by the Corporate Debtor are summarised below:-

a. The instant application is not within the threshold limit as prescribed under Section 4 of Insolvency & Bankruptcy Code, 2016.



It is stated by the Respondent that unpaid due is Rs.71,82,303/- which is below the threshold limit and only after the adding the interest amount at the rate of 24% total amount claimed comes to about Rs.1.36 crore.

b. The claim of the Petitioner along with interest portion @ 24% is not maintainable and debt is not ascertained.

It was submitted that there was no agreement as to payment of interest and claim of interest amounting to Rs.64.31 lakhs deserves to be rejected.

c. Existence of disputes raised by the Respondent Company.

It was submitted that there was a claim and counter claims between the Petitioner and the Respondent herein. As per the Respondent, the Petitioner has not completed the contract and was liable to pay a sum of Rs.63.21 lakhs as liquidated damages in terms of the purchase orders and work orders.

12. It was submitted that the Respondent herein on 06.02.2020 had issued notice to the Petitioner that no amount is due from the Respondent that was protected exchange of correspondence between the two parties and the same is annexed at page Nos. 64-72 of the Respondent's typed set.
13. Post the correspondence, the Respondent has invoked the Arbitration clause and issued a notice to the Petitioner on

30.11.2020 and the same is annexed at Page Nos. 73-74 of the Respondent typed set. Without settling the case, the Petitioner approached the District Legal Services Authority, Vadodara. The said Authority has dismissed the case of the Petitioner. The Respondent thereafter approached the Hon'ble Madras High Court.

14. The Petitioner knowing well that the Arbitration proceedings are pending issued the Demand Notice dated 20.09.2021, the Petitioner approached the Madras High Court for appointment of Arbitrator under Section 11 of the Arbitration and Conciliation Act, 1996 which is pending. In the rejoinder, the Applicant was unable to deny the Arbitration proceedings.
15. Heard the submissions of both the parties.
16. Apropos, Section 9(5) of Insolvency & Bankruptcy Code, 2016 is extracted below:-

"9(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order-

- (i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,-
 - (a) the application made under sub-section (2) is complete;
 - (b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;
(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and
(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.
(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if-
(a) the application made under sub-section (2) is incomplete;
(b) there has been repayment of the unpaid operational debt;
(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;
(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or
(e) any disciplinary proceeding is pending against any proposed resolution professional: Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

17. It is an admitted fact that the proceedings under the Arbitration and Conciliation Act 1996 are presently going on between the parties.

18. Reliance is placed on **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited, (2018) 1 SCC 353, para 51** which is reproduced below :-

"51. 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."

19. The present matter is squarely covered in the case of *Mobilox Innovations Private Limited -vs- Kirusa Software Private Limited in CIVIL APPEAL NO. 9405 OF 2017* as there was a pre-existing dispute between the parties, accordingly this Application is **dismissed**. No costs.



SAMEER KAKAR
MEMBER (TECHNICAL)



JUSTICE (RETD.) RAMALINGAM SUDHAKAR
PRESIDENT