



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

IA No.131/2023

IN

CP (IB) No. 627/MB-IV/2022

Under Section 9 of the I&B Code, 2016

In the matter of:

M/S. SAMYAK DISTRIBUTERS

(Mr. Onil Gandhi, Sole Proprietor)

[PAN NO: AAWPG5340H]

...Operational Creditor/Applicant

V/s

GOKUL SUGAR INDUSTRIES LIMITED

[CIN: U15424PN2008PLC140027]

...Corporate Debtor/Respondent

Order Dated: 14.06.2023

*Coram:*

Mr. Prabhat Kumar  
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli  
Hon'ble Member (Judicial)

*Appearances (via videoconferencing):*

For the Petitioner(s) : Mr. Shyam Kapadia , Ld. Counsel.

For the Respondent(s) : Mr. Nausher Kohli, Ld. Counsel.

ORDER

***Per: Prabhat Kumar, Member (Technical)***

1. This is an Application being CP (IB) No. 627/MB-IV/2022 filed on 29/01/2020 by M/S. SAMYAK DISTRIBUTERS (Mr. Onil Gandhi, Sole Proprietor), the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate



---

Insolvency Resolution Process (CIRP) in the matter GOKUL SUGAR INDUSTRIES LIMITED, the Corporate Debtor.

2. The total amount claimed by the Operational Creditor as specified in the Part IV of the Company Petition is Rs. 9,87,52,426/- (out of which the principal amount is Rs.6,08,92,636/- and interest thereon at the rate of 12% p.a. amounting to Rs. 3,78,59,790/-) as due and payable by the Corporate Debtor. The date of default is 23.03.2023.

2.1.M/s. Samyak Distributors, Solapur (hereinafter referred to as the "Operational Creditor") is a proprietorship concern of Mr. Onil Arvind Gandhi, inter alia engaged in the business of trading, broker and transportation of sugar.

2.2.M/s. Gokul Sugar Industries Limited (hereinafter referred to as the "Corporate Debtor") is a company registered under the Companies Act, 1956 and engaged inter alia in the business of manufacturing sugar from sugar-cane.

2.3.In or about August 2017, the Corporate Debtor, expressed its desire to sell white sugar and assured uninterrupted supplies of white sugar to the Operational Creditor for the sugarcane crushing season 2018-19. As per the understanding arrangement arrived at between the Parties, it was agreed that the Operational Creditor shall provide an advance to the Corporate Debtor and upon receipt thereof, the Corporate Debtor shall supply white sugar to the Operational Creditor.



- 2.4. The Operational Creditor states that the Parties had a smooth relationship since August 2017, which continued for about two years. The Parties maintained an open, current and running business account wherein the Operational Creditor continued to provide advances (debit) and the Corporate Debtor supplied sugar towards part of the advances (credit).
- 2.5. In and around September 2019, an advance of Rs.8,22,28,512.50 was outstanding towards the supply of sugar. Despite the balance available with them, additional advances were requested by the Corporate Debtor. The Operational Creditor agreed to provide the advances.
- 2.6. In order to formalize the business relationship, on 15<sup>th</sup> October 2019, the Parties entered into a White Sugar Purchase Contract dated October 15, 2019 (the 'said Agreement') for purchase and sale of 50,000 MT of white sugar for the sugarcane crushing season 2019-2020.
- 2.7. Pursuant to the said Agreement, the Corporate Debtor. supplied sugar to the Operational Creditor, however, the Corporate Debtor continued to make short supplies of sugar to the Operational Creditor. In the circumstances, the Corporate Debtor failed to supply sugar towards the entire advances paid by the Operational Creditor and/or failed to repay the said advance entirely.
- 2.8. The Operational Creditor has till date made advance payments of Rs. 2,72,39,01,034/- (Rupees Two Hundred Seventy-Two Crores Thirty-Nine Lacs One Thousand and Thirty-Four Only) during the period August 31, 2017 to March 31, 2022 to the Corporate Debtor and has received supply of Sugar from Corporate Debtor for an aggregate value of Rs. 2,63,94,08,398/-



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

IA No. 131/2023  
IN  
CP (IB) No. 627/MB-IV/2022

(Rupees Two Hundred Sixty-Three Crores Ninety-Four Lacs Eight Thousand Three Hundred and Ninety-Eight Only).

- 2.9. Upon reconciliation of the Ledger account supplied by the Corporate Debtor examination of the same, the Corporate Debtor issued four (4) Credit Notes to the Operational Creditor to rectify the discrepancies in the said accounts.
- 2.10. In the circumstances, as on March 31, 2021, the Corporate Debtor owed to the Operational Creditor a cumulative sum of Rs.8,44,92,636/-. The Operational Creditor called upon the Corporate Debtor on several occasions to repay the balance of the loan advances, which the Corporate Debtor had failed to supply sugar or repay the balance due and payable to the Operational Creditor, and kept on delaying the same.
- 2.11. Around July 2021, an undated letter was issued by the Corporate Debtor, to the Operational Creditor, whereby the Corporate Debtor admitted that it owes a sum of Rs.8,44,92,636/- and that the Corporate Debtor shall supply sugar against the said outstanding amount during the season 2021-22 or shall repay the said amount within 30 days, in the event the Corporate Debtor fails to do so. The Corporate Debtor further issued security Cheques No 000235 to cheque No 000238 and undertook to pay the money, failing which the Operational Creditor can have these cheques deposited to recover the outstanding. The said letter was signed by Mr. Datta Shinde Executive Director and Mr. Kapil Shinde, Director.
- 2.12. Subsequently, as on 01.04.2021, the Corporate Debtor has repaid an amount of Rs. 2,36,00,000/- (Rupees Two Crores Thirty-Six Lakhs Only) towards the outstanding liability of Rs.8,44,92,636/- due and payable to the



Operational Creditor. Significantly, the Corporate Debtor has never denied that the balance advance in the principal sum of Rs. 6,08,92,636/- is due and payable by the Corporate Debtor to the Operational Creditor.

2.13. A Demand Notice dated April 5, 2022 was issued by the Operational Creditor to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code 2016 raising a demand for the discharge of the liability of the Corporate Debtor, and the same was duly received by the Corporate Debtor via email on April 5, 2022 at 4.22 pm. The Corporate Debtor, responded to the said Notice, inter alia raising a phony, vague and untenable dispute and without offering any credible explanation justification for failure of the Corporate Debtor to supply the sugar or to repay advances paid by the Operational Creditor, in case of failure to supply.

3. The Corporate Debtor filed the IA No. 148/2023 seeking condonation of delay in filing the Affidavit in reply and enclosed its reply with the said IA. This bench condoned the delay and took this reply on record pursuant to its order dated 04.01.2023. The Corporate Debtor has objected to the application, stating that;

3.1. The White Sugar Purchase Contract dated 15.10.2019 is already completed, accordingly no case can be made out on that basis. It is further claimed that the purported White Sugar Contract as produced by the Petitioner is a forged document, as the Original Contract is for 500 MT and not for 50,000 MT, as claimed by the Petitioner. It is also submitted that, even if claim of the applicant that contract was for supply of 50,000 MT is accepted, the period of performance under the agreement would fall under the COVID-19 in view of daily supply stipulation of 25 to 30 MT to start from



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

IA No. 131/2023  
IN  
CP (IB) No. 627/MB-IV/2022

15.11.2019 under the said contract. Accordingly, the performance of said contract extinguishes in terms of Clause 11 of the contract, which is a force majeure clause. Further, the supply of 50,000 MT basis stipulated daily supply will take 6 to 8 years. Accordingly, the petition, based on contract having been entered to supply of 50,000 MT, is a premature, as the stipulated period is still to expire.

3.2. The undated letter, attached to the Company Petition as “Annexure II-G” at page no. 348 of the Petition, was not issued as the signature of managing director thereon as well as Company stamp seems to be forged.

3.3. The purported Ledger account of the Operational Creditor, annexed to Company Petition as Annexure II-F, was shared in 2020, however, the account department discovered several transactions which were to be recorded therein consequent to such discovery. The Corporate Debtor addressed the letter dated 05.07.2021 for such corrections. The ledger was correctly stated and shared vide mail dated 31.07.2021. The said ledger account reflects an outstanding of Rs.2,93,65,626.50/- as on 10.03.2021 and outstanding of Rs.49,51,876.50/- claiming payment of Rs.2,36,00,000/- during the Financial year 2020-21.

3.4. That the Operational Creditor claimed credit notes for rate difference and the same was agreed by the Corporate Debtor as follows: -

<b>Period of Supply</b>	<b>Rate difference claimed by Applicant</b>	<b>Rate difference acceptable to Corporate Debtor</b>
June 2019	Rs.1,93,96,445	Rs.1,17,31,955



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

IA No. 131/2023  
IN  
CP (IB) No. 627/MB-IV/2022

---

June 2019 to October 2019	Rs.7,55,75,000	Rs.76,64,490
February 2019	Rs.25,20,000	-

3.4.1. The Corporate Debtor, vide letter dated 31.03.2019 and letter dated 31.11.2019 placed as Annexure E and F of the reply of the Corporate Debtor, communicated this fact to the Operational Creditor and these letters are duly acknowledged by the applicant. Further, letter dated 08.02.2019 seeking a credit note of Rs.25,20,000/- by the Corporate Debtor from the Operational Creditor is also claimed to have been acknowledged.

3.5. The applicant has failed to mention the date of default in the demand notice which is a mandatory requirement of FORM 3. Further the Operational Creditor has stated at Clause g, page 6 of the petition that the Corporate Debtor was obligated *to commence delivery from 15.11.2019 and complete its obligation on or before the ending of sugarcane crushing season i.e. March 2020*. The contract contained a Force Majeure Clause i.e. Clause 11, which included the occurrence of an endemic as one of ground for invocation thereof. As the Clause 11 of the contract provided period of 45 days from the occurrence of endemic as curing period, the date of default could be 15.05.2020 i.e. 45 days from the occurrence of COVID-19 pandemic. Accordingly, even if contention of the applicant is accepted, the said debt would fall under sec 10A of the code.



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

IA No. 131/2023  
IN  
CP (IB) No. 627/MB-IV/2022

---

- 3.6. The interest, as claimed in the petition, was neither decided nor accepted by the Corporate Debtor and, no evidence has been brought on record by the applicant to substantiate the claim of such interest.
- 3.7. The non-deposit of undated cheques, stated to have been given to the applicant as security with a stipulation to deposit the same in the event of default, itself shows that the applicant was completely satisfied with the discharge of the obligation by the Corporate Debtor.
- 3.8. The applicant has failed to record 7 debit notes for aggregate sum of Rs. 2,04,13,316 issued by the Corporate Debtor and these debit notes were duly acknowledged by the Corporate Debtor as is evidenced from the acknowledgement on such debit notes enclosed with the Affidavit in reply.
4. The Corporate Debtor has filed IA 131/2023 seeking dismissal of CP IB 627/2022 on the grounds that there are several discrepancies in the said Petition, documents have been forged, and the transaction / arrangement as entered into between the parties is twisted.
5. The Operational Creditor has filed an Affidavit in Rejoinder dated 21.04.2023 in Company Petition and affidavit in reply to IA No 131/2023 stating that-
- 5.1. The signatures of the applicant on the purported letter evidencing rejection/part acceptance of credit notes by the Corporate Debtor to the applicant are forged. It is stated that he has obtained an opinion of Hand writing expert that signature, hand writing, figure and stamp on these letters is different.



5.2. The Claim of the Corporate Debtor is based on erroneous footing to negate the admissions made by the Corporate Debtor, which are supported by contemporaneous documentary evidence.

5.3. The Operational Creditor further pointed out discrepancies in the ledger produced by the Corporate Debtor and has claimed that Corporate Debtor has unilaterally and wrongly recorded a sum of Rs. 3,51,52,106/- during the Financial year 2018-19 to 2021.

*Findings:*

6. This bench has carefully gone through the documents and pleadings available on record and considered the arguments.

6.1. This bench finds force in the agreement of the Corporate Debtor that the present application is pre-mature in case it is admitted basis submission of the Petitioner that, the White Sugar Purchase Contract dated 15.10.2019 was entered for supply of 50,000 MT of sugar to be supplied on daily basis in tranche of 25-30 MT. This bench finds that the said contracts stipulates supply of 25 to 30 MT of sugar and also advance payment of Rs.1.5 crore upon signing of the contract, which came to be executed on 15.10.2019. On perusal of the Ledger account of the corporate Debtor in books of the Operational Creditor, this bench finds that the Corporate Debtor owe an amount far exceeding the amount of advance stipulated in the contract. If the submission of the Applicant that the contract was for supply of 50,000 MT of Sugar is to be believed, it would take 2000 days, which is equivalent to 6 years to fulfil the obligation under the Contract in accordance with clause 6.1 of the Contract stipulating delivery from 15<sup>th</sup> November onwards & daily 25 to 30 MT sugar. Consequently, the default can take place



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-IV

IA No. 131/2023  
IN  
CP (IB) No. 627/MB-IV/2022

somewhere in 2025 only and not on the date as claimed in the petition and such date of default falls in future.

6.2. The Bench further finds that Both the parties have submitted copy of ledger account of the other party in their respective books. The ledger account of Operational Creditor in the books of the Corporate Debtor reflects an outstanding of Rs.49,51,876.50/- payable to the Operational Creditor as on 31.03.2022, whereas the ledger account of the Corporate Debtor in books of the Operational creditor shows an outstanding of Rs.6,08,92,636/- receivable from the Corporate Debtor as on 31.03.2022. The applicant has relied upon the statement of account for the Financial year 2018-2019, supplied by the Corporate Debtor, recording a balance of Rs. 1,25,84,241.50/- as payable to the Operational Creditor, while the corresponding balance as per copy of ledger account, filed alongwith reply by the Corporate Debtor, is stated as Rs.27,06,049.50/-. This bench finds that the applicant has acknowledged there were certain differences in the balances appearing in their books of account and those differences came to be reconciled thereafter. Further, the Corporate Debtor has claimed that there were certain transactions found unrecorded in the statement supplied to the Operational Creditor and the said was updated under intimation to the Operational Creditor. It is further claimed by the Corporate Debtor that such updated ledger account was shared vide mail dated 31.07.2021. Considering these facts, this bench finds that the differences in the balances claimed as due by the both the parties is mainly arising on the account of claim/counter claims of both the parties.

6.3. This bench further finds that the undated letter stipulated deposit of security cheques in case of default and, such cheques never came to be deposited by



the Operational Creditor. If this act is looked in the context of Corporate Debtor raising debit notes and rejection of claim of Credit Notes raised by the operational Creditor by the Corporate Debtor, both of which are stated to have been accepted by the Operational Creditor, this bench finds that there exists a dispute on this aspect. Further, the report of forensic expert, suggesting forgery of signature and other particulars of the Operational Creditor to suggest said acceptance is forged, and the allegation of forgery in contracted quantity stated in the Contract, as advocated by the Corporate Debtor indicates that both the parties have counter claims on the authenticity of the basic documents, which makes it difficult for this Bench to discover the true facts. Thus, this Bench is of the considered view that the contra assertions of both the parties further confirms existence of a dispute, and such assertions need to be put on trial or further investigation. It is a trite law that this bench is not competent to carry out such trial or investigation to discover the truth in a proceeding u/s Section 9 of the Code.

6.4. This bench further finds that the fact whether the supply was to be completed on or before the ending of sugarcane crushing season i.e. March 2020 as stated at Clause g, page 6 of the petition by the applicant, is also not in consonance with the purchase contract, which is silent on the date of fulfilment of final obligation.

6.5. In the case of *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd. (2018) 1 SCC 353*, the Hon'ble Supreme Court held that “*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.”*

6.6. Further Hon’ble NCLAT in the case of ***Talbot & Company Vs. Austin Distributers Pvt. Ltd. (2023) ibclaw.in 34 NCLAT*** held that 16. “*It is well settled that in Section 9 proceedings the Adjudicating Authority is not to enter into final adjudication with regard to existence of dispute between the parties regarding operational debt. What has to be looked into is whether the defence raises a dispute which needs further adjudication by a competent court. Disputes pertaining to contractual issues are not to be resolved IBC Laws in Section 9 proceedings. If we apply the test laid down in Mobilox by the Hon’ble Apex Court to the facts of the present case it is clear that the defence raised by the Corporate Debtor in their reply filed in Section 9 application is not illusory or moonshine. The present is neither a case where there is undisputed debt for which insolvency can be asked by the Appellant to be initiated.*” Accordingly, this bench feels that there exists a prior dispute in relation to debt claimed in default.

6.7. This bench further finds that the interest as claimed in the petition is neither decided nor accepted by the Corporate Debtor and no evidence has been brought on record by the applicant to evidence it.

7. In view of the above, we find that the present case is fit for dismissal under Section 9(5)(ii)(d) read with Section 8(2)(a) and Section 5(6) of the Insolvency and Bankruptcy Code, 2016 in view of pre-existing dispute between the parties



with respect to the purported claims. Hence, the present case requires adjudication which is beyond the powers granted to us to adjudicate a petition filed under sec. 9 of the code and deserves to be dismissed.

**ORDER**

8. The petition bearing C.P. (IB) No. 627/MB/C-IV/2022 filed by M/S. SAMYAK DISTRIBUTERS (Mr. Onil Gandhi, Sole Proprietor), the Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) for initiating Corporate Insolvency Resolution Process (CIRP) in the matter GOKUL SUGAR INDUSTRIES LIMITED, the Corporate Debtor is **dismissed**.
9. The IA No.131/2023 in CP No. 627/2022 is allowed and disposed of.
10. 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 as it barred by the law.

Sd/-

**PRABHAT KUMAR**  
**MEMBER (TECHNICAL)**  
**14.06.2023.**

Sd/-

**KISHORE VEMULAPALLI**  
**MEMBER (JUDICIAL)**