



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-120/ND/2020

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/s KARGO LEAGUE LOGISTICS PVT. LTD.

Registered office at:

Flat No. 4/45B, FF,

Shri Ram Nagar, Near Bank of India,

G.T Road, Shahdara, Delhi - 110032

Delhi-110032

...Operational Creditor

Versus

M/s IREO HOSPITALITY COMPANY PRIVATE LIMITED

Regd. Office:

C - 4, 1st Floor Malviya Nagar,

New Delhi - 110017

...Corporate Debtor

Delivered on: 03.01.2023

Coram:

Shri BachuVenkatBalaram Das

Hon'ble Member (Judicial)

Dr. Binod Kumar Sinha

Hon'ble Member (Technical)

Appearances:



Operational Creditor : Adv. Gunjan Kumar, Adv. Shaurya Sharma
Corporate Debtor: Adv. Saurabh Kalia, Adv. Rahul Ahuja

ORDER

Per: Dr. Binod Kumar Sinha, Member (Technical)

1. The instant application bearing IB-120/ND/2020 is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditors, M/s Kargo League Logistics Private Limited is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s Ireo Hospitality Company Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

- a. It is submitted that Operational Creditor provided freight forwarding and custom broker services to the Corporate debtor from 2016 to 2017. All these above mentioned services were provided with regards to imports from Al Abbar, Dubai.



- b. It is further submitted that on 1st December 2017, an Agreement was executed between the parties. Under the said Agreement the Operational Creditor provided the services and raised a total bill for Rs. 7,70,65,119/- out of which the Corporate Debtor paid an amount of Rs. 6,23,91,831/- leaving a balance amount of Rs. 1,46,73,288/- balance payable from Corporate Debtor to the Operational Creditor.
- c. It is averred that, the Operational Creditor also provided freight forwarding and custom broker services to the Corporate Debtor with regard to other imports made by it from time to time. The said services were provided by the Operational Creditor to the Corporate Debtor for said other imports on the basis of purchase orders/orders by way of email confirmations.
- d. It is further submitted that Corporate debtor failed to respond to the demand notice within 10 days. The Corporate debtor has not repaid the amount in default till date of filing the instant application even after persistent reminders and notices.

3. Notice was issued by this Adjudicating authority to the Corporate Debtor on 17.01.2021. Corporate debtor has also filed its reply to the captioned petition.

A handwritten signature in green ink, appearing to be 'A. S. S.', located below the main text.



4. We have heard the arguments advanced by Ld. Counsels appearing for Operational creditor as well as for the Corporate debtor and also perused the record.

5. The Operational Creditor's claim is based on the facts that Applicant provided the freight forwarding and custom broker services and raised a total bill for Rs. 7,70,65,119/- out of which the Corporate Debtor paid an amount of Rs. 6,23,91,831/- leaving a balance amount of Rs. 1,46,73,288/- as payable by the Corporate Debtor to the Operational Creditor and the said debt is still not paid by the Corporate debtor. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of his operational debt, applicant had issued Demand Notice dated 16.10.2019 under section 8 of IBC, 2016 at the registered office of the Corporate Debtor. Corporate Debtor has also given reply to the said notice.

6. Per contra, Corporate debtor has one contention:-

I. The Corporate Debtor submitted in its reply that there is a 'Pre-existing dispute' on account of the due payments between the parties.

7. As regards the issue of pre-existing dispute, the statute uses the expression 'existence of a dispute'. The word 'dispute' has been defined in Black's Law Dictionary in the following manner:-

"Dispute. A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary



claims or allegations on the other. The subject of litigation; the matter for which a relation to which jurors are called and witnesses examined. See Cause of action; Controversy; Justiciable controversy; Labour dispute."

8. In the present case, the Corporate Debtor raised the issue of a pre-existing dispute as its main defence. The Corporate Debtor placed on record, an e-mail dated 14.11.2018 marked as Annexure-R2, in the reply. The e-mail was sent by the Corporate Debtor to the Operational creditor pointing out major reasons for the delay in billing as there is miscellaneous charges on every bill and bills are not pre-approved. While pursuing the records, we found one e-mail sent by Operational Creditor demanding overdue outstanding amount from Corporate Debtor. One e-mail was sent by the Corporate Debtor to the Operational Creditor demanding counter payments. All these e-mails were sent prior to the demand notice dated 16.10.2019. The miscellaneous charges on bills have become a disputed question of fact to which this Adjudicating Authority cannot go to record finding in its limited jurisdiction. In our considered opinion, the dispute which existed in between the Operational Creditor and the Corporate Debtor prior to the demand notice about the disputed bills amounts requires detailed inquiry and investigation by the proper forum and this Adjudicating Authority is not that forum. Hence, we hold that there is a pre-existing dispute pending in between the Operational Creditor and the Corporate Debtor.

A handwritten signature in green ink, appearing to be 'A. S. H.', located at the bottom center of the page.



9. As there is evidence on record of a pre-existing dispute in the present case, the defence is not spurious, mere bluster, plainly frivolous or vexatious. Therefore, this Adjudicating Authority is of the consequent view that the ratio of the Judgement of the Hon'ble Supreme Court in the case of "**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**" reported in (2018) 1 SCC 353 squarely applies to the facts of the attendant circumstances of the case. The relevant extract are given verbatim for reference:

"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.

10. In view of the aforesaid facts, a conclusion can be drawn that there is 'Pre-existence of dispute' which was raised by the corporate debtor time and again much prior to the demand notice served under section 8 of IBC and , therefore, it is a fit case to reject this application filed under section 9 of the IBC, 2016.



11. Accordingly, the instant Application bearing IB-120/ND/2020 is hereby dismissed. No orders as to cost. A copy of this order is to be marked to the parties and also to IBBI for record.

12. The order is pronounced by this Adjudicating Authority in Virtual Hearing.

(Dr. Binod Kumar Sinha)
Member (Technical)

(Bachu Venkat Balaram Das)
Member (Judicial)