

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IB No.1367/ND/2019

Under section 9 IBC
IN THE MATTER OF:

M/s Vebhav Yarns Pvt. Limited.

...APPLICANT/ OPERATIONAL CREDITOR

VERSUS

M/s. Vinit Knittings Private Limited

... RESPONDENT/ CORPORATE DEBTOR

Memo of parties

Vebhav Yarns Private Limited
Having Registered Office at:
401, Sharp Bhawan, 2nd Floor
Azadpur, Delhi-110033

VERSUS

Vinit Knittings Private Limited
Having Registered Office at:
39/14, Bawana Road
Sameypur Extensive Industrial Area
Delhi-110042

Order delivered on: 21.02.2022.

CORAM:

DR. DEEPTI MUKESH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: SMT. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

The present application is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by Vebhav Yarns Private Limited, (hereinafter "applicant"), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Vinit Knittings Private Limited (hereinafter, Respondent).

2. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:-

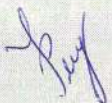
- a. The applicant/ operational creditor is a del-credre agent for BF Industries Ltd, Indo Rama Synthetic (India) Ltd and Shubalakshmi Polyesters Ltd, who are manufacturers of Polyester Yarns of various descriptions.
- b. The corporate debtor purchased polyester yarns of various descriptions from these principal manufacturers through the applicant and have defaulted in the payment of outstanding dues of Rs 2,60,90,142/-, though the applicant have already made the payment for the same to the principal manufacturers. Further corporate debtor have also defaulted in payment of Rs 15,64,784/- on account of direct sales made by the applicant which is included in the total debt.
- c. The respondent have also failed to issue 'C' forms amounting to Rs5,01,25,564/- to the principal manufacturers for which the liability comes on the applicant for payment of difference in tax amount and penal interest.
- d. The applicant sent demand notice under Section 8 of the code on 08.02.2019. The applicant submits that the notice was sent through e-mail to the registered e-mail id of the corporate debtor

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on 18.02.2019 which was replied by the corporate debtor through his counsel Sh. Sanjeev Bhandari through e-mail and by speed post. The Copy of demand notice along with postal receipts and the tracking reports has been placed on record.

3. Thereafter present application under section 9 is filed, upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:

- i. It is submitted that since 2015, there exists a dispute with regard to the payment claimed to be due by the operational creditor as in terms of the understanding between the parties.
- ii. The corporate debtor sent an email dated 22.11.2017 requesting for the account details from the operational creditor. Further the operational creditor sent reply to the corporate debtor on 23.11.20217. It is stated that several emails have been exchanged between the parties and each time corporate debtor asked operational creditor with respect to the statement of account in the prescribed format, however, the operational creditor kept on ignoring and delaying the issue. Further corporate debtor asked for the credit notes from the operational creditor but the same was not replied too by the operational creditor.
- iii. Despite several requests and reminders through emails dated 22.11.2017, 24.11.2017, 27.11.2017, 29.11.2017, 01.12.2017, 14.12.2017, 23.12.2017, 04.01.2018, 07.02.2018, 20.03.2018, 03.05.2018, 18.06.2018, 30.06.2018 and 19.07.2018 sent by the



Respondent to Mr. Vivek Jajoo and Mr. Jain (their accountant), the representatives of the Petitioner, asking them with the details of the sale, purchase, payment in the specific and agreed Proforma, the applicant failed to provide the details of sales made, payments and materials returned.

- iv. Further it is submitted that respondent purchased polyester yarns of various descriptions on different dates and from different manufactures through the petitioner, however, during the period of transaction it came to the knowledge that the goods supplied by petitioner were damaged goods with highly inferior quality/ packing
- v. It is submitted that the Respondent had returned 7 consignments of yarns of Vinit Knittings Pvt. Ltd. amounting to Rs. 1,15,46,206/- and the petitioner themselves had lifted the material on their own. However, they never issued any credit note in favor of the Respondent for the same. Further, as Shree Sai Industries is also unit of Vinit Knittings Pvt. Ltd. several other consignments were also returned from Shree Sai Knittings Pvt. Ltd. to the tune of Rs. 35,09,165/- and further goods/consignments worth Rs. 33,19,291/- were returned to a sister concern of the Petitioner with the name of Vikram Threads Pvt. Ltd. However, the Petitioner has not stated any of these facts before the adjudicating authority. The sole reason that the Respondent has been asking for the accounts from the Petitioner in the prescribed format was because there was not one but

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several accounts which were not settled among the parties and the Petitioner never made any attempts to settle the same. The Respondent has already returned the goods to the Petitioner to the tune of Rs.1,83.74,662/- at different points of time for being of inferior quality. Those goods were neither exchanged by the petitioner nor any Credit Notes as promised were given to the Respondent.

4. The applicant has filed rejoinder to the reply of respondent and written submissions as:

a. The Corporate Debtor Company, Vinit Knittings Pvt. Ltd. has 1 working Unit namely, M/s Shree Sai Industries and a sister concern namely Shree Sai Knitting Pvt. Ltd. having the working unit namely M/s Shree Sai Knitting, Barhi, Sonapat. The present Application is with regard to the business transactions of the Applicant Company with M/s. Shree Sai Industries. for Polyester Yarn, where Operational Creditor is a Del-Credre Agent of the Principal Manufacturers namely JBF Industries Ltd.(JBF), Indo Rama Synthetic India Ltd.(IRSIL) and Shublakshmi Polyesters Ltd.(SPL).

b. The Ledger Account Statement of Shree Sai Knitting, Barli showing that the account are already settled.

c. The List of various invoices pending payment against the good supplied to the Corporate Debtor. The last payment of Rs.15 lacs, received was on 30.10.2017, leaving a total admitted balance

outstanding to be of Rs. 2,76,54,926/-. (Outstanding Invoices from 06.05.2017 to 23.08.2017.

d. It is submitted that frivolous disputes has been raised by Corporate debtor with respect to the goods returned. Whereas, all the C-Forms have been duly issued by the corporate debtor to the Principal Manufacturers for the receipt of the goods supplied by the applicant.

e. It is alleged by corporate debtor that the goods delivered by applicant were returned being inferior quality and/or damaged Emails dated 22.11.2017, 24.11.2017, 27.11.2017, 29.11.2017, 29.11.2017, 14.12.2017, 23.12.2017, 04.01.2018, 07.02.2018, 20.03.2018, 03.05.2018, 18.06.2018, 19.07.2018. Furthermore, none of the Emails referred by the Corporate Debtor mention any goods returned.

f. None of the Emails referred by the Corporate Debtor allege inferior quality and/or damaged.

g. Only asking for the books of accounts — In Corporate Debtor's own Performa. Further it is submitted that Operational Creditor has filed the claim against invoices raised dated 06.05.2017 to 23.08.2017, the payment against the invoices prior of which has already been paid and settled by the corporate debtor as mentioned above. Thus, there is no dispute regarding their outstanding Operational Debt regarding remaining invoices.

5. The corporate debtor had filed its written submissions as:

- a. It is submitted that the Respondent was seeking further statement in agreed/ accepted proforma since the year 2014, however, the Petitioner provided the statement from 2016 which was not given in the prescribed format as requested to by the Respondent. Till date, the Respondent has not given the statement of account as requested in the proforma of the Respondent.
- b. That Respondent wrote emails to the Petitioner from 22.1.2017 to 19.07.2018 raising dispute of non-settlement of accounts. However, the Petitioner ignored these emails with regards to the payment as claimed to be due by the Petitioner. The dispute raised due to the non-settlement of accounts is even prior to issuance of the demand notice. The statement of account/ ledgers filed by the Petitioner are neither certified as per law nor are they supported by any voucher and /or supporting document.
- c. The Respondent purchased polyester yarns of various descriptions on different dates and from different manufactures through the petitioner, however, during the period of transaction it came to the knowledge that the goods supplied by petitioner were damaged goods with highly inferior quality/ packing. Several times the Respondent was in receipt of very poor quality of yarns and therefore, the Respondent suffered heavy losses on account of production loss as well as inferior quality of yarns. several times, the yarns were not as per the order specifications. All these issues were informed to the petitioner and in turn they had even done the inspection for the same and had agreed to take the consignments back with them. The Respondent has annexed the WhatsApp messages dated 09.12.2016, 14.04.2017. 18.05.2017 and 24.05.2017 from page Nos. 56 to 63, exchanged between the parties wherein the Respondent had conveyed to the petitioner that the goods were defective and the same were to the Petitioner. The Respondent

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had clearly mentioned regarding the goods being defective in the reply to the notice as well sent on 28.02.2019.

d. It is submitted that the Respondent had returned them 7 consignments of yarns of Vinit Knittings Pvt. Ltd. amounting to Rs. 1,15,46,206/- and the petitioner themselves had lifted the material on their own. However, they never issued any credit note in favour of the Respondent for the same. Further, as Shree Sai Industries is also unit of Vinit Knittings Pvt. Ltd. several other consignments were also returned from Shree Sai Knittings Pvt. Ltd. to the tune of Rs. 35,09,165/- and further goods/ consignments worth Rs. 33,19,291/- were returned to a sister concern of the Petitioner with the name of Vikram Threads Pvt. Ltd. However, the Petitioner has not stated any of these facts before the adjudicating authority. The sole reasons that the Respondent has been asking for the accounts from the Petitioner in the prescribed format was because there was not one but several accounts which were not settled among the parties and the Petitioner never made any attempts to settle the same. The Respondent has already returned the goods to the Petitioner to the tune of Rs. 1,83,74,662/- at different points of time for being of inferior quality. Those goods were neither exchanged by the petitioner nor any Credit Notes as promised were given to the Respondent.

guy 6. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, rejoinder, written submissions filed by the parties.

7. Admittedly, the respondent corporate debtor has sent various e-mails to the applicant for statement of account regarding business transactions between the parties in the required proforma. The respondent has not raised any dispute over quality or quantity of goods supplied by applicant

regarding unpaid invoices. The corporate debtor has placed whatsapp messages to show that the goods were defective however, payments were made after those messages.

8. The respondent in its reply has itself admitted that the e-mails were sent by respondent only to settle the accounts with applicant neither any dispute nor any counter claim has been made by corporate debtor vide e-mails. Therefore, there is nothing on record to show that there is a pre-existing dispute between the parties prior to issuance of demand notice.

9. In respect of definition of "dispute" in the Code, Hon'ble Supreme Court has held in the case of *Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.* 2018 1 SCC 353 inter-alia that:

"Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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 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." (emphasis given).

10. Since the corporate debtor itself was trying to settle the account with operational creditor, the factum of existence of dispute does not

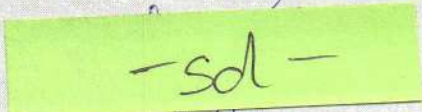
arise. In view of the aforesaid discussion the present application deserves to be allowed.

11. The applicant has proposed the name of an IRP, Mr. Kamal Agarwal as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-P00868/2017-18/11466 and email id. advocate.kamal.aggl@gmail.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is already filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
12. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Kamal Agarwal to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

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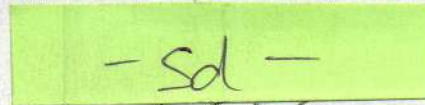
13. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

14. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

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(SUMITA PURKAYASTHA)

MEMBER(T)

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(DR. DEEPTI MUKESH)

MEMBER (J)