

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-1048/ (PB)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

New Pearl Vitrified Pvt. Ltd.

...Operational Creditor/Applicant

Versus

Waaman Products Pvt. Ltd.

...Corporate Debtor/Respondent

Order Delivered on: 17.08.2022

Coram:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. The applicant, carrying on its business/occupation of selling the vitrified tiles across the globe, has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.
3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:



- a. The Operational creditor and the Corporate Debtor are engaged in the long term business relationship, wherein the Corporate Debtor used to purchase the vitrified tiles from the Operational Creditor and use to sell it further.
- b. The Operational Creditor submitted that the Corporate Debtor had placed the purchased orders dated 28.07.2016, 14.12.2016 and 14.12.2016 for goods worth Rs.69,16,058/- and confirmed and testified the same.
- c. The Operational Creditor further stated that the Corporate Debtor made the part payment of Rs. 3,38,900/- through a cheque and the same was dishonoured on 10.10.2018 and thereby, the proceedings under Section 138 of the Negotiable Instrument Act have also been initiated against the Corporate Debtor.
- d. The Operational Creditor sent a Demand Notice dated 03.02.2020 demanding payment of an unpaid operational debt i.e. Rs. 15,50,165/- inclusive of principal amount of Rs. 10,36,900/- and interest amount of Rs.5,13,265/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

4. The Corporate Debtor has filed his reply against the said Application. The main objections raised by the corporate debtor are as follows:

- a. The Corporate Debtor stated that they are into the business of manufacturing and selling vitrified flooring tiles.
- b. The Corporate Debtor further stated that they had placed several purchase orders to the Operational Creditor on 28.0.2016, 14.12.2016 and 01.02.2017 for the supply of the vitrified tiles directly to the customers of the Corporate Debtor and the material provided by Operational Creditor was not up to the mark. Since, the material provided was not in accordance with the specifications, colour and quality of the material, the customers of the Corporate Debtor rejected the same and the Corporate Debtor had to bear the loss.
- c. The Corporate Debtor further stated that after receiving the defective material from the Operational Creditor they made a request to the Operational Creditor to provide them the inspection report which was prepared by the Operational Creditor before dispatching the material to the customers. However, the said requested report was not received till date.
- d. The Corporate Debtor also stated in its reply that as regards the outstanding dues of Rs. 10,36,900/- they had already paid a sum of

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Rs. 3,85,100/- before the Additional Chief Judicial Magistrate Morbi in Gujarat in the complaint case no. 7477/2018 and the same was duly accepted by the Operational Creditor.

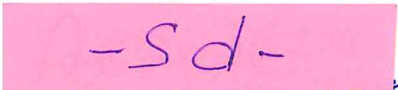
- e. The Corporate Debtor submits that the interest claimed by the Operational Creditor is not maintainable as because the Operational Creditor has failed to disclose that in what manner the same has been calculated and also the Operational Creditor has failed to give any inspection/quality report to the Corporate Debtor. Hence, the Operational Creditor is not entitled for any interest on the dues of Rs. 10,36,900/-.


5. We have heard the submissions made by the Ld. Counsel for the Operational Creditor as well as Ld. Counsel for the Corporate Debtor. It is pertinent to note that the Corporate Debtor has been subjected to CIRP vide our order of even date i.e., 17.08.2022 in the matter of **Rexsona Tiles Pvt. Ltd. v. Waaman Products Pvt. Ltd. in IB No. 1047/PB/2020** which is an Application under Section 9 of IBC, 2016.

6. The Operational Creditor i.e. New Pearl Vitrified Pvt. Ltd. is, therefore, directed to approach the IRP appointed in the above-referred matter and take further steps for filing their claim. This Adjudicating Authority further grants liberty to the Operational Creditor for revival/restoration of the matter in IB/1048/PB/2020 if a settlement is arrived at and the CIRP is terminated or is set aside in appeal as per law in the IB No. 1047/PB/2022.

The matter is disposed off accordingly.

The case folders and connected papers may be sent to the record room.


(DR. BINOD KUMAR SINHA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)