



IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.39
CP(IB) 251 of 2019

Order under Section 9 IBC

IN THE MATTER OF:

Shah Paper Mills Ltd

.....Applicant

V/s

Shree Rama Newsprint & Papers Ltd

.....Respondent

Order delivered on ..20/07/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

MADAN B GOSAVI
MEMBER (JUDICIAL)



**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT-1**

CP (IB) No.251/9/NCLT/AHM/2019

[Application under Section 9 of the Insolvency and Bankruptcy Code,2016 read with Rule 6 of the Insolvency and Bankruptcy [Application to Adjudicating Authority) Rules, 2016]

In the matter of :

M/s. Shah Paper Mills Limited
209, 2nd Floor, ML Spaces
Dashratlal Joshi Road
Vile Parle (W), Mumbai-400 056
And factory at
Plot No.5202, 3rd Phase
GIDC, Vapi-396 195
Gujarat

..... Applicant/
Operational Creditor

Versus

M/s. Shree Rama Newsprint &
Papers Limited
Village : Barbodhan
Taluka : Olpad
District : Surat
Gujarat

.....Respondent/
Corporate Debtor

Appearance:

Mr. Kamil Lokhandwala, Advocate along with Advocates Ms. Uma Acharya and Mr. Mihir Kakade i/b Jayakar & Partners, for the applicant.

Mr. Ravi Pahwa, Advocate, for the Respondent.

Order Pronounced on : 20.07.2022



**Coram: Madan Bhalchandra Gosavi, Member (Judicial)
Kaushalendra Kumar Singh (Technical)**

ORDER

1. This Application is filed by M/s. Shah Paper Mills Limited (Operational Creditor), under Section 9 of Insolvency and Bankruptcy Code, 2016 (“IBC”) for initiation of Corporate Insolvency Resolution Process (“CIRP”) in respect of M/s.Shree Rama Newsprint & Papers Limited (Corporate Debtor) on the ground that the Corporate Debtor committed default in paying an Operational Debt of Rs.55,23,253/-.

2. The following facts are not in dispute.

(i) By various Invoices in between 22.04.2016 to 29.07.2016, the Operational Creditor sold and supplied the Corporate Debtor certain goods on the terms of the payment on demand.

(ii) According to the Operational Creditor, the Corporate Debtor paid a certain sum of money leaving balance amount as outstanding. In spite of repeated demands, the Corporate Debtor did not pay the outstanding demand. Hence, on 28.11.2018, the Operational Creditor issued a Demand Notice to the Corporate Debtor under Section 8 of the IBC. The Corporate Debtor replied to the notice vide letter dated 11.12.2018, but did not pay the dues, hence, this application.



(iii) Notice of this application is served on the Corporate Debtor. The Corporate Debtor appeared through its Assistant Company Secretary, viz. Mr. Utkarsh Shah. He filed an affidavit in reply.

(iv) We have gone through the contents of the affidavit in reply. The Corporate Debtor disclosed its defense in paragraphs 5 and 6 of its reply, which are reproduced herein:-

*“5. I say and submit that the Corporate Debtor entered into business transaction with the Operational Creditor for purchase of packing wrappers, etc. from 25.07.2015 to 29.7.2016. I say and submit that after 29.7.2016, there is no transaction between the Corporate Debtor and the Operational Creditor. During this period, the Corporate Debtor purchased goods total worth Rs.2,60,74,614/- by placing different purchase orders. The Operational Creditor raised invoices against the Corporate Debtor after delivery of goods. This amount includes the amount of 15 invoices in respect of which the present petition is filed. It is relevant to mention that these 15 invoices are covered by only five purchase orders and not by seven purchase orders. The Operational Creditor has falsely placed two purchase orders bearing P.O. No. 767 and P.O. No.4300000058 which have not been issued by the Corporate Debtor. The five purchase orders issued by the Corporate Debtor have not been placed on record by the Operational Creditor. I beg to annex a copy of each of the five purchase orders at **Annexure-R1 Colly.***



6. *I say and submit that in all, during this period, i.e., period after May 2015 and ending with July 2016, the Corporate Debtor had issued 12 purchase orders. The Corporate Debtor has received material worth Rs.2,60,74,614/- in respect of which the Corporate Debtor has received 52 invoices. Accordingly, besides 15 invoices which are part of record in this petition, the Operational Creditor had issued 37 invoices. The Corporate Debtor has made payment of all these invoices on different dates between 25.7.2015 and 28.2.2017. A perusal of the statement would show that the Corporate Debtor has made entire payment for the goods received from the Operational Creditor during this period. All the invoices are fully satisfied. On the contrary, there is an excess payment of Rs.82,141/- I beg to place on record ledger statement of the Operational Creditor maintained with the Corporate Debtor at Anneuxre-R2. I also beg to annex copy of bank statements evidencing the payments mentioned in the ledger statement at Annexure-R3".*

3. On going through the affidavit in reply, it appears that the Corporate Debtor has come out with the defense that it has paid the entire amount and no debt is due and payable to the Operational Creditor.

4. We have heard Ld. Counsel Mr. Kamil Lokhandwala for the Operational Creditor and Ld. Counsel Mr. Ravi Pahwa for the Corporate Debtor. We have gone through the evidence and material on record.

5. In this case, there is no dispute about the quality of the goods or material supplied. The dispute as appears is that the



Operational Creditor asserts that a sum of Rs.55 lakhs and odd is yet due and payable by the Corporate Debtor whereas the Corporate Debtor says that the entire amount is paid.

6. The Operational Creditor itself produced on record along with the rejoinder, the correspondence that has taken place between the Operational Creditor and the Corporate Debtor, prior to the issuance of the Demand Notice. More particularly, the letter from Operational Creditor to Corporate Debtor dated 14.04.2017 whereby the Operational Creditor called upon the Corporate Debtor to pay a sum of Rs.70,76,730/-. The Corporate Debtor replied to the aforesaid letter vide email dated 15.04.2017 pointing out to the Operational Creditor that as per their account statement Rs.37,33,552.10 is only due and payable. The Operational Creditor sent one more letter dated 27.12.2017 giving some calculations calling upon the Corporate Debtor to pay Rs.55,23,253/-.

7. The Corporate Debtor along with its reply gave a detailed chart showing that a sum of Rs.2,61,56,755/- has already been paid (page17). It is the contention of the Corporate Debtor that it has paid the Operational Creditor a sum of Rs.82,141/- in excess. The Corporate Debtor has produced on record its detailed statement as Annexure-R2.

8. It appears from the above evidence on record that there is a dispute even prior to the Demand Notice about the exact amount due and payable by the Corporate Debtor to the Operational Creditor. This Adjudicating Authority is sitting in a limited



jurisdiction cannot dwell upon the issue as to whose account is accurate and correct. There appears a serious dispute about the actual amount payable by the Corporate Debtor to the Operational Creditor. In fact, the Corporate Debtor contends that nothing is due and payable now. The Corporate Debtor informed this fact in its reply to the notice.

9. In our considered opinion, such a dispute cannot be resolved in an inquiry of this application under Section 9 of the IBC. In order to ascertain the correctness of the account maintained by the Operational Creditor and the Corporate Debtor respectively, there requires a detailed hearing for which the parties have to approach the proper Forum.

10. Considering the evidence and the material on record, we hold that there appears dispute about whether any amount is payable by the Corporate Debtor to the Operational Creditor. In view of the ruling of the Hon'ble Apex Court in the case of *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd., 2017 (AIJEL-SC 60798)*, this application is not maintainable before this Adjudicating Authority.

11. In view of the above, the CP (IB) No.251/9/NCLT/AHM/2019 stands rejected with no order as to costs.



12. The Registry is directed to communicate a copy of this order to the petitioner and to the respondent.

-SD-

**KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)**

-SD-

**MADAN B GOSAVI
MEMBER (JUDICIAL)**

Sudha