IN THE NATIONAL COMPANY LAW TRIBUNAL, DIVISION BENCH – I, CHENNAI

CP/IB/95/CHE/2023

(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of Lakshmi Machine Works Limited

Krisam Automation Private Limited
Plot No. SPL-04, 3rd Main Road
KSSIDC Industrial Area, Jigani,
2nd Phase, Bengaluru- 560 105. … *Applicant/Operational Creditor*

-Vs-

Lakshmi Machine Works Limited
Perianaickenpalayam, SR Vidyalaya Post,
Coimbatore- 641 020. …*Respondent/Corporate Debtor*

Order Pronounced on ***22nd November 2023***

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor: Anusha Peri, Advocate
For Corporate Debtor: AK Mylsamy, Advocate

ORDER

Hearing conducted through VC

Under Adjudication is the Application, filed by Krisam Automation Private Limited(hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Lakshmi Machine Works Limited (hereinafter referred to as 'Corporate Debtor'). It is prayed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part-I of the Application sets out about the Operational Creditor.It is stated that the Operational Creditor is a Private Limited Company incorporated under the Companies Act, 1956 on15.02.2008with CIN No: U29221KA2008PTC045297. Part-II of the Application states that the Corporate Debtor is a Public Limited Company with CIN:L29269TZ1962PLC000463, incorporated on 14.09.1962 under the Companies Act, 1956. The Registered Office of the Corporate Debtor as per the Application is situated at Perianaickenpalayam, SRK Vidyalaya Post, Coimbatore-641020. In Part III of the application, the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal.

3. The Affidavit verifying the application is placed at Page No 107-110 of the Application typeset. One Mr.Tadepalli Venkata Ravi Kumar, has sworn the affidavit as the authorized representative of the Operational Creditor. [Copy of the board resolution authorizing Mr.Tadepalli Venkata Ravi Kumar to file this Application is placed at page no 57 of the Application typeset.]

4. In Part-IV of the Application, it is stated that a total sum of Rs.1,01,78,053/- (Rupees One Crore One Lakh Seventy Eight Thousand and Fifty Three only) is being claimed by the Operational Creditor as the Operational debt inclusive of interest till date @ 18.75% p.a. It is stated that default in the payment occurred when the Corporate Debtor failed to make payments against each of the invoices raised by the Operational Creditor on or before the due date. [The working of the total amount owed by the Corporate Debtor to the Operational Creditor is placed as Annexure VI of the Application typeset.]

5. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the existence of 'Operational debt'.

6. It is stated that, the Corporate Debtor for its requirement had placed an order on 22.02.2016 vide purchase order number 11CG/1607963, for the machinery namely Tube Cutting Laser Machine plus Laser Source with Cutting Head for Centering Sleeve ('machinery'). [Copy of the Purchase Order dated 22.02.2016 placed by the Corporate Debtor to the Operational Creditor is attached as Annexure III to the Application typeset.]

7. It is stated that, the Operational Creditor after receipt of the aforesaid order, supplied the Machinery on 09.10.2017. The same was duly received by the Corporate Debtor. As per agreed terms, the Operational Creditor raised an invoice being Invoice No: KAPL/17-18/017 for Rs. 1,77,00,000 (Rupees One Crore Seventy Seven Lakh only). The invoice amount was to be payable within 45 days as per the provisions of the Micro Small Medium Enterprises Development Act, 2006 ('MSMED Act). [Copy of the invoice dated 09.10.2017 raised by the Operational Creditor on the Corporate Debtor is attached as Annexure IV to the Application typeset.]

8. It is stated that, the Operational Creditor adjusted the advance amount Rs. 1,12,50,000 received from the Corporate Debtor between

10.05.2016 and 07.06.2016 as against the invoice amount. Further, an amount of Rs. 20,00,000 (Rupees Twenty Lakhs only) was received on 18.11.2017 vide UTR Ref no: CITIN17853951493. Subsequently an amount of Rs. 7,00,000 (Rupees Seven Lakhs only) was received on 17.01.2018 vide UTR Ref no: CITIN18807282058. [Copy of the details of payments received from the Corporate Debtor in a tabular form is attached as Annexure V to the Application typeset.]

9. It is stated that the Corporate Debtor has not made payment with respect to the balance payable amounting to Rs.37,50,000/- (Rupees Thirty Seven Lakhs Fifty Thousand only).

10. It is stated that, several reminders and requests were made through mails by the Operational Creditor to the Corporate Debtor, but no reply came from them.

11. It is stated that, as per Section 16 of the MSMED Act, where any buyer fails to make payment of the amount to the supplier, as required under Section 15 of the MSMED Act, the buyer shall be liable to pay compound interest with monthly rests to the supplier on that amount at three times of the bank rate notified by the Reserve Bank being 6.25% p.a.. [Copy of e-mail correspondences between the Operational

Creditor and the Corporate Debtor evidencing acknowledging payment liability is attached as Annexure VII of the Application typeset.]

12. It is stated that as under as per Section 16 of the MSMED Act interest payable is 18.75%p.a.Thus applying the same, the total outstanding debt is Rs. 1,01,78,053 (Rupees One Crore One Lakh Seventy Eight Thousand Fifty Three Only) which includes the compound interest amounting to Rs. 64,28,053 (Rupees Sixty Four Lakhs Twenty Eight Thousand Fifty Three only) calculated with monthly rests up to 10.01.2023. [Copy of the workings for computation of default and dates of default as per Section 16 of MSMED Act 2006, in tabular form is annexed as Annexure VI of the Application typeset.]

13. It is stated that, the Operational Creditor had sent repeated remainders to the Corporate Debtor for repayment of the outstanding dues, however nothing fructified. The Operational Creditor was thus constrained to issue Section 8 Demand Notice to the Corporate Debtor on 11.01.2023 which was delivered by speed post to the Corporate Debtor on 18.01.2023. [Copy of the demand notice (Form 3)

dated11.01.2023 is attached as Annexure VIII of the Application typeset.]

14. It is stated that, reply to the Section 8 Demand Notice dated 11.01.2023 was sent to the Operational Creditor through the Respondent counsel on 25.01.2023.In the Reply dated 21.05.2023, the Respondent had contended that there were issues on the quality of the machinery supplied and they are not liable to pay the remaining amount. [Copy of the Corporate Debtor's reply to the demand notice dated 25.01.2023 is attached as Annexure IX to the Application typeset.]

15. Under such circumstances, the present Application has been filed before this Tribunal.

16. The Respondent/Corporate Debtor has filed a comprehensive reply before this Tribunal on 30.06.2023.

17. It is stated by the Respondent in para 27 and 28 of the Reply, that a substantial amount of the Applicant's claim, accrues from the interest payable under the MSMED Act, however the invoice or the purchase order does not have an interest clause.

18. It is stated that, the Applicant has sought shelter under the MSME Act, solely for the purpose of meeting the threshold requirements to initiate application against the Respondent under IBC, 2016.

19. Further in para 31 of the Reply statement it is stated that, in the absence of a specific agreement between the parties regarding the interest on delayed payments, the Applicant cannot claim any interest whatsoever under Section 9 of IBC, 2016 as the term 'Operational Debt defined under Section 5(21) of the IBC, 2016 covers only four matters such as goods, services, employment, and government dues and does not include 'interest charged on delayed payments.

20. It is alleged, the Applicant's intention is to recover the outstanding payment, which is not at all the intention and object of the IBC, 2016. This Tribunal is not a recovery forum to entertain such baseless recovery suits led in the disguise of the present Application and hence this Application needs to be dismissed *in liminie.*

21. Heard the submissions of both the parties and perused the documents placed on record. This Tribunal is of the considered

opinion that this Application is to be dismissed for the reasons mentioned hereunder:

(i) The Applicant has failed to produce any document evidencing the interest amount payable by the Corporate Debtor in case of delayed payment. There is no interest clause in the invoice raised and also the Operational Creditor has not placed on record any document / agreement to show that delayed payments will attract interest.

(ii) The Operational Creditor has been relying upon Section 16 of the MSMED Act, 2006 to contend that they are entitled to claim interest. However, under the provisions of IBC, 2016 and in order to arrive at an 'operational debt', the Operational Creditor cannot charge interest under Section 16 of the MSMED Act, 2006. Under such circumstances, the interest portion claimed by the Operational Creditor under MSMED Act, 2006 cannot be treated as an 'operational debt'.

(iii) The principal debt amount claimed is Rs.37,50,000/- which is below the IBC pecuniary threshold of Rs. 1 Crore. The Relevant portion of the Notification, S.O 1205(E) dated 24.3.2020 issued by the Ministry of Corporate Affairs, Government of India, is extracted below,

"S.O. 1205(E).—In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section."

(iii) The Hon'ble NCLAT in the case of **Jumbo Paper Products –Vs– Hansraj Agrofresh Pvt. Ltd**. *Company Appeal (AT) (Ins) No. 813 of 2021,* has clearly affirmed that the threshold limit to file under the IBC after the said notification S.O 1205(E) dated 24.3.2020 is Rs. 1,00,00,000/-.

"It is seen that notification dated 24.3.2020 (supra) makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore."

22. In view of the discussions made supra, the instant Application filed by the Applicant under Section 9 of IBC, 2016 is not maintainable. It is accordingly **dismissed**. No costs.

-sd-

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)

-sd-

SANJIV JAIN
MEMBER (JUDICIAL)

Vinita Varshini.K