**IN THE NATIONAL COMPANY LAW TRIBUNAL**
**BENGALURU BENCH**

C.P. (IB)No.337/BB/2019
U/s.9 of the IBC, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

**Between:**

APS Poly Fab Private Limited
R/o. at Saraswati Nilaya,
No.747/42, 5th Main Road,
4th Cross, Vijayanagar,
Bengaluru – 560 040. - Petitioner/Operational Creditor

**And**

Printech Digital Imaging Private Limited
R/o. at No.270/2, Bhanu Nursing Home,
M. Vishweshwaraiah Road,
Bommanahalli,
Bengaluru – 560 068 - Respondent/Corporate Debtor

**Date of pronouncement: 13th May, 2021**

**Coram:** 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

**Parties/Counsels Present:**

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| For the Petitioner | : | Shri Vijay Narayan |
| For the Respondent | : | Shri B. Vachan |

**O R D E R**

**Per:** Rajeswara Rao Vittanala, Member (J)

1. C.P.(IB)No.337/BB/2019 is filed by APS Poly Fab Private Limited , U/s.9 of the IBC, 2016, R/w Rule 6 of I&B (AAA) Rules, 2016, by *inter alia* seeking to initiate Corporate Insolvency Resolution Process (CIRP)

in respect of Printech Digital Imaging Private Limited on the ground that it has committed default for an amount of Rs.11,60,381/- (Rupees Eleven Lakhs Sixty Thousand Three Hundred and Eighty One only) which includes principal amount and interest @ 18% p.a.

2. Brief facts of the case, as mentioned in the Company Petition, which are relevant to the issue in question, are as follows:

(1) APS Poly Fab Private Limited (hereinafter referred as Petitioner/ Operational Creditor), is a Private Limited Company was incorporated on 22.02.2011 under the Companies Act, 1956. It is involved in the business of Manufacturing of rubber products.

(2) Printech Digital Imaging Private Limited (hereinafter referred to as Respondent/Corporate Debtor) is a Private Limited Company, was incorporated on 25.08.2006, under the Companies Act 1956, bearing CIN: U22219KA2006PTC040279. Its Authorised Share Capital is Rs.1,25,00,000/- (Rupees One Crore Twenty Five Lakhs only) and Paid-up Capital is Rs.1,10,57,000/- (Rupees One Crore Ten Lakhs Fifty Seven Thousand only). It is involved in the business of Printing and Service activities related to printing.

(3) The Pvc Flex Sheeting in rolls were supplied and accepted by the Corporate Debtor but thereafter the Corporate Debtor had failed to make the payment for the outstanding dues of the invoice dated 10.06.2016 and 05.07.2016 amounting to Rs.7,59,962/-. The Corporate Debtor is also liable to pay an interest on the outstanding due amounting to Rs.4,00,419/- being interest @ 18% p.a., as per the terms of the invoice from the due date of the invoice till the date of the Demand Notice. After giving several reminders to clear the outstanding dues, the Operational Creditor issued the statutory Demand Notice in Form-3 along with Form-4 dated 6.7.2019 to the Corporate Debtor at its registered office and also to the Directors of the Corporate Debtor along with the

requisite documents as required U/S. 8(1) R/w. Rule 5(1) (a) & 5(1) (b) of the IBC, 2016. Even though the Operational Creditor had reminded several times to clear the outstanding dues but the same remain unpaid till date and the Operational Creditor had received the reply letter dated 17.07.2019 from Corporate Debtor after the issue of the Demand Notice.

(4) It is stated that the certified copy of the Statement of Bank Account of Operational Creditor maintained with State Bank of India where deposits are made or credits are received normally by the Operational Creditor in respect of the Corporate Debtor, reflects that no amount has been received by the Operational Creditor from the Corporate Debtor post the issue of Demand Notice.

3. The Respondent has filed its Statement of objections dated 10.02.2020, by inter alia contending as follows:

(1) The Petition is not maintainable either in law or on facts and the same is liable to be dismissed in liminie. The material supplied under the subject invoice was of low quality leading to loss to the Corporate Debtor. The Corporate Debtor is not liable to pay any money to the Operational Creditor. This issue had been brought to the notice of the Operational Creditor vide several emails and letters.

(2) The Operational Creditor is represented by Mr. Pramod Bansal with whom the Corporate Debtor has interacted on numerous occasions. The said Mr. Pramod Bansal represents the Operational Creditor as well as M/s. Maruti Flex Pvt. Ltd and he has routed the request for flex either to the Operational Creditor or to M/s. Maruti Flex Pvt. Ltd., the Operational Creditor imports flex from M/s. Star Flex Pvt. Ltd., South Korea through its Master Distributor in India namely M/s. Sun Shine Technologies, New Delhi. The flex are used for printing images on it and then are

mounted on large billboards for advertisement. The Corporate Debtor has been in the printing industry for the past twenty years and uses very sophisticated printing machinery to print on the fix. Further, the Corporate Debtor received orders from "M/s.Bharti Airtel Ltd", Hyderabad for printing on flex as per the images supplied by "M/s. Bharti Airtel Ltd". On receipt of the demand, the Corporate Debtor requested Mr. Pramod Bansal to supply flex for printing these images. Accordingly, Mr. Pramod caused supply of the flex through the Operational Creditor.

(3) When the flex were printed on and were sent to be mounted to various bill boards, the ink was stuck to each other on the folded prints, due to which reason the flex could not be mounted. The issue of the ink being stuck was a coating issue of the flex. The flex imported from Star Flex, South Korea through Sunshine Technologies, New Delhi, was of poor quality resulting in failure of the print. "Airtel" rejected these prints which compelled the Corporate Debtor to replace them at their cost by procuring locally manufactured flex. This issue was brought to the notice of the Operational Creditor through several emails and telephone conversations. Even the email sent by "Airtel" reprimanding the Corporate Debtor about the bad quality was also sent to the Operational Creditor. In response to these emails, the Operational Creditor on 01.07.2016 forwarded an email received from Star Flex, South Korea who have quite surprisingly concluded that the print failed due to fault in folding the flex after printing. This was surprising as the Corporate Debtor has been in the print business for more than twenty years and definitely knows how to correctly handle the printed flex. Further the said issue did not arise with the other printed flex obtained locally and other distributors clearly showing the fact that the issue was not with the folding of the printed flex.

(4) The representatives of Star Flex and Sunshine Technologies, New Delhi visited Corporate Debtor's office as well as that of "Airtel" and understood the problem relating to the flex. In this regard, our client has also written the email dated 28.09.2016 calling upon the Operational Creditor to raise the credit note for the loss of material and air courier charges incurred for the reprinted material.

(5) As the Operational Creditor failed to raise the credit note, the Corporate Debtor sent an email dated 12.11.2018 calling upon Mr. Pramod Bansal to resolve the said issue. It is on the receipt of this email that the Operational Creditor has initiated this proceeding as a ploy to avoid payment to the Corporate Debtor. The claim of the Operational Creditor is time barred. The claim under the invoices dated 10.06.2016, 11.06.2016, 16.06.2016 and 21.06.2016 are time barred. The remaining invoice dated 05.07.2016 is for a sum of Rs.61,936/- is even though not time barred, is not enough to invoke the jurisdiction of this Adjudicating Authority and on this ground alone the Petition is liable to be dismissed, The IBC cannot be used to recover time barred debts.

4. Heard Shri Vijay Narayan, learned Counsel for the Petitioner, and Shri B. Vachan, learned Counsel for the Respondent. We have carefully perused the pleadings of the Parties, extant provisions of the Code, the Rules made thereunder and the Law on the issue.

5. As stated supra, the claim raised with reference to amount due for invoices dated 10.06.2016 and 05.07.2016 amounting to Rs.7,59,962/- along with an interest on the outstanding due amounting to Rs.4,00,419/- @ 18% p.a., as per the terms of the invoice from the due date of the invoice till the date of the Demand Notice. It is not the case of Petitioner that debt in question is un-disputed. The

Respondent has filed list of various emails exchanged with the Petitioner to show that the debt and default are in dispute. The email dated 12th November, 2018 was a reminder about debit note issued to the Petitioner through said Bansal. In addition, in pursuance to statutory notice issued on 06.07.2019, under the provisions of Code, the Respondent has raised dispute about the claim made by the Petitioner, as detailed in their reply as briefly stated supra. The Petitioner, in his Affidavit dated 13th August, 2019, filed U/s 9(3)(b) of Code, has also admitted to have received the said Reply. Therefore, there is a pre-existing and bonafide dispute exists about the claim made by the Petitioner. Apart from pre-existing dispute, the instant Petition is filed to recover such disputed amount rather than to initiate CIRP on justified grounds.

6. For the aforesaid reasons and circumstances of the case, and taking into consideration of settled position of law on the issue, we are of the considered opinion that the Petitioner failed to make out any case so as to initiate CIRP in respect of Corporate Debtor. Hence, the Petition is liable to be dismissed.

7. In the result. C.P.(IB)No.337/BB/2019 is hereby dismissed. We make it clear that this order will not come in the way of Petitioner to invoke any other law so as to recover the claim in the instant Petition. No order as to costs.

**ASHUTOSH CHANDRA**
**MEMBER, TECHNICAL**

**RAJESWARA RAO VITTANALA**
**MEMBER, JUDICIAL**

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