

**NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. (IB) 3057/2018

Under section 9 of the IBC, 2016

In the matter of

Future Electronics Inc. (Distribution) Pte.
Ltd. 8, Marina Boulevard, #05-02, Marina
Bay Financial Centre, Singapore 018981
India Address: The Oak-Kalyani Platina,
5th Floor, Survey #129/4, Kundalahalli,
K.R. Puram, Hobli, Bangalore-560066.

.... Petitioner

v/s.

Chairpertech Electronics Private Limited
2, Mansarovar CHS LTD Sector 9, Plot No:
B-62, Airoli, Navi Mumbai, Maharashtra,
400078

.... Corporate Debtor

Order delivered on: 14.02.2020

Coram:

Hon'ble Bhaskara Pantula Mohan, Member (Judicial)

Hon'ble Shyam Babu Gautam, Member (Technical)

Appearance:

For the Petitioner: Mr. Prathamesh Kamath, Mr. Keanan
Nagporwala & Mr. Rushil Mathur,
Advocates i/b Kochar & Co.

For the Respondent: S.R. Jariwala, Chartered Accountant & Ami
Jain, Advocate

Per: Bhaskara Pantula Mohan, Member (Judicial)

ORDER

1. This Company Petition is filed by Future Electronics Inc. (Distribution) Pte. Ltd. (hereinafter called "Operational Creditor") by invoking the provisions of Section 9 of Insolvency and Bankruptcy Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Chaipertech Electronics Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate Debtor committed default in making payment to the Financial Creditor.

FACTS OF THE CASE

2. The Operational Creditor is a company based in Singapore bearing Identification Number 199507398C and has filed this petition through its authorized signatories in India. The petitioner has annexed the Power of Attorney in this regard. The Corporate Debtor is a company bearing CIN – U74999MH2008PTC179703 and having nominal share capital of Rs. 5,00,000/- and paid up capital Rs. 1,00,000/-.
3. The Operational Creditor is a company which supplies products/materials (electronic magnetic components). It used to supply the said products/materials to the Corporate Debtor. The counsel for the Operational Creditor mentioned that the Corporate Debtor approached them in or around the month of April 2016 and had placed purchase orders sent through separate e-mails by the Director of the Corporate Debtor Mr. Jugal Dhawan. Accordingly, the products were duly delivered for which the necessary customs clearance of the products by paying the customs duty were paid by the Corporate Debtor. There were invoices raised by the Operational Creditor for the said purchase of products bearing the terms and conditions and were printed overleaf of the said invoices according to which, the Corporate Debtor was to discharge its payment obligation.
4. The amount to be in default according to the Operational Creditor is Rs.2,17,95,594.40/- (Two Crore Seventeen Lakh Ninety-Five

Thousand Five Hundred and Ninety-Fort and Forty Paise Only). This amount is a sum total of Rs.1,73,86,654.4/- payable towards the purchase price of the products by the Corporate Debtor from the Operational Creditor along with an interest of Rs.39,08,940/- payable by them and is also inclusive of Rs.5,00,000/- which is a reasonable estimate of legal fees incurred till 07.08.2018. The said interest is claimed under Clause 3 of the 'Terms and Conditions' of the Loan Agreement calculated at a rate of 1% p.m. The Operational Creditor is entitled to claim legal fees incurred in the recovery of the sums due in terms of Clause 3 of the 'Terms and Conditions'.

5. The counsel for the Operational Creditor mentioned that admission was made by the Corporate Debtor on various occasions. In support of this submission various e-mails have been placed on record which were exchanged between them.
6. The counsel for the Operational Creditor further mentioned that despite multiple reminders, the Corporate Debtor failed to discharge its payment obligations. Also, a demand notice dated 17.04.2018 was duly sent by the Operational Creditor to the Corporate Debtor but no reply was made to this demand notice.
7. The Corporate Debtor on the other hand has denied all the averments made by the Operational Creditor. A strong contention was raised by the Corporate Debtor that the Operational Creditor did not annex the legal notices and replies of the Corporate Debtor prior to issuance of the demand notice and hence, by doing this, has tried to suppress the facts from this Tribunal. The Corporate Debtor has annexed all these notices in their reply.
8. The Corporate Debtor has mentioned that there were certain disputes between both the parties, the reasons for which are as follows:
 - i. That the applicant has supplied the material without placement of orders by the Corporate Debtor. A legal notice dated 13.11.2017 was also sent by the Corporate Debtor to the Operational Creditor stating that certain goods worth Rs.1,00,00,000/- were also dumped by the Operational Creditor on 10.04.2015. The said goods were accepted by the Corporate Debtor only to avoid penalty and damages

and on the assurance of help in selling the goods by the Corporate Debtor. But rather it was found that the Operational Creditor instead of helping the Corporate Debtor was selling the goods to the customers of the Corporate Debtor. It was also readily accepted by the Corporate Debtor to return the goods to the Operational Creditor subject to payment of custom duty and other expenses incurred by them. The Corporate Debtor also accepted to make the payment upon the sale of the dumped goods.

- ii. That the issue of quality of material remained unresolved. Several e-mails were sent by the Corporate Debtor to the Operational Creditor complaining about the quality of products delivered which are annexed with the copy of the reply.
- iii. That the purchase orders presented by the Operational Creditor are not signed by the Corporate Debtor. Specimen copy of the genuine purchase orders has been annexed at annexure 9 of the reply.

9. Therefore, the Corporate Debtor strongly contended that the Operational Creditor has not knocked the doors of the Tribunal with clean hands and therefore, this petition deserves to be dismissed.
10. To the reply filed by the Corporate Debtor, the Operational Creditor has filed his Affidavit in Rejoinder to which again the Corporate Debtor has filed Sur-Rejoinder. There were strong averments made by both the parties against each other. After hearing both the parties in detail and having gone through all the documents submitted by them, this Bench considers to pass the following order:

ORDERS

11. We have heard both the parties at length perused all the documents submitted by them. There are a lot of discrepancies in the present matter. Both the parties have made their own submissions and after careful examination of the entire matter, there remains no doubt about the supply of goods which was made by the Operational Creditor and its due receipt by the Corporate Debtor. The Operational Creditor has annexed the

invoices raised, e-mails exchanged between both the parties and the statement of accounts for the same.

12. The Corporate Debtor further raised a contention that the documents submitted by the Operational Creditor are manipulated. It was mentioned that Consolidated Invoices were raised by the Operational Creditor even when the individual invoices were raised earlier. This contention does not prove a point and even if admitted, will not absolve it from its liability to pay the amount due to the Operational Creditor.
13. Further the Corporate Debtor has also asked for initiation of civil or criminal trial against the Operational Creditor upon the ground that the documents have been fabricated for securing unfair gains. If this was the case, the Corporate Debtor could have initiated a criminal trial against the Operational Creditor which has not been done. Hence, this objection appears to have been raised for the sense of objection only.
14. The main contention raised by the Corporate Debtor against the Operational Creditor is that there was a dispute in existence between both the parties. The Corporate Debtor mentioned in his reply that the Operational Creditor has dumped certain goods even when the purchase order was not placed. If this was the scenario, there is nothing in writing to prove this contention of the Corporate Debtor. Moreover, when the goods were dumped, it was the duty of the Corporate Debtor to return the goods to the Operational Creditor then and there but the Corporate Debtor neither returned the goods nor any complaint was made in that regard. Also, it is to be noted that the custom duty on those goods was paid by them which clearly shows the intention of the Corporate Debtor that they were not wanting to return the goods and now are raising frivolous grounds for the dismissal of the petition.

It was brought to light by an e-mail dated 11.11.2016 that the Corporate Debtor mentioned about the issues it is facing regarding the goods supplied by the Operational Creditor and has asked to take back the goods. It was stated that this would help the Corporate Debtor in clearing the payments of the

Operational Creditor at the earliest. But later by an e-mail dated 24.10.2017, it was agreed by the Corporate Debtor to make the payment of the Operational Creditor on a regular basis.

15. There were several other e-mails as well which were addressed to the Operational Creditor by the Corporate Debtor dated 08.07.2016, 27.07.2016, 29.07.2016, 10.08.2016, 19.08.2016, 22.08.2016, 23.08.2016, 19.09.2016, 28.09.2016, 07.11.2016, 27.03.2017, 05.04.2017, 21.07.2017, 26.07.2017. After going through these e-mails, it has become crystal clear that the Corporate Debtor has several times admitted that they are bound to pay the due amount to the Operational Creditor and has again and again sought time for making the balance payment. The contention of the Corporate Debtor that the goods were dumped on 10.04.2015 by the Operational Creditor when even the purchase order was not made by them cannot be relied upon, for the simple reason that if this was the scenario, it was the duty of the Corporate Debtor to bring it to the notice of the Operational Creditor and stop receiving the goods. It could have even returned the goods sent by the Operational Creditor if they had not placed the orders for the same.
16. Also, the Corporate Debtor has mentioned about the ongoing dispute only in its reply. According to Section 8 of the Code, it is the duty of the Corporate Debtor to bring it to the notice of the Operational Creditor about the ongoing dispute between the parties if any. Here, it has become important to place reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited [(2018) 1 Supreme Court Cases 353]**, wherein it was held in paragraphs 33 and 51 that:

“33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e. on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule

*5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). **Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of the suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute [Section 8(2)(a)]......”***

51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application, under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires 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 to 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.”

Also, the paragraphs 15 and 18 of the judgment of Hon'ble NCLAT in the matter of **Ahluwalia Contracts (India) Ltd. V. Raheja Developers Ltd. (NCLAT – Company Appeal (AT)(Insolvency) No. 703 of 2018**, need to be relied upon which runs as follows:

“15. In an application under Section 9, it is always open to the ‘Corporate Debtor’ to point out pre-existence of a dispute. It is to be shown that the dispute was raised prior to the issuance of the demand notice under Section 8(1).

18. From the aforesaid decision, it is clear that the existence of dispute must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice. If it comes to the notice of the Adjudicating Authority that the ‘operational debt’ is exceeding Rs,1 Lakh and the application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid ‘operational debt’, the application under Section 9 cannot be rejected and is required to be admitted.”

But there was no reply made to the Demand Notice dated 17.04.2018 sent by the Operational Creditor. The existence of the said dispute was brought to the knowledge of the Operational Creditor by the Corporate Debtor only by a legal notice dated 26.07.2017.

17. Also, as the per the submissions of the Operational Creditor, the Corporate Debtor has stated that it is unable to discharge its payment obligations because of the NPA situation in the country which has become bad thanks to Vijay Mallya episode. The Corporate Debtor also blames the general state of India’s economy for its failure to pay the amounts. The Corporate Debtor further assures the petitioner that they are looking to raise bank funding to meet its payment obligations and it shall repay all the petitioner’s amounts promptly once it receives bank funding. These instances make it clear that the respondent always intended to make payments to the Operational Creditor and never in fact disputed the obligation.

18. The Operational Creditor also mentioned that the Honglitronics assignment which is in dispute in the present matter can also be dropped out from the ambit of current claim. Even if this is done,

the amount comes well above the minimum required amount of Rs.1 Lakh.

19. Here, it is pertinent to note that the Corporate Debtor has neither stopped placing orders to the Operational Creditor, nor has initiated any civil or criminal proceeding against them. Thus, we are of the firm belief that this is only an afterthought and concocted contentions of the Corporate Debtor which cannot be relied upon.
20. Moreover, the ledger accounts of the Corporate Debtor for the Financial Year 2016-2017 maintained by the Operational Creditor bears the amount of debt of Rs.1,75,56,450.65/- which was due and payable on the date of closing of the account i.e. 31.03.2018.
21. Therefore, this Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 8 & 9 of the Insolvency and Bankruptcy Code admits this Application declaring moratorium with the directions as mentioned below:
 - (a) That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) That the order of moratorium shall have effect from 14.02.2020 till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- (e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- (f) That this Bench hereby appoints Shivaganga Muralidhar Pramod, 20th Main, Banashankari 2nd Stage, Bengaluru, Karnataka, 560004 bearing ICSI-IPA Registration No - IBBI/IPA-002/IPN00222/017-18/10674, as an interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.

22. Accordingly, this Petition is admitted.

23. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-

SHYAM BABU GAUTAM
Member (Technical)

/SSB/

Sd/-

BHASKARA PANTULA MOHAN
Member (Judicial)