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BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

CP(IB) 526 of 2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.03.2021

Name of the Company: Auroshree Enterprises Pvt. Ltd.
V/s
Ambition Mica Ltd

Section 9 IBC,2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(through video conferencing)

The Order is pronounced in the open court vide separate sheet.

Sd/-
CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 1st day of March, 2021

Sd/-
MANORAMA KUMARI
MEMBER JUDICIAL

SAP

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD
COURT - 1

C.P. No. (IB) 526/9/NCLT/AHM/2019

In the matter of:

M/s. Auroshree Enterprises Private Limited
166, Kharvel Nagar
Janpath, Unit 3
BHUBANESHWAR 751 001 : **Petitioner**
Operational Creditor

Versus

M/s. Ambition Mica Limited
615-619, 6th Floor
Shivam Arcade
Nr. Satva-1, Hanspura
Naroda Dehgam Road
Naroda
Ahmedabad 382 330
GUJARAT STATE : **Respondent**
[Corporate Debtor]

Order delivered on 1st March, 2021

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Petitioner	:	Mr. Nilesh P. Udernani, Advocate
Respondent	:	Mr. Prashant Patel, Advocate

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Nikhil Agarwal, Director of **M/s. Auroshree Enterprises Private Limited** filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The applicant/operational creditor, a private limited company, having identification No. U269420R1991PTC0022836 and having its registered office at Bhubaneswar, Orissa, carrying on the business of dealership of ply Board, mica and related products of various companies, including M/s. Ambition Mica Limited, the corporate debtor, has submitted that, the respondent is indebted a total sum of **Rs. 23,12,482.88 (Rupees twenty-three lacs twelve thousand four hundred eighty-two and paise eighty-eight only) which include interest amount of Rs. 1,97,507.66.**

3. It is submitted by the applicant that it is dealer of Ply Board, Mica and related products of various companies, including the respondent company, was in long time business relations with the respondent company till September,2018. After September, 2019, the local market started not accepting the goods manufactured by the respondent company, consequent upon which the applicant started incurring huge losses by holding/stocking the non-saleable stock. That, on 13.11.2018, the applicant returned to the respondent stock worth Rs. 42,60,290/- and as per the prevailing trade policy, the respondent was required to refund the money. That, after lot of persuasion, on 27.05.2019, respondent replaced stock worth Rs. 10,12,841.00, and was reluctant to replace remaining/ further stock.

4. It is further submitted by the petitioner that the respondent is not settling the dues worth Rs. 21,14,975.00 being the value of goods lying in the premises of applicant since 13.11.2018.

5. It is further submitted by the petitioner that a sum of Rs. 21,14,975/-, on account of principal, had admittedly become due and payable to the petitioner on account of material received by the respondent from the applicant. That, the applicant is also entitled for a sum of Rs. 1,97,507.88, towards interest @ 18% per annum, calculated upto 31.05.2019.

6. It is further submitted by the petitioner that despite repeated reminders and follow-up, the respondent did not release the payment, therefore, the applicant under section 8 of the I B Code, issued demand notice dated 05.06.2019 calling upon the respondent to clear the outstanding dues.

7. In support of its claim, the applicant has annexed to the application copy of the all the documents required for considering the application.

8. The respondent/corporate debtor is a limited company registered under the provisions Companies Act, 1956, on 19.03.2010 and having identification No. L25202GJ2010PLC059931 and having registered office at Surat, Gujarat State. Authorised share capital of the respondent company is Rs.16,00,00,000/- and paid up share capital is Rs. 14,92,20,000/-.

9. The respondent filed affidavit in reply inter alia stating that...

- that, it is a profit making company employing 54 persons and regular in repayment of secured loans;
- that, the applicant was one of the distributors of the respondent for the state of Odisha since 2015 till its resignation on 24.09.2018 and during the period had business with the applicant around Rs. 2.5 crores;

- that, there is pre-existing dispute;
- that, instant petition is not maintainable because the claim mentioned is not operational debt.

Findings:

10. Heard the learned counsels appearing for both the sides and perused the documents annexed to the application/reply.

11. The first and foremost point coming up for consideration of the Adjudicating Authority is whether the claim amount falls within the definition of 'operational debt'. In our opinion claim of the applicant does not fall within the definition of Section 5 (21) of the Insolvency and Bankruptcy Code, 2016 since there is no claim in respect of the provisions of good or service. On perusal of the records it can be seen that the petitioner was one of the distributors of the respondent company during the period from the year 2015 till its resignation on 24th September, 2018 and during such period the respondent had business worth Rs. 2.5 crores with the petitioner.

12. On perusal of the records it is found that the respondent has filed a copy of resignation of the petitioner dated 24.09.2018 from the distributorship of the respondent company (Annexure R-3 – page 58), wherein, the petitioner has voluntarily offered its resignation. This fact has not been disclosed by the petitioner. From the records it is clear that after submitting the resignation from the distributorship, the petitioner sent back the goods and raised tax invoice on the respondent for the goods it had received earlier from the respondent itself. Record also shows that on 26.03.2019, the petitioner sent a mail (Annexure R-4 – page 59) requesting the respondent to send material which has been sent by the respondent vide

tax invoice dated 18.05.2019 (Annexure R-4 -page 60). This fact also has not been disclosed in the petition.

13. On perusal of the records it is found that it is not an issue of sale – purchase transaction between the respondent and the petitioner, it is mere a commercial arrangement between the petitioner and respondent for replacement of goods due to resignation from the distributorship of the respondent company and it is already admitted by the petitioner in its email dated 24.09.2019 inviting the respondent for amicable settlement. Further, record shows that the respondent had dispatched part of the requirement of the petitioner towards replacement of goods as per its invoice (Annexure R5 – page 60) and the same has been reflected/admitted in point No. 4, part – IV, form 5 of the petition. In short, there was not any reluctance to replace the stock in possession of the petitioner, it is only delay in the delivery of goods and delay in delivery of goods does not tantamount to default of payment.

14. On perusal of the records it is found that there is no default in payment of debt, but, it is only an arrangement of replacement of unsalable goods by mutual understanding of both the parties and the applicant has filed the instant petition for recovery of their dues. Since the very objective of the Code is reorganisation and insolvency resolution of corporate persons, no objective will be served by subjecting a solvent company into CIRP.

15. Under the facts and circumstances and as discussed above the petition is not maintainable and deserves to be dismissed in view of the above grounds. In the result, company petition No. CP (IB) 526 of 2019 stands dismissed and disposed of without cost.

Bhaskar Ingle Harihar

16. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.

Chockalingam Thirunavukkarasu	**Ms. Manorama Kumari**
Adjudicating Authority	**Adjudicating Authority**
Member (Technical)	**Member (Judicial)**

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