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

CP(IB) 276 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 02.03.2021

Name of the Company: BSE Ltd
V/s
Novagold Petro Resources Ltd

Section 9 IBC,2016.

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

ORDER
(through video conferencing)

None appeared on behalf of the parties.

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

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 2nd day of March, 2021

MANORAMA KUMARI
MEMBER JUDICIAL

BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

COURT – 2

CP (IB)No.276/9/NCLT/AHM/2019

In the matter of:

BSE Limited
(earlier known as Bombay Stock Exchange Ltd.)
25th **Floor**, P.J. Towers
Dalal **Street**
Fort
Mumbai-400 001

Petitioner
(Operational Creditor)

Versus

Novagold Petro-Resources Limited
A-202, Vrindavan Township
Iskon Mandir Road
Gotri, Vadodara 390 021
Gujarat State

Respondent
(Corporate Debtor)

Order delivered on 2nd March, 2021.

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

Appearance:

Advocate, Mr. Amit Laddha for the Petitioner-Operational Creditor.
None for the Respondent-Corporate Debtor.

ORDER

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

1. The present Company Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ["I&B Code" for short] read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ["Rules" for short], by the Operational Creditor, viz., BSE Limited, through its Authorized Signatory, Mr. Atul Dhotre, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Novagold Petro-Resources Ltd., (hereinafter referred to as Corporate Debtor).

2. The Petitioner-Operational Creditor is incorporated under the provisions of the Companies Act, 1956 and is a recognized stock exchange under the provisions of the Securities Contracts (Regulation) Act, 1956 and having CIN: L67120MH2005PLC155188, having registered office at Fort, Mumbai.

3. The corporate debtor, i.e. Novagold Petro-Resources Ltd. is incorporated under the provisions of the Companies Act, 1956, having identification No. L23200GJ1994PLC022009 and having registered office at Vadodara, Gujarat. Authorized share capital of the corporate debtor is Rs.7,00,00,000/- and paid up share capital is Rs.5,52,19,000/-.

4. The petitioner-operational creditor has submitted that in line and compliance with Section 21 of the SCRA and as per the mandatory requirement of the petitioner, a Listing Agreement had executed between the petitioner and the respondent on 05.05.1996 (under the name of Osian LPG Bottling Ltd. - earlier name of the corporate debtor company), pursuant to which the securities of the respondent were allowed to be listed and consequently traded on the platform provided by the petitioner subject to continuous compliance of listing requirements under the applicable provisions of law. It is further stated that as per Clause 38 of the erstwhile Listing Agreement dated 05.05.1996, the respondent has to pay the requisite Annual Listing Fees (ALF) to the petitioner on or before 30th day of April every year. The corporate debtor had agreed to unconditional compliances of all the terms and conditions of the Listing Agreement and the Rules, Bye-laws and regulations of the petitioner.

5. It is further stated that the corporate debtor had made payments of the Listing Agreement till Financial Year 2013-

2014 and an amount of Rs. 28,652/- was received from the corporate debtor on 18.06.2013. Thereafter, the respondent had failed to pay the Annual Listing Fee as per the terms and conditions of the agreement dated 05.05.1996, to the petitioner-operational creditor. The total operational debt due and payable by the corporate debtor comes to Rs.11,43,469/- (Rs.10,12,336/- [Principal] + Rs. 1,31,133/- (Interest) (Rupees eleven lacs forty-three thousand four hundred sixty-nine only).

6. That the petitioner had raised invoices from time to time calling upon the corporate debtor to pay the requisite ALF under the Listing Agreement/s and such invoices have been duly served upon the corporate debtor. The petitioner has further submitted that having failed to receive the Annual Listing Fee as per the terms and conditions of the agreement dated 05.05.1996, the petitioner sent Demand Notice dated 28.09.2018 to the corporate debtor, through Speed Post, but the same has been undelivered, as per postal remark 'Not Delivered Addressee moved", as shown in the track report. Thereafter, the demand notice was also sent through e-mail on 10.10.2018 to the corporate debtor. However, the corporate debtor did not respond to the email. It is further submitted that despite repeated reminders/demand notice, the corporate debtor has not paid the operational debt due and payable, therefore, this petition.

7. The petitioner filed the present petition supported with affidavit, listing agreement between the petitioner and the corporate debtor, invoices along with calculation of working, demand notice, etc.

Findings:

8. On perusal of the record, it is found the present company petition filed on 05.04.2019 was notified for the first time on 02.05.2019. On issuance of notice to the corporate

debtor through Registry as well as through petitioner, none appeared from the side of the corporate debtor. Despite giving number of opportunities, the respondent did not appear before this Tribunal nor filed any reply, therefore, paper publication was effected on 27.11.2019. Since the service is complete, the matter has been heard in absence of the corporate debtor.

9. On perusal of the record, it is found that along with the petition, the petitioner has produced on record copy of the agreement dated 05.05.1996, invoices at page no.29 to 38, demand notice, etc.

10. On perusal of the record, it is found that the Demand Notice under Section 8 of the I&B Code was issued by the applicant on 28.09.2018, through registered post. However, the same was returned with a postal remark "Not Delivered Addressee moved". The applicant has also issued Demand Notice through email on the same date demanding the arrears of the Annual Listing Fee. However, no dispute is raised by the corporate debtor.

11. Admittedly, the petitioner received the last payment on 18.06.2013 amounting to Rs. Rs. 28,652/- for the Financial Year 2013-2014. However, the petitioner in Form-5 has stated that debt fell due on 01.04.2015. Further, on perusal of page no. 12, at para-2.10 of the petition, it is found that the respondent has made payment of annual listing fee to the applicant till Financial Year 2013-2014 only. The last payment being received on 18.06.2013 for an amount of Rs. 28,652/-. Thereafter, the corporate debtor did not pay any amount in respect of Annual Listing Fee to the petitioner. Since the debt fell due on 01.04.2015 as admitted by the petitioner, that itself is barred by Law of Limitation, in view of ***B.K. Educational Services*** as held by the Hon'ble Supreme Court of India. While dealing with the point of

limitation in I&B Code, the Hon'ble Apex Court has referred to Article 137 of the Limitation Act and its applicability in other applications as occurring in Part-II of third Division of Schedule to the Limitation Act and observed that this Article 137 is applicable to the application under Section 7 and Section 9 or Section 10 of the Code. In view of the judgment of the Hon'ble Supreme Court, the limitation period is three years, which is to be counted from the date of default. As such, the instant application is hit by the law of limitation.

12. Further, the date of default in Form–5, Part-IV in clause No.2 is not reflected which makes Form-5 incomplete. However, while calculating from the due date as per Form-5 which is shown 01.04.2015, is beyond three years.

13. On perusal of the record, it is found that the present IB petition is filed on 05.05.2019, when the amount was due on 01.04.2015. Further, the agreement so entered between the parties are of 1996. However, on perusal of the agreement, it is found that some of the pages/places, i.e. at page no.26 are found blank and no remark is given to that effect. However, the agreement contains the initial of the parties only in the last page and none of the pages of agreement contains the signature of both the parties. On perusal of the agreement, it is found that, though the agreement is entered into between "Osian LPG Bottling Ltd." and The Stock Exchange of Bombay, there is no seal and signature for and on behalf of The Stock Exchange of Bombay.

14. Under such circumstances, the agreement so filed cannot be relied upon, as the same is not a valid agreement in the eye of law.

15. That apart, the petitioner has annexed invoices (page no. 29-38), but, none of the invoices contains signature/initial

of the applicant or any proof of raising the same upon the corporate debtor.

16. Thus, under such circumstances, as narrated hereinabove, the application so filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016, is bad in the eye of law and is not maintainable, hence, it does not deserve for admission.

17. Accordingly, the present IB Petition, i.e. CP (IB) 276/9/NCLT/AHM/2019 stands dismissed. No order as to costs.

18. However, the findings or observations made in this order shall not come in the way of the applicant/petitioner to approach any other forum / competent authority or any appropriate court of competent jurisdiction for recovery of any claim or as the case may be.

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

Chockalingam Thrunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority&
Member (Judicial)

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