IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT -V

C.P. (I.B) No. 534/MB/2023

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Mrs. Leena Salot
R/o C- 108, 1st floor, Panchratna,, Near Roxy Cinema Opera House, M.P. Road, Charni Road-West, Mumbai- 400 004.

...Operational Creditor/Applicant

Vs

Ridham Synthetics Private Limited
Having its registered address at Shree Mahalaxmi Woolen Mills Compound, Dr. E Moses Road, Mahalaxmi, Mumbai- 400011.

...Corporate Debtor/Respondent

Order Dated:22.12.2023

Coram:

Reeta Kohli, Hon'ble Member (Judicial)

Madhu Sinha, Hon'ble Member(Technical)

Appearances: (Physical)

For the Operational Creditor**:** CS Ashish O. Lalpuria

For the Corporate Debtor: Adv. Rashmi Shah

ORDER

Per: Reeta Kohli, Member (Judicial)

1. This Company Petition is filed by Leena Salot (hereinafter referred as "**the Operational Creditor/Operational Creditor**") seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as **"CIRP"**) against **Ridham Synthetics Private Limited** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called "**Code**") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs. 1,36,06,646.70/-**.

Brief Facts: -

1. The Petition reveals that Corporate Debtor approached the Operational Creditor somewhere in the year 2015 for purchase of various textile materials. Accordingly, both the parties agreed to enter into business with one another by the oral agreement. In pursuance of the above arrangement, the Corporate Debtor had placed several orders with the Operational Creditor for various kinds of textile material which were duly delivered to the Corporate Debtor from time to time. The Operational Creditor raised Tax invoices for the delivery and supply of textile materials to the Corporate Debtor, from F.Y 2015-16 to F.Y 2022-23.

2. The Operational Creditor further submits that the Corporate Debtor duly received the goods and has never raised any dispute in relation to quality and quantity of the goods.

3. It is further submitted by the Operational Creditor that the Corporate Debtor from time to time used to make adhoc payments towards the outstanding liability arising out of pending invoices. After the receipt of delivery of material on 18.08.2018 from the Operational Creditor, the Corporate Debtor has made part payments on the various dates viz. 05.08.2018, 30.08.2019, 30.01.2021,

27.04.2022 and 15.10.2022 as per the Ledger account of the Operational Creditor.

4. Further the Operational Creditor submits that the Corporate Debtor has acknowledged its liability based on the email dated 23.06.2022 along with the copy of the ledger shared by the Corporate Debtor. It is stated that after the acknowledgement of liability by the Corporate Debtor on 23.06.2022 for a sum of Rs. 1,39,85,901.02/- The Corporate Debtor made on account payment of Rs. 25,00,000/- which was duly received by the Operational Creditor on 15.10.2022. Hence, the last on account payment received by the Operational Creditor was on 15.10.22. After deducting the said amount of Rs. 25,00,000/- from Rs.1,39,85,901.02/- the admitted liability of the Corporate Debtor is Rs. 1,14,85,901.02/-

5. The Operational Creditor further submits that the ledger provided by the Corporate Debtor does not include two invoices raised by the Operational Creditor i.e. invoice no. RT/207/17-18 and RT/228/17-18, dated 1.03.2018 and 31.03.2018 respectively. Hence, the acknowledgement of debt by the Corporate Debtor is of a lesser amount than the total amount due. Therefore, the admitted liability of the Corporate Debtor is Rs. 1,14,85,901.02/- and the total outstanding liability is Rs. 1,36,06,646,70/-.

6. The Operational Creditor further submits that in spite of various follow ups by the Operational Creditor, the Corporate Debtor has failed to pay the Outstanding amount due of Rs. 1,36,06,646.70/-

7. In pursuance to the above, the Operational Creditor issued a notice for recovery dated 24.03.2023 calling upon the Corporate Debtor to pay the amount due within 7 days of the receipt of the notice, failing which the Operational Creditor will refer the Dispute before the Arbitration Bench of Mumbai Textile Merchants Mahajan at Mumbai. The Corporate Debtor neither replied to the above notice nor did he make any payment of the amount due.

8. Ultimately having been left with no option, the Operational Creditor issued a Demand notice dated 18.04.23 upon the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor replied to the Demand notice on 26.04.23, wherein they have denied the amount claimed and have attempted to raise a dispute. Hence the Operational Creditor was constrained to file the present petition.

9. The Corporate debtor filed an affidavit in reply to the present petition inter alia stating that:

    - They are a Solvent Company and is able to discharge its lawful debts.
    - The petition is not maintainable on technical ground alone as the alleged authorized representative Jaisukh Salot appointed (by a letter dated 6.06.2023) without any specific authorization to initiate Corporate Insolvency Resolution Process against the Corporate Debtor's Company.
    - The present petition has been filled to arm-twist their company into making payment of the claim amount which has been disputed by them.
    - Regarding the two purchase orders; the Operational Creditor has failed to supply the goods of one purchase order and had supplied defective goods against the other Purchase Order.
    - The Operational Creditor without supplying the goods against the above purchase orders raised invoices, namely RT/207/17-18 and RT/228/17-18, dated 1.03.2018 and 31.03.2018 respectively.
    - The Operational Creditor has also entered and misappropriated these invoices in their ledger account and added the amount to the purported Claim Amount.

- On 24.07.2018, the Corporate Debtor informed the Operational Creditor about the inferior quality of goods supplied by them via whatsapp text messages.
- The Operational Creditor rather than replacing the defective goods, attempted to deliver a stock of goods as a test product on 24.08.2022, however the Corporate Debtor rejected the goods with specific mark on Delivery Challan No. G S04 dated 24.08.2022 as the goods contained iron particles, which could not be used for clothes.
- The Operational Creditor further sent a notice of recovery dated 24.03.2023 wherein they have mentioned about the arbitration proceeding, in case the Corporate Debtor fails to pay the claim amount of Rs. 1,36,06,646.70. /- within 7 days of receipt of the notice. This in itself reflects that the Operational Creditor has made an attempt to resolve a pre-existing dispute between the parties in relation to the purported claim amount by proposing to resolve the issue by the way of arbitration.
- Further as mentioned in the additional statement of facts by the Operational Creditor that the Corporate Debtor has admitted their liability in reply to the Demand notice, The Corporate Debtor vehemently rejects the same and states that it has never

admitted any liability in their reply to the demand notice dated 26.04.23 to the purported claim amount.

- The Corporate Debtor submits that this Company Petition is filed by the Operational Creditor with malafide intentions, by making a deliberate attempt to intimidate the Corporate Debtor into making payments of the purported claim amount of Rs. 1,36,06,646.70/-
- The Operational Creditor is indulging in forum hunting as firstly he informed the Corporate Debtor that arbitration shall be proceeded with and then filed the present frivolous petition.

10. The Counsel for the Operational Creditor further countered the submissions of the Corporate Debtor stating that in addition to his own ledger entry which is merely to corroborate the fact of the pendency of the debt due amount, the counsel for the Operational Creditor submitted that the professional relationship between the parties has not been disputed by the Corporate Debtor. In response to the argument of the counsel for the Corporate Debtor with respect to forum hunting. The counsel for the Petitioner vehemently argued that the facts and circumstances of the present case cannot be stated to be an instance of forum hunting. The invoking

of the arbitration clause is a legally enforceable right of the Petitioner and is an accepted forum to recover the amount due. Invoking the provisions of IBC is also a legal right enshrined upon the Petitioner in view of the facts and circumstances of the case. Hence, the mandate of the recovery is entirely different from that of resolution of the Corporate Debtor. Thus, both the forums are completely independent and the Petitioner has rightly invoked the jurisdiction of this forum.

Findings/Conclusion

We have heard the arguments of the Learned Counsel for Operational Creditors as well as the Corporate Debtor and have gone through the records placed before the Hon'ble Tribunal.

1. The case of the Operational Creditor is that since an amount of Rs.1,36,06,646.70. /- is the debt due on account of supply of the material and the pending amount is due and payable and in the view of the fact that the Corporate Debtor has failed to make the payment, Hence, the present petition. The date of default stated to be is 16.10.2022. The Demand Notice under Section 8 was sent by the Operational Creditor on 18.04.2023 and the same was replied to by the Corporate Debtor on 26.04.2023 to substantiate his case. The Counsel for the Petitioner has made reference to the pending invoices hereinafter reflecting the amount to be paid by the Corporate Debtor. He also made reference to the ledger entry so as to

state that, it was a running ledger account. The invoices placed on record are from 30.05.2018 to 18.08.2018 which are stated to be pending and due.

2. He further made an attempt to draw the attention of the Hon'ble Tribunal to the fact that GST payment has been deducted by the Corporate Debtor. Further to substantiate his argument that the said amount was due and payable to the Operational Creditor, the attention of the Hon'ble Tribunal was drawn to the reply tendered by the Corporate Debtor to the Demand Notice, stating that an attempt has been made by the Corporate Debtor to wriggle out of his proven liability merely by a simple denial of the stated amount and to depict the same as the pre-existing dispute. This attempt of Corporate Debtor is very flimsy and not based on any material facts. The fact of the Petitioner having mentioned in his notice dated 24.03.2023 about his intention to initiate arbitration proceeding if payment of the amount due is not done within 7 days of the receipt of the notice by the Corporate Debtor, and not actually initiating the Arbitration proceeding does not by itself prove it to be a case of any pre-existing dispute between the parties. Mere reference to the initiation of the arbitration clause does not make it a pre-existing dispute. Hence the argument of the Corporate Debtor deserves to the rejected on this ground.

3. In addition, The Ld. Counsel of the Corporate Debtor countered the argument of the Petitioner basing his case on

the documented ledger entry of the Corporate Debtor stating that mere production of a ledger entry cannot prove it to be the admitted pending amount and the Petitioner cannot be permitted to make out a case on the strength of ledger provided by the Corporate Debtor so as to prove the pending debt. Otherwise also the case of the Corporate Debtor is that quo two alleged invoices the material was never supplied and the material once sent was of low quality thus was sent back, thus merits no payment. Hence the debt amount is not crystalized and the same is disputed by the Corporate Debtor in his reply to the petition.

4. In addition, the Ld. Counsel vehemently argued and disputed the invoices having been placed on record and particular reference was made to the invoices no. 207 & 228 of the petition. These two invoices were though raised by the petitioner, but no material was ever supplied qua invoice No. 207 & 228 to the Corporate Debtor. No mention of these invoices are made in the Demand Notice. These are false and frivolous documents. On this basis itself it can be contended that the invoices placed on record are not reliable, correct and authenticated documents and are thus disputed. To counter the arguments of the payment of the GST, she vehemently contended that the payment made of GST by no means can be said to be admission of the liability on the part of the Corporate Debtor. To prove the fact that there exists pre-

existing dispute, the Counsel drew the attention of the Hon'ble Tribunal to some whatsapp messages exchanged between the parties. The attempt of the Counsel of the Corporate Debtor is to show from these messages that there was a quality issue with respect to the material supplied by the Operational Creditor, so as to prove that there was a dispute. She further contended that it was because of this unsatisfactory supply of the material, which was sent back to the Operational Creditor along with the remarks on the challan forms further proves the existence of pre-existing dispute. With that, the Counsel concluded her argument. In response to the arguments of the Respondent, the counsel for the Petitioner made an attempt to dislodged, the issue of pre-existing dispute stating that the perusal of all the invoices makes it abundantly clear that, in the case of any discrepancy in the material, the same was required to be intimated within 72 hours of receipt of the material. The counsel drew the attention to clause 5 of the declaration of the tax invoice. He further submitted even if the case of the Corporate Debtor with respect to the whatsapp text messages, regarding the material not of proper tensile strength is taken to be correct then also the date on the said whatsapp text messages is 24.07.2018 whereas the documents being relied upon by the Corporate Debtor to further substantiate that the material was sent back are of the year 2022. Hence it is not plausible on the one hand to connect the same and on the other to connect these with the pending invoice of the Operational Creditor qua which the claim is made in the present petition and thus deserve no merit. In response to the submissions of the Corporate Debtor regarding the ledger entries not to be taken as to substantiate as a due amount, the counsel contended that he has placed on record all the invoices so as to prove the pendency of the amount. He has also placed on record the GST deduction enjoyed by the Corporate Debtor.

5. We have taken into consideration the invoices No RT/207/17-18 and RT/228/17-18, dated 1.03.2018 and 31.03.2018 respectively placed on record. As per the contention of the Respondent, material was never supplied by the Operational Creditor against these invoices but the amounts of these invoices have been added in the claim amount by the Petitioner. Additionally, the goods supplied against the invoice no. RT044 dated 21.05.2018 by the Operational Creditor was of inferior quality and the same was conveyed to the Operational Creditor via whatsaap messages dated 24.07.2018. The Operational Creditor rather than taking remedial action tried to deliver test products, the same was rejected by the Respondent with specific mark on Delivery Challan No. G S04 dated 24.08.2022. The challan is reproduced below: -

DELIVERY CHALLAN

ANJAANA CREATION

Mfgrs. Of : SUITING & SHIRTING

GST No.: 27ACWPC6753G1Z7

Works : G-19/2, M.I.D.C., Tarapur (BOISAR) Mob.: 9820544712, 8806312613, 9820544712

ivery Challan No. 256 G. 504 Date : 24/08/2022

To, M/s. Riddham Synthetics A/c. Virchand Gowardhan LLP

Address plot No. B, 22/24 Sagaon Village, phase-2, MIDC, Dombivali (E), GST No 27AA VFX B76 L1ZB

Dear Sir, Please receive the following Grey for dyeing 47

Quality 80/2 x 30s cotton Compact Width

Sr. No.	Pcs.No	Meters	Shade	Sr. No.	Pcs.No.	Meters	Shade	Sr. No.	Pcs.No.	Meters	Shade
1	7876	108/00		15				29			
2	7913	108/50		16				30			
3				17				31			
4				18				32			
5				19				33			
6				20				34			
7				21				35			
8				22				36			
9				23				37			
10				24				38			
11				25				39			
12				26				40			
13				27				41			
14				28				42			
Total Pcs.	02			Total Mtrs.	216/50			Avg. Q. W.T.			

Note: [illegible]

Receiving Date 25/8/22
Receiving 5-15 pm
Godown No. 2
Bale Yes
Sign

SR 651

Carry no MH 04 EL 4020

Prepared by.................... Authorised by Receiver's Signature

Hence, this bench is of considered view that there exists a pre-existing dispute with regards to the due amount and otherwise also there is no proper crystallization of the debt as the respondent have disputed the amount claimed in the present petition.

6. In addition, the counsel for the Corporate Debtor also submitted that the petition is not filed by duly authorized person and the authority placed on record is not a proper and legal authorization of Mr. Jaisukh Salot. By taking into view the above submission and the fact that the submitted

Authority letter is neither properly attested nor notarized makes it clear that there is no proper authorization given to the Operational Creditor to file this petition. Hence, this petition deserves dismissal on this ground as well.

7. Further this Tribunal has thoughtfully considered the fact that the Corporate Debtor is a Financially Solvent Company with the ability to discharge its lawful debt. The Hon'ble Supreme Court in M/S S.S. Engineers V. Hindustan Petroleum Corporation Ltd & Ors., Civil Appeal No. 4583/2022 has held *"The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with the insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor"*

8. In the view of the above stated **C.P. No. 534/MB/2023** deserves to be **dismissed**.

SD/-	SD/-
MADHU SINHA	**REETA KOHLI**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

/Aakansha/