



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-552/MB/2021

Under Section 9 of the IBC, 2016

In the matter of

Sendoz Commercial Private Limited

...Operational Creditor

v/s.

IREL (India) Limited

...Corporate Debtor

Order Pronounced on: 24.02.2023

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner: Mr. Suyog Mujumdar, Advocate.

For the Respondent: Ms. Consulta Juris, Advocate.

ORDER

Per: Prabhat Kumar, Member (Technical)

1. This is a Company Petition filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Sendoz Commercial Private Limited**, ("the Operational Creditor") on 14.04.2021, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **IREL (India) Private**



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Limited (“the Corporate Debtor”) for the amount payable to the Operational Creditor.

2. The Corporate Debtor is a company incorporated on 18.08.1950, is a Government of India undertaking under the control of Department of Atomic Energy, a company limited by shares with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U15100MH1950GOI008187. Its registered office is at Plot 1207, ECIL Building, 1207 Veer Savarkar Marg, Prabhadevi, Mumbai – 400 028, Maharashtra. Therefore, this Bench has jurisdiction to deal with the present Petition.
3. The present petition was filed by the Operational Creditor before this Tribunal on the ground that the Corporate Debtor failed to make payment of a total sum of Rs.2,16,62,305/- (Rupees Two crore sixteen lakh sixty-two thousand three hundred and five only) out of which the principal sum is Rs.1,83,57,886/-. The date of default is 23.03.2020 as per the details given in Part-IV of the Petition.
4. The case of the Operational Creditor is as under:
 - a) The Operational Creditor submits that it has supplied 4044.52 MT of Coal valued at Rs.1,83,57,886/- on 22.02.2020 to the Corporate Debtor against their Purchase Order No. 36/P/02171/PT/PO-36-01060 dated 28.01.2020 and an invoice was raised for the same value (Rs.1,83,57,886/-) on 22.02.2020 and sent to the Corporate Debtor on the same date. Though, the Corporate Debtor informed the



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Operational Creditor through an email dated 25.02.2020 that the consignment has been rejected due to inferior quality as the sample testing carried out by the Corporate Debtor, but had not supplied any test report in support of inferior quality allegation. The Operational Creditor has further stated that prior to loading and dispatching of the consignment, a sample test was conducted by the Operational Creditor and the quality criterion were met.

- b) In the Purchase Order of the Corporate Debtor, it is clearly indicated in *Clause 3* that if the Supplier/Operational Creditor is not satisfied with the test conducted by the Purchaser/Corporate Debtor, the Creditor could ask for 'referee sample' to be tested in a government lab whose result shall be 'final and binding'. In accordance with the said Clause, the Operational Creditor communicated to the Corporate Debtor through email on 29.02.2020 requesting the Corporate Debtor to conduct a sample test in a government laboratory. Due to Covid-19 and delayed communications, took long time to confirm the suggested testing in the government laboratory. Finally, on 14.08.2020 sample was sent to National Metallurgical Laboratory (NML), Jamshedpur for testing, however, the test report was not given to the Operational Creditor. The Petitioner further states that on 25.09.2020, Mr. Ramakrishna, representative of the Corporate Debtor verbally intimated to the Operational Creditor that the report of the sample tested was above the required specification of 3000 kcal/kg which is within the required quality as per the Purchase Order dated 28.01.2020. Upon confirmation of the test result, the Operational



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Creditor sent email to the Corporate Debtor requesting to release the payment of the goods supplied vide Invoice dated 22.02.2020, however, no payment was released. Since no payments are received, the Creditor sent several reminders.

- c) As no response from the Corporate Debtor, Petitioner sent legal notice to the Corporate Debtor on 12.11.2020 asking the Corporate Debtor to release the EMD of Rs.14,28,200/- and to pay outstanding dues of Rs.1,97,36,684/-. As there was no response to the legal notice from the Corporate Debtor, Demand Notice under the provisions of the IBC, 2016 was sent on 25.01.2021 to the Corporate Debtor. After sending the Demand Notice, the Corporate Debtor responded on 17.02.2021 to the legal notice sent on 12.11.2020 denying existence of any outstanding dues payable to the Operational Creditor.
- d) The Operational Creditor further states that the dispute of the Corporate Debtor is frivolous in nature and also relied upon a judgment of the Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (2018) 1 SCC 353* wherein the Apex Court has held that it is important to separate the grain from the chaff and to reject the spurious defence which is mere bluster. Further states that the matter of pre-existing dispute is a purposely made dispute and not a genuine dispute and pleads to the Adjudicating Authority to rely upon the above judgment and consider the present Petition to admit the Corporate Debtor into CIRP.



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Reply of the Corporate Debtor:

5. The Corporate Debtor has filed reply stating that there is pre-existing dispute between the Operational Creditor and Corporate Debtor; and clause 10 of the contract/purchase order provides that the Civil Courts of Chhatarpur shall have jurisdiction to deal with or decide any legal issue or dispute arising out of the said contract. The Corporate Debtor also submitted that it conducted a third test in another government laboratory viz. IIMMT, Bhubaneswar where the result found again inferior quality/below the required standard. Therefore, the Corporate Debtor strongly believes that the NML report is incorrect.
6. The Corporate Debtor further states that a joint meeting was conducted on 11.06.2020 in the premises of the Corporate Debtor to resolve the issue wherein the representatives of the Operational Creditor agreed to supply fresh lot of coal with higher Guaranteed Calorific Value (GCV) and blend the rejected coal so as to conform to meet the Corporate Debtor's GCV. The representatives of the Corporate Debtor agreed to positively review the above proposal provided the Operational Creditor accepts the quality control report of the Corporate Debtor and shall not dispute any further. It was confirmed by the representatives of the Operational Creditor that they shall put up a proposal as above for further action. Minutes of the meeting is attached with reply by the Corporate Debtor.

FINDINGS:

7. We have heard both the Counsel and perused material on records.



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8. It is noticed that the dispute as to the quality was raised by the Corporate Debtor immediately upon receipt of the material vide its email dated 25.02.2020 and the Applicant / Operational Creditor was intimated about rejection of the material instantly. There was subsequent test of the material in accordance with *Clause 3* of the Purchase Order and the samples were forwarded to NML Jamshedpur on 14.08.2020 by speed post. The case of the Operational Creditor is that it was not supplied the copy of the test report issued by NML, however, the Applicant came to know on 25.09.2020 from representative of the Corporate Debtor i.e. Mr. Ramakrishna verbally that test report confirms the quality of the material to be in accordance with the purchase order. After getting this information, the Petitioner issued a legal notice dated 12.11.2020 calling upon the Corporate Debtor to pay the outstanding money.
9. In view of the above facts, this Bench is of the opinion that there existed prior dispute till forwarding of test report. Hence, no debt can be said to be due and payable till that date. It follows therefrom that the debt claimed in default could have become payable only upon receipt of test report of NML, which became known to the applicant in September 2020. Thereafter, the Applicant called upon to pay the debt by legal notice dated 12.11.2020. Accordingly, as per applicant's own admission the debt became due and payable in accordance with legal notice dated 12.11.2020. This date till 24th March, 2021 falls under the period prescribed u/s 10A of the Code. Hence, even if any debt came into existence after receipt of the test report, the said debt can be said to have become due and payable after service of the legal notice by the Applicant.



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Consequently, the default occurred upon expiry of period stated in the legal notice dated 12.11.2020. Section 10A of the Code bars filing of any application u/s 9 of the Code for a default committed during the period from 25.03.2020 to 24.03.2021. Accordingly, this Petition is not maintainable on account of bar imposed by Section 10A of the Code.

10. The present petition is not maintainable on the ground of pre-existing dispute as explained in the aforesaid para(s). It is settled law that the Adjudicating Authority has to satisfy that there exists a prima-facie prior dispute without going into the merits of the said dispute. The dispute as regards the quality goes to the root of the debt and the applicant has also requested for re-test under clause 3. In view of this, the cannot be said that plea of pre-existing dispute is in nature of moon-shine defence.
11. In view of the foregoing facts, this Petition is hereby **dismissed**.

Sd/-

Prabhat Kumar
Member (Technical)

24.02.2023/pvs

Sd/-

Kishore Vemulapalli
Member (Judicial)