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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP/IB/159/CHE/2022

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **REGMA CERAMICS PRIVATE LIMITED.**

ARPANA PACKAGING PRIVATE LIMITED,
Represented by its Managing Director,
Mr. S. Nanthikeswaran,
Registered Office at 131,
Ceebros Court,
Habibullah Road,
T.Nagar,
Chennai 600 017.

...Applicant/ Operational Creditor

-Vs-

REGMA CERAMICS PRIVATE LIMITED
Represented by its Managing Director,
Mr. Ramanuja Reddiar Kumar,
Door No.4-131,
Opposite to Bus Stand,
Yanam - 533463,
Puducherry.

... Respondent/Corporate Debtor

*Order pronounced on **13th February 2023***

CORAM:

**JUSTICE RAMALINGAM SUDHAKAR, Hon'ble PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

For Operational Creditor: P.J.Sriganesh, Advocate

For Corporate Debtor : Satish, Advocate

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

Under consideration is an Application filed by **Arpana Packaging Private Limited** (*hereinafter referred to as "Operational Creditor"*) under Section 9 of IBC, 2016 seeking thereof to initiate Corporate Insolvency Resolution Process against **Regma Ceramics Private Limited** (*hereinafter referred to as "Corporate Debtor"*).

2. From Part I of the Application, it is seen that the Operational Creditor is a Private Limited Company.

3. From Part II of the Application, it is seen that the Corporate Debtor is also a Private Limited Company and the registered office of the Corporate Debtor as per the Application is stated to be Sellur Village, Agalankannu Road, Thirunallar Commune, Karaikal, Pondicherry. The date of incorporation of the Corporate Debtor is stated to be 17.10.2000 and the authorized share capital and paid up share capital of the Corporate Debtor are Rs.160,000,000 and Rs.158,900,000 respectively.

4. From Part III of the Application, it is seen that the Operational Creditor has not proposed the name of the Interim



Resolution Professional and left it to the discretion of this Tribunal to appoint the same.

5. Part IV of the Application discloses the details of the Operational Debt from which it is seen that the Operational Creditor has claimed a total sum of **Rs. 3,66,75,221/-** [Principal amounting to Rs. 1,91,55,230/- along with interest @ rate of 24% per annum amounting to Rs. 1,75,19,991/-]. The Applicant herein has stated 05.09.2018 as the date of default when the first invoice fell due and payable.

APPLICANT'S SUBMISSIONS

6. The Ld Counsel for the Applicant submitted:-

(i) That the Operational Creditor is engaged in the business of manufacturing co-friendly corrugated boxes and the Corporate Debtor approached the Operational Creditor for the said corrugated boxes to pack, store and sell ceramic tiles. The Operational Creditor has been supplying the said boxes to the Corporate Debtor for more than 5 years.

(ii) That despite systemic delivery, the Corporate Debtor failed to make payments for the invoices on time.

(iii) That the Operational Creditor has raised more than 1716 invoices for a total value of Rs.6,82,66,341/- out of which the Corporate Debtor have made part-payments to the

tune of Rs. 4,91,11,111/- leaving a balance of Rs.1,91,55,230/-. The last payment made by the Corporate Debtor was on 23.06.2020 and the Operational Creditor and the Corporate Debtor have been maintaining a running account for the business transactions between the Operational Creditor and the Corporate Debtor.

(iv) That, the Operational Creditor issued legal notice dated 16.12.2020 calling for the Corporate Debtor to pay the outstanding amount to the tune of Rs.1,91,55,230/- along with interest @ 24 % per annum within 30 days from the receipt of notice.

(v) That the Corporate Debtor had failed to make any payments regardless of sending legal notice and the outstanding debt amount due and payable as on 31.03.2022 amounts to Rs.3,66,75,221/- (Principal + Interest).

(vi) That the Operational Creditor issued statutory Demand Notice in Form-III dated 13.04.2022 to the Corporate Debtor and the same was duly served to the Corporate Debtor on 26.04.2022. Further it is said that no reply was sent by the Corporate Debtor in response to the Form-III Demand notice under Section 8 of IBC, 2016.



7. It is also averred in para 4 of Part-IV of the Application that the Operational Creditor on receiving no response from the Corporate Debtor with regard to the outstanding payments filed a petition before the Chairperson, MSME on 07.10.2020 and the same is pending as on date.

RESPONDENT SUBMISSIONS

8. The Respondent/Corporate Debtor have filed a counter statement in this matter before this Tribunal in SR No. 5307 dated 15.09.2022. The Ld. Counsel for the Respondent submitted,

(i) That the Applicant/Operational Creditor has filed a MSME Petition in case No. 3444/Ind & Com/Unit-III/B7/2020 in Pondicherry for recovery of dues and the same is pending as on the date of filing of this present Application. Further it is submitted that the Applicant had invoked Section 18 of MSME Act for recovery of the dues allegedly payable by Respondent to the Applicant. It is pertinent to mention that Section 18 of MSME Act specifically empowers the Facilitation Council to entertain any dispute between the parties for any amount that falls due under section 16 and 17 of the said Act.

(ii) That section 18 (2) of MSME Act provides for Conciliation and such conciliation are governed by section 65 to 81 of Arbitration and Conciliation Act, 1996. Further upon failure of conciliation, Section 18 (3) of MSME Act, empowers the Facilitation Council to arbitrate the dispute and provisions of Arbitration and Conciliation Act shall apply to Arbitration.

(iii) That Section 18(4) of MSME Act gives the status of an Arbitrator and Conciliator to Facilitation Council or the Councils providing Alternative Dispute Resolution services.

(iv) That the Applicant has filed a MSME Petition and the same is pending for adjudication. This will tantamount to a pre-existing dispute and hence this Application will be clearly hit by **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited; 2017 1 SCC Online SC 353.**

(v) Further it is submitted that the petitioner has not produced any records to prove the supply of materials such as purchase orders, consignment notes, airway bills or proof of remittance of GST to prove supply of materials.



FINDINGS & ANALYSIS OF THIS TRIBUNAL:

9. Heard the submissions and perused all the records placed before us. It is seen from part-IV of the Application that, the Operational Creditor has claimed a total sum of **Rs. 3,66,75,221/-** [Principal amounting to Rs. 1,91,55,230/- along with interest @ rate of 24% per annum amounting to Rs. 1,75,19,991/-].

10. It is not a disputed fact that there is a case pending before the MSME FC Pondicherry in case no. 3444/Ind & Com/Unit-III/B7/2020. The same also forms a part of the Applicant/Operational Creditor's submissions. Thus taking into consideration the blanket of facts and circumstances of this case, this Adjudicating Authority comes to the inevitable conclusion that this Application is liable to be dismissed as there is a "pre-existing dispute" in light of the Hon'ble Supreme Court judgment in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited; 2017 1 SCC Online SC 353**. Resultantly, this Application is **dismissed**.

- Sd -

SAMEER KAKAR
MEMBER (TECHNICAL)

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- Sd -

Justice (Retd.) RAMALINGAM SUDAKAR
PRESIDENT