

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IB No.227/ND/2019

IN THE MATTER OF:

M/s Shree Navrang Suppliers Pvt. Limited.

...APPLICANT / OPERATIONAL CREDITOR

VERSUS

M/s. Bajaj Appliances Limited

... RESPONDENT / CORPORATE DEBTOR

Memo of parties

Shree Navrang Suppliers Private Limited
Having Registered Office at:
205, Elegance Complex
Baroda Productivity Road
Dr. Urmi Char Rasta, Vadodara-20

VERSUS

Bajaj Appliances Limited
Having Registered Office at:
416, Pearl Omax, Tower-II
Netaji Subhash Place, Pitampura
New-Delhi-110034

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on:21.02.2022

CORAM:

DR. DEEPTI MUKESH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: SMT. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

The present application is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by Shree Navrang Suppliers Private Limited, (hereinafter "applicant"), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Bajaj Appliances Limited (hereinafter, Respondent).

2. As per averments made in the petition, the corporate debtor has entered into an agreement for storing and selling its product by the operational creditor. It is submitted that the operational creditor had provided its services to the corporate debtor worth Rs. 24,41,344/- to which various bills were raised by the operational creditor in respect to the goods supplied to the applicant.

Copies of the bill are annexed with the application.

3. The applicant sent demand notice under Section 8 of the code on 17.12.2018 calling upon the corporate debtor to pay the total amount of Rs. 24,41,344/-. The applicant submits that the notice had been duly served on the corporate debtor via speed post. The Copy of demand notice along with postal receipts and the tracking reports has been annexed.

4. It is further stated the respondent had admitted the claims of the operational creditor in its correspondence and in mails.

Copy of the Certificate regarding genuineness of mails under section 65B of the Evidence Act had been filed on record.

The application under section 9 claimed to be filed.

5. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:

i. It is stated that the Applicant refrained from attaching the proof of service qua the Respondent of the notice allegedly issued by it to the Respondent at the registered address. It is relevant to point out that in its affidavit, the Applicant has claimed to have attached the postal track report as "Annexure-1", however, no such annexure is present along with the affidavit.

ii. It is submitted that present application warrants outright dismissal as no debt amounting to Rs.24,41,344/- has accrued in favour of the Applicant even as per his own documents. The Applicant relies on a note dated 16.08.2018 as an admission of debt by the Respondent. However, upon scrutiny of the contents of the same, it is apparent that no debt is admitted by the Respondent, rather, the note signifies a contingency based on which the relations between the parties are to be governed in the future.

iii. It is submitted that the Applicant has even failed to disclose the calculation justifying the demand of Rs.24,41,344/- as the principal amount.

- iv. It is also submitted that the business between the parties is governed by the Agreement, which lays down the rights and obligations of both parties, including how claims raised by either party are to be dealt with. Further it is mentioned that the claim of the Applicant is beyond the terms and conditions of the Agreement as the Respondent is not obligated to take back any goods or give any monetary sum to the Applicant. Moreover, the Agreement still subsists as the same has not been terminated by either party as per the termination clause of the Agreement.
- v. It is submitted that the Applicant has failed to adhere to the terms and conditions of the Agreement and has miserably failed to meet its targets as stipulated in Agreement. As a result of the poor performance of the Applicant, the Respondent was constrained to warn and inform the Applicant of its failure to perform through numerous telephonic, conversations. However, as a pre-emptory measure to evade from its contractual obligation, the Applicant issued a false and frivolous legal notice dated 28.02.2018 through its counsel raising false and concocted claims and allegations which were duly disputed by the Respondent vide its reply dated 15.03.2018; wherein the Respondent raised the issue of poor performance and also pointed out the frivolity of the Applicant's claims which were not justified in terms of the Agreement. The Respondent duly pointed out that despite arranging for appropriate sales staff in terms of

the Agreement, the Applicant had failed to meet its sales target leading to immense losses to the Respondent.

Copies of the ledger accounts statements reflecting the expenses incurred by the Respondent on account of staff salaries are annexed.

- vi. It is further stated that the Applicant has failed to annex a mandatory certificate from the financial institution in compliance of section 9(3)© maintaining accounts of the Applicant confirming that there is no payment of an unpaid operational debt by the Respondent and in the absence of the same, the present application is not maintainable.

5. The applicant has filed rejoinder to the reply of respondent and submitted as follows:

- a) The case of the applicant is that there is no debt against the respondent company much less Rs.24,41,344/-. The respondent is interpreting the letter dated 16.08.2018 for his own benefit in order to avoid the payment. The letter specifically stated that the respondent have an outstanding amount and they shall start paying by 15th September'2018. It further stated that if the company manages to appoint sales staff in Gujrat Region, then the Super Stockist shall take the goods and in case the applicant herein will again start the business with the respondent then the company shall consider the other points. Further there was no mutual agreement between the applicant and respondent that if the respondent appoints more staff then the goods shall be returned for sale. It was agreed that the respondent shall pay the admitted amount and in case it appoints

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super stockiest in the area, the super stockist shall take the goods and pay the price of goods as agreed between applicant and respondent. It is further agreed that the respondent had raised a debit note but the same was not admitted by the applicant and the issue was pending but only with respect to Rs.97,353/-. An amount of Rs.3,86,000/- and Rs.23,000/- was being claimed by the applicant and was actually due but the respondent did not admit and had stated that if they are able to employ sales personal in Gujrat, then they will consider the claim of the said amounts.

b) It is further stated that the respondent is denying the execution of the note dated 16.08.2018 by the unauthorized person. The said letter had been confirmed by the respondent in the mails written to each other between the applicant and the respondent. Further the persons who had signed the said letter and the persons who had admitted the same in mails, if were not authorized to sign the same, then what action has been taken by the respondent against them for admitting claims of parties against the company.

c. It is further stated there is no debt against the respondent company much less Rs.24,41,344/-. The letter specifically stated that the respondent have an outstanding amount and they shall start paying by 15th September 2018 and the said letter dated 16.08.2018 admits the liability of the respondent. It further stated that if the company manages to appoint sales staff in Gujrat Region, then the Super Stockist shall take the goods and in case the applicant will again start the business with the respondent then the company shall consider the other points. The claim amount of Rs.24,41,344/- has been arrived at after mutual discussions with the respondent's representatives.

d. The claim of the applicant with regard to godown rent, salaries etc. is not claimed by the applicant in the present application. Further it is stated that the parties had arrived at the agreement for doing business and their rights are governed by the terms and conditions of the agreement. Furthermore the respondent was supposed to employ sales person in Gujarat for which the applicant was appointed as a super stockiest. When the respondent had removed and/or stopped employing sales personnel in Gujarat, as admitted by them, then the applicant is not supposed to keep the stock worth lacs. Even otherwise the agreement was executed on 16th May'2017 for the period of one year and the same has not been renewed by the parties and have expired. There is no question of termination of expired agreement which has not been renewed. If the respondent still believes that the business relationship still exists between the parties, then the respondent should take back the stock and pay the applicant the costs and other expenses. The applicant cannot be expected to keep the stock to be sold in the territory wherein the respondent has no sales personnel. The respondent should take back the stock from the applicant and sell the same in the territory wherein it has its sales personnel.

Copy

e. In respect to the "Summary of Amount not paid by Corporate Debtor— It is submitted that the respondent is liable to pay to the applicant an amount of Twenty four lacs forty one thousand three hundred and forty four only) plus interest of Rs.3,62,513/- till November'2018 totaling Rs.28,03,857/- (Rupees Twenty eight lacs three thousand eight hundred and fifty seven only). The Operation Creditor is also entitled for Rs.2,80,000/- as rent fee godown where the debtor's stock is kept at Rs.20,000/- per month for 14 months, Salary Rs.2,10,000/- for Supervisor @ Rs.15,000/- per month for 14 months and Stock Rs.12,00,000/- which the debtor has to take away on expiry of agency.

6. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder filed by the parties.

7. The respondent corporate debtor has admitted its liability to pay the operational debt via letter dated 16.08.2018. The applicant has placed

various communications on record showing that the respondent has never raised any compliant regarding claim of applicant. No dispute has ever been raised by the respondent apart from a debit note for a very small amount.

8. The applicant has placed sufficient documents to establish its claim against the corporate debtor. The respondent corporate debtor has not placed any record to show that any dispute was ever pending between the parties before issuance of demand notice under section 8 of IBC.

9. In respect of definition of "dispute" in the Code, Hon'ble Supreme Court has held in the case of *Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.* 2018 1 SCC 353 inter-alia that:


"Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so the Court does not need to be satisfied that the defence is likely to succeed. The court does not at this stage examine the merits of the dispute except the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application." (emphasis given).

10. In view of the aforesaid discussion, since the corporate debtor already admitted its liability to clear its debt which is evident from note dated 16.08.2018, the present application is admitted.

11. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Sanjay Agrawal, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-P00494/2013-14/10882 and email id- ska9001@gmail.com . IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
12. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Sanjay Agrawal to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
13. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the

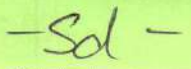
pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

14. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

-Sd-

(SUMITA PURKAYASTHA)

MEMBER(T)

-Sd-

(DR. DEEPTI MUKESH)

MEMBER (J)