

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IBA/1053/2019 filed under Section
9 of Insolvency Bankruptcy Code,
2016 r/w Rule 6 of Insolvency &
Bankruptcy Code, 2016

In the matter of **M/s. Nizam Energy Private Limited**

M/s. Agarwal Coal Corporation Private Limited,
Rep. by its Director Mr. Surendra Prasad Shukla,
"Agarwal House", Yashwant Niwas Road,
Indore-452 001 (M.P.)

---Operational Creditor

-Vs-

M/s. Nizam Energy Private Limited
(CIN No. U23101TN2009PTC072798)
Room No. 2 & 3, 7th Floor,
Seethakathi Business Centre,
Anna Salai, Chennai-600 006

---Corporate Debtor

CORAM:

R. SUCHARITHA, MEMBER (JUDICIAL)
B. ANIL KUMAR, MEMBER (TECHNICAL)

For the Applicant : *Shri.V.N. Dubey, Advocate*
Shri.D. Peruman Saranyan, Advocate
For the Respondent : *Shri. P. Jesus Moris Ravi, Advocate*

ORDER

Per: R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 27.04.2021

IBA/1053/2019
In the matter of M/s. Nizam Energy Private Limited

This IBA/1053/2019 is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (“IBC, 2016”) by the Operational Creditor i.e., **M/s. Agarwal Coal Corporation Private Limited**, Represented by its Director Mr. Surendra Prasad Shukla seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor i.e., **M/s. Nizam Energy Private Limited**. The Registered Office of the Corporate Debtor Company is at Room No. 2 & 3,7th Floor, Seethakathi Business Centre, Anna Salai, Chennai-600 006, (CIN No. U23101TN2009PTC072798). This application was filed on 19.05.2019.

2. The Applicant submits that from 29.12.2017 to 10.02.2018, the Applicant supplied imported coal to the Corporate Debtor and raised various invoices on the Corporate Debtor. The Corporate Debtor accepted the consignment without demand or protest. The total outstanding as on date of filing of this application is sum of Rs.97,70,147/-. Demand notice dated 26.02.2019 was issued to the Corporate Debtor, copy of which is enclosed at Page 29 of the application. In support of the claim, the Applicant has also filed bank

statement, copy of which is enclosed at Page 74 of the application. The Applicant has also filed copy of workings for computation of amounts and date of default in tabular form at Page 75 of the application.

3. The Respondent has filed its counter. The Corporate Debtor submits that there is a dispute in seven invoices raised by the Applicant/Operational Creditor. The Respondent submits that these goods which were mentioned in invoices were never delivered to the Corporate Debtor. The Corporate Debtor and the Applicant had business transactions and the amount due, the entire amount has been settled. Furthermore, the Corporate Debtor submits that against these supplies, the Letter of Credit was also issued to the Applicant/Operational Creditor. The Letter of Credit of Rs.25,00,000/- was encashed by the Applicant/Operational Creditor on 08.03.2018. It is pertinent to mention that the invoices are dated 10.01.2018, 17.01.2018, 25.01.2018, 31.01.2018, 07.02.2018, 10.02.2018 and 31.05.2018. The Corporate Debtor submits that Letter of Credit of Rs.25,00,000/- was encashed by the Applicant/Operational Creditor on 08.03.2018.



Since there has been dispute between both the parties, the Respondent/Corporate Debtor has discontinued the business with the Applicant/Operational Creditor. At the time of supply, the Respondent had given blank cheques to the Applicant and the Applicant deposited those cheques and claimed that the cheques were dishonoured. In disputed invoices raised by the Applicant, no despatch details such as lorry receipts, delivery note etc. were provided. Thereafter, the Respondent further states that in the application and also the invoices filed therein, delivery challan and lorry receipt are not enclosed. The Respondent categorically states that he has not received the materials mentioned in the invoices annexed along with the application.

4. The Applicant has filed rejoinder dated 10.12.2019. In the rejoinder, the Applicant denies the averment of the Corporate Debtor. The Applicant accepts that except the payment received on 08.03.2018 through Letter of Credit, the Corporate Debtor never issued any other Letter of Credit. As such, the amount is due and payable.

Furthermore, by email dated 23.11.2017, the Corporate Debtor has acknowledged the receipt of the goods. Copies of the invoices at page 13 to 20 are enclosed in the application. In respect of the same, the Corporate Debtor has issued cheques. Along with the rejoinder, the Applicant has also enclosed few emails exchanged between both the parties and lorry details.

LIST OF DOCUMENTS FILED ALONG WITH BOTH REJOINDERS:

S. No.	Date	Particulars
1.	10.12.2019	Rejoinder filed in S.R. No.6509 .
2.	23.11.2017	Email sent by the Corporate Debtor.
3.	23.11.2017	Email sent by the Operational Creditor containing details of shipment, quantity, price, payment terms and vessel name.
4.	27.12.2017	Email from Corporate Debtor to the Operational Creditor attaching Purchase Order along with Form 27C.
5.	17.02.2018	Email from Corporate Debtor to the Operational Creditor attaching Letter of Credit for reference.
6.	20.02.2018	Email from Operational Creditor to the Corporate Debtor requesting for hard copies of the Purchase Order and Form 27C.
7.	07.07.2018	Intimation from Operational Creditor regarding presentation of cheques by email to the Corporate Debtor.

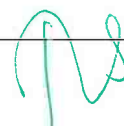


1.	23.11.2020	Rejoinder filed in S.R. No.3515 .
2.	18.11.2020	Affidavit.
3.	-	Copy of Ledger Account of the Respondent for the period 2013-2018.
4.	27.12.2017	Copy of email, Purchase Order and Form No.27C.
5.	27.12.2017	Copy of revised Purchase Order.
6.	31.01.2018	Copy of Form No.27C.
7.	-	Statement with relevant details of the supply/delivery, depicting dates, quantities supplied, truck details, GST paid, GST invoice number and amounts of consideration in respect of each separate delivery made during the period 08.01.2018 to 10.02.2018.
8.	-	Copy of CA certificate, detailed chart depicting dates, quantities supplied, GST paid, GST Invoice Number and amounts of consideration in respect of each separate supplies made during the period 08.01.2018 to 10.02.2018.
9.	17.02.2018	Copy of email and Letter of Credit issued by the Respondent.
10.	-	Master Data of the Respondent available at the MCA portal.
11.	-	Proof of Service.

5. We have heard both the parties. We have gone through the documents submitted by the Applicant. It is clear that the both parties

were having business dealings for considerable time and payment were made. Goods were also supplied and some payment were also received by the Applicant. Subsequently, there appears to be some dispute between both the parties. The Respondent has categorically submitted that in respect to the invoices enclosed at Page 13 to 20 of the application, neither delivery challan nor goods have been delivered at the Corporate Debtor address. In the rejoinder filed by the Applicant also, the Applicant has not enclosed despatch details such as delivery challan and lorry receipt in support of their claim, however, the details of despatch are typed. But whether it involves to the invoices mentioned in the application or nor are not confirmed. The copy of the lorry receipt was not enclosed.

6. IBC is a very rigorous enactment. Hence, the Adjudicating Authority ought to ensure extreme caution and detailed study before passing a final order of admission. Based on the agreement, documents and submissions made by the parties, it is clear that the Applicant could not prove that the goods were supplied by lorry to the



Corporate Debtor address. The lorry details of the consignment, delivery challan in proof of the same are not enclosed. Based on few emails exchanged between the parties and dishonored cheques, it is not appropriate to conclude the debt and default. Hence, this Adjudicating Authority cannot conclude the debt and default based on the disputed invoices and also on a selective emails filed along with the rejoinder, exchange of few emails can only be a supportive document and cannot be treated as conclusive proof. In the matter of *Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.*, the Hon'ble Apex Court held as follows:

"40. It is clear, that once the Operational Creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been served by the Operational Creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the Operational Creditor the "existence" of a dispute or the fact that a suit or arbitration



proceeding relating to a dispute is pending between the parties. Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires 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 a 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 to the extent indicated above. So long as a dispute truly exists in fact or is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application.

7. Hence, the Applicant failed to satisfy this Adjudicating Authority that as per the invoices the goods were delivered by a lorry consignment to the address of the Corporate Debtor. Hence, neither the debt nor the default is proved. Since there were business dealings between the parties, it is not possible to pick and choose the invoice



and establish that there is "alleged debt" and consequential default. The transaction involves purchase order, modes of operation as agreed between the parties, the terms and conditions and violations if any, the details of C & F agencies. Hence, from alleged debt out of few invoices, one cannot establish the case beyond doubt. A detailed trial is required to establish the "debt" and "default". In the summary manner, the Applicant failed to establish the "debt" and "default". Since IBC is a rigorous act, it ought to be exercised with abundant caution. There ought to be no doubt of "alleged debt". Since there are lot of ambiguity regarding supply and payment, the application is dismissed.

7. Accordingly, for the reasons mentioned supra, this IBA/1053/2019 stands **dismissed**.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

VS