

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

IBA/832/2020

(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 M/s. Sakthi Ganesh Textiles Private Limited

M/s. Sri Saravana Mills Private Limited

SSM Fine Yarns – Yarn Processing Unit,

Reg. Off:-

Renganathapuram,

Kasipalayam Post, Vedasandur,

Dindigul – 624711

...Operational Creditor

-Vs-

M/s. Sakthi Ganesh Textiles Private Limited

Reg. Off:-

2A, 3rd Floor, Mayflower Valencia,

336/2, Avinash Road, Nava India

Coimbatore – 641004

...Corporate Debtor

Order pronounced on 25th April 2022

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**Justice (Retd.) S. RAMATHILAGAM, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor : V. Manivannan, Advocate

For Corporate Debtor : No Representation

O R D E R

Per: ANIL KUMAR B, MEMBER (TECHNICAL)

The Present Application is filed by an Operational Creditor
viz., M/s. Sri Saravana Mills Private Limited under Section 9 of the
Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as

'IBC, 2016) before this Tribunal on 30.11.2019 seeking initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor viz., M/s. Sakthi Ganesh Textiles Private Limited.

2. Part – II of the Application discloses the details of the Corporate Debtor, from which it is seen that the Corporate Debtor is a Private Limited Company which was incorporated on 08.03.1996 and the registered office address of the Company is stated to be situated at 2A, 3rd Floor, Mayflower Valencia, 336/2, Avinash Road, Nava India Coimbatore - 641004. From Part – III of the Application is seen that the Operational Creditor has proposed one Mr. Kanakkampalayam Chinnasamy Senthilkumar having IBBI/IPA-001/IP-P01229/2018-19/12091 to be appointed as the Interim Resolution Professional.

3. From Part IV of the Application it is seen that the Operational Creditor has claimed a sum of Rs.6,00,001/- which is due and payable by the Corporate Debtor and the date of default is mentioned as 02.08.2018. The Operational Creditor, in order to prove the 'operational debt' has annexed the copies of invoices.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor had issued a Demand Notice under section 8 of the Insolvency and Bankruptcy Code, 2016 on



27.06.2019 which was received by the Corporate Debtor on 29.06.2019, to which, the Corporate Debtor had sent a reply on 01.07.2019 and stated that a Credit Note dated 06.07.2018 was issued by the Deputy General Manager (DGM) of the Operational Creditor for Rs. 6,00,000/- against the final settlement of the Corporate Debtor and a letter confirming no outstanding against the Corporate Debtor. To this, the Operational Creditor addressed a letter dated 16.09.2019 to the Corporate Debtor wherein the Operational Creditor had categorically stated that the Credit Note and the Balance Confirmation were false and fabricated as there was no such post termed as "Deputy General Manager" of the Operational Creditor and the said letter was returned undelivered with the remarks "Refused by the Addressee". The Copy of the postal receipt and the returned post is annexed as 'Annexure II(7)' to the typed set along with the application.

5. Further the Learned Counsel for the Operational Creditor submitted that the Operational Creditor has never issued such documents and this was a clever ploy on the part of the Corporate Debtor to repudiate their liability for payment of the amounts due. Under these circumstances, the Operational Creditor submitted that the Corporate Debtor has committed a default in the payment of the debt amount which is due and payable to the Operational



Creditor and hence prayed for initiation of the Corporate Insolvency Resolution Process against the Corporate Debtor.

6. In relation to the Corporate Debtor, it is seen from the records that a notice had been issued to the Corporate Debtor on 29.03.2021 by the Operational Creditor and again this Adjudicating Authority vide its daily order dated 06.09.2021 directed the Operational Creditor to issue a fresh notice to the place of business operations of the Corporate Debtor and also on all directors of the Corporate Debtor. The Operational Creditor submitted that the notice had been returned with an endorsement 'Refused' and an Affidavit of Service was filed by the Operational Creditor on 20.09.2021 with the Registry. Again this Tribunal vide its daily order dated 08.11.2021, directed the Operational Creditor to give a paper publication in newspaper having wide circulation in the location where the registered office of the Corporate Debtor is situated. On 30.11.2021 the Adjudicating Authority after taking into consideration that the Operational Creditor has submitted a Compliance Report on 19.11.2021, before this Adjudicating Authority, Ordered that if the Corporate Debtor does not appear in the next hearing they were to be set aside ex-parte. When the matter came up for hearing before this Adjudicating Authority on 04.01.2022 one Ms. Santhya Rengarasu claiming to be on change of vakalath appeared and stated that she has filed a vakalath by e-



mail and RPAD. However, since no vakalath was available on records the Adjudicating Authority expressed constraints to take the appearance on record.

7. Heard the submissions made by the Learned Counsel for the Operational Creditor and perused the documents on record. From the facts and circumstances of the case, as narrated above it becomes imperative for this Adjudicating Authority to adjudicate on the issue as to whether there exists a 'dispute' between the parties in relation to the amount claimed by the Operational Creditor.

8. The contention of the Learned Counsel for the Operational Creditor is that the Corporate Debtor has committed default in the payment of the sum which is due and payable by the Corporate Debtor to the Operational Creditor.

9. It is seen that the Corporate Debtor had sent copies of Credit Note and Balance Confirmation letter which were claimed to be issued by the Deputy General Manager of the Operational Creditor as a response to the Demand Notice issued by the Operational Creditor, and it is disputed by the Operational Creditor stating that the documents are false and fabricated since there exists no post like the one "Deputy General Manager" in the Operational Creditor Company.



10. Based on the averments made in the application, this Adjudicating Authority is of the view that there exists a dispute. Therefore, it is required to be noted that the Hon'ble Supreme Court of India in the matter of M/s. **'Mobilox Innovations Pvt. Ltd.' Vs. 'Kirusa Software Pvt. Ltd.'** (2018) 1 SCC 353 has clearly laid down that 'the test for determination for the Adjudicating Authority is to see at the stage of Admitting/rejecting the Application 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 mere bluster'. Thus, it is not required for this Adjudicating Authority to enter into the gravity of the dispute which exists between the parties and is only required to see that whether the dispute as raised by the Respondent requires further investigation and that the dispute is not patently feeble legal argument or an assertion of fact unsupported by evidence.

11. Further, this Tribunal being an Adjudicating Authority under the IBC, 2016 and the proceedings before this Tribunal being summary in nature, this Tribunal unlike a Civil Court cannot indulge in the luxury of taking evidence and that the debt and



default on the part of the Corporate Debtor is required to be proved by the Operational Creditor beyond reasonable doubt.

12. Thus, from the discussions made supra we are of the view that there exists a dispute between the parties and the said dispute required further investigation and hence the Application in IBA/832/20202 stands **Dismissed**. No costs.

-Sd-
B. ANIL KUMAR
MEMBER (TECHNICAL)

-Sd-
Justice (Retd.) S. RAMATHILAGAM
MEMBER (JUDICIAL)

Sudhir