

IN THE NATIONAL COMPANY LAW TRIBUNAL
AT MUMBAI BENCH, C-IV

IA No.2963 of 2021

IN

CP (IB) No. 1210 of 2020

An application under Rule 11 of
NCLT Rules, 2016.

Filed by

Jaychandra Agro Industries Private
Limited

...Applicant

IN THE MATTER OF

Unique Sugars Limited

...Operational Creditors

Versus

Jaychandra Agro Industries Private
Limited.

...Corporate Debtor

Order delivered on: 06.12.2023.

Coram:

Ms. Anu Jagmohan Singh
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances:

IA No 2963/2021

For the Operational Creditor

: Mr. Manoj Harit a/w Adv. Pooja
Harit i/b Manoj Harit & Co., Ld.
Counsel.

For the Respondent : Mr. Prerak Talathi a/w Abhijeet
Shinde i/b CA Dr. Rajendra Jain,
Ld. Counsel.

ORDER

1. The present Application is filed by the Applicant challenging maintainability of the Company Petition.

Submissions of the Applicant / Original Corporate Debtor

2. Preliminary Objections raised by the Applicant are as follows:
 - a. The claims made by Unique Sugars Limited i.e. Original Operational Creditor are hopelessly barred by Limitation. The company petition has been signed on 15.09.2020 and must be filed thereafter. Considering the date of filing of the Petition, the claims cannot be made with respect to purported defaults prior to 15.09.2017.
 - b. All the claims set out in petition are time barred and hence the Company Petition does not meet the threshold limit and hence barred under section 4.
 - c. The Petitioner has made several claims and no supporting documents have been attached. The Operational Creditor has annexed the following documents with the Company Petition, in order to prove existence of Debt:
 - i. Computation table for Debt amount;
 - ii. Summary of Findings;
 - iii. Order of NCLT dated 28.02.2019, for admission of Operational Creditor into CIRP process;

- iv. Copy of Demand Notice in Form 3 and 4 dated 11.01.2020;
- v. Reply of Applicant to the Demand Notice;
- vi. Minutes of COC meeting of Operational Creditor Company.

None of these documents provide any documents in support of the purported claim made by Petitioner. The Petition suffers from incurable defects that cannot be cured and hence the Petitioner deserves to be dismissed.

Submissions of Respondent / Original Operational Creditor

3. The Respondent in its reply states that the instant application has been filed after the receipt of the Forensic Audit Reports of the Operational Creditor. The report mentions trade receivables from Related Party as Rs. 4.9 Crores. The objection on the ground of bar of limitation is misconceived and erroneous. It is being sought to be contended that the debts are time barred. The contention is legally untenable in view of the following facts –

- i. Unique Sugars Ltd was admitted to CIRP. Thereafter, the CoC directed forensic audit to be conducted as there were a large number of related party, suspicious, undervalued and fraudulent transactions entered into by the suspended Directors in order to avoid the creditors and other dues.
- ii. The Forensic Auditors i.e. Batliboi & Purohit submitted the forensic audit report dated 08/01/2020 to the Resolution Professional. At Annexure I is the true copy of the Forensic Audit Report dated 08/01/2020.
- iii. Pursuant to the Forensic Audit - the Resolution Professional issued a Demand Notice in Form 3 dated 11/01/2020 to the Applicant.

- iv. Since the Applicant failed and neglected to pay the dues, in a CoC meeting dated 21/02/2020 it was resolved that appropriate proceedings may be initiated for recovery of dues.
- v. In consequence of the aforesaid CoC Resolution, the CP came to be filed on 17/08/2020. The Corporate Debtor has placed his reliance on section 17 of the Limitation Act 1963, and thereby contends that, there is no force in the challenge mounted on the point of limitation.

Findings

4. This bench has perused the documents and pleadings available on record and considered the arguments of both the sides.

- 4.1 As per material on record after going through the invoices as set out in the Computation Chart it is observed that the Invoices No 1 to 248 dated 30.06.2014 up to 21.06.2017 are prior to three years hence barred by limitation and the amounts in the remaining invoices are below the threshold limit. As per the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs "*claim under IBC should be minimum 1 crore, any petition for a claim below 1 crore cannot be dealt with by NCLT*". The claim amount is below the threshold limit. In that view of the matter, this bench is of the considered view that plea raised by the Applicant/Original Corporate Debtor has substance.

- 4.2 As far as the question of limitation goes, the Respondent seeks to take the cover of Forensic Audit Report and has relied on Section 17 of the

Limitation Act. However, a plain reading of section 17 clearly indicates that Operational Creditor case is not covered under any of the clauses of Section 17 of the Limitation Act, 1963. In any case Forensic Audit is only an indicative report and not a conclusive evidence which has to be further examined. The Hon'ble Apex Court has held that to invoke Section 17 of the Limitation Act discovery of the fraud have to be pleaded and proved. In the present case apart from the Forensic report which mentions 'trade receivables' from the related party, no supporting documents have been filed to prove the existence of fraud committed by the Corporate Debtor. Hence this bench is not inclined to go with the respondent's plea on applicability of Section 17 of Limitation Act.

5. Under these circumstances, this tribunal is of the considered opinion that the above Interlocutory Application No. 2963/2021 is **allowed** and CP No. 1210/2020 filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 is **Dismissed** on the ground of maintainability.

Sd/-
ANU JAGMOHAN SINGH
MEMBER (TECHNICAL)
06.12.2023.

Sd/-
KISHORE VEMULAPALLI
MEMBER (JUDICIAL)