IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI

BENCH-VI

IB-2750/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

Amit Jain Proprietor of M/S Aadi Traders

Having its office at: - 405, Patel Nagar

New Mandi, Muzzaffarnagar

U.P-251001 ...Operational Creditor/Petitioner

Versus

Silvertoan Papers Ltd.

Having its Registered office at: -

E-44, G.F. Madhu Vihar, New Delhi-1100032.

...Corporate Debtor/Respondent Company

Order Delivered on:05.03.2021

Coram:

Shri. P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Jay Savla, Sr. Adv.

Mr. Prabhat Chaurasia Advocates.

Counsel for Corporate Creditor: Mr. Alok Kumar, Mr. Chanchal Yadav,

Mr. Anand Kumar, Advocates.

ORDER

As per P.S.N. PRASAD, Hon'ble Member (Judicial)

1. This is a petition filed by Mr. Amit Jain Proprietor of Aadi Traders the petitioner/operational creditor seeking to initiate CIRP against the Respondent company /Corporate Debtor M/s Silvertaon Papers Limited, under Section 9 of IBC 2016 for the alleged default on the part of the Corporate Debtor in settling the

amount of Rs. 1,45,69,392/- as on 31.12.2018 along with the interest component towards the goods supplied. The case of the operational creditor is as follows:

i. The Operational Creditor supplied the Wheat Straws and raised 7 invoices in the name of proprietorship concern, however, the Corporate Debtor failed and neglected to pay the entire amounts under 7 invoices in question, issued by Operational Creditor. It is stated that as per the agreed conditions of payment for the supplies, the Operational Creditor/Applicant is entitled to charge interest @ 24% quarterly compounding 7 (seven) days after the delivery of the goods.

ii. It is submitted that as on 31.12.2018, outstanding amount under the 2 invoices are Rs. 86,23,601/- towards principal and Rs. 59,45,791/- towards interest calculated @ 24% compounded quarterly, thereby, aggregating to Rs. 1,45,69,392/-. That when the Operational Creditor approached the Corporate Debtor for payment of the outstanding dues, the Corporate Debtor sought more time to make the payment, however, the Corporate Debtor acknowledged and confirmed the outstanding dues of the Operational Creditor by endorsing the Statement maintained by the Operational Creditor.

iii. The operational creditor has served demand notice dated 20.03.2019 to the corporate debtor. The corporate debtor sent a reply letter dated 24.04.2019 raising certain dispute regarding claim of operational creditor.

2. The Corporate debtor (respondent) has filed its reply and raised certain objections against the claim of the applicant. After final arguments on 17.12.2020 both the parties were directed to file Written Submissions. The respondent in its written submission has filed some additional document like forensic report regarding confirmation of accounts, which was not placed on record earlier. Therefore, the applicant was given chance to rebut the same vide order dated 12.01.2021. Both the parties argued again and the matter was reserved for orders on 22.01.2021. In that way both the parties have been given proper opportunity in respect of facts of the present case.

3. The following objections have been raised by the respondent:

   - That it is most pertinent to mention that the applicant has deliberately not mentioned the date of default in Form V which fact itself make the whole proceeding as void-ab-initio, here it is also most important to mention the reason of non-mentioning of date of default as the date of default is 10.09.2016 and the alleged claim of applicant is time barred and due to which reason also the present application is not at all maintainable.

   - Further, the applicant had tried to get the limitation renewed on the basis of mere acknowledgment of a junior clerk which document itself is under challenge due to following reasons:

a) The name of the Company i.e., "Corporate-debtor" is wrongly written as "Silvertoan Paper Mills Ltd." in place of "Silvertoan Papers Limited".

b) The acknowledgment had been shown by a junior clerk named as "Deopal" while acknowledgment is fabricated with the signature mentioned as "Devpal".

c) The said fabricated acknowledgment is under protest in criminal case no. 236/11 of 2020 in the district court of Muzaffarnagar.

- The respondent has relied upon recent judgments by the Hon'ble Apex Court in the matter of Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr. (Civil Appeal No. 6347/2019 dated 14.08.2020), and also in the matter of B.K. Educational Services Private Limited v. Parag Gupta and Associates (Civil Appeal No. 23988/2017) whereas the Hon'ble Apex Court had categorically decided that apart from Article 137 of Limitation Act no part of limitation act is applicable on Section 7, 9 and 10 application of IBC, 2016. Further it has also been decided that the acknowledgement of a debt does not result into extension of period of limitation. Copy of

Judgment in Civil Appeal No. 6347/2019 and in Civil Appeal No. 23988/2017.

- In respect of issue pertaining to Confirmation of accounts for 31.03.2017 and extension of limitation it is submitted that the issue raised by Applicant is nothing but an attempt to misguide this Tribunal and has no relevance in the eyes of law as the application was filed way after the expiry of limitation period. It is pointed out that the applicant had tried to get the limitation renewed on the basis of mere acknowledgment of a junior clerk which document itself is under challenge as the name of the Company i.e., "Corporate Debtor" is wrongly written as "Silvertoan Paper Mills Ltd." in place of "Silvertoan Papers Limited", the acknowledgement had been shown to the signed by a junior clerk named as "Deopal" while the acknowledgment is fabricated with the signature mentioned as "Devpal" and the said fabricated acknowledgement is under protest in criminal case no. 236/11 of 2020 in the district Court of Muzaffarnagar.

- In respect of issues pertaining to vehicle number on which material was supplied it is submitted that the material wheat straw was mostly supplied by the local farmers in bullock carts and sometimes on the local assembled vehicles due to which the vehicle numbers may not be correctly appropriated and admittedly the vehicle numbers mentioned in the applicant's invoice and/ or the challans can be similarly categorized as "no vehicle", "scooter" and "motor cycles" detailed list of which is not submitted here for the sake of brevity and can be submitted if asked by the Hon'ble Tribunal.

- In respect of issue pertaining to material which is supplied back is similar material not same material it is submitted that the material supplied by the applicant was wheat straws and the respondent keeps all such material i.e., wheat straw, baggage, paddy husk in a large open compound and in the heaps of such materials it is not possible to demarcate the materials of each supplier, also the continuous flow of air and vehicles in that area all above materials got mixed to each other and that is the only reason to mention the similar material otherwise also on being mentioned as same material the applicant would have asked for the manner of identification for the sake of argument and to prove his bogus claim.

4. The applicant in its rejoinder arguments submitted that objections raised by respondent are completely false, fabricated and manufactured and the claim of the applicant is due and payable in the eyes of law.

5. Heard the parties and perused the case records.

6. The claim of the applicant is not admitted by the respondent. In fact there are certain issues which should be adjudicated before ascertaining the claim of the applicant. At this stage it is immaterial to consider who will succeed. Besides this forum, in the present proceeding, is not supposed to examine the merit of the disputed claims made by the parties.

7. Respondent has also filed criminal complaint in respect of the disputed acknowledgment. Without the said acknowledgement of account, the claim of applicant will be barred by limitation as the invoices were raised between April 2016 to July 2016 and the present petition was filed in November 2019. A person can file complaint of fraud or forgery only after knowing about the said fraudulent act. In the present matter the complaint has been filed after receiving the disputed acknowledgment of accounts. Therefore, till the outcome of the pending complaint, the claim of applicant remains disputed.

8. The Hon'ble NCLAT in the case of ***Ishrat Ali Vs. Cosmos Cooperative Bank Ltd. & Anr*** has observed that:

"The date of coming into force of IBC Code does not and cannot form a trigger point of limitation for application filed under the Code. Equally, since "applications" are petitions, which are filed under the Code, it is Article 137 of the Limitation Act, 1963 which will apply to such applications.

9. In the light of the aforementioned decision passed by Hon'ble NCLAT when we shall consider the case in hand and if we shall calculate the period of limitation from August 2016 then the present application is filed in the November 2019, much after the period of limitation prescribed under Article 137 of Limitation Act, i.e., three years when right to apply accrues. Hence the present petition is barred by limitation.

10. The Supreme Court in a recent ruling, ***Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries Pvt. Ltd. & Anr, Civil Appeal No. 6347/2019***, has held that Section 18 of the Limitation Act, 1963 ('**Limitation Act**'), which provides for a fresh period of limitation to be computed from the time when an acknowledgment of liability has been made in writing and signed, is not applicable to proceedings under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('**Code**').

11. In light of this ruling, a financial/operational creditor will have to be vigilant while initiating proceedings under the Code and ensure that application is within 3 years from the date of default. The creditor will be unable to take the benefit of the provisions of the Limitation Act, which provide for a fresh period of limitation to run/exclusion of time in computing limitation. The same rule shall apply for the operational creditor as well as per the judgement passed by the Hon'ble Supreme Court.

12. Existence of dispute largely depends on the facts and circumstances of each case. In the factual background of this case 'existence of real dispute' cannot be totally overruled.

13. That apart the respondent has placed copies of invoices for re-supply of materials in place of defective materials. The said invoices have been disputed by the applicant in its rejoinder. Therefore, there exist various questions which require a proper adjudication in order to ascertain the claim of applicant.

14. For the reasons stated above the application fails and therefore the same is dismissed as barred by limitation.

15. It is made clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the applicant before any other forum shall not be prejudiced on account of dismissal of instant application.

-Sd-

(DR. V.K.SUBBURAJ)

MEMBER (TECHNICAL)

-Sd-

(P.S.N PRASAD)

MEMBER (JUDICIAL)