

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-V**

CP (IB) No. 35 of 2021

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

In the matter of

M/s Mour Marble Industries Private Limited,

14, keytuo Estate, Kondivita Road,
MIDC Andheri (E), Mumbai- 400059.

..... Operational Creditor

Vs

M/s. Trident Marbles Private Limited,

Registered office at CTS No. 1971-1972,
Air Port Side, Service Road, Western
Express High Way, Vile Parle (E),
Mumbai- 400099

..... Corporate Debtor

Order dated: 12.05.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Shri Prabhat Kumar, Member (Technical)

Appearances (via Videoconferencing)

For the Operational Creditor: Adv. Amir Arsiwala, Counsel i/b. Girish Kedia

For the Corporate Debtor: Shyam Kapadia, Counsel a/w. Priyanka Fadia
i/b. Shashank Fadia

Per: Kuldip Kumar Kareer, Member (Judicial)

ORDER

1. This Company Petition is filed by M/s. Mour Marble Industries Private Limited., hereinafter called as the ("**Operational Creditor**"), seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Frontage Media Private Ltd, hereinafter referred to as the ("**Corporate Debtor**") by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 5,06,88,561/-.

FACTS OF THE CASE

2. The Operational Creditor is into the business of dealing in various kinds of marbles, granites and including job-work on the marbles and granite since 1998. The Corporate Debtor has been engaged in the marble industry which deal in Italian marbles and granite since 1996.
3. The Corporate Debtor has placed various orders from time to time, and pursuant to this, the Operational Creditor sold and delivered the marble/granite material and has also carried out job works in respect to the

material supplied effected between 2010-2011 to 2018-2019. In this regard, the Operational Creditor also raised various Invoices.

4. The Operational Creditor has stated that the Corporate Debtor was obligated to make the payment within 15 to 90 days from the receipt of the Invoices, failing which the Corporate Debtor will be liable to pay an interest at the rate of 18% for the delayed period.
5. The Operational Creditor has further submitted that the Corporate Debtor failed to make the payments of an outstanding amount of Rs. 5,06,88,561/- being principal amount along with the interest at the rate of 18% for the delayed period in respect of total 257 outstanding Invoices.
6. It has been further submitted that the Corporate Debtor has accepted and availed the benefit under GST after July 2017.
7. It has further stated that the Corporate Debtor has confirmed its liability by execution of confirmation of account on 01.04.2017 for outstanding amount Rs. 6,13,16,768.33/-. The Corporate Debtor, thereafter, has made the part payment and has executed Confirmation Letter dated 01.04.2018 for outstanding amount of Rs. 5,06,88,561.33/- towards the principal amount.
8. The Operational Creditor has submitted that the Corporate Debtor has issued three cheques aggregating to a sum of Rs. 36,10,000/- discharging its liability in part. But the cheques were dishonoured, and the intimation thereof was received by the Operational Creditor on 05.02.2020.
9. After the dishonour of cheques, the Operational Creditor issued a Demand Notice under Form 3 of the Insolvency & Bankruptcy Code on 15.10.2020 and the said notice was forwarded to the Corporate Debtor by Registered Post A.D., email and hand delivery.

10. The Corporate Debtor has sent a reply to the Statutory Demand Notice on 26.10.2020 and denied the liability without disputing the Confirmation letters and issuance of cheques.
11. On failure of the Corporate Debtor in making the payment of the outstanding amount of Rs. 5,06,88,561/-, the Operational Creditor has filed the present petition under Section 9 of the Code.

REPLY FILED BY THE CORPORATE DEBTOR

12. At the outset, the Corporate Debtor has denied every averment, statement, submission and contention made by the Operational Creditor.
13. The Corporate Debtor has submitted that in February 2016, the Operational Creditor had approached the Corporate Debtor with an offer to sell the factory and land situated at 709/1/2, Village Naroli, NR, Silvassa (**Subject Premises**). The said Subject Premises was secured for a loan taken from State Bank of India which was defaulted by the Operational Creditor. The Corporate Debtor offered a sum of Rs. 11.77 Crores as purchase consideration which was duly accepted by the Operational Creditor. The Corporate Debtor has transferred a sum of Rs. 10.67 Crores during the period from 23.02.2016 to 03.05.2016.
14. The Operational Creditor has further raised invoices upon the Corporate Debtor at the rate of Rs. 20/sq.ft., for records only, since the conveyance was yet to be executed by the Operational Creditor. It has further been submitted that the Corporate Debtor issued a Debit Note on 19.07.2019 for a sum of Rs. 2,32,74,013/- for work done relating to marbles at the subject premises in terms of the MOU dated 05.04.2016 between the parties and it was duly accepted and acknowledged by the Operational Creditor.

15. Thereafter, it was agreed between the parties that the Subject Premise would be transferred to the sister concern of the Corporate Debtor i.e Sidh Granite Private Limited (SGPL). The Operational Creditor has executed and registered a Sale Agreement dated 23.02.2018, recording the transfer of the subject premise in favour of SGPL.
16. The Operational Creditor was declared 'Wilful Defaulter' by the Central Bank of India. The Operational Creditor, thereafter, approached the Corporate Debtor to sell two lands. To put an end to all the disputes, in the meeting held on 29.07.2019 between the parties, it was agreed that the Corporate Debtor would pay a sum of Rs. 1.22 Crore to the Operational Creditor as full and final settlement of all the disputes.
17. It was submitted that the Operational Creditor has intentionally and wilfully suppressed material information from this Hon'ble Tribunal. It has further submitted that as per the Memorandum of Understanding executed on 29.07.2019, out of Rs. 1,2,50,000/-, Rs. 67,50,000/- is yet to be paid as the Operational Creditor has still not completed the transfer of land.
18. It has further submitted that the Operational Creditor has not annexed 257 Invoices that it purportedly raised on the Corporate Debtor.
19. The Corporate Debtor has further submitted that the Operational Creditor has not annexed the reply of the Corporate Debtor dated 02.12.2020 which was issued in response of the statutory Demand Notice dated 26.10.2020. The Operational Creditor has only annexed the Preliminary Reply of the Corporate Debtor dated 26.10.2020 despite receiving the copy of the Final Reply on 04.12.2022.
20. The Corporate Debtor has further submitted that the present petition is not maintainable with respect to Notification dated 24.03.2020 issued under Section 4 of the Code. it has been submitted that only a sum of Rs. 67,50,000/- is due and payable from the Corporate Debtor, which is lower

than 1,00,00,000 as specified the minimum amount for admitting the CIRP petition under the Code.

21. The Corporate Debtor has further submitted that the petition cannot be admitted under Section 9 of the Code in the light of pre-existing dispute between the parties.

REJOINDER FILED BY THE OPERATIONAL CREDITOR

22. The Operational Creditor submitted that the present petition is not barred by the Notification dated 24.03.2020 as claim amount is more than 1 Crore i.e. 5,06,88,561/-.

23. The Operational Creditor further submitted that the Debit Note dated 29.07.2019 is a forged and fabricated document.

24. It has further been denied if the Operational Creditor has handed over the possession of the factory premises to the Corporate Debtor. The possession was handed over to M/s. Sidh Granites Pvt Ltd. (SGPL) under conveyance dated 23.02.2018.

25. About crystallising the amount by writing dated 29.07.2019, the Corporate Debtor has stated that the said writing was executed with SGPL and not with the Corporate Debtor. It has further submitted that the cheques issued by SGPL and the Corporate Debtor were dishonoured and the Civil Suit against SGPL is pending before the Dindoshi Court, Bombay.

26. The Operational Creditor has further pleaded that all the documents relied upon by the Corporate Debtor are forged and fabricated.

FINDINGS

27. In a Petition under Section 9, it is to be seen whether there is a pre-existing dispute between the parties about the claim amount. It is to be satisfied by this Bench that the claim in respect of the Operational Debt is crystal clear.

However, in the instant case, the Respondent/Corporate Debtor has pointed out certain discrepancies in the claim raised by the Petitioner/Operational Creditor. In this regard, it has been pointed out that though in the Petition, the Operational Creditor has referred to 257 invoices but it has placed on record 10 invoices which are dated between 16.03.2018 and 18.05.2018 whereas the rest of the 247 invoices have not been placed on record nor the details of the said invoices have been disclosed. Therefore, in our considered view, the Operational Creditor has not been able to crystallize the claim.

28. Secondly, the Corporate Debtor has claimed in the reply that the Operational Creditor is guilty of suppressing of material facts and documents while filing the present Petition and on this ground alone, the Petition is liable to be dismissed. According to the Corporate Debtor, the Operational Creditor was in desperate need of funds and it agreed to sell its property for a sum of Rs. 11.77 Crores which included Rs. 8.20 Crores towards acquisition of land, plant and machinery while sum of Rs. 3.57 Crores was payable towards the stock in hand. The Corporate Debtor transferred Rs. 10.67 Crores to the Operational Creditor as depicted in Annexure A attached with the reply. After the payment, the Corporate Debtor took physical possession of the premises sometimes in 2016 but the conveyance deed was not registered due to ongoing litigation between the Operational Creditor and the Bank of India. However, marble belonging to the Corporate Debtor was being delivered at the same premises and the Corporate Debtor was doing all the work on this marble over there. It was agreed between the parties that the entire job work i.e. cutting, netting, filling of marbles would be done by the Corporate Debtor and the Operational Creditor would raise invoices upon the Corporate Debtor @ 20 per sq. ft. for the purposes of record only as the conveyance was yet to be executed by the Operational Creditor. According to the Corporate Debtor, it was only in this context that a debit note dated 29.07.2019 (Annexure-B) was issued by the Corporate Debtor which is duly acknowledged and signed on behalf of the Operational Creditor. In the debit note it is clearly mention

that a sum of Rs. 2,32,74,013/- have been debited being showing job work expensed paid by the Corporate Debtor to various parties on behalf of the Operational Creditor during the period of 01.04.2016 to 31.03.2018.

29. The Counsel for the Operational Creditor has claimed that a debit note dated 29.07.2019 is a forged and fabricated document and does not bear the signatures of any authorized signatory of the Operational Creditor and the alleged signatures on the debit note are also forged. However, in this regard, no action is shown to have been taken by the Operational Creditor. No FIR or a complaint is shown to have been lodged with any Authority alleging that the signatures of the Operational Creditor on the debit note have been forged or misused for cheating in order to eschew liability of Rs. 2.32 Crores. Nonetheless, this Bench find that the signature on the debit note and the MOU appears to be same on a cursory look. Even if, the contention of Operational Creditor in this regard is accepted, this, by itself, constitute a dispute in relation to the debt claimed to be in default.
30. The Corporate Debtor has further relied upon the Memorandum of Understanding (Exhibit-D) dated 01.04.2016 between the Operational Creditor and the Corporate Debtor. On page 2 of the Memorandum, it is stated that the Operational Creditor will be issuing invoices on the gross value of the work done for the Corporate Debtor including material supplied by the latter. It is further recorded the material procured and supplied by the Corporate Debtor to the Operational Creditor would be debited by the Operational Creditor to the Corporate Debtor through a debit note on the actual invoice received by the latter from the material vendors and the Corporate Debtor will not adding any mark up on value of invoices received from its vendors.
31. From a perusal of the Memorandum of Understanding also, it becomes abundantly clear that that the debit note dated 29.07.2019 was issued as per understanding arrived at between the parties in the Memorandum. The

Memorandum of Understanding is also purported to have been signed by an Authorized Signatory of Operational Creditor but surprisingly, it has denied the signatures claiming the same to have been forged and fabricated. However, no complaint etc. is shown to have been lodged with the police or any Authority by the Operational Creditor regarding forgery of its signatures on the MoU. Even if, the contention of Operational Creditor in this regard is accepted, this, by itself, constitute a dispute in relation to the debt claimed to be in default.

32. In this context, it is worthwhile to point out the Operational Creditor in the rejoinder has not disputed the sale of the property of the Operational Creditor to the Corporate Debtor. It has only been claimed in the rejoinder that the possession of the factory premises was handed over to M/s Siddh Granites Private Limited and the possession was not given to the Corporate Debtor. It has also been admitted that factory plant and machinery were sold for Rs. 8.20 Crores to SGPL and the Corporate Debtor. On the contrary, it has been categorically claimed by the Corporate Debtor that even though the entire purchase consideration of the subject premises was paid by the Corporate Debtor, it was latter on agreed that the premises would be transferred another sister concern of the Corporate Debtor i.e. Siddh Granite Private Limited. This fact has not been controverted in the rejoinder even otherwise from the confirmation of account (Exhibit-A) attached with the reply, it is evident that the Corporate Debtor transferred a sum of Rs. 10.67 Crores which obviously pertain to the sale consideration of the subject premises belonging to the Operational Creditor. This further strengthens the view that the MoU and the debit note were also rightly executed/issued with the consent and concurrence of the Corporate Debtor who now appears to be taking an undue advantage of the fact that the property was being transferred to the SGPL and not to the Corporate Debtor. All the circumstances clearly obfuscate the claim of the Petitioner and there appears

to be a pre-existing dispute between the parties which needs to be resolved before an appropriate Civil Authority/Court.

33. Because of the above discussion since there appears to be a pre-existing dispute between the parties, the matter cannot be admitted.

34. Accordingly, the above CP (IB) No.35 of 2021 is **dismissed** being devoid of merits.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

Sd/-

KULDIP KUMAR KAREER
MEMBER (JUDICIAL)