

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB- 1005/ND/2018

(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 SWASTIK INTERCHEM PVT. LTD.

...Applicant/Operational Creditor

VERSUS

M/s A.M. VINYL PVT. LTD.

...Respondent/ Corporate Debtor

Pronounced on: 04.09.2019

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

SHRI HEMANT KUMAR SARANGI

HON'BLE MEMBER (Technical)

For the Applicant : Mr. Navneet Dugar, Adv.

For the Respondent: Ms. Rukmini Mukherjee, Adv.

Mr. Kunal Sharma, Adv

MEMO OF PARTIES

M/s SWASTIK INTERCHEM PRIVATE LIMITED

Having its registered office at:

F-19, First Floor, Kanishka Plaza,
LSC Complex, Behra Enclave,
Paschim Vihar, New Delhi- 110087

...Applicant/ Operational Creditor

VERSUS

M/s A.M. VINYL PRIVATE LIMITED

Having its registered office at:

323, 3rd Floor, Hemkunt Chambers,
89, Nehru Place, New Delhi- 110019

...Respondent/ Corporate Debtor

ORDER

DR. DEEPTI MUKESH, MEMBER (J)

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Swastik Interchem Private Limited (for brevity 'Operational Creditor') through its director Mr. Deepak

- Kumar Grover authorizing him to file present application vide Board resolution dated 05.06.2018, with a prayer to initiate the Corporate Insolvency process against M/s A.M. Vinyl Private Limited (for brevity 'Corporate Debtor').
2. The Operational Creditor namely M/s Swastik Interchem Private Limited is a company incorporated under the provisions of Companies Act, 1956 with CIN No. U24100DL2012PTC233950, having its registered office at F-19, First Floor, Kanishka Plaza, LSC Complex, Behra Enclave, Paschim Vihar, New Delhi- 110087.
 3. The Corporate Debtor namely M/s A.M. Vinyl Private Limited is a company incorporated on 19.11.2004 under the provisions of Companies Act, 1956 with CIN No. U25202DL2004PTC130642, having its registered office at S-357, Greater Kailash, Part-1, Delhi-110048. The Authorized Share Capital of the respondent company is Rs. 5,00,00,000/- and Paid Up Share Capital of the company is Rs. 3,46,74,390 /- as per Master Data of the company.

4. It is the case of the Operational Creditor that Corporate Debtor used to purchase Industrial Chemicals, Pigments and Titanium Dioxide from the Operational Creditor. It was orally agreed that upon receiving the goods by Corporate Debtor and raising of invoices by Operational Creditor, the entire payment for such invoices shall be made in a timely manner failing which interest for delayed payment would be paid by the Corporate Debtor. The Corporate Debtor placed various purchase orders for supply of said goods. The Operational Creditor supplied the goods as per the orders placed by Corporate Debtor and raised invoices against the said supply.
5. It is further submitted by the Operational Creditor that they maintains an open and current account in the name of the Corporate Debtor in its books of accounts and as on 16.07.2018 an amount of Rs.1,98,59,216/- (Rupees One Crore Ninety- Eight Lakhs Fifty- Nine Thousands Two Hundred and Sixteen only) is payable by the Corporate Debtor towards the goods purchased from the Operational Creditor including interest on unpaid amount. A true copy of

ledger maintained by the Operational Creditor is annexed with application.

6. It is further submitted by the Operational Creditor that against the said supply of goods and in discharge of above stated legal liability, the Corporate Debtor issued 16 cheques. When said 16 cheques were presented in ICICI Bank, Delhi, the said cheques were returned / dishonored and the bank return memo with reason 'Insufficient funds' are placed on record.
7. That Operational Creditor brought to the notice of Corporate Debtor that the cheques have been dishonored, but despite knowing this fact the Corporate Debtor never bothered to reply nor paid outstanding dues hence the Operational Creditor sent a demand notice dated 19.06.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor asking it to make the payment of Rs. 1,88,90,161/- as principal amount and interest of Rs. 7,18,120/- totaling to Rs. 1,96,08,281/- (Rupees One Crores Ninety-Six Lakhs Eight Thousand Two Hundred and Eighty-one only), within 10 days from receipt of the notice.

8. The Corporate Debtor vide its letter dated 18.08.2018 replied to the demand notice issued under Section 8 of the Insolvency and Bankruptcy Code, 2016 and disputed the amount claimed by the Operational Creditor. The corporate debtor has submitted that debt is disputed and not payable as the color pigments and industrial chemicals supplied to the Corporate Debtor were different in quality and quantity. As a result of the inferior, substandard and bad quality it has caused a monetary loss and damage to goodwill of the Corporate Debtor.
9. The Applicant has filed present application to which Corporate Debtor has replied mentioning about dispute with respect to the quality of goods supplied by the applicant.
10. In Part-IV of the present application, the Operational Creditor has given the details of the total amount of the Operational debt and the transactions on account of which the debt fell due.

PARTICULARS OF OPERATIONAL DEBT	
1. TOTAL AMOUNT OF DEBT	An amount of Rs. 1,98,59,216/- (Rupees One Crore Ninety- Eight Lakhs Fifty-Nine Thousand Two Hundred and Sixteen only) is payable including interest on unpaid amount as on 16.07.2018.
2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURED	An amount of Rs. 1,98,59,216/- (Rupees One Crore Ninety- Eight Lakhs Fifty-Nine Thousand Two Hundred and Sixteen only) is payable including interest on unpaid amount as on 16.07.2018

11. The defense adopted by the Corporate Debtor to the present application filed under Section 9 is that color pigments supplied to the Corporate Debtor were different in quality and quantity and not as per the order placed by it.

12. It is further submitted by the Corporate Debtor that the alleged bank statements annexed with the application are only of the period commencing from 10.06.2018 to 17.07.2018, however the invoices are raised from 11.04.2017 to 03.01.2018. No bank statements for the period prior to June are annexed, which are self-serving documents, cannot amount to any admission on the part of the Respondent to make any payment.
13. It is further claimed that amounts mentioned in the various alleged invoices is for total amount of Rs. 58,94,227/- whereas the amount claimed in the application is Rs. 1,98,59,216/-. Also, as per the ledger account, total outstanding amount is of Rs. 93,34,830/- whereas the amount claimed as outstanding in the Application filed is of Rs.1,98,59,216/-. The Operational Creditor has not disclosed the amount that has been received from the Corporate Debtor, Ledger accounts shows an amount of Rs. 1,06,93,482/- as receipt from 2017-18. Further Ledger account from the period 01.04.2018-16.07.2018 shows a further receipt of Rs.80,03,412/-.

14. It is further submitted that color pigments that were supplied by the Operational Creditor were of inferior quality as a result, the output produced was of sub-standard quality and the same has caused a monetary and loss of goodwill to the Respondent. A copy of the inspection reports dated 11.04.2017 to 08.01.2018 of the same are annexed with the reply.
15. Due to the defect in the quantity and quality of the product, the Respondent was unable to service few purchase orders causing them a loss of Rs. 39,79,000/-, the copy of said purchase orders are annexed with the reply.
16. A rejoinder to the reply has been filed by the Operational Creditor reiterating the submissions made in the application and controverting the assertions in the reply. It is submitted that colour pigments supplied were of good quality and were duly received by the Corporate Debtor, there was no complaint ever by the Corporate Debtor regarding inferior quality of goods. The copy of inspection report of the Corporate Debtor is an afterthought. Various cheques between 18.03.2018 to 26.09.2018 issued by the Corporate

Debtor have been dishonored as the Corporate debtor is unable to pay its debts.

17. It is seen that the Corporate Debtor has neither filed any document to show that they had raised the issue of bad quality of goods with Operational Creditor any time before receiving Section 8 notice on 19.06.2018, though the supply of goods and invoices raised are from 11.04.2017 to 03.01.2018.
18. Facts which are material to the controversy raised with respect to 'pre-existing dispute'.

In ***“Innoventive Industries Ltd.(Supra)”***, the Hon'ble Supreme Court held that **pre-existing dispute is the dispute raised before demand notice or invoices was received by the 'Corporate Debtor'**. Any subsequent dispute raised while replying to the demand notice under Section 8(1) cannot be taken into consideration to hold that there is a pre-existing dispute.

Therefore, the reply given by the 'Corporate Debtor' only after the receipt of notice under Section 8 of the Code is to be

ignored for finding out whether there is pre-existence of dispute or not.

19. Further the Hon'ble Supreme of India in **Mobilox Innovations Private Limited vs. Kirusa Software Private limited** held that – *“a dispute truly exists in fact and is not spurious, hypothetical or illusory. Here there is no such dispute was pre-existing apart from that a hypothetical or illusory dispute which has been raised by the ‘Corporate Debtor’ while replying to the demand notice served under Section 8(1) by the Operational Creditor”*. In the present case also, the Corporate Debtor has created so called ‘dispute’ only after receiving Section 8 notice.
20. In view of the aforesaid fact, we hold that there is no ‘pre-existing dispute’ in the present case.
21. The applicant has attached the copy of the Bank statement issued by ICICI Bank for the period starting from 10.06.2018 to 17.07.2018 in compliance of Section 9(3) (c).
22. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

23. The present application is filed on 21.07.2018 which is within the period of limitation.
24. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
25. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.
26. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Ms. Sujata Sharma having registration no. IBBI/IPA-001/IP-P01418/2018-19/12188 having email address sujatasharma2205@gmail.com and contact number is 9810079081 as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the

statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

27. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016.
28. The applicant/Operational Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and accounted for by the IRP. The amount shall be reimbursed to Operational Creditor after the COC has approved the expenses of the IRP before appointing Resolution Professional.
29. A copy of the order shall be communicated to the Applicant as well as to the Respondent Company above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.

Sd/-

(SH. HEMANT KUMAR SARANGI)
MEMBER (TECHNICAL)

Sd/-

(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)