

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IB No. 2681/ND/2019

IN THE MATTER OF:

**M/s. Sanjay Kumar Chetwani
R/o 124/80, Aggarwal Farms
Mansarover, Jaipur,
Rajasthan-302020**

...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

**M/s. MedinnebelleHerbalcare Private Limited
CIN No. U74239DL1996PTC076006
HAVING ITS REGISTERED OFFICE AT:
Plot no. 13 Road No. 35 F/F,
West Punjabi Bagh, New Delhi-110026**

... RESPONDENT / CORPORATE DEBTOR

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on:14.12.2021

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

ORDER

Per: SMT. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the



14/12/21

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by Sanjay Kumar Chetwani, (hereinafter “applicant”), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s MedinnebelleHerbalcarePrivate Limited (hereinafter, Respondent/Corporate Debtor).

2. As per averments made in the petition, that the applicant was proprietor of the registered trade mark “NPD ENDURA MASS”. The said trademark was assigned to the respondent vide assignment deed dated 19.01.2018 for a consideration of Rs. 4,44,00,000/- excluding GST. It is stated that the respondent paid Rs. 3,96,00,000/- vide two demand drafts bearing no. 503542 and 503543 drawn on ICICI Bank ltd. after deducting Rs. 44,00,000/- amount for TDS. It is stated that the respondent did not pay the GST amount 52,80,000/-.
3. It is submitted that the respondent in order to discharge the liability of GST payment had issued cheque bearing no. 000696 dated 15.03.2018 drawn on ICICI Bank in favour of the applicant. However, the cheque got dishonored vide return memo dated 12.01.2018 stating the reason “*payment stopped by drawer*”. Thereafter, the applicant sent demand letter dated 19.10.2018 demanding payment of Rs. Rs. 52,80,000/- and also requested to deposit TDS Rs. 44,00,000/- against the PAN of applicant. However, the respondent vide letter dated 24.10.2018 had refused to pay the said amount.
4. It is further stated that on invoice no. NPDTM001 was issued on 06.02.2018, the respondent denied to pay the amount to applicant. Thereafter the applicant issued demand notice dated 13.09.2019 under


14/12/21.

section 8 of the Code for payment of Rs. 52,80,000/-. It is submitted that the respondent has not replied to the demand notice.

5. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:

- i.** It is stated that deed of assignment dated 19.01.2018 clearly states that the price/consideration of Rs. 4.4 crore for the Trade Mark includes GST and word 'WHATSOEVER' includes all the taxes including GST. It is submitted that the respondent had paid sum of Rs. 3,55,00,000/- and Rs. 41,00,000/- by way of demand drafts dated 09.01.2018 aggregating to Rs. 3.96 lacs after deducting Rs. 44,00,000/- towards the TDS.
- ii.** It is submitted that the GST was included in the main amount of consideration and if not then it is a disputed question, which should be adjudicated by a competent authority. It has been pointed out that page 40 of the assignment deed provided that "*Received on 9th January 2018 from MedinnBellee Herbal Care Pvt. Ltd., a gross consideration amount of Indian Rupees 4,40,00,000/-*", and the word "Gross Consideration" means GST is included in the amount.
- iii.** It is also claimed that the entire transaction has now become null and void due to various criminal acts including fraud and cheating by applicant and criminal proceedings are pending. It is also claimed that that applicant is liable to return full consideration and atleast not entitled to enforce any of its rights.


14/12/21

iv. It is submitted that the corporate debtor has reversed all the transactions related to the deed of assignment in the books of accounts of the corporate debtor because of fraud and criminal activities of the applicant and now the entire amount is receivable from the applicant.

v. It is further stated that the corporate debtor has sent reply dated 24.10.2018 informing the applicant about the criminal acts of fraud, conspiracy. The contents of said reply dated 24.10.2018 are clear evidence that there is a pre-existing dispute. The same dispute was also raised by corporate debtor vide reply to the demand notice dated 26.09.2019. There is also a criminal complaint filed by corporate debtor which is still pending.

6. The petitioner has filed rejoinder to the reply of respondent and submitted as follows:

- a) The case of the applicant is that the respondent issued cheque bearing no. 000696 amounting to Rs. 52,80,000/- with an endorsement that the cheque will be cleared subject to G.S.T paid by Sanjay Kumar Chetwani for the invoice no. NPDT 001 dt. 06.02.2018. and the issuance of cheque for payment of GST override the deed of assignment.
- b) It is further stated that the applicant has not claimed the credit of TDS as the operational debt because this adjudicating authority is not a competent forum for recovery of TDS credit.
- c) It is further submitted that the fact of pre-existing dispute is a moonshine defense and there is no dispute pending between the


14/12/21

parties. It is submitted that the corporate debtor itself has paid Rs. 1,70,00,000/- to Mr. K.N. Prasad and on the other hand the corporate debtor is claiming that Mr. K.N. Prasad had conspired with applicant to commit fraud with corporate debtor.

7. It is pertinent to mention here that the corporate debtor has filed some additional document on record such as letter dated 12.03.2018 in order to show disagreement between the parties regarding payment of GST. It is pertinent to mention here that the corporate debtor in its letter dated 12.03.2018 itself has acknowledged the issuance of cheque for Rs. 52,80,000/- in respect of payment of GST amount.

8. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and written submissions filed by the parties.

9. It is seen that the assignment agreement is silent about the payment of GST on the consideration amount. However, the Corporate Debtor itself has issued an additional cheque for payment of GST amount to applicant. The respondent's case is that the said cheque was issued as a security, which clearly indicates that the respondent/corporate debtor had agreed to pay GST additionally over the amount of consideration.

10. There is nothing on record to show that the corporate debtor raised dispute over use of said Trademark sold by the applicant. The corporate debtor has failed to demonstrate that the GST was not payable by it, when a cheque for the same purpose was issued. The defense of corporate debtor regarding pre-existing dispute regarding payment of remaining amount is not supported by any documentary proof.

11. In respect of definition of “dispute” in the Code, Hon’ble Supreme Court has held in the case of *Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.* 2018 1 SCC 353 inter-alia that:

“Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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. However, in doing so the Court does not need to be satisfied that the defence is likely to succeed. The court does not at this stage examine the merits of the dispute except the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.” (emphasis given).

12. In view of the aforesaid discussion, since the corporate debtor already issued a cheque in order to clear its liability towards payment of GST, the claim of applicant deserves to be allowed.

13. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Santanu Kumar Samanta, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-P02324/2020-21/13511 and email id. santanukumar@yahoo.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The



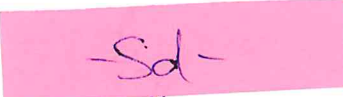
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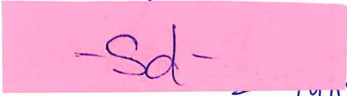
specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

14. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Santanu Kumar Samantato meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
15. 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 corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
16. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant


14/12/2019

is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.


(SUMITA PURKAYASTHA)
MEMBER (T)


(DHARMINDER SINGH)
MEMBER (J)

NOTE

Pronounced today in open court in pursuance of power under Rule 151 of NCLT Rules, 2016 as Ms. Sumita Purkayastha, Hon'ble Member (T) is not holding Court today.

Vishal Rana
Court Officer