

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

CP (IB) 3704/MB /2019

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

Scitec Iparies Kereskedelmi K .

...Operational Creditor/Applicant

Versus

Neuvera Wellness Ventures Private Limited.

A-11,Shriram Industrial Estate, Near Wadala
Telephone Exchange, Wadala West,Mumbai-
400031

...Corporate Debtor/Respondent

Order Delivered on 10.04.2024

Coram:

Sh. Prabhat Kumar

Hon'ble Member (Technical)

Justice V.G Bisht,(Retd).

Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor : Mr. Aman Kacheria, Adv

For the Corporate Debtor : Mr. Jairam Chandani, Adv

ORDER

Per: Prabhat Kumar(Technical)

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MUMBAI COURT-1

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1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by M/S SCITEC IPARIES KERESKEDELMI K. ("**Operational Creditor**"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/S NEUVERA WELLNESS VENTURES PVT LTD. ("**Corporate Debtor**").
2. The Corporate Debtor is incorporated on 18.03.2011 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U74990MH2011PTC214996. The Corporate Debtor's registered office is situated at A-11, Shriram Industrial Estate, Near Wadala Telephone Exchange, Wadala Telephone Exchange, Wadala West, Mumbai-400031 Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Present Petition is filed as the Corporate Debtor owes to the Operational Creditor an amount of Euro 77,134.5 (equivalent to Rs.60,62,771.7) or such other amount being valued in Indian Currency at the official exchange rate which is reference rate published by the Reserve Bank of India) along with applicable interest till receipt. On 28.08.2018 is a date from which such debt has fallen due and considered as date of default.

Submissions made by the Petitioner:

4. The Operational Creditor is Engaged in the manufacturing of food supplement products in the sport nutrition industry and further relating products such as sportswear or shaker products. The Applicant has operations in several countries where it supplies its products through distributors. Corporate Debtor is a company who is leading manufacturer of High-Quality Stainless Steel and other materials.

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5. The Operational creditor submits that on 16.01.2015 both Operational creditor and Corporate Debtor entered into Distribution Agreement, where Corporate Debtor was appointed as an exclusive distributor for the territory of India in respect of Applicant's products for the consideration to be paid by Corporate Debtor as per terms and conditions.
6. The Operational Creditor submits that under the Distribution Agreement, the Applicant has from time to time supplied goods and raised invoices which the Corporate Debtor initially paid but has failed to make payments of the outstanding invoice with bearing No.9200408728, dated 29.06.2018 for an amount of Euro 67,280.25. The amount became due and Payable on 28.08.2018 being the due date mentioned in the outstanding invoice itself. The outstanding amount is payable with applicable interest as provided under law.
7. Pursuant to these facts the Operational Creditor has issued an email and letter dated 19.12.2018 calling upon the Corporate Debtor to make payment in respect of the outstanding invoices.
8. The Corporate Debtor by its email dated 19.12.2018 confirmed the outstanding invoices as per their books of accounts by specifically referring to the outstanding invoice being subject matter of this Application. It is stated that the following Invoices were outstanding and Corporate Debtor assured the Operational Creditor about the invoices by January 2019. Following are the invoices and date on which it was due and payable:

Sr.No.	Date	Invoice No.	Amount (In Euro)
01	29.06.2018	9200408728	67,280.25
02.	29.06.2018	9200408729	63,631.44
		Total	1,30,911.69

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9. The Corporate debtor has failed to make the payment towards the Invoice No.9200408728 which was raised on 29.06.2018 for an amount of Euro 67,280.25(Equivalent to Rs. 52,88,227.65), and therefore the said disputed amount is still due and payable with applicable interest.
10. The Corporate Debtor made the payment towards Invoice No. 9200408729 which was due on 29.06.2018 for an amount of Euro 63,631.44 on 31.01.2019. Further the Corporate Debtor states that they have confirmed receipt of the said amount vide its email dated 04.02.2019 and thereafter requested the Corporate Debtor to make payment of the outstanding debt of Euro 67,280.25.
11. The Operational Creditor submits that they vide its email dated 12.02.2019 again requested the Corporate Debtor to make the payment of the outstanding debt amount of Euro 67,280.25. The Corporate Debtor vide its email responded to the Operational Creditor and assured the payment of outstanding amount to the Operational Creditor.
12. The Operational Creditor submits that owing to the default committed by the Corporate Debtor, the operational Creditor (through its advocates) by a demand Notice dated 22.03.2019 called upon the Corporate Debtor to make payments of the sums as more particularly mentioned therein. The Corporate Debtor failed and neglected to pay the amount which was due and payable.
13. The Operational Creditor by Demand Notice dated 21.06.2019 and called upon the Corporate Debtor to make payments of outstanding due.
14. The Operational Creditor Denies the averment made by the Corporate Debtor that having received the products way back in 29.06.2018 Corporate Debtor by a letter for the first time raised certain false and frivolous grievances and offered to pay only an amount of Euro 18,725.78 out of the total outstanding of Euro 67,280.25.

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15. The Operational Creditor by a notice dated 03.09.2019 rejected the offer of the Corporate Debtor, denied and refuted all frivolous claims of the Corporate Debtor outlined in its letter dated 29.06.2019.

Submissions made by the Corporate Debtor:

16. The Corporate Debtor at the very outset denies all the averment made by the Operation Creditor. Also prays for the dismissal of this petition before this tribunal.
17. The Operational Creditor claimed interest of Euro at the rate 18% P.a amounting to Euro 9854.25 on principal amount of Euro 77,134.5 alleged by the Operational Creditor to be payable by the Corporate Debtor. The claim in the present application arises out of the alleged invoice and said distribution agreement. A bare perusal of said invoice and said distribution agreement would reveal that there is no provision for interest 18%. P.a. without there being any provision for the same in the said invoice or said distribution agreement, on this ground the petition should be dismissed with compensatory cost.
18. The Corporate Debtor submits that the Oppression Creditor didn't act according to the terms in the Distribution Agreement.
19. According to the agreement if there is any defective good supplied by the Operational creditor then the applicant was under obligation to supply replacement of products or refund purchase price for the defective products. The Value of defective goods is sum total of Euro 28961.40. The respondent is entitle to get refund for the defective products.
20. Corporate Debtor by a letter for the first time raised certain false and frivolous grievances and offered to pay only an amount of Euro 18,725.78 towards full and final settlement of Operational Creditor's

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claims under said invoice dated 29.06.2018 bearing no.9200408728, This offer was made in response to Operational Creditor's demand notice dated 21.06.2019, wherein the Corporate Debtor proposed to offset the value of alleged defective goods and the expenses related to advertising marketing materials against the principal amount of Euro 67,280.25. Additionally, the Respondent extended an invitation to the Applicant to inspect the Corporate Debtor's warehouse, presumably to provide evidence pertaining to the purported defective goods and related matters.

21. The Corporate Debtor submits that the Operational Creditor has filed this petition to get out of its obligations under the Contractual arrangement between them and for pressuring the Corporate Debtor to pay the disputed invoices after the applicant failed to perform its part of obligations.
22. The Corporate Debtor contends that the present Petition is misconceived and not maintainable. The mandatory form 3 has not been issued by a person authorized to act on behalf of the Operational Creditor on the date of issuance of Form-3 and therefore is no notice under the Law. The Corporate Debtor replied to Form -3 bringing out the true and correct facts of the case and even on consideration of the reply of the Respondent to the said Form-3, it is clear that the present Application is not maintainable and is liable to be dismissed.
23. The Corporate Debtor Further contends that the interest calculate on principal amount is conspiring as there is no provision for interest of 18% P.A. in the invoice and in the said distribution agreement which is claimed in the petition and therefore the Corporate Debtor is praying for the dismissal on this ground.

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24. That there is pre-exists dispute between the respondent and the applicant on the issue of failure on part of applicant to perform its contractual obligations.
25. The Corporate Debtor submits that they have reasonable Number employees working across India. The Corporate Debtor had a turnover of Rs.64,57,66,612.00 crores and its earnings before interest, taxes, depreciation, and amortization is adequate according to the financial statement of the Corporate Debtor for the respective years of 2016-17, 2017-18; and 2018-19.
26. The Corporate Debtor submits that they are extremely sound financially and has been regular in making payments to all its financial creditors. The Respondent has sufficient liquidity to meet all its dues to financial creditors as the same fact is certified by an independent auditor's report for the financial year of 2016-17, 2017-18; and 2018-19.
27. The Corporate Debtor submits that as per one of the clauses of the said Distribution agreement with Operational creditor, as they were in obligation to spend at least 2.5% of Corporate Debtor's total yearly purchase on advertising and marketing in the Territory of Respondent. The Operational Creditor before meeting with the terms of the distribution Agreement had agreed to fulfil its marketing contributions by providing products free of cost to Corporate Debtor, which the Applicant had failed and neglected to provide due to which Respondent is laden with unsold stock. The value of advertising material which is to receive by the Corporate Debtor is amounting to Euro 13,995.05.
28. The Corporate Debtor Submits that as per clause 6.8 of the said Distribution agreement Operational Creditor had undertaken to provide to Respondent with every order of Respondent market material at respondent's choice free of charge corresponding in each order to 1%

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of the invoice price of the products ordered and effectively paid by Respondent. Respondent states that till date respondent is entitled to receive marketing materials, as prescribed in the Distribution Agreement, amounting to Euro 5598.02, which Respondent has failed and neglected to provide and hence Respondent is entitled to credit for equivalent amount.

29. The Corporate Debtor further contends that as per clause 9.10 of the said Distribution Agreement executed by the Operational Creditor if there is a damaged product then the distributor shall promptly notify the supplier of the facts and shall not distribute or transfer damaged products to any other person or otherwise distribute damaged products, except as instructed in writing by the supplier. The Applicant was under obligation to supply replacement of products or refund the price for the defective products. The Corporate Debtor has time and again informed Operational Creditor about products, which were found defective due to forming lumps and hardening before the expiry date of the product. The value of defective goods is sum of total to Euro 28961.40 and respondent pleads that they are entitled to refund of purchase price of said defective goods and/or to credit for purchase price of said defective goods which the Operational Creditor has assured to Corporate Debtor.
30. The Corporate Debtor contends that on 21.06.2019 they have responded to the Demand Notice by denying the liability towards alleged claims of the applicant, the Respondent offered to pay to applicant a sum of Euro 18725.78. towards full and final settlement of applicant's all claims, rights and/or demands under said invoice dated 29.06.2018 bearing no. 9200408728 and all claims, rights and/or demands under said demand notice after setting off value of said defective goods and cost of said advertising marketing material against the principal amount of 67,280.25 (equivalent to Rs.52,88,227.65) and

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alleged interest @18% amounting to Euro 9854.25(equivalent to Rs.7,74,544.05) from 28.08.2018 till 21.06.2019.

31. The Corporate Debtor submits that the Operational Creditor reverted to the said proposal which is mentioned above through letter dated 03.09.2019 and apparently have denied all the claims which was raised by the Respondent.
32. The Corporate Debtor Contends that Operational Creditor willfully failed, neglected and avoided to comply with its obligation in accordance with the Distributorship Agreement.
33. The Corporate Debtor submits that their company is financially sound position to pay the amount claimed by the Operational Creditor. The Respondent has not admitted its liability alleged to be due and payable to the Operational Creditor as the liability is very much in dispute.

Findings:

34. Heard learned Counsel for both the parties. Perused the records.
35. The Operational Creditor issued a Demand Notice Form 4 rule 5 on 21.06.2019, to the Corporate Debtor for total amount of Euro **77,134.5** (equivalent to Rs.60,62,771.7) in that Euro 67,280.25 being the principal and interest was calculated 18% amounting to Euro 9854.25(Equivalent to Rs.7,74,544.05 from 28.08.2018 to 21.06.2021) outstanding against the Invoices raised in respect to various Purchase Orders under the provision of the Insolvency and Bankruptcy Code, 2016, and the petition was filed on 18.10.2019. The total number of invoices raised by the Operational Creditor is two (2).
36. The Corporate Debtor submitted that there was an obligation not to sell any damaged or defective products and under clause 9.9 of the said agreement the applicant was under obligation to supply replacement of

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products or refund purchase price for defective products in terms of clause of 9.10 of the distribution agreement. Further clause 6.1 and 6.8 of the agreement obligates the Operational Creditor to spend at least 2.5% of the Respondent's total yearly purchase on advertising and marketing in the territory of the Respondent and to provide market materials free of charge corresponding to 1 % of the invoice price of the product. The Respondent claims that the total claims of these accounts amounts to Euro 13,995.05, 5,598.02 and 28,961.40. We note that these fact and dispute was brought to the notice of the Applicant vide letter dated June 21, 2019. We further note that the Corporate Debtor have offered Euro 18725.78 towards full and final settlement of the Applicant claims after setting of the amount claimed by the Corporate Debtor against the principal amount of Euro 67280.25. The Respondent is stated to have paid the amount on 28.11.2019.

37. We note that the present petition is filed for principal claim of 67280.25 and interest @ 18% amounting to euro 98548.45. It is not in dispute that the claims raised by the Respondent in the reply to the demand notice are in confirmative with the distribution agreement and these disputes cannot said to be merely moonshine defense. That on 21.06.2019 the Corporate Debtor have responded to the demand notice by denying the liability towards claims of the Operational Creditor, thereafter the Corporate Debtor offered to pay to applicant's all claims, rights and/or demands under said invoice dated 29.06.2018 bearing no.9200408728 and all claims rights and/or demands under said demand notice after setting off value of said defective goods and cost of said advertising marketing materials against the principal amount and with the interest. This Tribunal has no power to go into merits of the dispute accordingly this bench refrains itself from adjudication of the claims raised by the Corporate Debtor. After directing these claims amount from the principal claim of the petition, we find that whole of the remaining principal debt

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stands paid on 28.11.2019 accordingly we have no hesitation to hold the present petition is not maintainable in account of Pre-existing dispute. At last we make it clear that our observation in relation to the claim raised to by the corporate shall not prejudice the contentions of either party in relation to merits of the claim. Hence the Petition is dismissed.

Order

- a. In the above circumstances the petition bearing **CP(IB) 3704/MB/C-I/2019** filed by **Scitec Iparies Kereskedelmi K**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Neuvera Wellness Ventures Pvt Ltd**, the Corporate Debtor, is dismissed.

Sd/-

Sh. PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE V.G BISHT
Member (Judicial)