IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-409/(ND)/2020

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:

M/S Madhav Krishna Textiles Mills Pvt. Ltd.
Having its Corporate office at:
D-9/3, Okhla Industrial Area
Phase -2, New Delhi- 110020.

...Operational Creditor/Applicant

Versus

M/s Laj Exports Ltd.
CIN No. U51909DL2004PLC124854
Having its Registered office at
Khasra No. 150, Chandan Hulla,
NEW DELHI-110030

...Corporate Debtor/Respondent

Order Delivered on: 17.02.2022

CORAM:

JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT
SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (T)

Present:
For the Petitioner- Mr. Sanjeev Goyal.
For the Respondent- Mr. Akshat Dabral.

ORDER

Per: JUSTICE RAMALINGAM SUDHAKAR, HON'BLE PRESIDENT

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, the corporate debtor.

2. As per averments made in the petition the corporate debtor vide performa invoice dated 08.02.2019, 19.04.2019 and 07.09.2019 placed purchased orders with applicant. The applicant then supplied the required fabrics to the corporate debtor and raised following invoices:

S. No.	Particulars	Amount (Rs.)
1	No. 1022 dated 06.03.2019	1,17,096/-
2	No. 1023 dated 07.03.2019	1,13,457/-
3	No. 1024 dated 07.03.2019	1,20,439
4	No. 1025 dated 07.03.2019	39,543
5	No. 1030 dated 09.03.2019	4,95,398
6	No. 1033 dated 12.03.2019	3,09,994
7	No. 1039 dated 15.03.2019	4,95,398
8	No. 1040 dated 15.03.2019	33,907

9	No. 1042 dated 16.03.2019	2,85,180
10	No. 1044 dated 16.03.2019	4,35,406
11	No. 1046 dated 18.03.2019	7,84,963
12	No. 1060 dated 23.03.2019	3,58,646
13	No. 1062 dated 25.03.2019	4,06,308
14	No. 67/19-20 dated 29.04.2019	2,90,646
15	No. 485/19-20 dated 17.09.2019	4,20,992

3. The applicant stated that vide email dated 07.09.2019, the corporate debtor after reconciliation of the accounts with operational creditor has acknowledged the outstanding principal debt of Rs. 27,89,495 (Rupees Twenty Seven Lacs Eighty Nine Thousands Four Hundred Ninety Five only) payable to operational creditor by the corporate debtor as on 31.10.2019.

4. The operational creditor sent a Demand Notice dated 18.12.2019 demanding payment of the unpaid operational debt amount to Rs. 27,89,495/- (as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via email and through speed post on 19.12.2019.

5. It is submitted that in spite of the receipt of the Demand Notice dated 18.12.2019, the Corporate Debtor failed reply to the said demand notice and also failed to show any payment with respect to the unpaid invoices of the operational debts within 10 days from the date of receipt of the said notice.

6. It is submitted that the Corporate Debtor has not raised or shown that any dispute existing prior to issuance of the demand notice within 10 days from the date of receipt of the said notice. The applicant has filed affidavit dated 24.01.2020 in terms of Section 9 (3) (b) of the Code. The applicant further submitted that the Corporate Debtor after the lapse of statutory period of 10 days, sent a communication dated 06.12.2019, received by applicant on 01.01.2020 through DTDC Courier, stating that since the Operational Creditor failed to sell the garments of the Corporate Debtor as agreed between the parties, an amount of Rs. 52,90,619/- has been debited to the account of Operational Creditor.

7. In respect of letter dated 06.12.2019 received on 01.01.2020 the applicant has clarified that there was no prior agreement between the parties that the payment of the fabrics/garments supplied by the applicant to corporate debtor will be made after further selling of the delayed shipments/garments by the applicant.

8. In this case notice was issued on 03.02.2020. Respondent appeared through the Ld. Counsel and Vakalatnama was filed on 17.02.2020. Thereafter the case was adjourned from time to time. After receipt of documents filed a by the petitioner the Respondent filed reply, objecting to the admission support by certain documents. The Respondent in its reply to the application submits that:

a. The Corporate Debtor placed a supply order to the Operational Creditor bearing number 2018A/4604, dated 08.02.2019 for a total quantity of 17200 meters of fabric for Rs. 28,89,600/ (including GST) and the goods were to be supplied to the Corporate Debtor on 24.02.2019. It is claimed that as per the terms and conditions of the supply order, the date of delivery on the purchase order was to be strictly adhered to, failing which the applicant would be liable to pay a penalty @ 1% per day to 7 days to corporate debtor for the delay caused. Further, it was also agreed between the parties that in case of delay of more than 7 days, the corporate debtor would be at liberty to either accept/refuse the delivery of order or may ask to such discount as may deem fit and proper and the said terms and conditions were agreed upon by both the parties at the time of placing the purchase orders.

b. It is stated that even after 4 weeks of the scheduled delivery date, the Operational Creditor had not completed the supply of fabrics to the corporate debtor and despite numerous reminders to the Operational Creditor; the Operational Creditor kept on giving false assurances of sending the supply order to the Corporate Debtor. Pursuant thereto, another supply order placed by one overseas client of the Corporate Debtor got cancelled because the operational creditor delayed the delivery of the fabrics.

c. It is submitted that the Operational Creditor assured to make good the loss borne by the Corporate Debtor by selling the said fabrics through its own resources that were supposed to be shipped to overseas clients but could not be shipped due to delayed delivery from the end of the operational creditor. Copies of the said whatsapp and e-mail correspondences have been placed on record.

d. It is stated that, the Corporate Debtor had issued cheques on verbal commitment of Mr. Ramdev, executive director of the applicant, that he will get the aforementioned cancelled supply order sold and will pay the balance of losses. Pursuant thereto, since Mr. Ramdev was not able to sell the garments and the Corporate Debtor was suffering heavy losses; the Corporate Debtor requested Mr. Ramdev to compensate the losses, which he failed to do. Therefore, the corporate debtor issued a debit note vide correspondence dated 05.12.2019.

9. In this regard, the applicant has denied the allegations made in the reply of the corporate debtor and further submitted in rejoinder that:

   a. It is submitted that at no point of time, prior to the issuance of notice dated 19.12.2019 under section 8 of IBC by the Operational Creditor, the corporate debtor has ever disputed its liability to make payment against the goods supplied by the operational creditor. On the contrary, the Corporate debtor has acknowledged its liability towards the

Operational Creditor, vide email dated 07.09.2019 whereby the accounts of operational creditor were reconciled by Corporate Debtor and further acknowledged its liability to pay the unpaid debt vide acknowledgement dated 30.10.2019 on the operational creditor's statement of account.

b. That the said Debit note is fabricated documents as the respondent has failed to raise any dispute before delivery of Demand Notice. A bare perusal of the said debit note would reveal that the Corporate Debtor after the receipt of the demand notice dated 19.12.2019 and after more than 9 months of delivery of goods by Operational Creditor and more than 7 months of due date(s) of respective invoices, raised the spurious and frivolous debit note alleging cancellation of shipment due to late delivery of fabric.

c. The applicant further stated that the Corporate Debtor has accepted the goods unconditionally without reserving his right to claim compensation for any loss for delay or giving notice of his intention to do so in terms of Section 55 of the Indian Contract Act, hence, the Corporate Debtor is barred in law to claim any compensation for loss, if any, occasioned due to alleged delay, if any.

10. Heard the arguments of Learned Counsel for the petitioner-Mr. Sanjeev Goyal and Learned Counsel for the respondent-Mr. Akshat Dabral.

11. Insofar as the objection is concerned, referring to the objections filed by way of reply, the Learned Counsel of the corporate debtor referred to some purchase orders, truncated whatsapp messages, and emails, to state that there was an ongoing dispute. We went through each one of these documents and we find that the emails, refer to documents relating to transactions, which are in the nature of sale and purchase of goods between the parties. These are normal emails communication between traders where goods are sold and delivered. The Ld. Counsel for the corporate debtor has also filed chat messages which were exchanged through whatsapp application. These messages relate to a particular period of time where goods were sent forward and backwards in the normal course of business and there was some issues which had to be resolved and hence exchange of messages. We do not find from these chats anything specific, to say that there was a dispute of a serious nature stated by the corporate debtor. It does not deal in detail any coherent dispute that can be quantified. The only document which appears to be relevant, in relation to dispute is a letter dated 06.12.2019. This letter dated 06.12.2019 received on 01.01.2020 reads as follows:

" *Date:- 06.12.2019*

To, Madhav Krishna Textile Mills Pvt Ltd
Corporate office at: 0-9/3,
Okhla Industrial Area Phase-2,
New Delhi-110020

Refer to the discussion we had on 29th Nov 19 since you have not been able to sell the shipments inspite of us providing you with the details of the Buyer, label, Country of shipment visual of garments & teck pech Hence, We have debited the FOB Value of cancelled order along with GST & Incentives lossed on cancelled order and you had undertaken to supply this cancelled shipment on your own to another Buyer to whom you had already approached as per your various communications.

Thanking you

Your Faithfully

For LAJ EXPORTS LTD ".

This letter is also followed by a debit note dated 02.12.2019.

12. This admittedly was received by the applicant on 01.01.2020. As rightly pointed out by the Learned Counsel for the applicant, the Section 8 Demand Notice, as required under the Insolvency & Bankruptcy Code, 2016 was issued on 18.12.2019 and received by the respondent on 21.12.2019. The tracking record is also filed along with the proof of receipt of Section 8 notice in Form-3 and Form-4. Hence, the so called letter dated 06.12.2019 received on 01.01.2020 is obviously an afterthought.

13. Even otherwise, we find that the pre-existing debt on the admitted liability of Rs. 27,89,495/-, is confirmed by the respondent in the reconciliation statement for the period from 01.04.2019 to 30.10.2019, where the respondent has signed and affixed its seal, acknowledging the debt of Rs. 27,89,495/-. This is forwarded in the email dated 07.09.2019. Therefore, the plea of the pre-existing dispute has no substance and it is rejected. In view of the aforesaid discussion, the present application is admitted.

14. The applicant has not proposed the name of an IRP. Therefore, this bench appoints Mr. Bikaram Singh Gusain as the Interim Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N00011/2016-17/10015 and email id- bikramgusain@gmail.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The 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.

15. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely, Mr. Bikaram Singh Gusain to 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.

16. 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 initiation/ continuation of proceedings 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.

17. 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 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.

—Sd—

(RAMALINGAM SUDHAKAR)
PRESIDENT

—Sd—

(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)