IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURTI-II

CP(IB) 288 MB 2023
Under section 9 of the Insolvency and Bankruptcy Code, 2016

IN THE MATTER OF

M/s Paras Sales Corporation
7, Hiraman Damu Mahatre Bidg, Sagaon, Dombivali (East), Maharashtra.

... Operational Creditor

V/s.

M/s OC Specialities Private Limited
205, The Chambers, Western Express, Highway, Vileparle (East), Mumbai – 400057, Maharashtra.

... Corporate Debtor

Order delivered on :- 31.10.2023

Coram:

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

Hon'ble Shri Anil Raj Chellan, Member (Technical)

Appearances:

For the Operational Creditor : Adv. Yahya Batatawala
For the Corporate Debtor : Adv. Vishal Shriyan

ORDER

Per: - Kuldip Kumar Kareer, Member (Judicial)

1. This Company petition is filed by M/s Paras Sales Corporation (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against M/s OC Specialities Private Limited (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter called "**Code**") on the ground that the Corporate Debtor has failed to make payment of a sum of Rs. 1,46,61,972/-.

<u>The submissions by the Operational Creditor:-</u>

2. The Corporate Debtor herein issued Purchase Order to the Applicant to provide "Connectweld Connector, S.S. Side glass flange, ball Valve (Design 6), Metallic Gasket, PTFE envelope packing, Stainer, Beral Nipple, moulded granting plate, granting plate, PVC roof sheet, S.S. Reducer, S.S. side glass, S.S. ball valve, green hose pipe, hightention bolt nut double washer, Teflon sheet, rubber mat, stainer, M.S. Pipe C class, M.S. Seamless Elbow, CS Butterfly valve, Teflon gasket, G.I. Earthing Strip, C.S. Steam Trap, Gasket ring rubber neoprint, PVC Adhesive, S.S. side glass, Foundation bolt with nut & washer, gasket cutter with accessories, electric rubber mat. Pipe fitting pipes, Gasket

Sheet, PTFE Teflon Tape". The Applicant supplied all the above goods to the Corporate Debtor and raised proper tax paid invoices for the sales The Corporate Debtor was due to pay the invoice amounts to the Applicant for purchase of the goods.

3. Since April 2022, the Petitioner herein has been supplying goods to the Corporate Debtor. Against supplies made through proper tax paid Invoices aggregating to Rs Rs.1,48,71,815/-, the Corporate Debtor repaid Rs. 2,09,843/ and defaulted on the balance debt payment of Rs.1,46,61,972/- The Corporate Debtor stopped making payments after June, 2022. Even after regular follow up by phone, e-mail personal visits by the Applicant, the Corporate Debtor kept giving vague excuses for delay only to subsequently default on the payment. Huge efforts by Applicant went futile as the Corporate Debtor deliberately kept delaying making payments. Such large delay beyond agreed terms of repayment clearly indicated the inability of the Corporate Debtor to repay the Debt amount.

4. In October, 2022, the Corporate Debtor sent a legal notice to the Applicant framing false allegation of the bribery on the Applicant. The Notice stated that a bribe was given to the purchase manager to secure the Orders from Corporate Debtor. The Applicant thereafter denied in toto the said allegations vide his letter dated 17.10.2022.

5. In November, 2022, in compliance of Rule 5 of the Application rules, the Applicant served the Corporate Debtor with a Demand Notice.

6. The Corporate Debtor thereafter requested for a meeting with the proprietor of the Applicant, Mr. Dimpesh Doshi. During this meeting, the Corporate Debtor proposed an haircut of more than 50% of the outstanding amount to settle the matter Mr. Dimpesh Doshi blatantly denied the said offer.

7. Such offer of settlement from Corporate Debtor clearly shows that the Corporate Debtor is not able to repay the debts in normal course of business and has become solvent. Thus, the Applicant is taking steps under the Code for initiation of Corporate Insolvency Resolution Process in respect of the Corporate Debtor and hence this present Petition.

The submissions by the Corporate Debtor:-

8. At the outset, the Respondent denies the contents of the present Company Petition entirely and say that the same are false, frivolous and completely bogus. The claim made by the Petitioner *vide* the present Company Petition are untenable, illegal and are not payable either wholly or in part.

9. The Respondent is a company engaged in the business of manufacture and supply of specialty chemicals. The Respondent is a financially sound company, having an average turnover of Rs. 500 Crores annually for the last three years. The Respondent has a staff of over Three Hundred (300) employees on its payroll. There is no question of the Respondent being insolvent.

10. The Petitioner is one of the suppliers of steel material to the Respondent. The Petitioner has done business with Respondent from 2021 onwards till about July 2022.

11. It is pertinent to note that, Mr. Nirav Doshi, being the brother of Mr. Dimpesh Doshi who claims to be the proprietor of Petitioner, has acted as the representative of the Petitioner in all its dealings with the Respondent from the beginning. Hence all the actions of Mr. Nirav Doshi are equally the actions of Petitioner. Hence Petitioner and Mr. Nirav Doshi are equally liable for the illegal conduct and transactions as set out hereunder.

12. In or around July 2022, it came to Respondent's attention that Petitioner has cheated and defrauded the Respondent, thereby causing severe losses to the Respondent. Over the years, the Petitioner has made illegal payments of bribes kickbacks in the sum of Rs. 4,30,000/- (Rupees Four Lac Thirty Thousand Only) to the Respondent's employees as follows. Rs 2,50,000/- was paid as a bribe by Mr. Nirav Doshi to Mr. Rakesh Patil who was working as Purchase Department - Assistant General Manager with the Respondent. Rs 1,80,000/- was paid as a bribe by Mr. Nirav Doshi to Mr. Sunil Mansungi who was working as Purchase Department - Assistant with the Respondent. Later on, the Respondent also found out that the price at which goods were sold by the Petitioner were much inflated as compared to that of the actual market price. If the actual prices are taken into consideration then the claims would be worth much less than Rs 1,00,00,000/-. The Petition is not maintainable on this ground as well. The Petitioner at

every step has tried to defraud and extort monies from the Respondent.

13. The aforesaid Mr. Patil and Mr. Mansungi have already provided affidavits in which they have declared and confessed to receiving bribes from the Petitioner worth Rs. 4,30,000/-. In return for these kickbacks these employees have extended favours to the Petitioner including but not limited to (i) securing the purchase transactions in Petitioner's favour as opposed to other suppliers, and (ii) approving and authorizing Purchase Orders at highly inflated prices for the said goods, being significantly higher prices compared to market rates.

14. In order to further establish the criminal conduct of the Petitioner, the Respondent craves leave to refer to and rely upon the phone recording dated 12th June 2022 between Mr Nirav Doshi and the Respondents' employee Mr. Sunil Mansungi, which clearly shows Mr. Nirav Doshi offering kickbacks to the Respondents' employees. Since the phone recording cannot be annexed to this Affidavit, the same will be produced at the time of hearing. The said phone recording shows, inter alia:

   a. that Petitioner has already paid approximately Rs. 75,000 to Mr Sunil Mansungi as a kickback or a bribe;

   b. that Petitioner has already paid Rs 1,95,000/- as bribe to another employee of the Respondent, being Mr Rakesh Patil

   c. that Petitioner is encouraging Mr Mansungi to take further bribes so that Mr Mansungi can cam beyond Rs 1,25,000/-;

d. that Petitioner was arranging for further purchase orders with the help of Respondent's employees who were receiving bribes from him.

It may be noted that the said Mr. Sunil Mansungi has stated on affidavit that he was paid a bribe amount of Rs 1,80,000 by the Petitioner. Similarly, Mr. Rakesh Patil has stated on affidavit that he has received Rs 2,50,000 as a bribe from the Petitioner.

15. Mr. Nirav Doshi has also collected in his personal account, the kickback amount/bribes which other suppliers were paying the Respondents' staff. being the aforesaid Mr Patil, Mr. Mansungi and one Mr. Abhijit Sawant (Purchase Department executive). Thus, the Petitioner is at the center of a racket of bribery, cheating and fraud.

16. Additionally, the material supplied by the Petitioner to the Respondent is substandard i.e. not up to the desired quality. Usage of substandard material supplied by the Petitioner has resulted in huge financial losses in production to the Respondent. There is ample contemporaneous correspondence to show the same, including emails sent to the Petitioner on 2nd August 2022, 5 August 2022 and so on. Poor quality of materials supplied by the Petitioner like EQUAL TEE has caused the incidences like pipeline leakages which in tum led to major safety concerns. Leakage could have caused personnel injury on shop floor. Additionally, poor quality of material

has caused process upsets. A well-run reactor had to be unnecessarily shut down and batches of the products also have been ruined and resulted into loss of product and revenue in the sum of Rs. 25 Lakhs for the Respondent.

17. The Respondent's Advocate issued a notice dated 4" October 2022 ("said) notice") to the Petitioner, whereby the above facts were recorded and brought to Petitioner's attention. The Respondent called upon the Petitioner to make good losses suffered by the Respondent. All this was long prior to the section 8 notice issued by the Petitioner, which the Hon'ble Tribunal may kindly note. Thereafter, the Petitioner vide its letter dated 17 October 2022 replied to the said notice and raised several false and frivolous defences to the legitimate claims of the Respondents.

18. However, after issuing the said false reply, Mr. Nirav Doshi met the Respondents at their office on or about 25th November 2022. At the meeting dated 25 November 2022, the said Mr. Nirav Doshi accepted his illegal conduct on behalf of the Petitioner, of giving kickbacks to the Respondent's employees. Further, Mr. Nirav Doshi assured the Respondent that the Petitioner would address the Respondents' grievances and the bills issued by the Petitioner would be adjusted so as to account for the losses suffered for the Respondent. The Respondent believing on Petitioner's assurances, gave an opportunity to the Petitioner to amicably settle the matter.

19. Despite the aforesaid assurances, the Petitioner issued a demand notice under Section 8 of the IB Code dated 10th

November 2022 seeking alleged balance amount of Rs. 1,46,61,972/-. The Respondent was in utter shock upon receiving the demand notice. Therefore, the Respondent vide its Advocate's letter dated 30 November 2022 replied to the demand notice stating true and correct facts of the matter. The Petitioner with malafide intent issued the demand notice in order to avoid its liabilities and consequences arising from its illegal conduct. It may be noted that, it was only after Respondent's notice dated 4th October 2022 that the Petitioner issued the demand notice to the Respondent. This makes it abundantly clear that the present Petition is just an afterthought of the Petitioner and an obvious attempt to extort monies from the Respondent.

20. The Respondent realized that the Petitioner was going to continue its illegal and fraudulent conduct. Hence the Respondent filed a Police Complaint dated 06 December 2022 at Mohol, Solapur against the Petitioner for committing fraud and supplying substandard materials to the Respondent.

21. Sometime in May 2023, the Petitioner's representatives reported to Mohol. Solapur Police Station regarding the said complaint and admitted that Petitioner has paid monies to the Respondent's employees. However, Petitioner has claimed that the monies paid by Petitioner are in the nature of personal transactions between the Petitioner and the said employees. There is no question of the Petitioner having any legitimate personal transactions with the Respondent's employees. This is clearly a false statement, made by Petitioner only to evade its liability for illegal and fraudulent

transactions. However, subsequently, the ex-employees also attended the Solapur Police Station and recorded their statements for taking bribes.

22. The Petitioner has not annexed the Respondent's original notice dated 4th October 2022 nor has the Petitioner annexed its own reply dated 17th October 2022. Similarly, the Petitioner has made no reference to the Police Complaint filed by the Respondent and the statements given by or on behalf of the Petitioner in the said Police Complaint. Thus, the Petitioner has suppressed many material facts and documents and has approached the Hon'ble Tribunal with incomplete and erroneous facts and unclean hands. It is clear that the Petitioner wants to conceal the pre-existing dispute. On this ground alone, the present Petition is liable to be dismissed.

23. It is clear from the above facts and circumstances that there is a pre-existing dispute between the parties and for that reason, Petitioner's purported claim is not maintainable under the IB Code. Even otherwise, the subject transactions are tainted by illegal and fraudulent conduct on Petitioner's part and such transactions cannot form the basis of any claim under the IB Code. A party such as the Petitioner who approaches this Hon'ble Tribunal with unclean hands ought not to be granted any relief in these proceedings.

24. Counsel for the Applicant filed a rejoinder, denying each and every fact given by the Respondent in reply and reiterating those made in the Petition.

Findings:-

25. We have heard Counsel for the parties and have gone through the records.

26. During the course of arguments, the Counsel for the Petitioner has argued that the factum of operational debt has not been disputed by the Corporate Debtor nor any dispute with regard to quality of the goods was raised at any point of time. It has also not been disputed that the goods were supplied between 18.04.2022 and 26.07.2022 against invoices in pursuance of the purchase order dated 18.04.2022. Therefore, according to the Counsel for the Petitioner, it is a fit case for admission u/s 9 of the Code, 2016.

27. On the other hand, the Counsel for the Corporate Debtor has argued that there is a pre-existing dispute between the parties due to which the Petition cannot be admitted. In this regard, the Counsel for the Corporate Debtor has referred to letter dated 04.10.2022 whereby the Corporate Debtor pointed out that the Operational Creditor cheated and defrauded the Corporate Debtor on account of the fact that some illegal payments amounting to Rs. 4.3 lakhs were paid as bribe to the employees of the Corporate Debtor namely Rakesh Patil and Sunil Mansungi of the purchase department. It was further stated in the letter dated 04.10.2022 that Mr. Patil and Mr. Mansungi confessed having received bribes from the Operational Creditor. According to the Counsel for the Corporate Debtor, the

letter dated 04.10.2022 was issued prior to the issuing of the demand notice.

28. The Counsel for the Corporate Debtor has further argued that even a Police complaint was filed with regard to the offences committed by the employees of the Corporate Debtor in collusion with the Operational Creditor to cause lose to the Corporate Debtor. Thus, there is a clear-cut pre-existing dispute in this case and the Petition is liable to be dismissed on this ground alone.

29. We have weighed the contentions raised by the Counsel for the parties and have gone through the records.

30. The demand notice in this case was issued by the Operational Creditor on 10.11.2022. However, prior to the demand notice, on 04.10.2022 the Corporate Debtor sent a legal notice to the Operational Creditor pointing out that a sum of Rs. 4.30 lakhs had been paid to the employees of the Corporate Debtor as bribe who were working in purchase department of the Corporate Debtor and the said payments were made to cause wrongful loss to the Corporate Debtor. It was further pointed out in the notice dated 04.10.2022 that the material supplied by the Operational Creditor was substandard and not of desired quality which resulted in financial loss to the Corporate Debtor. In reply to the notice dated 04.10.2022, the Operation Creditor in its letter dated 17.10.2022 absolutely denied having paid bribes of Rs. 4.30 laksh to Rakesh Patil and Sunil Mansungi and also feigned ignorance about the affidavits furnished by the said employees whereby they

admitted having received the bribe from the Operational Creditor. Surprisingly, the Petitioner furnished in affidavit with the Petition stating that no notice was ever given by the Corporate Debtor relating to pre-existing dispute prior to the demand notice dated 10.11.2022 which is factually wrong.

31. It has also been argued by the Counsel for the Petitioner that Mr. Dimpesh Doshi is the sole proprietor of the Petitioner firm and no payment is shown to have been made by the Petitioner to the so called employees of the Corporate Debtor and, therefore, the defence of existence of a dispute cannot be accepted. However, from the affidavits furnished by the said employees namely Rakesh Patil and Sunil Mansungi, it has been clearly admitted that they received money from Paras Sales Corporation i.e. the Operational Creditor. In our considered view, it is not very material if there is no direct proof of the fact that the money was paid by Mr. Dimpesh Doshi himself or by somebody else on his behalf. Besides, there is enough evidence that dispute in this regard was raised much prior to the issuance of the demand notice by the Petitioner.

32. It is well settled that at the stage of admission, it has only to be seen whether a pre-existing dispute exists or not with regard to the transaction on the basis of which the Petition has been filed. Merits of the pre-existing dispute have not to be gone into. It is only to be seen that the dispute raised is not something spurious or moon shine. In our considered opinion, the dispute that some bribes were paid on behalf of the Operational Creditor to the employees working in the

purchase department of the Corporate Debtor which could possibly be to supply goods at either exorbitant rates or to supply sub-standard goods should be considered as a genuine pre-existing dispute which cannot be resolved in summary proceedings and are supposed to be tried by a competent court by recording evidence in detail. Therefore, on the ground of the existence of a pre-existing dispute the instant Petition deservers to be dismissed. In this regard, reference can also be made to the law laid down ***Kay Bouvet Engineering Limited v/s Overseas Infrastructure Alliance India Private Limited 2021 (10) Supreme Court cases 483*** whereby it was held that all that the Adjudicating Authority is required to see at this stage is whether there is plausible contention which require further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence and further that so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has no other option but to reject the Application.

33. In the light of the above discussion as well as the law laid down in the afore-cited case, we are of the considered view that the present Petition deserves to be dismissed. It is ordered accordingly. File be closed and consigned.

Sd/-	**Sd/-**
ANIL RAJ CHELLAN **Member (Technical)**	**KULDIP KUMAR KAREER** **Member (Judicial)**