IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH - V

C.P. (I.B) No. 2689/MB/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules 2016)

In the matter of

M/s Vikram International
Through its Authorised Representative
Mr. Vikram Rathi having address at
113B, Manohar das Katra,
Kolkata West Bengal- 700007

......Petitioner/Operational Creditor

Vs

Trinity Trademark Limited.
Having its registered office at:
16 & 17, Washington Plaza, Dispensary Road, Goregaon (West), Mumbai 400062

.......Corporate Debtor

Order Dated: 21.12.2023

Coram:

Reeta Kohli, Hon'ble Member (Judicial)
Madhu Sinha, Hon'ble Member(Technical)

Appearances:

For the Petitioner/Operational Creditor: Adv. Pratik Kothari (PH)

For the Corporate Debtor: Adv. Prakhar Tandon (PH)

ORDER

Per: Reeta Kohli Member (Judicial)

This Company Petition is filed by **M/s Vikram International** (hereinafter referred as "**the Petitioner/Operational Creditor**") on **24.07.2018** seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as **"CIRP"**) against **Trinity Trademark Limited** (hereinafter called "**Corporate Debtor**") by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy Code, 2016 (hereinafter called **"the Code"**) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for committing default in payment of an Operational Debt of **Rs. 4,32,41,523/-**

Brief Facts of the Case and Submission by the Operational Creditor:-

1. The case of the Petitioner/Operational Creditor is that he had sold goods (electronic materials) to the Respondent/Corporate Debtor amounting of Rs. 13,98,24,694/- from time to time starting from the month of August 2014 on various different dates. Invoices were raised by the Operational Creditor during the period 16.12.2014 to 03.03.2015. As per the agreement between the parties the policy of the payment was that the payment had to be released by the Corporate Debtor within 7 days from the date of raising invoice. The last date on which the debt fell due was 10.03.2015 (including a credit period of 7 days calculated from the bill dated 03.03.2015).
2. The said goods were accepted by the Respondent/Corporate Debtor without any objection of any kind and after receipt of the goods on various dates the Corporate Debtor made part-payment of Rs. 9,65,83,171/- to the Petitioner. The last payment was made on

02.03.2015, thereafter no payment has been made to the Petitioner for the balance of amount of Rs. 4,32,41,523/-.

3. The repayment period up to 10.03.2015 had already lapsed and the due amount has not been paid by the Respondent/Corporate Debtor. Thus, there is a clear default on the part of the Corporate Debtor. The Petitioner sent an e-mail dated 26.08.2017 to the Respondent/Corporate Debtor demanding the balance of unpaid amount of Rs. 4,32,41,523/-.

4. Ledger account of the Operational Creditor in the books of Corporate Debtor as on 01.04.2017 established the outstanding amount of Rs. 4,32,41,523/- of the Operational Creditor pending against the Corporate Debtor.

5. The peculiar facts of the case are that the Respondent had supplied goods to a third party namely M/S Sixty Nine Degree Technology Pvt. Ltd. (Hereinafter referred to as "69"). The said "69" was also having business dealings with the Operational Creditor. Due to financial problems, "69" was not able to clear the dues of Rs. 4,35,00,000/- to the Corporate Debtor which in turn delayed the payment made to the Operational Creditor. The Operational Creditor owed an amount of Rs. 5,85,00,000/- to "69". Therefore, in view of the present situation in business dealings, the three parties entered in to a tri-partite settlement dated 04.07.2017. The effect of the aforementioned settlement was that the Corporate Debtor's liability of Rs. 4,32,41,523/- towards the Operational Creditor had been adjusted against the Corporate Debtor's receivable of Rs. 4.35 Crores from the said '69' which in turn reduced the Petitioner/Operational Creditor's liability of Rs. 5.85 Crores with the said '69' to that extent. This Agreement is duly signed and stamped by all the three parties to the Agreement, namely, the Operational Creditor, Corporate Debtor and "69".

6. It is the case of the Operational Creditor that this tri-partite settlement agreement dated 04.07.2017 is an internal understanding between the Corporate Debtor and "69" without the consent and approval of the Operational Creditor, whereby the default amount was unilaterally wiped off. In the books of the Operational Creditor, "69" is still his Creditor and the Corporate Debtor has failed to produce any evidence signifying the adjustment of its liability under the said agreement.

7. In view of not receiving any payment from the Corporate Debtor, Operational Creditor was constrained to issue Demand Notice under section 8 in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 16.02.2018 which was duly served upon the Corporate Debtor. The Operational Creditor stated that it had received no reply to the aforementioned Demand Notice. Hence this present petition.

Submissions by the Corporate Debtor:

1. The Corporate Debtor has disputed the alleged outstanding amount of **Rs. 4,32,41,523/-** stated to be due and payable.
2. In response to the petition the Corporate Debtor filed his reply categorically stating that he does not have any liability towards the Operational Creditor.
3. The Corporate Debtor submitted that this petition is fit to be rejected on this ground alone that the date of default is 10/03/2015 and the Date of Filing is 24.07.2018 therefore the present petition is barred by limitation.
4. It is further the case of the Corporate Debtor that the Corporate Debtor debited ledger account of the Operational Creditor on 04.07.2017 itself which is the date of the aforementioned tri-partite settlement agreement. The copy of the said tri-partite settlement

agreement has been placed on record by the Respondent/Corporate Debtor. Thus, communication dated 26.08.2017 from the Operational Creditor came as shock to the Corporate Debtor alleging therein about the default. In view of the tri-partite agreement having been arrived at between the parties the Corporate Debtor vide E-mail dated 12.09.2018 denied the outstanding amount. Despite the said denial, communication dated 07.10.2017 from the Petitioner was received. In the aforementioned communication, the Operational Creditor again claimed that the Default amount is due as per the ledger in his books of accounts and also requested the Corporate Debtor to mail him the ledger as per its books of account for the purpose of reconciliation. In response to the same Corporate Debtor vide E-mail dated 13.10.2017 again denied any outstanding amount. The Corporate Debtor also sent a copy of the ledger to the Petitioner.

5. In view of the above stated, the notice in 'Form 3' sent by the Petitioner on 16.02.2018 calling upon the Corporate Debtor to make payment of unpaid debt within 10 days is itself not sustainable in the eyes of law. The Respondent/Corporate Debtor replied to the said notice vide communication dated 03.03.2018 denying any default. Once again he reiterated tri-partite settlement dated 04.07.2017 and its effect of discharging the Corporate Debtor of all liabilities. Unfortunately, the said reply sent by the Respondent/Corporate Debtor was returned by the postal authorities stating *"Addressee moved"*. The Corporate Debtor has placed a copy of the same on record. In view of the submissions made, the case of the Corporate Debtor is that nothing is due and payable and thus the petition deserves to be dismissed.

6. In addition the Corporate Debtor further submitted that there is also an occurrence of Pre-existing dispute which makes an additional ground for the dismissal of this petition. Such dispute

emerges from the reply of the Corporate debtor vide its email dated 13.10.2017 in which it expressly and clearly denies any outstanding amount towards the Operational Creditor.

Findings

1. The first contention of the Corporate Debtor is that the Date of Default as mentioned in the present petition is 10.03.2015 and the Date of Filing is 24.07.2018 therefore the present petition is barred by limitation. However, on 01.04.2017, the Corporate debtor has acknowledged its liability towards the Operational Creditor through its ledger statement accounts and thus this Tribunal is of the considered opinion that a fresh lease of life is granted to the default amount in terms of Section 18 of the Limitation Act, 1963. The calculation of the limitation period should therefore start from 01.04.2017. Furthermore, reliance is also placed on the judgement of the Hon'ble Supreme Court in ***Rajendra Narottamdas Sheth & Anr. V. Chandra Prakash Jain & Anr. [Civil Appeal no. 4222 of 2020***] in which it was upheld that a subsequent acknowledgement of debt leads to the introduction of a fresh period of Limitation. In view thereof, the filing of the present petition on 24.07.2018 is well within the period of limitation and thus the petition cannot be rejected on this ground.

2. The second contention of the Corporate Debtor is that the tri-partite settlement agreement entered into between the Corporate Debtor, Operational Creditor and '69' on 04.07.2017 itself sets off the liability of the Corporate debtor towards the Operational Creditor. The said agreement is placed on record of this Tribunal and the perusal of the same shows that the said tri-partite agreement bears the signature and stamp of the Operational Creditor. Therefore, it is clearly established that settlement had in

fact actually been entered into and acting upon the same the accounts have been stated to have settled.

3. The third contention of the Operational Creditor is the existence of a pre-existing dispute. The occurrence of the pre-existing dispute can be established through the email of the Corporate Debtor dated 13.10.2017 in which the Corporate Debtor categorically denies any outstanding amount toward the Operational Creditor. Therefore, this shows a disputed question of fact also leading to the debt having not been crystallised.

4. Therefore, in view of existence of the tri-partite settlement agreement, occurrence of a pre-existing dispute and uncrystallised debt the present petition is not fit to be admitted. In conclusion, therefore, the present CP No. 2689/MB/2018 is **rejected**.

Sd/-
MADHU SINHA
MEMBER (TECHNICAL)

Sd/-
REETA KOHLI
MEMBER (JUDICIAL)

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