BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

C.P. (I.B) No. 523/9/NCLT/AHM/2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.03.2021

Name of the Company: Mahadev Trading Co
V/s
Supreet Chemicals Pvt Ltd

Section: 9 of the Insolvency & Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 23rd day of March, 2021.

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I

CP (IB) No.523/9/NCLT/AHM/2019

(Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of:

M/s Mahadev Trading Company
A sole proprietorship firm
Regd. Office at;
GF 11, Alien Complex, Behind
Deep Complex, Nizampura Road,
Vadodara 390002

..Operational Creditor

Versus

M/s. Supreet Chemicals Private Limited
(CIN NO. U24231GJ1992PTC017944)
Regd. Office at;
A1/5402, Fourth Phase, GIDC
Vapi, Gujarat T-Balsad, Gujarat
Pin- 396195

...Corporate Debtor

Order reserved on 10.03.2021
Pronounced on 23.03.2021

Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Ld. counsel Mr. Atul Sharma appeared for the operational creditor.
Ld. counsel Mr. Narendra Jain appeared for the corporate Debtor.

ORDER
[Per VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IBC 2016**") by Operational Creditor M/s Mahadev Trading Company to initiate the Corporate Insolvency Resolution Process against Corporate Debtor M/s Supreet Chemicals Pvt. Ltd for the default amount of Rs. 2, 28,72,166/- and interest thereon the date of default is 22.07.2016.

2. The operational creditor submitted that the corporate debtor approached the operational creditor for the supply of chemical substances such as caustic soda flakes, acid slurry, phosphoric acid, etc, and the operational creditor supplied the aforesaid goods as per the demand of the corporate debtor and raised 24 invoices from 06.07.2016 to 23.10.2016 for the total amount of Rs. 2,28,72,166/-. The operational creditor further submitted that out of the total outstanding amount, the corporate debtor paid the amount of Rs. 9,65,130/- against invoice no. 30 which was raised on 06.07.2016 for the amount of Rs. 10,41,390/-. Apart from this payment, the total outstanding principal amount is Rs. 2,19,07,036/-

3. It is also submitted by the operational creditor that the corporate debtor had assured and agreed to acknowledge all the delivery challans at once and also assured to release the payment of all the outstanding. The operational creditor gave several reminders to the corporate debtor for making the payment of outstanding dues but the corporate debtor failed to make the payment. Thereafter, the operational creditor issued the demand notice under section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 IBBI(Application to the Adjudicating Authority) Rules, 2016 in form 4 on 15.02.2019 for the payment of the outstanding amount of Rs. 2,19,07,036/- . The said demand notice was duly delivered to the corporate debtor on 25.02.2019. The operational creditor has received a letter dated 23.02.2019 from the corporate debtor wherein the corporate debtor denied any outstanding amount.

4. The corporate debtor filed the reply to the present application and pointed out that there were no pending dues. It has been claimed that the invoices raised by the operational creditor are bogus. It has already been informed by the corporate debtor vide letter dated 23.02.2019 that if the operational creditor having any supporting documents such as weighing slip, challan, and purchase order issued by the corporate debtor then provide to the

corporate debtor or produce before this Adjudicating Authority to substantiate its claim. The documents produced by the operational creditor in support of the contentions are nothing but documents generated by the petitioner to create a non-existing claim against the corporate debtor.

5. The corporate debtor further replied that the respondent is a company and always acts through some individual, but the operational creditor has not stated that who has contacted on behalf of the corporate debtor.

6. The corporate debtor has further stated that whatever goods were received from the operational creditor and the payment of supplied goods has already been made to the operational creditor by the corporate debtor. Therefore, nothing remains to be paid. The ledger account produced by the operational creditor is false and fabricated. The corporate debtor has denied that for giving any assurance to the operational creditor for acknowledging the challan of delivered goods later on.

7. The corporate debtor further replied and denied that as per the assertion of the operational creditor that the part payment was to the tune of RS. 9,65,130/- against invoice no. 1 dated

06.07.2016. As per the record of the operational creditor, there is no invoice No. 1 dated 06.07.2016. However, there is one invoice No. 30 for an amount of 10,41,390/- and payment thereof has already been made to the operational creditor to the tune of RS. 22,68,428/- along with the outstanding amount of other invoices.

8. The corporate debtor submitted that no such communication was made by the operational creditor for the payment of the outstanding debt in question. It is submitted that the documents produced by the applicant in support of the claim being the alledged letter posted showing balance confirmation and the email dated 24.04.2018 all documents that the applicant seems to have managed to get issued, and with respect to the so-called letter dated 21.09.2018 allegedly posted on 06.10.2018, the said letter was never delivered to the corporate debtor. The corporate debtor submitted that the operational creditor with conspiracy with some employee of the accounts department got bogus bills inward in the system of the corporate debtor and the operational creditor did not reply on demand of the details in respect of said bill. The intention of the operational creditor to make illegal gains is proved from the fact that even before any order from this Authority, the operational creditor sent a letter dated 17.06.2019 to General Manager, Bank of India, Zonal Branch Bhadra about

the filing of the present application to put pressure on the corporate debtor for making the payment of an illegal claim.

9. The operational creditor filed the rejoinder to the reply of the Corporate Debtor and denied the averments made by the corporate debtor that the operational creditor with the conspiracy of some of the employees of accounts of the corporate debtor got bogus bills entered in the system of the corporate debtor which shows the malafide intention of the corporate debtor. The corporate debtor has already acknowledged the debt vide email date 24.04.2018 with the attachment of the ledger account statement which confirms the outstanding debt. The corporate debtor unequivocally admitted the fact that in a number of transactions the payment was made to the corporate debtor but, surprisingly denied the supply of goods subsequently. Moreover, the corporate debtor denied the averments made by the operational creditor in general without bring any documentary proof on record.

10. It is also submitted that the operational creditor has paid the tax liability towards value-added tax to the statutory authorities against all the invoices in relation to the goods sold to the corporate debtor. The operational creditor prayed from this

authority either direct to the corporate debtor or direct to concerned government authorities of Gujarat State Tax and Commercial Tax if this authority deems fit to produce records of input tax availed by the corporate debtor bearing VAT TIN No. 2419030446 for the specific period. All invoices attached with the application are electronically stored in the computer that operates for the business activities of the operational creditor. The operational creditor has already filed the affidavit under section 65-B of the Indian Evidence Act, 1872.

11. The operational creditor rebutted the contentions of the corporate debtor in respect to produce the transport receipt to prove the delivery of goods to the corporate debtor on the ground that it was clearly mentioned on the invoices that the goods outside the premises of the operational creditor including transportation shall be on the risk/ born by the purchaser. However, the corporate debtor admitted in its reply that the amount of Rs. 22,68,428/- including the amount of invoice No. 30 has been paid towards the outstanding liability. The operational creditor submitted that there is no pre-existing dispute in regard to the quality of goods. It is also submitted by the operational creditor that there is no evidence brought on record by the corporate debtor to disapprove that the tax invoices are bogus.

12. Heard both the counsels of the operational creditor as well as corporate debtor and gone through the entire record. It noted that no delivery challans have been produced by the operational creditor for the delivery of the goods in question and no written agreements were made by and between operational creditor and corporate debtor for the supply of goods. Generally, there is no necessity for a written purchase order but in the present case, this fact got relevant which have been noted in the latter part of the order.

13. The submission of the operational creditor that corporate debtor has admitted that the payment of invoice no. 30 dated 06.07.2016 was made by the corporate debtor with another invoice, amounts to admission does not hold goods. Because of excess payment, the correlation with any other invoices has not been provided.

14. The submission of the operational creditor in respect that the corporate debtor has assured the operational creditor for the acknowledgment of delivered goods later on is not valid. It can't be presumed that all the 24 invoices can be acknowledged later, wherein there is no specific time period was fixed for the delivery of goods. Moreover, as per the chart given by the operational

creditors to prove the amounts of pending invoices, the payment terms mentioned on each invoice is 30 days, if the payment terms of the invoices were 30 days then how operational creditor continuously supplied the goods even after non-payment of due invoices. Moreover, there is no evidence on record to show that any communication was made with the corporate debtor concerning making the payment between 06.07.2016 to 23.10.2016 because as per the averment of the operational creditor about goods of 20 invoices were supplied to the corporate till 31.08.2016. It is also noted that multiple invoices were raised for the supply of goods upon the corporate debtor in regular series of invoice numbers even after a gap of three to four days i.e. Invoice No. 44, 45 & 46 were raised on 03.08.2016, 08.08.2016 and 11.08.2016 respectively & Invoices no. 63, 64 & 65 raised on 10.09.2016, 11.09.2016 & 16.09.2016 respectively . Moreover, admittedly all the transactions were done verbally., hence, this contention is also rejected being without support of documents for this averment. The statement of outstanding amount produced by the operational creditor is reproduced here:

Annexure D Outstanding Statement								
Sr. No.	Purchase order No. & Date	Order Date	Invoice No.		Invoice Date (DD/MM/YY)	Total amount of Debt/ Invoiced Amount (INR)	Terms of Payment	Payment Due Date (DD/MM/YY)

1	Verbal	Verbal	BILL MTC/030/2015-16 Dt -:06/07/16	PR-RMX859	06/07/16	1041390.00	30	05/08/16
2	Verbal	Verbal	BILLMTC/031/2015-16 Dt. .09/07/16	PR-RM\858	09/07/16	1069556.00	30	08/08/16
3	Verbal	Verbal	BILLMTC/032/2015-16 Dt. : 11/07/16	PR-RM\876	11/07/16	1007891.00	30	10/08/16
4	Verbal	Verbal	BILL MTC/036/2015-16 Dt. : 19/07/16	PR-RM\985	19/07/16	1468392.00	30	18/08/16
5	Verbal	Verbal	BILLMTC/035/2015-16Dt. : 19/07/16	PR-RMX994	19/07/16	931980.00	30	18/08/16
6	Verbal	Verbal	BILL MTC/038/2015-16 Dt. : 19/07/16	PR-RM\995	19/07/16	1327445.00	30	18/08/16
7	Verbal	Verbal	BILL MTC/037/2015-16 Dt. : 19/07/16	PR-RMXI090	19/07/16	1797792.00	30	18/08/16
8	Verbal	Verbal	BILL MTC/039/2015-16 Dt. :26/07/16	PR-RMM094	26/07/16	965265.00	30	25/08/16
9	**Verbal**	**Verbal**	**BILL MTC/044/2015-16 Dt. :03/08/16**	**PR-RMU172**	**03/08/16**	973852.00	30	02/09/16
10	**Verbal**	**Verbal**	**BILL MIC/045/2015-16 Dt. -.08/08/16**	**PR-RMU178**	**08/08/16**	999521.00	30	07/09/16
11	**Verbal**	**Verbal**	**BILLMTC/046/2015-16 Dt. : 11/08/16**	**PR-RMUI81**	**11/08/16**	551460.00	30	10/09/16
12	Verbal	Verbal	BILLMTC/047/2015-16 Dt. -:11/08/16	PR-RMX1I94	11/08/16	432705.00	30	10/09/16
13	Verbal	Verbal	INVOICE MTC/049/2016-17 Dt. -:18/08/16	PR-RMIII\95	18/08/16	1119433.00	30	17/09/16
14	Verbal	Verbal	INVOICE MTC/053/2016-17 Dt. :23/08/16	PR-RMI11\93	23/08/16	463214.00	30	22/09/16
15	Verbal	Verbal	INVOICEMTC/052/2016-17 Dt. -:23/08/16	PR-RMIIR94	23/08/16	656220.00	30	22/09/16
16	Verbal	Verbal	BILLMTC/051/2016-17 Dt. -:23/08/16	PR-RMM263	23/08/16	1808100.00	30	22/09/16
17	Verbal	Verbal	INVOICE MTC/056/2016-17 Dt. -.31/08/16	PR-RMIII\IO4	31/08/16	1107450.00	30	30/09/16
18	Verbal	Verbal	BILLMTC/059/2016-17Dt. -:02/09/16	PR-RMM383	02/09/16	800625.00	30	02/10/16
19	Verbal	Verbal	BILLMTC/060/2016-17Dt. -:07/09/16	PR-RMM391	07/09/16	959175.00	30	07/10/16

20	**Verbal**	**Verbal**	**BILL MTC/063/2016-17Dt. -:10/09/16**	**PR-RMM380**	**10/09/16**	846300.00	30	10/10/16
21	**Verbal**	**Verbal**	**BILL MTC/064/2016-17 Dt. -:11/09/16**	**PR-RMU454**	**11/09/16**	672000.00	30	11/10/16
22	**Verbal**	**Verbal**	**BILLMTC/065/2016-17 Dt. -:16/09/16**	**PR-RMU464**	**16/09/16**	273000.00	30	16/10/16
23	Verbal	Verbal	INVOICEMTC/067/2016-17Dt. -:20/09/16	PR-RM1IIU36	20/09/16	174237.00	30	20/10/16
24	Verbal	Verbal	BILL MTC/076/16-17 Dt. :23/10/16	PR-RMU725	23/10/16	1425163.00	30	22/11/16
			Interest on Outstanding till 15.02.2019					
	TOTAL					**2,28,72,166**		

From the perusal of the above chart, a logical inference can be drawn that transactions are not for supply but for other purposes.

15. The contention of the operational creditor in recpect that it is not possible to produce the delivery challan for the supplied goods because, as per the terms of the invoices, the goods outside the premises of the operational creditor on the risk of the purchaser including transportation of the goods also not proper. On perusal of the invoices it noted that though the goods outside the premised of the operational creditor on the risk of the purchaser, however, it does not indicate that goods were transported by the corporate debtor on its vehicle. Further, the contention of the operational creditor in respect that the corporate debtor has

denied the averments in the application to pay the debt in general instead of giving the documentary proofs is also not holding good. It is the general principle of law that the burden of proving the averments by the person who seeking adjudication in his favor. Thereby, the burden of proving the facts on the operational creditor by bringing the cogent material on record. In the present application, the operation has not produced any cogent evidence that shows that goods have been supplied to the corporate debtor, mere, invoice can't be sufficient in absence of proof of delivery of goods. In view of the above observations, the present application is rejected.

16. The instant CP(IB) 523/9/NCLT/2019 is thus dismissed and disposed-off in terms indicated above.

17. Urgent certified copy of this order may be issued to all concerned parties, if applied for, upon compliance with all requisite formalities.

(Virendra Kumar Gupta)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

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