

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**DELHI BENCH, COURT NO. IV**

**Company Petition No. IB-1018/ND/2019**

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

**IN THE MATTER OF:**

**M/s. RAAJ UNOCAL LUBRICANTS LTD.**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. SWASTIK PIPE LTD.**

**...Respondent/ Corporate Debtor**

**Pronounced on: 27.07.2020**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SHRI HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

For the Applicant : Mr. Rajat Agnihotri, Advocate

For the Respondent : Mr. Sanjay Jain, Ms. Puja Chaurasia, Advocates

## **MEMO OF PARTIES**

### **M/s. RAAJ UNOCAL LUBRICANTS LIMITED**

Having its registered office at:

Farm No. 6A, Gobind Sadan Road,

Gadaipur Farms, Mehrauli,

New Delhi

**...Applicant/Operational Creditor**

### **VERSUS**

### **M/s. SWASTIK PIPE LIMITED**

Having its registered office at:

Building No. 4, Punjabi Bagh West,

Central Market, Near Syndicate Bank,

New Delhi 110026

**...Respondent/Corporate Debtor**

### **ORDER**

**PER- SH. HEMANT KUMAR SARANGI, MEMBER (T)**

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by

M/s. Raaj Unocal Lubricants Ltd. (for brevity 'Applicant'), through its director Mr. Madhav Rajgarhia, authorizing him to file present application vide Board resolution dated 23.03.2019, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP), against M/s. Swastik Pipe Ltd. (for brevity 'Respondent').

2. The Applicant, the Operational Creditor, is a company incorporated on 26.12.1990, under the provisions of Companies Act, 1956, having CIN No. U23201DL1990PLC042487, having its office at Farm No. 6A, Gobind Sadan Road, Gadaipur Farms, Mehrauli, New Delhi, inter alia, engaged in the business of the supply of lubricant oils.
3. The Respondent, namely M/s. Swastik Pipe Limited, is a company incorporated on 10.10.1973, under the provisions of Companies Act, 1956 with CIN No. U74899DL1973PLC006881, having its registered office at Building No. 4, Punjabi Bagh West, Central Market, Near Syndicate Bank, New Delhi 110026. The Authorised Share

Capital of the respondent company is Rs.10,00,00,000/- and Paid Up Share Capital of the company is Rs.9,20,09,504/- as per Master Data of the company.

4. It is the case of the applicant, that the Corporate Debtor had approached the Operational Creditor for the supply of lubricant oils through various purchase orders. In accordance with the commercial understanding agreed upon between the Corporate Debtor and the Operational Creditor, for the supply of lubricant oils on the basis of Purchase Orders issued and invoices being Invoice No. RULL/17-18/0037 dated 04.05.2017 and Invoice No. RULL/17-18/0051 dated 13.05.2017, the Corporate Debtor is lawfully and legally obligated to make a payment of Rs. 2,22,714/- (Rupees Two Lakhs Twenty Two Thousand Seven Hundred Fourteen).
5. The Applicant also states that, the services were completed by the Operational Creditor in the month of May, 2017. It is submitted that for all the services completed by the Operational Creditor, invoices were duly raised, payments against which, till the date of filing the present petition, have

been withheld by the Corporate Debtor and no deficiency in services has ever been claimed by the Corporate Debtor. The amount due, for which supply was made in May, 2017, is Rs. 1,72,982/- (Rupees One Lakh Seventy Two Thousand Nine Hundred Eighty Two). Therefore, the same amount is outstanding debt due and payable by the Corporate Debtor.

6. The Applicant further states that, the payment had fallen due in the month of May, 2017 and the Corporate Debtor is also liable to pay interest at the rate of 15% on the outstanding amount which is calculated at a sum of Rs. 49,732/- (Rupees Forty Nine Thousand Seven Hundred Thirty Two), from the date on which the debt fell due. Thus, the total amount due and in default, inclusive of the debt and the interest amount is Rs. 2,22,714/- (Rupees Two Lakhs Twenty Two Thousand Seven Hundred Fourteen).

7. In spite of various requests made and reminders sent by the Applicant, the respondent did not reply. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 25.09.2018, under Section 8 of the

Insolvency and Bankruptcy Code, 2016 to the respondent, asking them to make the entire payment of Rs. 1,72,982/- (Rupees One Lakh Seventy Two Thousand Nine Hundred Eighty Two), together with interest within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

8. The applicant has annexed a postal receipt along with a tracking report to establish the delivery of the said demand notice at the registered office of the Corporate Debtor.
9. After the delivery of demand notice sent under Section 8 of the Code, the Respondent has not filed its reply to the said notice, nor raised any dispute by way of notice of any other dispute. As no payment was coming, hence this application, seeking to unfold the process of CIRP.
10. The applicant has stated that total debt due and payable is Rs.1,72,982/- (Rupees One Lakh Seventy Two Thousand Nine Hundred Eighty Two), along with interest @ 15% from the due date, amounting to Rs.49,732/- (Rupees Forty Nine Thousand

Seven Hundred Thirty Two). As per the invoice issued on 03.06.2017 and 12.06.2017.

11. Hence, the application under section 9 of the IBC, 2016 was filed by the applicant to initiate CIRP.
12. After the service of said notice, the respondents have caused appearance in the matter and have filed their reply. In its reply to the present section 9 application, the respondent states that, Notice of Demand, within the purview of section 8 (1) of the I & B Code, 2016 was to be delivered before the initiation of the CIRP, which has not been received by the Corporate Debtor on its registered address, as it is a mandatory condition to be satisfied before the initiation of the CIRP under the I & B code. The Operational Creditor has concealed from this Tribunal that the Corporate Debtor vide its email dated 06.06.2017 had raised a dispute towards the quality/ quantity of the products alleged to be supplied by the Operational Creditor.
13. The Respondent further states that, it is settled law that once the Corporate Debtor has expressed his dissatisfaction

towards the goods and services, as provided by the Operational Creditor, the said application would not be maintainable in this Hon'ble Tribunal. This Hon'ble Tribunal in the case "*M/s. Design Worx Infrastructure India Private Limited Vs. Premier Restaurant Pvt. Ltd.*" has held that;

*"whereunder the application of the Appellant under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to I & B Code) for initiation of Corporate Insolvency Resolution Process against Respondent/ Corporate Debtor was rejected with the following observation:-*

*5. in the reply filed by the Corporate Debtor they have pointed out and relied upon emails to show that there was dissatisfaction over the work done. Ld. Counsel for the corporate debtor has submitted the following points in resisting the prayer made for by the operational creditor"*

14. It has also been stated by the Respondent that, it is a settled law that a party which has misled the Court is not entitled to be heard on the merits of the case. The Hon'ble Supreme Court in *Dilip Singh vs. U.P. & Ors.* Has held that:

*"... The materialism has overshadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings. In the last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals, in order to meet the challenge posed by this new creed of litigants, the courts have from time to time evolved new rules and it is now well established that a litigant who attempts to pollute the stream of justice or who*



*touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final”.*

15. The applicant in its rejoinder, further denies the existence of any dispute prior to the issuance of Demand Notice under section 8 of the I & B Code, 2016. However, the Corporate Debtor had sent Notice of Dispute to the Operational Creditor on receiving the Demand Notice from the Corporate Debtor. Through the notice of Dispute the Respondent has annexed email communications indicating a pre-existing dispute.
16. The Applicant has filed its Rejoinder, in its Rejoinder the Applicant states that, the notice under Section 8 of the I & B Code, 2016 was served on the Corporate Debtor at its registered address. The proof of service of the notice on the Corporate Debtor at its registered address has been filed along with the petition and the same is born from the records of the present petition. Also, the said notice was served by the Operational Creditor on the Corporate Debtor at its plant address at Kose-Kotwan, Mathura.

17. The Applicant further states that, it has been held by the NCLAT in *Alloysmin Industries vs. Raman Casting Private Limited*, Company Appeal (AT) (Insolvency) Bo. 684 of 2018, that:

*“6. In view of aforesaid facts we hold that the Adjudicating Authority erred in rejecting the application under Section 9 on wrong presumption that the demand notice is to be served on the Registered Office of the Corporate Debtor and not on Corporate Office (Industrial Area Office herein). If the demand notice under Section 8 (1) is served either on its registered Office or its Corporate Office, it should be treated to be valid service under notice Section 8 and the application under Section 9 on failure of payment, if filed after 10 days is maintainable.”*

18. It has also been stated by the Applicant that the alleged email which the Corporate Debtor claims to have sent for raising an alleged dispute with regard to the quality of the products supplied by the Operational Creditor was never received by the Operational Creditor. The email addresses as contained in the

annexure filed by the Corporate Debtor are not that of the Operational Creditor. Further, the Corporate Debtor has even after supposedly sending the alleged email dated 06.06.2017, made payments towards the outstanding dues of the Operational Creditor as can be seen from the books of accounts attached with the petition.

19. Further the Hon'ble Supreme of India in ***Mobilox Innovations Private Limited vs. Kirusa Software Private limited*** has observed that-

*“The adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

*(i) Whether there is an “operational debt” as defined exceeding Rs.1 lakh? (See Section 4 of the Act)*

*(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid and*

*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the application would have to be rejected.*

*Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

As per the reply filed by the Corporate Debtor, it can be inferred & concluded that there is a pre existing dispute between the Corporate Debtor and Operational Creditor, with regard to the quality of goods supplied and falls well within the

definition of 'Dispute' as per Section 5(6) which is reproduced below:

"Dispute" includes a suit or arbitration proceedings relating to—(a) the existence of the amount of debt; **(b) the quality of goods or service**; or (c) the breach of a representation or warranty.

20. It is further seen that the demand notice in the present case was issued under Section 8 (1) of the Code on 25.09.2018, Respondents have placed their earlier correspondences dated 06.06.2017 and beyond, raising issues with respect to the quality of goods supplied by the Operational Creditor. It is thus seen that the dispute was brought to the notice of the applicant prior to the issuance of the demand notice dated 25.09.2018 issued under Section 8 (1) of the Code.

21. As a sequel to the above discussion, this application fails and the same is hereby rejected and dismissed.

22. It is made clear that any observations made in this order shall not be construed as an expression of opinion on the merit of

the controversy and the right of the applicant before any other forum shall not be prejudiced on account of dismissal of the instant application.

23. Let the copy of the order be served to the parties
24. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

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SD/-

**(HEMANT KUMAR SARANGI)**  
**MEMBER (Technical)**

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SD/- 1

**(DR. DEEPTI MUKESH)**  
**MEMBER (Judicial)**

