

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 334/Chd/Pb/2019**

**Under Section 9 of Insolvency and  
Bankruptcy Code, 2016 read with  
Rule 6 of the Insolvency and  
Bankruptcy Rules, 2016**

**In the matter of:**

**M/s S.K. Yarns**

A-196, Raguru Nagar, Ludhiana

Now At:- Sukhdev Avenue Near

Aman Park, Firozpur Road, Ludhiana-141012

through its Proprietor, Sh. Sushil Aggarwal ...Petitioner-Operational Creditor

**Vs.**

**M/s Jindal Agro Mills Pvt. Ltd.**

having its registered office at

Village Jandiali, 13, K.M. Stone

Chandigarh Road, Ludhiana, Punjab-141112.

CIN No. U15311PB1989PTC009092

...Respondent-Corporate Debtor

**Judgment delivered on: 02.06.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- : Mr. Vikas Bali, Advocate  
Operational Creditor

For the Respondent- : Mr. Amrinder Singh, Advocate  
Corporate Debtor

**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **M/s S.K. Yarns** through its Proprietor, Sh. Sushil Aggarwal (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **M/s Jindal Agro Mills Pvt. Ltd.** (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, **M/s Jindal Agro Mills Pvt. Ltd.**, is a Company incorporated on 17.02.1989 under the provisions of Companies Act, 1956 with CIN No. U15311PB1989PTC009092 with its registered office at Ludhiana, Punjab India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure A-3.

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor was in business with the Corporate Debtor of MEIS/DFRC Licences including Duty Credit Scripts under the name and style of M/s S.K. Yarns for the last several years. The Corporate Debtor approached the Operational Creditor for purchasing Licences and raised various invoices on FIFO basis. This dispute for non-payment of Rs. 31,45,805/- against the last invoice dated 13.07.2016 arose. The Corporate Debtor did not pay the amount despite repeated requests and reminders. The Operational Creditor maintains ledger accounts and Corporate Debtor

has also acknowledged and admitted the debt due to the Operational Creditor.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 31,45,805/- (Rupees Thirty One Lakh Forty Five Thousand Eight Hundred Five Only) along with 24% interest i.e. Rs. 22,37,726/- total amounting to Rs. 53,83,531/-. The default occurred on 13.07.2016 i.e. the date of invoice as no payment has been received by Operational Creditor thereafter from Corporate Debtor. Copy of GST registration certificate (Annexure-A-2), Invoice (Annexure-A-4), Ledger Account (Annexure-A-5), Settlement of Account (Annexure-A-12), Balance Sheet (Annexure-A-13) are attached with the main petition.

5. A demand notice in Form 4 is stated to be issued by the operational creditor on 13.03.2019 and the same has been delivered to the corporate debtor vide registered post as the delivery report and postal receipts are attached at Annexure-A-6A and A-6B. The corporate debtor gave a reply dated 25.03.2019 to the demand notice wherein it was stated that nothing contained may be construed as admission or acknowledgment of any amount claimed or demanded as due from the company. The company disputes and denies all such claims, and demands. The letters dated 09.12.2017, 15.12.2017 and 21.12.2017 are concealed disputing the genuineness of license supplied vide invoice No.617 dated 13.07.2016. The said letters clearly mentions the fact regarding the pendency of the Civil Suit before the Ld.Civil Court, Ludhiana, thus subject matter of the instant notice is *subjudice*. It was apparent that inconnivance with M/s Nikhil Exim Pvt.

Limited, M/s Neha Exports and M/s Ranjan Trading Private Limited, operational creditor sold bogus and invalid licenses to the respondent company. The criminal complaint filed against the company with EOW, Ludhiana was disposed vide District Attorneys Legal Opinion dated 14.12.2017 stating that the money matter is between the parties and hence no interference is required by Police Authorities. This in itself is an admission of liability, there is a pre-existing dispute. The company has raised all objections at Police Authorities, Civil Courts, Directorate General of Foreign Trade since 2016-18. There is no due which is payable by the company and the same does not qualify as operational debt under IBC, 2016.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The corporate debtor has filed a reply vide diary No.2026 dated 16.03.2020, wherein Corporate Debtor has reiterated the facts mentioned in its reply to the demand notice. The dispute between the parties existed much before the Corporate Debtor had even purchased the licenses including duty credit scripts. The Operational Creditor failed to establish the genuineness of licenses. The operational creditor wrote a reminder letter dated 08.10.2016 to resolve the dispute that had arisen with Usha Impex regarding duty.

7. The short written submissions have been filed by the petitioner vide Diary No.01260/2 dated 29.12.2022 and by the respondent corporate debtor vide diary No.01260/01 dated 08.12.2022.

8. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 dated 13.03.2019 was properly served. The demand notice dated 13.03.2019 is stated to be issued by the operational creditor and the same has been delivered to the corporate debtor vide registered post as the delivery report and postal receipts are attached at Annexure-A-6A and A-6B. The corporate debtor gave a reply dated 25.03.2019 to the demand notice. Therefore, the demand notice was duly served upon the corporate debtor.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit by learned counsel for the operational creditor that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities as on day (Annexure A-14).

However, it is seen from the records that the operational creditor has filed a complaint with the Economics Offences Wing on 29.04.2017, CR No. 1086024 and under Section 420, 120-B of the Indian Penal Code for outstanding amount with respect to an invoice dated 12.07.2016 which was disposed on 14.12.2017. The Usha Impex, the sister concern of the Corporate Debtor against the Operational Creditor filed a Civil Suit before Ld. Civil Judge, Ludhiana bearing Case No. CS/4847/2017 for recovery of damages and compensation. A criminal complaint against the proprietor of the operational creditor in a court of Illqa Judicial Magistrate Case No. COMI/886/2017, Ludhiana under sections 418,420,34 and 120-B of the Indian Penal Code was filed for fraud and cheating by Usha Impex. A proprietorship firm named as M/s Usha Impex, owned and managed by Mr.

Atul Jindal s/o Mr. Rajinder Kumar Jindal (one of the directors of the company) filed an application with DGP(Punjab) for registration of FIR against Operational Creditor under Sections 420,120-B and 182 of the Indian Penal Code and was followed up vide email dated 21.07.2017.

Therefore, the above complaints show that there was pre-existing dispute between the parties much before the issuance of the demand notice and filing of the present petition on 08.07.2019. It is submitted by the corporate debtor that the sale of licenses by an Operational Creditor has attracted the scrutiny of customs authority and they were obtained fraudulently. The dispute existed much before the corporate debtor even purchased licenses including duty scripts as a statement dated 12.10.2017 was filed by Mr. Atul Jindal in response to criminal complaint No. 108602 dated 29.04.2017 wherein it is stated that on receipt of show cause notice dated 18.06.2016 from DRI for Usha Impex, Mr. Atul Jindal apprised Proprietor of Operational Creditor of the matter and supplied a copy of the show cause notice to him. The proprietor of the operational creditor assured Mr. Atul Jindal that the issue will be resolved soon and the corporate debtor then continued to purchase MEIC/DRFC License from the operational creditor. The operational creditor failed to establish the genuineness of licenses and the show cause notice imposed a penalty on Usha Impex when it was not even aware about the credentials of exporters and transferee importers have contravened the provisions as the customs duty was not paid on the goods imported on basis of overvalued FMS Licenses. The dispute existed between the parties much before the issuance of the demand notice. The reliance can be placed upon

the judgment of Hon'ble Supreme Court **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353**

wherein it was held that:

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.*

*43. ....We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).*

*45. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.*

(Emphasis Supplied)

11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 13.03.2019 in Form 3 attached as (Annexure A-6A and A-6B) was duly served on the corporate debtor. Therefore, the period of limitation would begin from the date of

default i.e. 13.07.2016 i.e. the date of invoice as no payment has been received by Operational Creditor thereafter from Corporate Debtor. This application was filed vide Diary No. 3273 on 08.07.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. As a sequel to the above discussion and the facts as well as circumstances since there is a pre-existing dispute between the parties regarding the amount claimed by the petitioner, the petition is liable to be rejected, in terms of Section 9 of IBC, 2016. The petition consequently stands dismissed, however, with no order as to costs.

**Sd/-**  
**(Subrata Kumar Dash)**  
**Member (Technical)**

**Sd/-**  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

June 02, 2023  
PKA/TB