

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**MUMBAI BENCH-I**

**C.P. No. 2660/IBC/MB/2019**

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

*In the matter of*

**Fujifilm India Private Limited**

(U24233DL2007PTC171054)

Address for Correspondence at: Business Centre Office  
No. 521, Level V, Caddie Commercial Tower, Hospitality  
District Aerocity IGI Airport, New Delhi-110037.

*.....Operational Creditor*

**Vs**

**Metrostar Print Solutions Private Limited**

(U52396MH2011PTC215202)

Registered office at: C-120, Bonanza Industrial Estate,  
Ashok Chakravarty Road, Ashok Nagar, Kandivali East,  
Mumbai-400101, Maharashtra.

*..... Corporate Debtor*

**Order Reserved On : 03.05.2023**

**Order Pronounced On : 21.06.2023**

***Coram:***

Hon'ble H.V. Subba Rao, Member (Judicial)

Hon'ble Anu Jagmohan Singh, Member (Technical)

***Appearances:***

For the Petitioner : Mr. Pulkit Sharma, Advocate

For the Respondent : Mr. Nausher Kohli, Mr. Arjun Sathees,  
Advocates

**ORDER**

***Per: H. V. Subba Rao, Member (Judicial)***

1. The above Company Petition is filed by **Fujifilm India Private Limited** hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against **Metrostar Print Solutions Private Limited** called as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy Code (hereinafter called “Code” read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of Operational Debt of Rs. 3,40,63,260.47/- (Rupees Three Crore Forty Lakhs Sixty-Three Thousand Two Hundred Sixty and Forty-Seven Paise Only) + 24% interest on the amount of debt.
2. Brief facts behind filing of the above Company Petition are as follows:

That the Corporate Debtor entered into business relationship with the Operational Creditor via purchase agreement dated 21.06.2018 wherein, the Corporate Debtor had to provide CTCP plates to the Operational Creditor as per terms and conditions mentioned in aforesaid agreement and for which, the Operational Creditor was to give advance payment. Therefore, the Operational Creditor paid total amount of Rs. 7,68,37,596/- in various tranches to the Corporate Debtor as advance amount for supply of goods which is an undisputed fact.

The Corporate Debtor started providing CTCP plates to the Operational Creditor. Thereafter, to the utter shock of the Operational Creditor, the Corporate Debtor started providing goods of low quality. The Operational Creditors received complaint from its customers about sub-standard quality of the said goods (i.e. plates) and certain customers returned the said goods also. Thereafter, the Operational Creditor asked

the Corporate Debtor for purchase return of goods of sub-standard quality and asked many times them to improve the quality of their goods, but the Corporate Debtor did not pay any heed to the request of the Operational Creditor. Thereafter, the Operational Creditor asked the Corporate Debtor for its refund its outstanding advance money, but the Corporate Debtor refused to refund the outstanding advance of Operational Creditor without any justification.

On 20.03.2019, a letter was sent by the Operational Creditor for audit purpose to the Corporate Debtor wherein the Corporate Debtor was asked to give confirmation that balance of Rs. 3,40,63,260.47/- is due by them. To which, the Corporate Debtor sent confirmation to the Auditor of the Operational Creditor wherein they gave confirmation that requisite amount is pending on their part.

On 12.04.2019, the Operational Creditor sent letter to the Corporate Debtor for its refund of the remaining balance of advance payment but the Corporate Debtor via its reply dated 09.05.2019 raised dispute and refused to pay so and consequently started demanding money from the Operational Creditor on fictitious grounds. The Operational Creditor has come to know that the corporate debtor is in the process of sale/transfer of its manufacturing unit with all its assets without safeguarding interest of Operational Creditor & other creditors. Since Corporate Debtor is not willing to refund the legal claim of outstanding advance amount, Operational Creditor is left with no option but to file Insolvency Proceeding in terms of provisions of Insolvency & Bankruptcy Code, 2016 and rules made thereunder to protect its rights.

Hence, the demand Notices in prescribed Form No. 3 & 4 u/s 8 of the IBC were served on 19.06.2019 to the Corporate Debtor & all its Directors in response to which, the Corporate Debtor sent its reply dated

28.06.2019 wherein, it refused to refund the amount of the Operational Creditor. Therefore, the Operational Creditor has filed this Application.

3. The Corporate Debtor filed Affidavit in Reply of Mr. Mukund Bhuta opposing the above Company Petition for which the Operational Creditor filed Affidavit in Rejoinder dated 04.02.2022. The important Paras of the reply are reproduced hereunder for ready reference:

Para-3. It is submitted that as stated in the Application by the Operational Creditor both the parties entered into the Purchase Agreement dated 21<sup>st</sup> June, 2018 ("the Agreement"), in terms of which the Operational Creditor and the Corporate Debtor entered into an arrangement wherein the Operational Creditor would purchase CTCP plates from the Corporate Debtor.

Para-4. Prior to the issue of Demand Notice dated 19.06.2019, the Operational Creditor vide letter dated 12<sup>th</sup> April, 2019 demanded a total sum of Rs. 4,00,63,260/- along with 18% p.a. interest, claiming it to be Rs. 3,40,63,260/- from the advance amount along with Rs. 60,00,000/- towards alleged deficiency in the quality of plates.

Para-5. The Corporate Debtor vide Reply dated 9<sup>th</sup> May, 2019 to the above referred letter disputed the claims of the Operational Creditor. The relevant extracts of the Reply dated 9<sup>th</sup> May, 2019 is reproduced hereunder:

*“At the very outset, we inform you that the claims made in your letter are not accepted. The contentions herein are without prejudice to any of our rights as per law or facts.*

*You are aware that there are several requests which we have made to you in many aspects of our service but you have been evading responses or good faith discussions. Such acts of yours are despite contractual provisions which you are bound to follow. Therefore, in our view, if at all there is breach it is caused at your end.*

*Concerning the performance of contract and quality related allegations raised in your above-referred letter, you will agree that we always tried to deliver the quality which we agreed as per our contract and during the quality requirement tests at which your representatives were present and had given a go ahead. However, post such procedures you have made changes to your quality/requirements which is nothing but putting us into prejudice with the might of your organization which has substantial market share and influence. Even after being subject to such unfair practice, we have made the best performance of the contract by suffering losses, which we have notified you from time. You are, therefore, bound to reimburse any losses incurred by us. You are also informed that such acts shall lead us to the financial difficulties which we are trying to overcome.*

*Regarding the payments to us and the amounts referred in the letter, we are of the view that we should jointly proceed with the reconciliation of the same to assess details of services to be rendered by us. There being no such reconciliation done, there is no rationale or reason for you to claim such amounts or services from us. Further, you will agree to the fact that any amount paid by you under the Contract is not agreed to be refunded by us; there is no such recital/agreement to the said effect in our contract i.e. no privity of contract to such extent. There being no agreement to*

*refund as per our contract, you have no right to seek a refund of any amount.*

*Please note that several requests which we had made during the contract period, which you were bound to discuss and agree on a good faith basis as per terms of our Contract is not acted upon and therefore there are multiple defaults from your end e.g. increase in cost of production due to increase of currency rate (USD INR), the request has been initiated from our end as early as on October 2018 and till date there are no good faith basis actions from your end, till date there has been no response from you. If we calculate, the differential price variation, it will be seen that huge amount shall have to be recovered from you and we reserve our right to claim such amount as when we feel appropriate.*

*You are informed that as per the contract, the transportation cost incurred by us is expressly agreed to be paid by you. However, you have not made any payments till date and our demands for reimbursement in this regard is not honoured which also reflects your breach of obligations and non-payment. We also reserve the right to claim the same from you at the time as when we feel appropriate.*

*You are also informed that citing random figures in your notice and raising a claim that such amount is the amount due to you is without the support of any contractual provisions. Your claim for such unsubstantial claim is not accepted."*

Para-6. Thereafter, the Operational Creditor issued the Demand Notice under Section 8 of the I&B Code dated 19<sup>th</sup> June, 2019, while there was already a pre-existing dispute as notified by the Corporate

Debtor in the above referred reply, claiming Rs. 3,40,63,260.47/- along with 24% p.a. interest, while deliberately suppressing the fact that the Corporate Debtor vide the aforementioned Reply dated 9 May, 2019 had placed on record a serious dispute that had emerged between the Operational Creditor and Corporate Debtor regarding the amount and performance under the Agreement.

Para-7. The Corporate Debtor vide Reply dated 28<sup>th</sup> June, 2019, categorically reiterated the dispute citing reference to the aforementioned Reply dated 9<sup>th</sup> May, 2019, and placed its preliminary counter claim and reserving right to submit additional claim. The relevant extracts of the Reply dated 28<sup>th</sup> June, 2019 is reproduced hereunder:

*"In the first instance, my clients state that they do not owe a sum of Rs.3,40,63,260.47/- (Rupees Three Crore Forty Lakh Sixty-Three Thousand Two Hundred Sixty and Forty-Seven Paisa) plus 24% on the said amount as alleged by you in your said Notice."*

*"My clients state that your client has not recorded the fact that my clients vide letter dated 09.05.2019 had placed on record a serious dispute that has emerged between your client and my clients regarding the said amount and performance under the said agreement. It is stated to you by my clients that the dispute raised by my clients has not been placed on record in the said Notice, therefore, my clients state that the said Notice is illegal and cannot be relied upon for the purpose mentioned in the I&B Code."*

*"My clients state that the fundamental basis under which the transactions of purchase and supply were effected was the*

*Purchase Agreement dated 21.6.2018, which clearly contained Clause No.6 regarding price and clause 6.2 states as follows:*

*“The prices of the PRODUCTS are fixed during the term of this AGREEMENT, unless the parties hereto agree otherwise and such agreement is reduced to writing. The parties, or initiative of either party, shall enter into negotiation in good faith in changing the prices of the PRODUCTS as needs arise. However, the prices of products will be reviewed after every three months keeping in view of fluctuation in prices of Lithograde Aluminum and movement of the exchange rate with a base of US \$1- Rs.68/- and Supplier shall accordingly change the price of Products after prior intimation to the Purchaser”*

*In clause 6.1 for approximately 1,50,000 square meters, a sum of Rs.185 per square meter (US\$ 68/- was fixed after intense negotiations which again was a lower value and since it was a highly negotiated price, clause 6.2 was provided for revision of prices based on variations in the foreign exchange rate. In the said paragraph, it was undertaken by your client that on the initiative of either party, the parties will enter into negotiations in good faith and that the prices of the products will be reviewed every month keeping in view the fluctuations in prices of Lithograde Aluminum and the movement of fluctuations in the exchange rate. As early as June 2018, my clients had been taking up with your client for revision of the prices due to fluctuations in the exchange rate.*

*While the above particular provision emphasises good faith negotiations, your client showed a blind eye for such overtures of good faith negotiations and did not revise the prices and allowing*

*my clients to lose heavily on account of fluctuations in the exchange rate. My clients state that your client attitude had been to ignore the terms and conditions of the said Agreement. Thus your client have been a major violator of the Agreement dated 21.6.2018. My clients on a quick appraisal of the various transactions have come to the conclusion that they have on an estimate they have lost a sum of Rs.8,63,826.07 on a preliminary accounting basis. My clients reserve their right to conduct a full audit of all the transactions and submit a counterclaim against your client in this respect. In any case, my clients are entitled to receive from your client a sum of Rs. 8,63.826.07 based on the first estimate*

*My clients draw your client's attention to clause 5E of the said Agreement wherein it has been stated that if any party incurs any expenses or any outgoing suffered, the same shall be reimbursed. My clients on several occasions seeking your client a sum of Rs. 1,11,000/-on account of transportation cost, which again remained unpaid to my clients till date. Thus, my clients are also entitled to claim a sum of Rs.1,11,000/-on account of transportation cost.*

*My clients state that your client were insisting upon additional packing material, although the same was not covered under the understanding. In order to satisfy your client, my clients incurred additional cost and packing material and sought the same from your client on several occasions. However, in spite of several requests, your client have not made any payment towards such additional cost. An amount of Rs.3.8 lakhs is due and payable by your client on account of such costs."*

4. Heard Mr. Pulkit Sharma, counsel appearing for the Operational Creditor and Mr. Nausher Kohli, counsel appearing for the Corporate Debtor.
5. After hearing the submissions and upon perusing the material available on record, this Bench observes that, as rightly contended by the Corporate Debtor, the Operational Creditor vide their letter dated 12.04.2019 demanded a sum of Rs. 4,00,63,260/- which was denied and resisted by the Corporate Debtor vide their reply dated 09.05.2019 raising various contractual disputes. The Corporate Debtor also raised counter claim through the above reply dated 09.05.2019. Admittedly this correspondence is two months prior to the demand notice dated 19.06.2019. On perusing the above contentions raised by the Corporate Debtor in the above referred e-mail which are prior to the date of issuing Demand Notice, this Bench is of the considered opinion that the defence raised by the Corporate Debtor in this case is not a spurious one and requires further investigation. Similarly, this Adjudicating Authority cannot decide the contractual dispute as it is beyond the scope of Section 9 petition as per the settled proposition of law.
6. As per the law laid down by the Hon'ble Supreme Court in *Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*, when once the Adjudicating Authority comes to the conclusion that the defence raised by the Corporate Debtor is not spurious and requires further investigation, it shall not go into the merits of the dispute and decide as to whether the Corporate Debtor can succeed on the strength of his defence.

7. Therefore, in the light of the above facts and keeping the law laid down by the Hon'ble Supreme Court and the Hon'ble NCLAT in mind, this Bench is of the considered opinion that there are prior existing disputes between the parties in this case and the above Company Petition is filed by the Operational Creditor only to exert pressure on the Corporate Debtor for repayment.
8. For the aforesaid reasons, there is no merit in the above petition and accordingly the above Company Petition is liable to be rejected.
9. Accordingly, the above Company Petition bearing No. C.P. No. 2660/IBC/MB/2019 **is rejected.**

Sd/-  
**ANU JAGMOHAN SINGH**  
**MEMBER (TECHNICAL)**

Sd/-  
**H.V. SUBBA RAO**  
**MEMBER (JUDICIAL)**

Shubham