



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH,(Court-II)  
KOLKATA**

**C.P. (IB) No. 312/KB/2022**

*An application under Section 9 of the Insolvency & Bankruptcy Code, 2016.*

***In the matter of:***

**K. K. Banijya Private Limited [CIN U51909WB1996PTC080559]**, having its registered office at 56, Mcleod Street, Kolkata – 700017;

*....Operational Creditor*

**-Versus-**

**Xylo Impex Private Limited[CIN U19115WB2014PTC201932]**, having its registered office at 234 Rabindra Sarani, Kolkata – 700007;

*...Corporate Debtor*

**Date of hearing: 04 July, 2023**

**Order Pronounced on: 29 August, 2023**

**Coram:**

***Smt.Bidisha Banerjee, Member (Judicial)***

***ShriBalraj Joshi, Member (Technical)***

**Appearances (via video conferencing/physical)**

For the Operational Creditor : Mr. Javad Salah, Adv.

Mr. Prasenjit Saha, Adv.

For the Corporate Debtor : Mr. Anjan Kr. Roy, PCS

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**ORDER**

***Per: Bidisha Banerjee, Member (Judicial)***


1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (*'the Code'*) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Paradip Kalanoria, Director (*'Operational Creditor'*) duly authorised *vide* Authorization Letter dated 25 July, 2022<sup>1</sup> for initiation of Corporate Insolvency Resolution Process (*'CIRP'*) against Inter Leaves Private Limited (*'Corporate Debtor'*).
3. The present Petition was filed on **05 November, 2022** before this Adjudicating Authority. The total amount claimed in default is Rs.1,15,99,342/- (Rupees One Crore Fifteen Lakh Ninety Nine Thousand Three Hundred Forty Two only). The ***date of default*** is stated to be as on **11 September, 2020**;
4. In part II of the Petition the authorized share capital of the Corporate Debtor is Rs. 20,00,000/- (Rupees Twenty Lakh only) with subscribed share capital of Rs. 4,00,000/- (Rupees Four Lakh only). Part – IV of the Petition deals with the particulars of the Operational Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.***
  - 5.1 That, the Operational Debt amounting to Rs.1,15,99,342/- is above the minimum amount prescribed under Section 4 of the Code.
  - 5.2 That the allegation of Corporate Debtor of 'False Bill for alleged Job Work' is baseless & devoid of merits. The Operational creditor has submitted all the bills in time
  - 5.3 The Corporate Debtor has deliberately fudged & manipulated their audited accounts & statements which is evident from their counter reply affidavit dated 28 December, 2022.

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<sup>1</sup>Annexure – 8 of the Petition.

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- 5.4 It is pertinent to mention at Page no. 134 of the Reply in the Current Liability column, it shows no outstanding liability towards Operational Creditor but surprisingly on the same audit accounts at Page no. 138 of the Reply in the related party disclosure an amount of Rs.1,79,57,119/- is shown as outstanding towards the Operational Creditor.
- 5.5 The Corporate Debtor in its reply dated 03 September, 2022 against the statutory demand notice dated 25 August, 2022 of the Operational Creditor, in which bills mentioned in serial nos. 1 to 3 has been accepted by the Corporate Debtor and rest of the bills shown in serial nos. 4 to 17 has been claimed as false and fabricated but the facts remained that bill no. KKJK/0063/19-20 dated 17 February, 2020 and KKJK/0065/19-20 dated 22 February, 2020 has been taken in to the Annexure I page no 131 'Job work ledger account of M/s. KK Banijya Pvt. Ltd. F.Y. 2019-20'.
- 5.6 One bill no. KKJK/0079/19-20 dated 16 March,2020 for Rs.8,07,860/- has been left out in the chart mentioned above but the same bill has been shown in the dash board of GSTR 2A sent by the Corporate Debtor along with their reply dated 03 September, 2022.
- 5.7 That there was never a dispute as to the amount of outstanding due but the Corporate Debtor created legally unacceptable dispute and committed fraud by fudging their accounts in order to avoid the legitimate dues of the Operational creditor.
- 5.8 That all the illegal allegation for siphoning of money from Corporate Debtor to Operational Creditor, the said allegations are baseless and not supported by any legal documentary evidence.
- 5.9 Further, as per the ROC records it shows thar there is limited transaction in the accounts of the Corporate Debtor in F.Y 2020-21 & no transaction in the accounts of the Corporate Debtor in F.Y. 2021-22, so it is pertinent to mention here that the Corporate Debtor have malafide intention not to pay the dues of the Operational creditor even if the Operational creditor succeeds in the present case.

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**6. *Per contra, submissions by the Ld. Authorised Representative appearing on behalf of the Corporate Debtor would be as under:***

- 6.1 That, the Operational Creditor issued three demand notices dated 30 March, 2022, 10 August, 2022 and 25 August, 2022 to the Corporate Debtor. Each of the demand notices were duly replied denying the existence of the alleged debt and also bringing to the notice of the Operational Creditor the existence of a 'pre-existing dispute'.
- 6.2 The Operational Creditor never replied to any of the reply letters sent by the Corporate Debtor which brought to the notice of the Operational Creditor the 'Pre - Existing dispute' in the matter.
- 6.3 The Operational Creditor in the affidavit dated 25 October, 2022 verifying the Company Petition has falsely made a declaration that '*there is no notice given by the corporate debtor, relating to a dispute of the unpaid operational debt*'. There was no denial on the part of the Operational Creditor regarding the existence of the 'Pre - Existing dispute'.
- 6.4 The letter dated 23 December, 2020 by the Corporate Debtor mentions that 'I categorically deny that I have ever misled the company as alleged or at all. The attempt to disregard or eschew the liability towards M/s K KBaniva Private Limited and the story of manipulation is completely misplaced and false and has been made with some utterly malafide motive' [page 92 of the reply].
- 6.5 That Mr. Aniket Kalanoria, son of Mr. Pradip Kalanoria the director of the Operational Creditor was working at the Corporate Debtor as an agent of the Operational Creditor and was responsible for financial transactions and billings. In and around the year 2020 it came to the knowledge of the other directors of the Corporate Debtor that Mr. Aniket Kalanoria was creating false bills and was siphoning money. This was the origin of the dispute between the Corporate Debtor and Operational Creditor.
- 6.6 Due to the existence of 'Pre Existing Dispute' within the meaning of the terms in Section 5(6) of IBC 2016 read with the judgement of the honourable Supreme Court of India in '*Mobilox Innovations Private Limited*

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*v. Kirussa Software Private Limited*', this instant petition is not maintainable.

- 6.7 The Operational Debt as claimed is below Rs. 1 Crore. The interest claimed is only to reach the threshold. It would be pertinent to mention that the alleged invoices attached to the Application, nowhere mentions about any interest to be paid for delayed payment. Even the ledger attached to the Petition doesnot contain any amount of interest on delayed payment.
- 6.8 The Documents brought on record by the Operational Creditor in their rejoinder being the GST returns are auto populated and are based on the GSTR 1 return filed by the Operational Creditor themselves. The alleged bills as mentioned in those returns were never submitted to the Corporate Debtor and were for the first time sent to the Corporate Debtor along with the Demand Notice dated 25 August, 2022.

***Analysis and Findings***

7. We have heard the Learned Counsel appearing on behalf of the Operational Creditor and the Corporate Debtor and perused the documents on record.
8. Before delving into the merits of the case, it is appropriate to take into account the date of default as stated by the Operational Creditor, which is as on ***11 September, 2020***.
9. However, as per amendment to the Insolvency and Bankruptcy Code (Second Amendment) Act, 2020, w.e.f. 05 June, 2020, section 10A was introduced, which says as follows;

*“10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf;*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.*

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*Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.]*

- 10.** In view of the above, C.P (IB) No. 312/KB/2022 is *rejected*. However, the Operational Creditor is at liberty to resort to other remedies that may be available under any other law.
- 11.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**Balraj Joshi**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

The order is pronounced on 29<sup>th</sup> day of August, 2023

SA [LRA]