IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
SPECIAL BENCH
COURT - 1

ITEM No.3
CP(IB) 231 of 2019

Order under Section 9 IBC

IN THE MATTER OF:

IVP Ltd ....**Applicant**
V/s
Fitcast Founder & Engineers Pvt Ltd ....**Respondent**

Order delivered on ..27/04/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The matters were heard almost in the month of March but orders could not be pronounced because Technical Member was not available. Technical Member will not be available for another couple of weeks, hence, matter cannot be kept pending for pronouncement because hearing was concluded almost a month ago. Hence orders are pronounced invoking Rules 151 of NCLT Rules,2016 with consent of other Member.

-Sd-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B GOSAVI
MEMBER (JUDICIAL)

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

CP (IB) No. 231 of 2019

In the matter of:

IVP Ltd.
CIN: L74999MH1929PLC001503
Having its registered office at:
Shashikant N. Redij Marg, Ghorupdeo,
Mumbai-400033, India
Though Mr. Amber Shrivastava,
Area Sales Manager,

.... **Operational Creditor/Applicant**

Versus

Fitcast Founder & Engineers Ltd.
CIN: U27209GJ1999PTC037035
Having its registered office at:
314, Phase-II, G.I.D.C. Estate Vatva,
Ahmedabad, Gujarat - 382445

.......**Corporate Debtor/Respondent**

Order reserved on : 29.03.2022
Order delivered on: 27.04.2022

Coram: **Madan B. Gosavi, Member (Judicial)**
Kaushalendra Kumar Singh, Member (Technical)

Appearance:

Adv. Mr. Anand Nainawati a.w. Adv. Mr. Ambarish Pandey, for the Applicant.
Adv. Mr. Kunal P. Vaishnav, for the Respondent.

ORDER
[PER BENCH]

ORDER
[PER BENCH]

1. The instant petition has been filed by M/s IVP Limited, Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IB Code') for initiation of the Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP') against M/s Fitcast Founder & Engineers Private Limited, the Corporate Debtor for a default amount of Rs. 6,73,726/- (Rupees Six Lakhs Seventy-Three Thousand Seven Hundred and Twenty Six Only) including interest up to 17.12.2018.

2. The Operational Creditor has submitted that in pursuance of the purchase orders placed by the Corporate Debtor, the Operational Creditor supplied goods to the Corporate Debtor and raised the various invoices (Eleven Invoices) from 11.01.2017 to 31.08.2017 of Rs. 6,50,172/- (Rupees Six Lakhs Fifty Thousand One Hundred and Seventy-Two Only) and out of the said amount the Corporate Debtor paid an amount of Rs. 1,48,173/- (Rupees One Lakh Forty-Eight Thousand One Hundred and Seventy Three Only). The Corporate Debtor failed to pay an amount of Rs. 5,01,999/- (Rupees Five Lakhs One Thousand Nine Hundred and Ninety Nine Only) even after a number of reminders and requests.

3. It is submitted that the Operational Creditor under the compelling circumstances issued a Statutory Demand Notice dated 18.12.2018 and the same was delivered to the Corporate Debtor on 24.12.2018. Thereafter, the Operational Creditor received a certain payment from the Corporate Debtor However, on verifying the same with its Finance Department, it was confirmed that the payments were received from the Corporate Debtor with respect to

earlier invoices but not for the invoices with respect to which the present application is filed. No reply was made by the Corporate Debtor with respect to the said demand notice. Hence, the present petition is filed by the Operational Creditor to initiate the CIRP against the Corporate Debtor.

4. The Corporate Debtor filed its reply to the present petition on 10.06.2019 and submitted that the Corporate Debtor has stated that on receipt of the statutory notice dated 18.12.2018 one email was sent by the Corporate Debtor to the Operational Creditor on 19.11.2018, wherein it is clearly stated that the amount claimed by the Operational Creditor has already been paid. The Bank statement has also been annexed with the reply to show that the claim amount has already been paid to the Operational Creditor.

5. The Corporate Debtor further submitted that this petition is nothing but merely to misguide and mislead this Authority. The Corporate Debtor also stated that the person who signed the petition is not authorized to file the affidavit on behalf of the Operational Creditor on the ground that once the powers are delegated by the board the same can be not delegated further. In this petition, the Board of the Operational Creditor has authorized a few persons through Board Resolution dated 13.11.2018 and, they further authorized the signatory of this petition.

6. The petitioner company filed an application bearing IA No. 757 of 2019 for placing on record additional documents after the reply filed by the Corporate Debtor the same was allowed by this Authority vide order dated 05.02.2020 on the ground that there can be no serious prejudice to the right, if any, of the Corporate Debtor because the Corporate Debtor will get an opportunity to

file rebuttal document along with its reply in the main matter by this Authority.

7. We have heard the learned counsel of the Operational Creditor as well as the Corporate Debtor and perused the documents on record. The Operational Creditor has alleged that the amount of Rs. 6,73,726/- as outstanding including interest up to 17.12.2018, eleven invoices were raised for the amount of Rs. 6,50,172/- out of total principal amount Rs. 1,48,173/- has been paid by the Corporate Debtor. The said amounts were paid by the Corporate Debtor with different transactions viz. Rs. 9,595/- on 04.01.2017, Rs. 79,849/- on 24.01.2017, Rs. 28,713/- on 06.02.2017 and Rs. 30,016/- on 05.05.2017. But as per the transaction detail provided by the Operational Creditor as well as the Corporate Debtor the total amount was paid by the Operational Creditor of Rs. 7, 52, 638/- in the different transactions Viz Rs. 1,97,689/- on 04.01.2017, Rs. 69,346/- on 06.02.2017, Rs. 1,12,982/- on 18.04.2017, Rs. 1,01,568/- on 20.05.2017, Rs. 62,100/- on 17.06.2017 and Rs. 1,08,560/- on 31.08.2017 which shows that more than the principal amount has been paid by the Corporate Debtor to the Operational Creditor. Moreover, the details of the adjustment given by the Operational Creditor are not matching with the Bank transactions.

8. The contention to the Corporate Debtor that the claim amounts were received in lieu of previous invoices and the Rs. 5,01,999/-is still pending to be paid by the Corporate Debtor. The amount received from the Corporate Debtor has been adjusted on the basis of a first in first out basis. In support of the aforesaid claim, the Operational Creditor has placed on record 11 invoices raised from 22.04.2016 to 26.12.2016 through Interlocutory Application

bearing No. 757/2019. But the Operational Creditor has failed to justify that how much amount has been adjusted against which invoices.

9. If we consider the contention of the Operational Creditor the paid amount has been adjusted on the basis of a first-in and a first-out basis. As per the given chart by the Operational Creditor with the rejoinder, the amount has been adjusted for 15 invoices for the year 2016, however, the invoice placed on record for 2016 is 11 only. If, the total invoices for the year 2016 are 11 then how the adjustment of the amount can be made for 15 invoices for the year 2016. Invoices for the year 2016 are I. AHM/16-17/0170 dated 22.04.2016 for Rs.71,496/-, II. AHM/16-17/0193 dated 26.04.2016 for Rs.56,926/-, III. AHM/16-17/194 dated 26.04.2016 for Rs.73,462/-, IV. AHM/16-17/0361 dated 21.05.2016 for Rs.73,634/-, V. AHM/16-17/1303 dated 10.10.2016 for Rs.73,269/-, VI. AHM/16-17/1446 dated 05.11.2016 for Rs.73,229/-, VII. AHM/16-17/1445 dated 05.11.2013 for Rs.73,229/-, VIII. AHM/16-17/1554 dated 25.11.2016 for Rs.56,926/-, IX. AHM/16-17/1573 dated 30.11.2016 for Rs.62,100/-, X. AHM/16-17/1600 dated 03.12.2016 for Rs.12,107/-, and XI. AHM/16-17/1723 dated 26.12.2016 for Rs.56,926/-) and the adjusted list provided by the Operational Creditor is as under:

Invoice No	Invoice Date	Inv Amt	Received Amt	
AHM/16-17/0170	22.04.2016	71,496	34,584	
AHM/16-17/0193	26.04.2016	56,926	56,926	
AHM/16-17/194	26.04.2016	73,634	32,714	
AHM/16-17/0361	21.05.2016	73,462	73,462	197,686
2140445AHM/16-17	04.01.2017	39,330	30,016	
2140201AHM/17-	05.05.2017	31,050	39,330	69,346

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AHM/16-17/1303 2140932AHM/16-17 2140933AHM/16-17	05.11.2016 05.11.2016 05.11.2016	73,269 73,229 73,229	6,857 73,229 32,896	112,982
AHM/16-17/1303 2140235AHM/16-17	05.11.2016 25.11.2016	73,269 56,925	66,412 35,156	101,568
2140235AHM/16-17 2140242AHM/16-17	25.11.2016 30.11.2016	56,925 62,100	21,769 40,331	62,100
2140242AHM/16-17 2140296AHM/16-17 2140318AHM/16-17 2140444AHM/16-17	30.11.2016 03.12.2016 26.12.2016 04.01.2017	62,100 12,107 56,925 39,330	21,769 12,107 56,925 9,595	100,396
2140530AHM/16-17 2140706AHM/16-17	25.11.2016 06.02.2017	56,925 69,345	79,848 28,712	108,560

10. In view of the above, it is clearly shown that the Operational Creditor has adjusted the amount for 15 invoices for the year 2016 however, as per the record only 11 invoices were raised in the year 2016.

11. It is also noted that in the petition the Operational Creditor has alleged that the outstanding amount of a total of 11 invoices (04.01.2017 to 31.10.2017) is pending but in an e-mail dated 21.11.2018 sent by the Operational Creditor to the Corporate Debtor for paying the outstanding amount to the Corporate

Debtor, the Operational Creditor has sent the claim of 9 invoices only and the principal amount claimed is Rs.4,33,086/- but in the petition, the principal claim amount is Rs.5,01,999/-.

12. we are of the considered view that no amount is due to be paid to the Operational Creditor, as the statement of Bank Account of Corporate Debtor, shows that the outstanding amount has been paid. Moreover, there is inconsistency in the details of invoices and adjustment of payments provided by the Operational Creditor. Hence, the present petition is rejected.

13. Accordingly, the present petition is dismissed and disposed of.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

MADAN B GOSAVI
MEMBER (JUDICIAL)

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