

**In The National Company Law Tribunal
Kolkata Bench
Kolkata**

C.P. (IB) No. 1051/KB/2019

In the matter of :

An application for initiation of corporate insolvency resolution process by an Operational Creditor under Section 9 and other applicable provisions of the Insolvency and Bankruptcy Code, 2016, (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of :

M/S. SHREE KARNI PT. LTD., having CIN-U70101WB1973PTC029047 of 378, Hemanta Mukhopadhyay Sarani, kolkata 700029.

..... Operational Creditor

Versus

In the matter of :

M/S. MAHARAJA SHREE UMAID MILLS LIMITED, having CIN No. U17124WB1939PLC128650 and registered office at Krishna Building, 7th Floor, Room No. 706, 224, A.J.C. Bose Road, Kolkata, West Bengal – 700017.

.... Corporate Debtor

Self

Self

Order reserved on: 05/03/2020

Judgement / Order delivered on : 18/03/2020

**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)**

Counsel on Record :

- | | |
|---------------------------------|----------------------------|
| 1. MR. PANKAJ AGARWAL, Advocate |] |
| 2. MS. PARAMITA MAITY, Advocate |] For Operational Creditor |
| 1. MS. RICHA SARAF, Advocate |] For Corporate Debtor |

ORDER

Per Harish Chander Suri, Member (T)

1. This application under Section 9 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, has been filed by **M/s. Shree Karni Private Limited**, hereinafter referred to as the "Operational Creditor" against **M/s. Maharaja Shree Umaid Mills Limited**, a Corporate entity having its registered Office at Kolkata, West Bengal, hereinafter referred to as the "Corporate Debtor".
2. The Operational Creditor has sought initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for its

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default in payment of a sum of Rs.6,14,189/- (Rupees Six Lakh Fourteen Thousand One Hundred Eighty Nine Only) inclusive of interest till 28th February, 2019 to the Operational Creditor. The Operational Creditor had admittedly purchased 6,123.600 Kgs of Hosiery Yarn from the Corporate Debtor and a sum of Rs.14,11,506/- (Rupees Fourteen Lakh Eleven Thousand Five Hundred and Six Only) was paid by way of RTGS as advance, on 24th January, 2018. The goods were found defective and the Corporate Debtor was informed about the defective goods. It is stated that the Corporate Debtor had requested the Operational Creditor not to return the defective material and asked to sell as much goods as possible at a lesser price. A part of the goods i.e. 4122 Kgs of yarn was sold by the Operational Creditor at the rate of Rs.10/- per Kg. It is stated that the remaining 2047.980 Kgs of goods has not been lifted by the Corporate Debtor nor has it refunded the pending amount of Rs.4,72,073/- (Rupees Four Lakh Seventy Two Thousand and Seventy Three Only) which finally compelled the Operational Creditor to issue a notice under Section 8 of the Code on 4th March, 2019 which was duly served. A reply dated 18th March, 2019 was also received by the Operational Creditor. Copy of the demand notice as well as reply are annexed with the application collectively marked as **Annexure 'H'**.

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3. In reply to the application, the Corporate Debtor has disputed the prayer, and the claim and submitted that the Operational Creditor is claiming refund of the amount which is already sold by the Operational Creditor to its customers along with interest @ 18% p.a. It is submitted that the Applicant is not an Operational Creditor under Section 5(20) of the Code and there is no Operational Debt due or outstanding under Section 5(21) of the Code. It is stated that there are pending prior disputes with regard to claim made by the Operational Creditor. It is stated that the claim of the Applicant does not relate to any goods or services sold by the Operational Creditor but is related to non refund of money and is being claimed as compensation on account of alleged loss incurred by the Operational Creditor. The Operational Creditor has also filed copy of Bank Statement, as is required under Section 9(3)(c) of the Code.
4. A rejoinder to the reply has also been filed by the Operational Creditor reiterating the facts mentioned in the application and denying the contents of the reply affidavit.
5. We have gone through the respective pleadings filed by both the parties and have heard the Ld. Counsel for the parties at length.
6. There is no dispute that an advance was given for the supply of material in terms of the invoices and on the goods having been

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admittedly found defective, a part of the goods were sold by the Operational Creditor. Even though the Operational Creditor has filed affidavit under Section 9(3)(b) of the Code that the Corporate Debtor has not made out any genuine dispute in its reply and that there is no dispute of the unpaid operational debt, in its reply to the notice, the Corporate Debtor has informed the Operational Creditor that the supply of 6123 kgs of 24/1 CH Slub yarn had been supplied as per their order and specifications and as per the agreed terms, no claim pertaining to quality would be entertained after 30 days from the date of invoice. It was further informed that no claim for 2047 Kgs 24/1 CH Slub yarn was raised by the Operational Creditor and that the Corporate Debtor had never agreed for returning this material and that was communicated to the Operational Creditor verbally as well as vide e-mail dated 5th November, 2018.

7. In support of its case the Corporate Debtor has referred to and relied upon the case of **SHRM Biotechnologies Private Limited v. VAB Commercial Private Limited**, wherein the Hon'ble Tribunal observed that the applicant neither did render any service to the Corporate Debtor nor did provide any goods to the Corporate Debtor, and accordingly, dismissing the application, held as follows:

"16. The operational creditor, in the case in hand, does not fall within the above referred 3 elements of the definition of

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operational creditor. Therefore, I am of the concerned view that the claim of the applicant here in this case does not fall within the definition of operational debt. Therefore, I come to a conclusion that the applicant herein is not an operational creditor as defined u/s 5(20) read with Section 5(21) of the I&B Code, and therefore, this application requires no consideration. It is liable to be dismissed”.

The Corporate Debtor has further referred to and relied upon the order of the **Hon’ble NCLT, Mumbai Bench, in the matter of Tata Chemicals Limited v. Raj Process Equipment and Systems Private Limited**. The relevant extract of the judgment is reproduced below for reference:

“Operational Creditor’s claim on compensation or damages on account of alleged breach of contract is not admitted by the Corporate Debtor. In fact, Corporate Debtor has raised a demand for payment for losses on the Petitioner.”

8. Having heard and considered all the facts and circumstances in the present case as against the unsuccessful attempt of the Operational Creditor, in proving its case, we agree with the arguments advanced on behalf of the Corporate Debtor and in view of the aforesaid judgments cited by the Corporate Debtor, we are convinced that the Applicant is not an Operational Creditor covered under Section 5(20) and there is no operational debt due as defined under Section 5(21) and moreover, there was pre-existing dispute, for which admittedly a compensation was being demanded by the Operational

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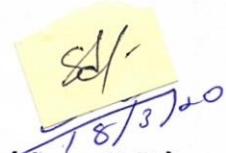
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Creditor from the Corporate Debtor. We, therefore, do not find it to be a fit case for admission, the application is hereby dismissed.

9. Accordingly, the **Company Petition CP (IB) No. 1051/KB/2019** is, therefore, **dismissed**. There is no order as to costs.
10. Registry is hereby directed under section 9(5)(ii) of the I & B Code, 2016 to communicate the order to the Operational Creditor and the Corporate Debtor by Speed Post as well as through E-mail.
11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 18th day of March, 2020.

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