IN THE NATIONAL COMPANY LAW TRIBUNAL,

KOLKATA BENCH,
KOLKATA

C.P (IB) No.1780/KB/2019

In the matter of
An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And
In the matter of:

GT INDIA PRIVATE LIMITED , CIN: U51909TN2003PTC050479, having its registered office at 249, Syndhems Road, Periamet Chennai, Tamil Nadu, 600003.

… Operational Creditor

Versus

In the matter of:
JAYANTI DOMESTIC PRODUCTS PRIVATE LIMITED, (CIN: U74999WB1990PTC050344), having its Registered office at 9C, Ganguly Lane, Kolkata, West Bengal, 700007.

…Corporate Debtor

Date of hearing : 06 /04/2022
Order Pronounced on : 20/05/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)
Mr. Harish Chander Suri, Member (Technical)

Counsel / Authorised Representative appeared physically/through video conference:

For Operational Creditor	:	Mr. Arnab Dutta, Adv. Ms. Prerana Choudhary, Adv
For Corporate Debtor	:	Mr. Rahul Parasrampuria, PCS

O R D E R

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.

2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016 has been filed by **GT INDIA PRIVATE LIMITED,** through its General Manager, Mr. S.Vijay Sharma, authorised vide Board Resolution dated 10/05/2019 (Exhibit-M) (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **JAYANTI DOMESTIC PRODUCTS PRIVATE LIMITED,** a corporate entity, having its Registered office at 9C, Ganguly Lane, Kolkata, West Bengal, 700007, (hereinafter referred as the Corporate Debtor).

3. It is submitted that the Operational Creditor is one of the largest manufacturers and exporters of Dhoops & Agarbathies including sambhranis, Kumkum & Turmeric and had supplied the Joss Powder to the Corporate Debtor who are the Exporter/Manufacturer of Incense sticks, cones, dhoop sticks mosquito repellent coils, etc. and during the course of business they had transacted with each other and a huge outstanding has been created in favour of the Corporate Debtor which is to be payable to the Operational Creditor.

4. It is submitted that the Joss Powder was received and accepted by the Corporate Debtor and there were no dispute at the time relating to the quantity and quality of goods but thereafter the Corporate Debtor had failed to make the payment for the outstanding dues of the invoices dated 22nd July,

2016 to 03rd February, 2017 amounting to Rs.4,81,862/- (Rupees Four Lakhs Eighty One Thousand Eighty Hundred Sixty Two), the copy of the invoices issued by the Operational Creditor to the Corporate Debtor is annexed as Exhibit-C and the copy of the Ledger of Corporate Debtor in the books of accounts of Operational Creditor is annexed as Exhibit-D and it is pertinent to note that the Operational Creditor was maintaining the running account of Corporate Debtor in his books of Accounts as reflected in the aforesaid ledger.

5. It is submitted that the Corporate Debtor is also liable to pay an interest on the outstanding due amount of Rs.2,23,740/- (Rupees Two Lakhs Twenty Three Thousand Seven Hundred Forty only) @ 18% per annum as per the terms and conditions of the invoice from the due date of the invoices till the date of the Demand Notice, the copy of the computation showing the details of the outstanding due and the date of default along with the interest calculation is annexed as Exhibit-E.

6. It is submitted that after giving several reminders, the Operational Creditor had issued the Statutory Demand Notice in Form 3 along with Form 4 dated 13th May,2019 as required under section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor at its Registered Office and also to the Directors of the Corporate Debtor, the copy of the Statutory Demand Notice issued by the Operational Creditor to the Corporate Debtor and also to the Directors of the Corporate Debtor along with the requisite documents is annexed as Exhibit-F.

7. It is stated that the Demand Notice was also forwarded via E-mail on 13th May, 2019 on 13th May, 2019 on the registered mail id of the Corporate Debtor on the website, the copy of the E-mail sent by the Operational Creditor to the Corporate Debtor is annexed as Annexure- Exhibit-G.

8. It is submitted that the copy of Demand Notice was sent by India Post through Speed Post on 14th May, 2019, the copy of the Speed Post Receipts evidencing the service of the Demand Notice is annexed as Exhibit-H, along

with the copy of the Track Report as available from the website of the India Post evidencing the delivery status for the same.

9. It is submitted that the copy of the Statement of Bank Account of Operational Creditor where deposits are made or credits are received normally by the Operational Creditor in respect of the Corporate Debtor, reflects that no amount has been received by the Operational Creditor from the Corporate Debtor post the issue of Demand Notice, the copy of the Bank Statement of Operational Creditor is annexed as Exhibit-I.

10. It is submitted that the Operational Creditor had reminded several times to repay the outstanding dues but the same remain unpaid till date. However, the Operational Creditor had received a reply from the Corporate Debtor on 24th May, 2019 against the issue of the Demand Notice stating that the matter is under dispute at Fast Track Criminal Court, Chennai and the same is pending till date and also stated that letter/ correspondence will be shared but the same were never shared by the Corporate Debtor which clearly means that the reply sent by the respondent is vague, ambiguous, and up-through nearly to raise false and fabricated dispute to escape the provision of Insolvency and Bankruptcy Code, 2016, the copy of the Reply Letter received from the Corporate Debtor by the Operational Creditor is annexed as Exhibit-J.

11. In the reply affidavit filed on behalf of the Corporate Debtor by one of its Directors namely Asis Kanti Paul, the Corporate Debtor has submitted as under:-

a. The application as framed is not maintainable in law and on facts as alleged in the application.

b. The application is barred by the principles of estoppel, waiver and acquiescence and by the principles of law analogous thereto.

c. The Operational Creditor has got no cause of action for the application as against the Corporate Debtor for initiation of insolvency resolution process.

d. It is submitted that, the document on basis of which the Operational Creditor had filed the instant application is not binding upon the Corporate Debtor as there exists the dispute before the demand notice. On this instant ground, the application is liable to be rejected.

e. That, the Corporate Debtor raised a dispute informing certain irregularities in the quality of materials supplied by the applicant. However, the Operational Creditor had chosen not to reply and simply ignore the complaints raised by the Corporate Debtor. This has caused huge loss to the corporate debtor on account of money, goodwill and customer base.

f. It is further submitted that by way of emails and verbal communication on several occasions, the Corporate Debtor informed to the Operational Creditor regarding the quality of materials. The said email of Corporate Debtor was ignored under one pretext over the another.

12. **During the Course of arguments**, the Ld. Counsel for the Operational Creditor has submitted that the Operational Creditor has filed the present petition against the Corporate Debtor under section 9 of the Insolvency and Bankruptcy Code,2016 for the default amount of Rs.7,05,602/-(Rupees Seven Lakh Five Thousand Six Hundred Two only) in respect of the outstanding invoices from 22/07/2016 to 03/02/2017. The Respondent has received, accepted and consumed the goods.

13. It is further submitted that the Corporate Debtor failed to make payment of the outstanding amount, the Operational Creditor herein served a Demand Notice dated 13/05/2019 upon the Corporate Debtor herein under section 8 of the IBC through Speed Post as well as over Respondent's email ID.

14. It is submitted that the Corporate Debtor replied to the Demand Notice vide reply letter dated 24/05/2019 which is produced with the Petition at

page No.67. It is pertinent to note that Corporate Debtor did not dispute the quality or quantity of the goods supplied. On the contrary, the Corporate Debtor simply said that the issue is under dispute and pending at Chennai Fast Track Criminal Court which is all fabricated and also not even a single documentary proof was attached or sent later as mentioned by Corporate Debtor in the said reply letter. Thus, the Corporate Debtor has not given any sort of details or correspondence of dispute upon receipt of the Demand Notice issued under section 8 of the IBC,2016 or thereafter.

15. It is submitted that thereafter, the Operational Creditor was constrained to file the present petition before this Adjudicating Authority after service of the advance copy of the Petition upon the Respondent and all its Directors. No response was given by the Respondent to the Advance copy of the Petition sent by the Petitioner.

16. It is submitted that thereafter, the Corporate Debtor was issued notice of hearing by this Adjudicating Authority as well as by the present Operational Creditor in terms of Order dated 24/10/2019 passed by this Adjudicating Authority. The Corporate Debtor appeared through its counsel before this Adjudicating Authority on 30/12/2019 and sought time to file reply. On the next date of hearing i.e. 03/02/2020, the Corporate Debtor again sought further time to file reply wherein this Adjudicating Authority directed that affidavit in reply to be filed within next three days failing which, the matter will proceed ex-parte. On the next date of hearing i.e. on 14/02/2020, the Corporate Debtor filed the reply and came out with lame and vexatious defense which is not at all tenable in the eyes of law.

17. It is further submitted that the present petition is complete in all respects. The present petition is filed within limitation period. The present petition fulfills all criteria laid down under the provisions of Insolvency and Bankruptcy Code, 2016. The Corporate Debtor has lost its substratum and hence the present petition may kindly be admitted in the interest of justice.

18. **During the course of arguments**, the Ld. Counsel for the Corporate Debtor has submitted that this application is not maintainable before this Adjudicating Authority as there is an existing dispute as to the quality of goods as referred to in section 5(6) of the Insolvency and Bankruptcy Code, 2016.

19. It is submitted that there was an existing dispute even before the demand notice was issued by the Operational Creditor upon the Corporate Debtor and the same can be evident from the notice of dispute sent by the Corporate Debtor in reply to the demand notice sent by the Operational Creditor.

20. It is submitted by the Ld. Counsel for the Corporate Debtor that the first notice received from the advocate of the Operational Creditor was dated 1st September, 2017 where the demand was raised for an amount of Rs.5,36,625/- against the said goods. The Corporate Debtor replied to the said letter vide letter dated 9th October, 2017, informing the Operational Creditor about the inferior quality of the material and the loss suffered because of such material and has proposed and requested the Operational Creditor to resolve the issue. Copy of the letters dated 01/09/2017 and 09/10/2017 are annexed as Annexure- A & B respectively.

21. It is submitted that thereafter on 20th October, 2017, the Operational Creditor has admitted through their advocate that the material supplied by them were of inferior quality and has hence requested to return the material within 15 business days from the date of the letter, which shows the existence of dispute with respect to the quality of material as per Section 5(6) of the Insolvency and Bankruptcy Code, 2016. Copy of the letter dated 20.10.2017 is annexed as Annexure-C.

22. It is submitted that after the request received by the Operational Creditor to return the goods for replacement of the same, the Corporate Debtor has asked them to supply the GST number so as to enable the return

of materials vide two letters dated 27.10.2017 and 24.11.2017.Copy of the letters dated 27.10.2017 and 24.11.2017 are annexed as Annexure-D and E respectively.

23. It is submitted that in between these letters, a letter from an advocate was received on 21st November, 2017,whereby new issue was raised by the Operational Creditor and fraudulently, stating that the representative had visited the godown to verify the inferior material and that they were shocked to know that it was only the waste material in the garbage bag in the godown so as to raise a dispute in respect of the said transaction. So, however, on one side they have accepted several times that the material is of inferior quality and after some time again they have change their version when the Corporate Debtor was about to send the goods and also they have wrongfully mentioned the visit, the answering respondent puts the operational creditor in strict proof regarding the verification of goods done by the Operational Creditor.

24. It is submitted that thereafter, when the GST certificate was received by the Corporate Debtor vide the same letter dated 21st November, 2017, where they have changed their stance, to which the Corporate Debtor had supplied the inferior quality raw materials back to the Operational Creditor through VRL Logistics, we reached out to the Operational Creditor for the supply of goods. Copy of the logistics invoice and GST certificate is annexed as Annexure-F.

25. It is further submitted that Corporate Debtor surprised that the materials were refused to be taken back from the godown of VRL Logistics by the Operational Creditor against which the Corporate Debtor had written letters dated 12th January, 2018 and 2nd February, 2018 to take back the materials sent by the Corporate Debtor. However, it was refused by the Operational Creditor for which the Corporate Debtor even had to bear the demurrage charges of Rs.31,350/- Copies of the letters dated 12.01.2018 and 02.02.2018 is annexed as Annexure- G and H respectively.

26. It is submitted that that the Corporate Debtor had relied on demand notice (page 67 of the application) stating that the dispute is pending before the Chennai Fast Track Criminal Court. Also further as promised in reply to demand notice, corporate debtor again sent a letter stating the facts and the reason of invoking 138 by Operational Creditor. Copy of the subsequent letter is annexed as Annexure-I.

27. Ld. Counsel for the Corporate Debtor submits that the Hon'ble Supreme Court has observed that the Adjudicating Authority shall see at the time of admitting or rejecting an application whether there is a plausible contention which requires further investigation and that the dispute is not patently feeble legal argument or an assertion of fact and supported by evidence. So, here in the instant case, the Corporate Debtor states that the dispute is also supported by the emails/letters which were exchanged between the Corporate Debtor and the Operational Creditor.

28. It is submitted that the Operational Creditor has also very cunningly filed a case under Section 138 of the Negotiable Instruments Act, 1938 against the Corporate Debtor, however, that are not pursuing the same because they are very well aware of the fact that no sum is payable by the Corporate Debtor to the Operational Creditor on account of the inferior quality of materials supplied. The Operational Creditor has also refrained from appearing in the said matter.

29. Further, the Hon'ble Supreme Court in the matter of Dena Bank versus C Shivakumar Reddy (Civil Appeal No. 1650 of 2022), held that there is no bar in law to the amendment of pleadings in an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 or to the filing of additional documents apart from those initially filed along with application under Section 7. The answering respondent is relying on same analogy in the instant section 9 application.

30. It is further submitted that the Operational Creditor was aware of the

existence of dispute at the time of filing of application under Section 9 of the Insolvency and Bankruptcy Code, 2016.

31. After going through the petition, reply and all other documents placed on record, it is quite clear that in reply to the notice under section 8 of the Code, the Corporate Debtor vide its reply dated 24th March,2019 had informed the Operational Creditor that the matter is under dispute at Criminal Court Chennai, Fast Track Criminal Court, the Corporate Debtor had given the details of the matter pending before the said Criminal Court. They further submitted that they would be sending to the Operational Creditor all the details of the account and letter/correspondence. Similarly, in its reply to the Operational Creditor, the Corporate Debtor has submitted to this Adjudicating Authority that the Corporate Debtor had raised the disputes informing certain irregularities in the quality of materials supplied by the Operational Creditor but the Operational Creditor had chosen not to reply and simply ignore the complaints raised by the Corporate Debtor which caused huge loss to the Corporate Debtor on account of money, goodwill and customer base. The Corporate Debtor further submitted in its reply that relying on the decision of Hon'ble Supreme Court in **R Vijayan vs Baby and Another, (2012) 1 SCC 260**, the proceedings under section 138 of N.I.Act is really a Civil Case of recovery of money, therefore, in view of the pendency of such case, application under section 9 of the Code is not maintainable. The Corporate Debtor has further relied on the decision of Hon'ble Supreme Court in **"Innoventive Industries Ltd. Vs. ICICI Bank and Ors. (2018) 1 SCC 407**. The relevant extract of the said decision has been quoted by the Corporate Debtor as under :-

> *"29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in*

> *sub-section (1), bring to the notice or the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which pre-existing - i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code."*

32. The Corporate Debtor during the course of arguments has further referred to decision of the Hon'ble Supreme Court in the matter of **Dena Bank Vs. C Shivakumar Reddy, (Civil Appeal No. 1650 /2022)** wherein the Hon'ble Supreme Court has held that there is no bar in law to the amendment of pleadings in an application under section 7 of the IBC, 2016 or to the filing of additional documents apart from those initially filed along with application under section 7. The Corporate Debtor is relying on the same analogy in the instant section 9 application. It is submitted that the Operational Creditor was very much aware of the existence of the dispute at the time of filing of the application under section 9 of the Code and, therefore, the present application is not maintainable. The Corporate Debtor has sought to refer to and place on record certain documents / correspondence between the parties during the course of arguments.

33. After hearing the arguments of both the Ld. Counsel for the parties and going through the documents placed on record, it is clear that in reply to the demand notice, the Corporate Debtor had referred to some disputes pending before the Criminal Court, Chennai and had further stated that the letters and correspondence will be sent to the Operational Creditor shortly. In continuation thereof, the Corporate Debtor has further referred to those disputes between the parties in its reply affidavit also and during the course of arguments also, those very documents have been placed before the Bench. Since the complaint under section 138 of the N.I.Act, 1881 had been pending between the parties and certain pre-existing disputes had been pending between the parties, this petition will have to be rejected.

34. Accordingly, **C.P (IB) No.1780/KB/2019 , is dismissed.**

35. 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 (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this the 20th day of May , 2022

PJ.