

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH- IV

IB No. 1680/ND/2019

IN THE MATTER OF:

AMD Industries Limited
A Company Incorporated under the Companies Act
Having its Registered Office
18, First Floor, Pusa Road
Karol Bagh, New Delhi-110005

...PETITIONER/ OPERATIONAL CREDITOR

VERSUS

M/s. VHV Beverages Private Limited
A Company Incorporated under the Companies Act
Having its Registered Office
14-B, Second Floor
(Back Side Flat), Vijay Park
Najafgarh, South West
New Delhi-110043

... RESPONDENT / CORPORATE DEBTOR

Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

Order delivered on: 09.12.2021

CORAM:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SH. PRASANTA KUMAR MOHANTY, HON'BLE MEMBER (TECHNICAL)


9/12/21.

ORDER

Per: SH. DHARMINDER SINGH, MEMBER (JUDICIAL)

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by AMD Industries Limited, (hereinafter "applicant"), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s VHS Beverages Private Limited (hereinafter, Respondent/Corporate Debtor).

2. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

a. The case of the applicant is that the corporate debtor is indebted to a sum of Rs. 3,19,82,394/- (Rupees Three Crores Nineteen Lakhs Eighty-Two Thousand Three Hundred Ninety-Four Only), towards supply of goods on various dates. The amount also includes the interest upto 31.03.2019 at the agreed rate in terms of the M.O.U executed between the parties dated 16.02.2018 along with unpaid accumulated interest of Rs. 10,09,417/- at the rate of 12% per annum on account of having purchase material from the operational creditor against the invoices.

b. It is submitted that the part amount has been received from the corporate debtor but the balance amount was accruing on a day-to-day basis until the debt owed to the operational creditor stands discharged.


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- c. The applicant further states that a MOU dated 16.02.2018 was executed between the parties in which the respondent has admitted its liability to pay dues to the applicant.
- d. That the corporate debtor had issued 2 cheques for Rs. 10,00,000/- in favor of the Operational creditor in order to discharge its liability. However, upon presentation the same was dishonoured on account of "Insufficient Funds". Further, the operational creditor issued notice under section 138 of the Negotiable Instrument Act, 1881 against the corporate debtor and its directors for the aforesaid cheques.
- d. That the operational creditor sent a Demand Notice dated 20.05.2019 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 via Speed Post. Copy of the Demand Notice dated 20.05.2019 demanding payment in prescribed Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 duly served upon the address as per the website of Ministry of Corporate Affairs, Government of India, where the operational creditor supplied services to the Corporate Debtor.
3. Upon issuance of notice, Ld. Counsel for the respondent filed reply to the present petition raising the following objections against the admission of the present petition:

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- i. It is stated that the applicant had supplied faulty/ bad quality of material to the corporate debtor and on various occasions respondent have mailed to the applicant regarding the material quality. Further it is submitted that vide email dated 05.07.2018 and 07.07.2018 the respondent again communicated to the applicant about the quality of the material supplied by the applicant, however till date the applicant has not taken any step with respect to the same nor replied to the emails sent by the corporate debtor. With respect to the bad quality of material supplied, the corporate debtor has suffered huge losses in the business and also lost valuable contracts and destroyed the goodwill and market value of the corporate debtor.
- ii. It is submitted that the application is not maintainable on the ground that the application is not being filed by the authorized representative of the company i.e AMD Industries Limited which is evident from the fact that the application is not accompanied by any Power of Attorney and or Board Resolution authorizing Ms. Radha Shakti Garg to file the application against the respondent.
- iii. It is also submitted that in the demand notice the applicant has claimed an amount of Rs. 3,19,82,34/- /- (Rupees Three Crores Nineteen Lakhs Eighty-Two Thousand Three Hundred Ninety-Four Only), however, at the time of filing of application under section 9 the applicant has claimed the outstanding amount of Rs. 3,29,91,811/-which clearly shows that the demand notice is

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issued for different amount and application is filed for the different amount.

- iv. It is further stated that the amount claimed by the applicant is never due and payable by the corporate debtor. Furthermore, the applicant has stated that while executing the MOU the corporate debtor admitted the liability against the applicant. However, on perusal of the MOU dated 16.02.2018 which was executed between the parties i.e (a.) AMD Industries Limited (b) VD Corporation Private Limited(buyer) (c) Xalta Food and Beverages Private Limited (Consignee-1) and (d) VHV Beverages Private Limited (Consignee-2) all parties collectively referred as "Xalta Group". From the perusal of the clauses of the MOU it is seen that respondent was only liable to pay Rs. 1.05 Crores to the applicant, which is different from the claimed amount of the applicant.

4. The petitioner has filed rejoinder to the reply of respondent and submitted as follows:

- a) The case of the applicant is that on the receipt of emails dated 05.07.2018 and 07.07.2018 immediately officials of the operational creditor visited the corporate debtor and satisfy the corporate debtor related to the query raised, consequent thereto the material was utilized by the corporate debtor. Therefore, there is no pre-existing dispute between the parties regarding defective goods.
- b) It is submitted that the claim of the respondent that the materials were not supplied by the applicant is false and misconceived. The

e-mails and MOU was not denied by the respondent and the respondent has not placed any document disputing claim of the applicant.

5. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and written submissions filed by the parties.

6. It is an admitted fact that the M.O.U dated 16.02.2018 was executed between the parties. The respondent in its reply has admitted that fact that Rs. 1.05. crores as per the MOU is pending to be paid by respondent to applicant towards supply of goods. The respondent has not denied the fact of executing the MOU.

7. In respect of difference in amount claimed by applicant, it is pertinent to mention here that this is not a recovery forum and as far as there is "debt" and "default" the quantum of claim is immaterial. What is material that the amount of default, as admitted by respondent as well, is more than Rs. 1 lac in terms of Section 4 of the Code.

8. In respect of definition of "dispute" in the Code, Hon'ble Supreme Court has held in the case of *Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.* 2018 1 SCC 353 inter-alia that:

"Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so the Court does not


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need to be satisfied that the defence is likely to succeed. The court does not at this stage examine the merits of the dispute except the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.” (emphasis given).

9. In view of the aforesaid discussion, since the corporate debtor already signed a MOU admitting its liability, the claim of applicant deserves to be allowed.

10. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Rahul Khanna, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N01095/2021-22/13581 and email id. rk_3398@rediff.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016. The same is to be filed by the IRP within 3 days from the date this order is uploaded on NCLT site.

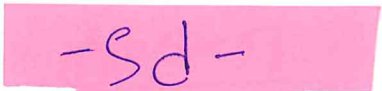
11. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rahul Khanna to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The

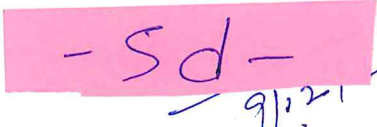


amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

12. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

13. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.


(PRASANTA KUMAR MOHANTY)
MEMBER (T) &
ADJUDICATING AUTHORITY


(DHARMINDER SINGH)
MEMBER (J) &
ADJUDICATING AUTHORITY