IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
IB-892(ND)/2022

Order under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s. KHUSBHU DYE CHEM PRIVATE LIMITED

Having its registered office at:

M/403, Vardhaman Nagar, Dr. R. P. Road,

Mulund (West), Mubmai-400080.

CIN: U51410MH2003PTC139518 **...... Operational Creditor**

VERSUS

M/s. CHEMICAL SUPPLIERS INDIA PRIVATE LIMITED

Having its registered office at:

507, Plot No. D-4,5,6, 5th Floor,

Krishna Apra Business Square, N.S.P.,

Pitampura, Delhi-110034.

CIN: U24299DL1997PTC090695 **...... Corporate Debtor**

Order Delivered On: 17.01.2024

CORAM:
SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)
SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Mohammed Zain Khan, Mr. Ayush Rai, Advs.

For the Respondent : Mr. Krishnendu Datta, Sr. Adv., Mr. Nikhil Verma, Ms. Mahak Agarwal, Advs

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by M/s. Khusbhu Dye Chem Private Limited, the Applicant/Operational Creditor before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016

("IBC" or "Code") r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ("Adjudicating Authority Rules"), for initiating the Corporate Insolvency Resolution Process ("CIRP"), against M/s. Chemical Suppliers India Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding principal amount of Rs. 1,82,54,891/- (Rupees One Crore Eighty Two Lakh Fifty Four Thousand Eight Hundred and Ninety One Only) plus Rs. 42,72,193/- (Rupees Forty Two Lakh Seventy Two Thousand One Hundred and Ninety Three Only) as interest totalling to Rs. 2,25,27,084/- (Rupees Two Crore Twenty Five Lakh Twenty Seven Thousand and Eighty Four Only).

2. **<u>Submissions of the Applicant/Operational Creditor:</u>**

i. It is the case of the Applicant/Operational Creditor that the Director of the Corporate Debtor (Mr. Ankur Agrawal) somewhere in January, 2021 approached the Director of the Operational Creditor (Mr. Ashok Manilal Dand) with a proposal/request to provide/supply Isopropyl Alcohol, Toluene, Methyl Methacrylate, Methyl Iso Butyl Ketone and Acetone.

ii. The Corporate Debtor raised a purchase order vide an email dated 25.01.2021 requesting the Operational Creditor to supply 35 tons of Isopropyl Alcohol for an amount of Rs. 86.50 per kg on a payment term of 70 days. Accordingly, the Operational Creditor supplied 34,090 kgs of Isopropyl Alcohol and raised an invoice dated 25.01.2021 bearing invoice No. 000001519 for an amount of Rs. 34,82,176/- which includes applicable GST and TCS.

iii. The Corporate Debtor raised a purchase order vide an email dated 25.01.2021 requesting the Operational Creditor to supply 100 MT Toulene for an amount of Rs. 48.25 per kg plus GST, TCS on Ex Kandla port basis and out of the aforesaid 100 MT requested delivery of 28 MT to Radhe Shyam Transport Company. Accordingly, the Operational Creditor supplied 26,200 kgs of Toulene and raised an invoice dated 25.01.2021 bearing invoice no 000001520 for an amount of Rs. 14,92,816/- which includes applicable GST and TCS.

iv. The Corporate Debtor by its email dated 27.01.2021 requested the Operational Creditor to supply 35 MT Toluene to Radhe Shyam Transport Company. Accordingly, the Operational Creditor supplied 33,940 kgs of Toluene and raised an invoice dated 30.01.2021 bearing invoice no 000001545 for an amount of Rs. 19,33,823/- which includes applicable GST and TCS.

v. The Corporate Debtor by its email dated 28.01.2021 requested the Operational Creditor to supply 18 Ton of Methyl Methacrylate (MMA) for an amount of Rs. 171 per kg plus GST, TCS on Ex Kandla port basis. Accordingly, the Operational Creditor supplied 17940 kgs of Methyl Methacrylate (MMA) and raised an invoice dated 01.02.2021 bearing invoice no 000001551 for an amount of 36,22,648/- which includes applicable GST and TCS.

vi. The Corporate Debtor by its email dated 13.01.2021 requested the Operational Creditor to deliver 100 tons of Toluene for an amount of Rs. 48.25 per kg plus GST, TCS on Ex Kandla port basis along with 50 paise per kg storage charge. Accordingly, the Operational Creditor supplied 20010 kgs of Toluene and raised an invoice dated 05.02.2021 bearing invoice no 000001568 for an amount of Rs. 11,51,939/- which includes applicable GST and TCS.

vii. The Corporate Debtor by its email dated 04.02.2021 requested the Operational Creditor to deliver 21 Ton of Methyl Iso Butyl Ketone MIBK for an amount of Rs. 181 per kg plus GST, TCS on Ex Kandla port basis. Accordingly, the Operational Creditor supplied 21,000 kgs Methyl Iso Butyl Ketone (MIBK) and raised an invoice dated 06.02.2021 bearing invoice no 000001575 for an amount of Rs. 44,88,544/- which includes applicable GST and TCS.

viii. The Corporate Debtor by its email dated 18.02.2021 requested the Operational Creditor to supply 18.50 MT Acetone for an amount of Rs. 95.50 per kg plus GST, TCS on Ex Dahej basis. Accordingly, the Operational Creditor supplied 18,470 kgs Acetone and raised an invoice dated 01.03.2021 bearing invoice no 000001688 for an amount of Rs. 20,82,945/- which includes applicable GST and TCS.

ix. Accordingly, the Operational Creditor supplied aforesaid chemicals to the Corporate Debtor aggregating to Rs. 1,82,54,891/- under the abovementioned Seven invoices and the payment terms were agreed at 70 days from the date of respective invoices.

x. The Operational Creditor served the Demand Notice dated 24.06.2022 under Section 8 of the Code calling upon the Corporate Debtor to make the payment of Rs. 1,82,54,891/- within a period of 10 days from the date of receipt of the demand notice.

xi. The Demand Notice was dispatched by speed post at the Registered Office Address of the Corporate Debtor which was duly received by the Corporate Debtor on 30.06.2022. The Corporate Debtor sent a reply dated 13.07.2022 thereby admitting the liability of the debt but wrongly denied the payment. Similarly, the Corporate Debtor filed another reply dated 14.07.2022 thereby admitting the liability but wrongly denied to pay the same on the ground of adjustment with respect to a separate transaction thereby trying to create a false dispute to get out from the code. Further, the Operational Creditor sent Rejoinders dated 15.07.2022 to the Reply dated 13.07.2022 and 14.07.2022 respectively, thereby denying the contentions of the Corporate Debtor and calling upon it to make the payment of Debt.

3. **Submissions of the Respondent/Corporate Debtor:**

i. The Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant and stated that the Applicant has suppressed many relevant materials and therefore, is guilty of suppressio veri (suppression of true fact) and suggestio falsi (suggestion of false fact).

ii. It is the case of the Corporate Debtor that the non-disclosure of pre-existing disputes in whatever form leads to the inevitable conclusion that the application has been filed for collateral purposes, purely as a pressure tactic for forcing the Corporate Debtor.

iii. The Corporate Debtor submitted that the invoices amounting to Rs. 1.82 crores (Approx.) got adjusted against the outstanding payment which was required to be paid by the Applicant against the material purchased by the Respondent on behalf of the Applicant. Further, there is a pre-existing dispute between the parties in respect of the alleged outstanding debt as claimed by the Operational Creditor.

iv. It is contended by the Respondent that the Applicant issued the Purchase Order dated 18.06.2020 to the Respondent for supplying 450 MT Isopropyl Alcohol ("IPA") at the rate of Rs.139.50/- per Kg. Since the Respondent is the trader of the chemicals, it procured 450 MT of Isopropyl Alcohol demanded by the Applicant from the market and waited for the lifting of the material. However, the Applicant lifted and paid only Rs. 2,00,67,075/- for 143.850 MT out of 450 MT of the material. The balance amount of Rs.4,27,07,925/- plus GST of Rs. 1,12,99,500/- was never paid by the Applicant.

v. The Respondent after waiting for some time approached the Applicant to lift the material and release the payment of Rs.4,27,07,925/- plus GST as the Respondent procured the material from the market on behalf of the Applicant on credit.

vi. It is submitted that the Applicant on 18.07.2020 issued one credit note of Rs.72,25,140/- only instead of Rs.5,40,07,425/- to the Respondent. The Respondent immediately sent an email to the Applicant and demanded the pending amount for the balance of 306.150 MT and also requested the Applicant to lift the balance material as soon as possible, but there was no communication from the Applicant.

vii. The total amount claimed by the Applicant as a principal amount is Rs.1,82,54,891/-, however, the said amount does not consider the payment of Rs.20,71,000/- which was paid by the Respondent on 20.03.2020 and the debit note of Rs.72,25,140/- issued by the Respondent while calculating the principal amount. Therefore, the alleged due amount being claimed by the Applicant as a principal amount is less than the threshold limit of one crore as per the provisions of Section 4 of IBC, 2016, hence the present application is liable to be dismissed.

viii. The Applicant issued a legal notice dated 05.09.2022 for dishonoring of cheques allegedly issued towards the settlement of the account. The cheques mentioned in the said legal notice were issued by the Respondent in the year 2020 which were stopped because the payment was made through RTGS in 2020. The Applicant fraudulently changed the dates of the cheques and presented the cheques in the bank for clearing. However, the Respondent immediately stopped the payment of the cheques as the cheques were tampered with by the Applicant issued in the year 2020 for the previous transactions. Thereafter, the Respondent filed a police complaint against the Applicant for committing cheating and forgery. Copy of the complaint and acknowledgment of the same from the police station is filed along with the Application.

ix. It is submitted that the Applicant filed a police complaint against the Respondent in Mumbai for not paying the alleged pending amount and the Directors of the Respondent Company received notice from the Mulund Police Station, Thane, Mumbai, which clearly shows the pre-existing disputes between the parties regarding the payments. Copy of the notice received from the police station along with its translated copy is filed along with the Application.

x. The Applicant sent an email on 14.12.2021 wherein the Applicant demanded Rs. 1,76,07,391/-, however in demand notice, the Applicant demanded Rs. 1,82,54,891/- which clearly shows that the principal amount is disputed between the parties. Moreover, both the said figures are incorrect and the Respondent is not liable to pay any amount to the Applicant.

4. **<u>Analysis and Findings:</u>**

I. We have heard the Ld. Counsel appearing for both parties and also perused the records.

II. The following issues emerge for Consideration:

First Issue: Whether the present application is within the minimum default amount of Rs.1,00,00,000/- as provided under Section 4 of the Code or not.

Second Issue: Whether there is a pre-existing dispute with respect to the amount claimed to be due in the application or not.

III. Threshold Limit

i. The Applicant/Operational Creditor has claimed the outstanding principal amount of Rs. 1,82,54,891/-, however, invoices brought on record do not confirm the same.

ii. The Debit Note and Credit Note exchanged between the Parties, show that the principal amount claimed by the Applicant does not take into account the payment of Rs.20,71,000/- which was paid by the Respondent on 20.03.2020 to the Applicant and the debit note of Rs.72,25,140/- issued by the Respondent to the Applicant while calculating the principal amount. After subtracting the payment amounting to Rs. 20,71,000/- and the debit note amounting to Rs. 72,25,140/-, the principal outstanding amount comes to Rs. 89,58,751/-, which shows that the present amount is less than the threshold limit of Rs.1,00,00,000/- as provided under Section 4 of the Code.

iii. The Applicant/Operational Creditor has failed to justify the aforesaid claim and also failed to substantiate the submission by any documentary evidence. Hence, we are satisfied that the present application is below the threshold limit of Rs.1,00,00,000/-.

IV. Pre-Existing Dispute

i. Admittedly, the Operational Creditor has failed to disclose in detail the pre-existing disputes between the parties. Further, from the communications annexed by the Corporate Debtor in the Reply, it can be demonstrated that the parties were constantly in discussions over pre-existing and unresolved disputes.

ii. The main defence of the Corporate Debtor is based on the existence of a prior dispute before the issuance of the Section-8 demand notice. Their argument is based on the following e-mail communications dated 01.10.2020, 05.10.2020, 18.11.2021, reply e-mail communications dated 18.11.2021 and counter to reply e-mail communications dated 18.11.2021, which are extracted below for ready reference:

E-mail dated 01.10.2020

"Dear Ashok Bhai Dand Ji

PFA-COPY OF PURCHASE ORDER GIVEN BY YOU FOR 450 MT IPA BEARING No.180604 DATED 18.06.2020

RIGHT FROM INVOICE BEARING No.1331 TILL 1373 YOU HAVE ONLY LIFTED 143.850 MT IPA AND ISSUED ONE SIDED CREDIT NOTE ON 17.07.2020 (WHICH IS NEVER ACCEPTABLE TO US)

AND REMAINED WITH BALANCE UNLIFTED QUANTITY 306150 KG AS ON 01.10.2020,

SINCE YOU DID NOT WANT YOUR NAME TO BE EXPOSE IN THE MARKET AND REQUESTED US TO MAKE ARRANGEMENT FOR BUYING 450 MT IPA FOR YOU, HENCE IN GOOD FAITH & FIRM COMMITMENT RECEIVED FROM YOUR SIDE, WE HAVE MADE THIS ARRANGEMENT FOR 450 MT IPA FOR YOU BUT NOT EVEN IN OUR WORST NIGHTMARE, WE HAVE NEVER THOUGHT THAT A HONEST, SINCERE, COMMITTED AND DEDICATED MAN LIKE YOU, WILL BACK OUT FROM THE DEAL AND PUSH US IN GREAT PAIN AND BECAUSE OF YOUR INSINCERE & IRRESPONSIBLE BEHAVIOUR, OUR Rs. 5 CRORE +,ARE STUCK UP IN A MARKET AND CAUSING US GREAT TROUBLE, YOU ARE ALREADY AWARE OF THE CURRENT MARKET SCENARIO AND SITUATION IS EXTREMELY TIGHT IN TERMS OF PAYMENT AS WELL AND THIS CHILDISH BEVAHIOUR OF YOURS HAS ADDED MORE PAIN IN OUR LIFE

I HAVE REMINDED YOU TO LIFT THE MATERIAL MANY TIMES, EVEN TO YOUR DISPATCH TEAMS, YOUR ACCOUNTS TEAM, BUT WE HAVE NOT HEARD ANYTHING FROM YOU AND BOUND TO TOLERATE YOUR IRRESPONSIBLE BEHAVIOUR AND KEPT OUR PATIENCE, CONSIDERING OUR LONG BUSINESS

RELATIONSHIP BUT YOU HAVE SIMPLY DISHOUNERED YOUR COMMITMENT

NOW, WE ONCE AGAIN REQUEST YOU TO KINDLY LIFT YOUR PENDING MATERIAL ON IMMEDIATE BASIS, IN CASE YOU DO NOT LIFT THE MATERIAL, WE WILL START SELLING THE SAME IN THE MARKET FROM 05.10.2020 ONWARDS AND GIVE YOU DEBIT NOTE FOR WHATEVER SALE DIFFERENCE COMES

ALSO, THERE ARE BACK TO BACK ALMOST THREE ADDITIONAL STORAGE CHARGES WHICH IS PAYABLE BY YOU DETAIL AS UNDER

FREE 30 DAYS STORAGE PERIOD FROM 10.07.2020 TILL 08.08.2020

FIRST ADDITIONAL STORAGE CHARGES@ 1000 PMT + GST ON 306150 KG MATERIAL STARTS FROM 09.08.2020 TILL 07.09.2020, Rs 361257.00

SECOND ADDITIONAL STORAGE CHARGES @ 1000 PMT + GST ON 306150 KG MATERIAL STARTS FROM 08.09.2020 TILL 07.10.2020, Rs 361257.00

TOTAL ADDITIONAL STORAGE CHARGES PAYABLE BY KDCPL Rs 722514.00

Warm Regards

Ankur Aggarwal"

<u>E-mail dated 05.10.2020</u>

"Dear Ashok M Dand Ji

With respect, kindly give your schedule for lifting material today

We do not wish to talk in this regard anymore because we are in no mood to stretch this matter as it is already delayed above 70 days

Please see our Rs 5 crore + stuck due to non-lifting of material by your side, which is causing us great trouble to make timely payments in the market including yours as well

In case you do not start loading the material from today than we do not have any choice left except selling material as per market price in same terms & conditions

Kindly treat this matter top most urgent, you have already taken our polite & co-operative behaviour for granted but it's enough now

I have been through great mental trauma and pain because of this delay and I will never forgive you for this

Please hurry up

Or If you wish to talk then kindly talk to Mr. Amit Bansal (Aryann Chemicals) on our behalf)

Thanks

Warm Regards

Ankur Aggarwal"

<u>E-mail dated 18.11.2021</u>

"Dear Ashok Bhai dand

with due respect, refer to attached file {s), kindly lift your balance quantity of IPA 307 MT

also, you are liable to pay additional storage charges after 30 days free storage period till the date you lift the material

we have been polite & sincere with you all this time and cooperate with you and made an outstanding payment of Rs 15-16 crore approximately without any wrong intention (payable by CSIPL to KDCPL)

it is just because of your misdeeds we are stuck up badly .. anyways we do not wish to go in to any further discussion, it is a humble request, please make full payment of balance unlifted quantity of 307 MT IPA @ 139.50 per kg + GST along with additional storage charges @ 1000 PMT + GST ON 306150 KG MATERIAL STARTS FROM 09.08.2020 TILL 01.12.2021

For Chemical Suppliers India (P) Limited

Ankur Aggarwal

Director"

Reply E-mail dated 18.11.2021

"Kind Attn : Mr. Ankur Bhai,

Respected Sir,

Today Morning I requested you for the Payment, and you mailed us the matter which has already been closed.

I have received your mail today i.e. 18.11.2021 at 14.42 pm and I was in shock that you have mailed me above the non-lifting IPA material, as you are aware that this matter has been closed and resolved.

I would request you to please clear my balance outstanding of Rs. 1,82,54,891.00 as on 18.11.2021 and I would bring to your notice that you have also purchased IPA from us and in that also you have not lifted the material and we have never raised any dispute regarding the non-lifting of IPA, because in our heart our relation is very much different not as business but as family.

So we would request you to please not mailed such matters which have been already closed earlier.

Thanking you,

Regards,

Ashok M Dand

Director Khushbu Dye Chem Pvt Ltd."

iii. Counter to Reply E-mail dated 18.11.2021

"Dear Ashok bhai Dand Ji

The said matter was never closed, can you show me any communication done between us regarding closing of matter which you are referring in your mail, rather it is only you who is delaying lifting of the material, if I had bad intentions of keeping your money or to deduct your money or to adjust your money and raising dispute than I would have not done payment of Rs 20 crore +to you toward your outstanding,

Also the said deal of IPA which you are talking about was merely done on your request, as the said mail was required by you for showing it to DEEPAK FERTILIZERS or your other Supplier, *towards (fake) sale of material done by you, the said mail was sent to you, on your request only, also, if the said deal was actually exist in real terms than you would have asked us to lift the material, but the reason why you did not do it, like I said earlier it was a so called mail which had put by us to you, only on your request, only for showing it by you to your principle supplier(s), where as deal between KDCPL and CSIPL was done on real terms basis, out of which you have lifted 144 MT material approximately and still left with non-lifted quantity of 306 MT till date,*

we have already shared all the evidences to you in our last mail for your ready references

And like you have habit of dropping at anyone's office without any advance information, please do not do that, as these days I am busy in legal matters specially in NCLT cases which I have done on my buyers, so I would not be able to meet you on spot

Also I have all evidences towards the said deal of 450 MT IPA done by you which will be great support/help for me to fight legal case against you

Hence it is a hardcore request, kindly make payment of non-lifted material on Immediate basis along with additional storage charges and lift your material without any further delay, in case you fail to lift the material, we will sell your material in open market as per current price and send debit note of price difference along with additional storage charges to you

Thanks

For Chemical Suppliers India (P) Limited

Ankur Aggarwal

Director"

iv. On the ground that various complaints have been initiated wherein the Operational Creditor and the Corporate Debtor are accused/co-accused, which are as follows:

a. A police complaint dated 22.03.2023, filed by Mr. Ankur Aggarwal, Director of the Respondent Company as Complainant against Mr. Ashok Manilal Dand, Director of the Applicant Company regarding a fraudulent act done by altering month and year over the cheque issued for the month of March 2020. On 23.03.2023, the said complaint was acknowledged by the Commissioner of Police, Delhi and the same has been referred to the Special Commissioner of Police/L&O (ZONE-I) vide Dy. No. 21010/E-mail dated 22.03.2023.

b. A police complaint dated 28.09.2022, filed by Mr. Ashok Manilal Dand, Director of the Applicant Company as Complainant against Mr. Ankur Aggarwal, Mr. Anil Kumar Gupta, Ms. Vasudha Aggarwal and Ms. Rekha Aggarwal, Directors of the Respondent Company. On 28.09.2022, the Directors of the Respondent Company received notice from the Mulund Police Station, Thane, Mumbai regarding attendance at the police station of the investigating office. For ready reference, the relevant portion of the police complaint dated 28.09.2022 is extracted below:

> *"With respect to above mentioned subject, we would like to intimate you that on 28.09.2022 Mr. Ashok Manilal Dand Director of M/s. Khushbu Dye Chem (P) Limited, has lodged a complaint against you, who is supposed to dealing <u>with you since 2010 by supplying you chemicals and against which there is an outstanding.</u>"*

v. Although the police complaint dated 28.09.2022 filed after the issuance of the Section 8 demand notice, but this police complaint contemplates the dispute in existence between the parties since 2010. We find this police complaint relevant to adjudicate the present matter.

vi. We have perused the e-mail communications dated 01.10.2020, 05.10.2020, 18.11.2021, reply e-mail communications dated

18.11.2021 and counter to reply e-mail communications dated 18.11.2021 and police complaint dated 22.03.2023 and 28.09.2022, we are satisfied that the Corporate Debtor had raised pre-existing dispute with respect to the amount claimed by the Operational Creditor.

vii. It is well settled that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would suffice for the Adjudicating Authority to reject the application filed under Section-9 of the Code, the Adjudicating Authority being precluded from determining as to whether the Corporate Debtor would be successful or not, with regard to the said dispute, at the time of decision making.

V. We therefore answer the first issue and second issue as follows:

In the facts and circumstances of the present case, we are of the considered view that the Corporate Debtor has been able to raise a plausible contention regarding the threshold limit (minimum default amount) and pre-existence of "dispute" between the parties.

5. In view of the above analysis and findings, we are satisfied that the present Applicant fails to fulfill the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:

i. The Application bearing **IB-892(ND)/2022** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed.**

ii. The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)