BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

C.P. (I.B) No.230/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 16.03.2020

Name of the Company: Kewaunee Labway India Pvt Ltd
V/s
JBF Petrochemicals Ltd

Section : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MANAN PANERI	ADV.	PETITIONER	M Paneri
2.				

ORDER

The Petitioner is represented through learned counsel.

The Order is pronounced in the open court vide separate sheet.

Sd/-
CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 16th day of March, 2020

Sd/-
MANORAMA KUMARI
MEMBER JUDICIAL

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BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 230/9/NCLT/AHM/2019

In the matter of:

M/s. Kewaunee Labway India Private Limited
#92/1A, 3rd Floor BNR Towers
HP Avenue Road
Konappana Agrahara
Electronic City Phase – 1
BANGALORE 560 100 : **Petitioner**
Operational Creditor

Versus

M/s. JBF Petrochemicals Limited
Survey No. 273,
Village Athola,
Dadra Nagar Haveli
SILVASSA 396 230, DNH
Gujarat State : **Respondent**
Corporate Debtor

Order delivered on 16th March, 2020.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Mr. Manan K. Paneri for petitioner
Advocate Mr. Maulik Nanavati for respondent

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. The instant application is filed by M/s. **Kewaunee Labway India Private Limited** through its Director – Finance, Mr. Ravi Tibrewal under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 18.09.2008 having identification No. U24290DN2008PLC000287 and having registered office at Silvassa, Dadra & Nagar Haveli. Authorised share capital of the respondent company is Rs. 1250,00,00,000/- and paid up share capital is Rs. 1086,64,17,000/-.

3. The applicant/operational creditor is private limited company having registered office at Bangalore and having identification No. U33125KA2000PTC028202.

4. The applicant/operational creditor has stated that against purchase order dated 19.02.2016 the operational creditor had supplied laboratory furniture, exhaust, gas distribution, drainage, electrical safety, HVAC system and office furniture to the corporate debtor worth Rs. 1,90,47,477/- and delivered the same at the lab premises of the corporate debtor at Mangalore. Thereafter, the corporate debtor issued a work order on 24th February, 2016 to the operational creditor for installation and commissioning of HVAC and electrical works at the lab premises for a sum of Rs. 15,50,137/-. That, in terms of the purchase order, the petitioner was entitled to receive advance payment of 20% of the total purchase order value, from the respondent upon furnishing advance bank guarantee. That, 70% of the purchase order value was agreed to be paid by the corporate debtor against receipt of material on pro rata basis upon supply of materials and the balance 10% was agreed to be paid upon submission of a performance bank guarantee by the petitioner to the corporate debtor, which would be valid for a period of 12 months from the date of completion of the services.

5. The petitioner has further stated that, in terms of the work order, petitioner was entitled to receive an advance payment of 20% of the total work order value from corporate debtor upon furnishing advance bank guarantee. 70% of the work order value was agreed to be paid by corporate debtor against the site work progress being certified by them and the balance 10% was agreed to be paid by corporate debtor after 100% job completion certificate was submitted by the petitioner to corporate debtor along with performance bank guarantee of equivalent amount being valid for 12 months from completion of services. Accordingly, in terms of the purchase order and the work order, the petitioner received advance payment of 20% after furnishing bank guarantee dated 08.06.2016. That, a further amount appropriating to the balance 70% was received by the petitioner upon supply of materials.

6. It is further stated by the petitioner that, upon completion of the services, on 21.12.2016, the petitioner furnished a performance bank guarantee dated 29.12.2016 and another performance bank guarantee dated 29.12.2016 in line with the terms of the work order. That, petitioner also furnished another performance bank guarantee dated 29.12.2016 towards the purchase order, in line with the terms of the work order. However, despite meeting all its obligations in terms of the purchase order and work order, payment towards 70% of the amounts towards the work order and 10% of amounts towards the work order amounting to the outstanding dues remain due and payable by the corporate debtor to the petitioner.

7. The petitioner has further stated that it has come to its notice that the corporate debtor has deducted TDS on the outstanding payments amounting to Rs. 24,000/- but has

not remitted the said amount with the Income Tax Department.

8. It is further stated by the petitioner that despite several personal visits and e-mails the outstanding dues continue to remain unpaid. That, the petitioner has submitted its project handing over report to corporate debtor on 21.12.2016 which has been duly acknowledged by the corporate debtor. That, after repeated follow ups and meeting, one Mr. Naveen Kumar of the corporate debtor, vide e-mail dated 03.08.2017, committed to clear the outstanding in two separate instalments within 20.08.2017, however, such commitment was not honoured. Again, Mr. Naveen Kumar of the corporate debtor, on 10.11.2017, by e-mail committed to release all the outstanding payments by 15.12.2017, however, again failed to honour the commitment. Therefore, this petition.

9. In support of its claim, the operational creditor has annexed to the application, copy of purchase order/work order placed by the corporate debtor, statement of accounts, demand notice, copy of e-mail communications, copy of bank statement etc.

10. The respondent/corporate debtor filed affidavit in reply raising various objections. The first objection raised by the corporate debtor is about the pre-existing dispute between the companies regarding quality/quantity of goods and the quantum of amount raised.

Findings

11. Heard the counsels appearing for both the sides and perused the documents annexed to the application/reply.

12. On perusal of the records it is found that the petitioner has not kept on record copy of purchase order, affidavit in respect of no dispute and has suppressed vital information about the pre-existing dispute regarding quality/quantity and quantum of amount claimed.

13. On perusal of the records it is found that the corporate debtor has placed on record (page 251-256) copy of e-mail communication dated 11.01.2017 sent by the corporate debtor rejecting the material supplied by the operational creditor due to sub-standard quality and thereby raising dispute. It is also found that, subsequently, the corporate debtor had sent number of e-mails dated 22.04.2017, 28.11.2017, 15.05.2017 and 16.05.2017 complaining about the quality of the material and asking for compensation against the same. On perusal of the record it is also found that there was pre-existing dispute much before issuance of demand notice on 25.09.2018.

14. On perusal of the records it is found that against the defective material supplied by the petitioner, respondent had issued debit notes also.

15. In the instant application, from the material placed on record by the respondent, it is evident that there is/are pre-existing dispute regarding quality/quantity and amount of invoice raised by the operational creditor against the supply of goods and, therefore, the instant petition is not maintainable.

16. It is also revealed from the records that the petitioner has not sent copy of invoices along with the demand notice. It is also found that the copy of invoices and affidavit to the effect that there is no notice given by the corporate debtor

relating to a dispute of the unpaid operational debt is not filed. It is also found that the petitioner has failed to furnish a copy of the certificate from the financial institution maintaining accounts of the applicant to establish the debt and default.

17. In view of what is stated herein above, the Adjudicating Authority is of the considered view that the instant application is devoid of merit and as such is not maintainable on the very reason that there is/are pre-existing disputes with regard to the goods supplied.

18. In the result, the instant application is dismissed. No order as to cost. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim as against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration of the provision of IB Code, 2016.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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