

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-3060/(ND)/2019

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/s Soham Polymers Private Limited.

Having its office at:-
1401, Belscot Tower
Lokhadwala Complex, Azad Nagar
Andheri West, Mumbai--400053

...Operational Creditor/Applicant

Versus

M/s Flocksur India Pvt. ltd.

Having its Registered office at:-
170, Carippa Marg, Sainik Farms
Opp. Saket, Delhi-1100062

...Corporate Debtor/Respondent

Coram:

MR. P.S.N. PRASAD

Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ

Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Rishi Kumar Singhal, Advocate
Counsel for Corporate Debtor: Mr. Sinha Shrey Nikhilesh, Advocate

Order Delivered on: 01.04.2021



ORDER

As Per Dr. V.K Subburaj, Member (Technical)

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.
2. The applicant, M/s Soham Polymers Private Limited has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.
3. It is the case of the applicant that it had placed orders for the supply of the goods/materials from time to time to Flocksur India Private Limited (Corporate Debtor) and has raised invoices. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:
 - a. That the Operational Creditor is engaged in the business of supply of goods (chemicals) required by the Corporate Debtor.
 - b. The grievance of the Operational Creditor is that an amount of Rs. 39,45,231/- is still outstanding towards the goods and materials supplied along with interest of Rs.7,08,630/- thereon @ 21% per annum tantamount to Rs.46,53,861/-.



- c. That since August 2018, the operational creditor repeatedly demanded the said outstanding payment through whatsapp and emails and for the first time vide email dated 20.05.2019, the corporate debtor disputed its liability to pay the debt on the ground that the material supplied being defective.
 - d. That the operational creditor sent various reminders, follow ups to which the corporate debtor failed to pay the due debts as per the agreed terms of the payment.
 - e. The operational creditor sent a Demand Notice dated 05.08.2019 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 18.05.2019 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 which was replied to.
4. The Corporate Debtor in its reply to the application submits that:
- a. There is a pre-existing dispute between the parties prior to the issuance of the alleged demand notice. That the applicant had issued demand notice dated 05.08.2019 under section 8 of the Code, 2016 which was received by



the corporate debtor on 09.08.2019 and a reply dated 26.08.2019 was duly supplied to the applicant. Mere pursual of

- b. reply to the notice signifies there is existence of pre-existing dispute.
- c. That the corporate debtor on 20.05.2019 vide an email already intimated the applicant regarding the substandard quality of the goods supplied by them and the losses that were incurred by the corporate debtor on using the same supplied materials. Further the corporate debtor requested the applicant to collect the finished goods/stocks lying at the warehouse of the corporate debtor on the account returnable on the basis of the substandard material.

Copy of email dated 20.05.2019 is annexed alongwith.

- d. It is submitted that due to the substandard materials/goods supplied by the operational creditor, the machinery of the corporate debtor suffered various technical problems and had suffered huge monetary expenses in repairing the same.
5. Heard the parties and perused the case records.
 6. 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 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).*

7. It is the case of the respondent that there has been pre-existing dispute between the parties prior to the issuance of the alleged demand notice, wherein, the applicant had issued demand notice dated 05.08.2019 under section 8 of the Code, 2016 which was received by the corporate debtor on 09.08.2019 and a reply dated 26.08.2019 was duly supplied to the applicant. However, the documents on records show that the respondent raised its dispute much before issuance of demand notice.
8. In the factual background it is seen that there has been no admission of operational debt by the respondent. In fact, there has been a dispute regarding the quality of the goods being supplied by the



applicant. Further the corporate debtor on 20.05.2019 vide an email already intimated the applicant regarding the substandard quality of the goods supplied by them and the losses that were incurred by the corporate debtor on using the same supplied materials. There was existence of dispute much prior to the issuance of notice under Section 8 of the Code. Respondent has raised dispute with sufficient particulars. The amount of claim raised by the applicant clearly falls within the ambit of disputed claim. The claim of dispute suggests the need of elaborate investigation. In the facts it is reiterated that existence of genuine dispute in the present case cannot be ruled out.


9. As per Section 9 (5) (ii) (d) of the Code provides that adjudicating authority shall reject the application if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility.

10. For the reasons stated above this petition fails and the same is rejected.

11. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Applicants before any other forum shall not be prejudiced on account of dismissal of instant application.

Let the copy of the order be served to the parties.


(DR. V.K.SUBBURAJ)
MEMBER (TECHNICAL)


(P.S.N PRASAD)
MEMBER (JUDICIAL)