IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CP (IB) No. 807/KB/2018

In the matter of:

A petition under section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

Sichuan Gent Imp & Exp Co. Limited

...Operational Creditor

Versus

K. P. Garments Private Limited

[CIN: U18109WB2005PTC104771]

...Corporate Debtor

Order reserved on: 01 December, 2021

Order pronounced on: 27 January, 2022

Coram:

Shri Rajasekhar V.K.	**:**	**Member (Judicial)**
Shri Balraj Joshi	**:**	**Member (Technical)**

Appearances (through video conferencing):

For the Operational Creditor	:	Mr. Abhishek Sikdar, Advocate Ms. Pallavi Ray, Advocate
For the Corporate Debtor	:	Mr. Kuldip Mallick, Advocate

ORDER

Per Rajasekhar V.K., Member (Judicial)

1. This Court convened through videoconferencing today.

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, the Code) by Sichuan Gent Imp & Exp Co. Limited ("Operational Creditor"), a company incorporated

under the provisions of the Companies Act, 2013 and represented by Mr. Pankaj Saraf, authorised by a Letter of Authorisation dated 20 February, 2018, seeking to initiate Corporate Insolvency Resolution Process ("CIRP") against K. P Garments Private Limited ("Corporate Debtor").

3. The Corporate Debtor is a company limited by shares incorporated on 28 July, 2005, having CIN: U18109WB005PTC104771, under the Companies Act, 1956, with the Registrar of Companies, West Bengal, Kolkata. Its registered office is at 67, Sreedhar Roy Road, Kolkata-700039, within the State of West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.

4. The present petition was filed on 08 June, 2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs.64,71,902/- (Rupees Sixty-Four Lakh Seventy-One Thousand Nine Hundred and Two only).

5. The learned Counsel for the Operational Creditor states as follows:-

    a. The Operational Creditor supplied Raw silk Yarn to the Corporate Debtor and accordingly invoices were raised by the Operational Creditor. The Corporate Debtor made payments on ad hoc basis to the Operational Creditor till 10 July, 2015.

    b. The Corporate Debtor has defaulted in payment of Rs.34,84,033/- (Rupees Thirty-Four Lakh Eighty- Four Thousand and Thirty-Three only) along with interest of @18% p.a. payable from 16 June 2013 to 20 March 2018.

    c. The Corporate Debtor has accepted its liability through its Managing Director, Mr. Hiren Prabhulal Panchal, who has issued two confirmation letters dated 24 April 2014 and 23 January 2016.

d. The Operational Creditor had issued two reminder Letters dated 21 March, 2017 and 27 July, 2017 to the Corporate Debtor but received no reply.

e. A demand notice under section 8 of the Code was issued on 22 March, 2018, the Corporate Debtor replied to the letter dated 29 April, 2018.

6. Apart from the aforementioned documents, the Operational Creditor has placed the following documents on record:

   a. An affidavit dated 29 May, 2018, under section 9(3)(b) of the Code, affirming that although the Operational Creditor did receive a reply to the demand notice, there was no document to substantiate the dispute.

   b. Copies of Sale Confirmation from 09 January, 2013 to 21 May, 2013; annexed to the petition and marked as Exhibit D at pages 16 to 28.

   c. Copies of invoices from 08 January, 2013 to 17 June, 2013; annexed to the petition and marked as Exhibit C at pages 29 to 62.

   d. Copies of the confirmation given by the Corporate Debtor; annexed to the petition and marked as Exhibit E at pages 63 to 64.

e. Copies of correspondences between the Operational creditor and the Corporate Debtor; annexed to the petition and marked as Exhibit F at pages 65-68.

f. Demand notice dated 22 March, 2018; annexed to the petition and marked as Exhibit G at pages 69 and 71.

g. Reply to the Demand Notice dated 29 April, 2018; annexed to the petition and marked as Exhibit H at pages 76 to 78.

7. Court notice had been served on the Corporate Debtor on 06 July, 2018, the Corporate Debtor filed its reply affidavit on 11 January, 2019 wherein it states as follows:

    a. The claim in the instant petition is ex-facie time barred and is not maintainable and the petition is barred under principles of acquiescence, waiver, estoppel and the principles analogous thereto.

    b. The Bill of Lading does not disclose all the invoices which the Operational Creditor has relied on. The Corporate Debtor has made payments for the invoices raised by the Operational Creditor.

    c. The invoices by which the balance amount has been allegedly claimed are false, fabricated. The documents at pages 30, 32, 34, 36, 38, 40, 42, 44, 46, 50, 52, 54, 56, 58, 60 and 62 of the petition are purported, bad and illegal and are manufactured. The Corporate Debtor has not received any goods with regard to the said invoices.

d. The invoices at pages 37, 47 and 49 of the petition are addressed to Manikrit Conglomerate Pvt. Ltd and not to the Corporate debtor.

e. That there was a shortage in the supply made by the Operational Creditor which was brought to the notice of the Operational Creditor on several occasions.

8. The main defences taken by the Corporate Debtor here are that

    i. The payments have been made with respect to the invoices raised;

    ii. The alleged invoices annexed to the petition are false and fabricated.

    iii. The petition is barred by limitation.

9. With regard to the Corporate Debtor's first defence, the Corporate Debtor has filed a ledger which reflects that the last payment was made on 27 August, 2013. According to the Operational Creditor, the last payment was made on 10 July, 2015. Neither the Corporate Debtor, nor the Operational Creditor has filed a bank statement to substantiate their contention as to the date when the last payment was made or received.

10. The Corporate Debtor has taken a defence that the invoices that have been relied on by the Operational Creditor are forged and fabricated. The Adjudicating Authority in a summary proceeding cannot delve into inspection of the invoices presented.

11. Let us now consider whether the petition is barred by limitation or not. Firstly, all the invoices under which the dues are being claimed and the petition is based on, have been raised between 08 January, 2013 to 17

June, 2013 and the present petition was filed on 08 June, 2018. The last payment was made on 27 August, 2013 and the Operational Creditor has relied on the acknowledgements given by the Corporate Debtor in Exhibit E at pages 63 and 64 of the petition. On bare perusal of Exhibit E, it is seen that there is an acknowledgement and a signature but the signature is not supported by a seal of the Corporate Debtor neither is the name of the signatory mentioned, which puts a question on the genuinity of the acknowledgements.

12. As the documents produced as acknowledgements by the Operational Creditor are in question, the same is not taken into account.

13. The correspondences between the Operational Creditor and the Corporate Debtor are sent through their advocates, on perusal of the letters, it is seen that the Corporate Debtor has time and again denied that there are payments due and payable.

14. Considering the date of invoices and date of payment last made, the present petition is barred by limitation, in so far as proceedings under the Code are concerned. The Operational Creditor is free to pursue other remedies, if the same are available under any other law.

15. In view of the above observations, CP (IB) No. 807/KB/2018 is dismissed.

16. Certified Copy of this order may be issued, if applied for, upon compliance of all requisite formalities.

Rajasekhar V K Digitally signed by Rajasekhar V K Date: 2022.01.27 17:36:25 +05'30'

Balraj Joshi
Member (Technical)

Rajasekhar V.K.
Member (Judicial)
27 January, 2022

GGRB(LRA)