

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 339/ND/2020

[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:

KUNAL SINGH

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S AMEREX PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER PRONOUNCED ON: 10.03.2022

CORAM:

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

SMT. SUMITA PURKAYASTHA, HON'BLE MEMBER(TECHNICAL)

ORDER

Per Smt. Sumita Purkayastha, Member- Technical

- Smy*
1. This is an application filed by Mr. Kunal Singh, applicant/operational creditor seeking (for brevity Operational Creditor) to initiate CIRP against the Respondent company/Corporate Debtor (for brevity Corporate Debtor) M/s Amerex Private Limited, under Section 9 of IBC

2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 68,33,055/- on account of supplying of Dry Iron and Steam Iron to the corporate debtor. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:-

- a. The applicant/ Operational Creditor, Kunal Singh proprietor of M/s Kunal Enterprises is engaged in the business of Chimneys, Mixer grinders, Dry and Steam Irons and other home appliances.
- b. The operational creditor supplied dry and steam irons and other appliances to the corporate debtor through various invoices between 08.09.2018 to 05.11.2019 pursuant to the purchase order placed through telephone and mail and have also received payment through RTGS/Cheque from time to time.
- c. It is submitted that the corporate debtor has admitted the operational debt as it had issued 3 cheques to the operational creditor for discharge its part debt obligation which got dishonored with remark "Payment Stopped by the drawer".
- d. Furthermore it is submitted that the operational creditor has made several communication/ follow up with corporate debtor for release of payment of admitted outstanding dues

Buy

and the corporate debtor never bothered to make the payment.

Copy of the e-mail communication sent to corporate debtor for release of outstanding payment has been placed on record.

- e. It is stated that the operational creditor for account prior to 08.09.2018 has filed separate case under section 138 of the Negotiable Instrument Act against the corporate debtor.
- f. The applicant sent demand notice under Section 8 of the code on 20.12.2019 calling upon the corporate debtor to pay the total amount of Rs. 68,33,055/- via speed post and through email on 30.12.2019. The Copy of demand notice along with postal receipts and the tracking reports has been annexed.
- g. Further submitted that the corporate debtor has released Rs. 2,50,000/- after the receipt of the demand notice of the operational creditor leaving an outstanding balance of Rs. 68,33,055/-.

Copy of the account statement of the operational creditor.

2. The Corporate Debtor has filed its reply to the application raising objections against the prayers of the applicant. The objections raised by Corporate Debtor are as follows:-

- a. The Operational Creditor has not delivered the demand notice to the Corporate Debtor, as the same was returned back with the remark insufficient address. The Corporate Debtor submits that the registered office address to which the demand notice was delivered was available on the MCA portal is correct and functional. Furthermore the email sent by applicant is also does not contain an annexures, therefore, the Operational Creditor has not effectively delivered a copy of the demand notice to the Corporate Debtor.
- b. It is submitted that there is a pre-existing dispute between the parties regarding quality of the goods supplied by the applicant. The corporate debtor also submitted that the goods supplied by the applicant was non-compliant of the Legal Metrology Act, 2009 and thus was not able to be sold in the market. The same fact was duly communicated to the applicant and the applicant assured that compliance will be made as per Legal Metrology Act, 2009.
- c. However, the Corporate Debtor continued to face the problem of supply of defected from the Operational Creditor and the Corporate Debtor was time and again receiving complaints from its dealers. Copy of a compliant received from one of the dealer M/s Pooja Electronics has been placed on record. The corporate debtor wrote an email dated 23.10.2019 raising its concerns and again receiving complaints from its dealers and about the non-compliance of Legal Metrology Act, 2009 and other statutory requirements, due to which the Goods are unfit to be sold. In the said email the Corporate Debtor categorically mentioned that the violation of norms is a punishable offence and if any penalty and fine is imposed on the Corporate Debtor, the same will be passed on to you the Operational

Creditor. The aforesaid clearly establishes a per-existing bonafide dispute between the Corporate Debtor and the Operational Creditor, as the present petition should be dismissed on this ground itself. Copy of email has been placed on record.

- d. The Corporate Debtor has also raised a debit note to a tune of Rs. 11,29,968/- on the Operational Creditor. It is stated that the said ongoing and pre-existing dispute is also evident from the minutes of the meeting dated 06.02.2020, annexed along with the application for restoration filed by the Operational Creditor, which clearly establishes the supply of defected products by the Operational Creditor and the same has not been disputed/challenged by the Operational Creditor.
- e. Further the alleged amount claimed in the petition is incorrect and indeterminate, which is substantiated by the existent Inconsistencies in the ledger account as well as the copies of the Invoices annexed along with the petition. The answering Respondent also denies and disputes each and every entry/amount reflected in the purported statement of account enclosed with the petition. It is further said that owing to the dispute regarding supply of defected Goods and the consequent deduction of amount and further raising of debit note by the Corporate Debtor,
3. The applicant has filed rejoinder rebutting objections raised by the applicant and submitted that:

- a. It is submitted that the averment made by the respondent with reference to serving of demand notice is non-sustainable before law as the applicant has rightfully send the demand

notice at the registered office of the Corporate Debtor which is returned back because corporate debtor is not maintaining proper registered office which is also violation of Section 12 of the Companies Act, 2013. Moreover the copy of the demand notice has also served at the corporate office of the corporate debtor situated at Noida and also the personal address of the directors of the corporate debtor which was duly served.

- b. It is further submitted that copy of the demand notice also send by e-mail at the mail id mentioned in the master data of the Ministry of Corporate Affairs as required under Rule 5(2(b) of the Insolvency and Bankruptcy(Application to Adjudicating Authority) Rules 2016 which is delivered to the corporate debtor. In the reply respondent stated that the mail is without annexure is not correct because attachment is there in the mail.
- c. It is also submitted the corporate debtor has returned the above goods to the Operational Creditor and issued a corresponding debit note on the agreed term that operational creditor put the releval and return back the goods to the Corporate Debtor again. It is also submitted that once goods with respect to a particular batch/ lot are returned to the operational creditor by way of making debit note subsequently Corporate Debtor cannot claim that the product

were defective. Moreover the materials were returned by the applicant to the corporate debtor during settlement process and recorded in Para 4 of settlement agreement dated 06.02.2020.

4. We have heard the arguments of Ld. Counsels for the applicant and the respondent and perused the case records. Apparently on behalf of the respondent, it is proved on record that there was no Stricker on the box of articles containing steam iron qua the price which was apparently in violation of Legal Metrological Act. Therefore, the respondent could not resell the article further. Even the dispute was raised by respondent vide email dated 23.10.2020. In order to prove the same, the respondent corporate debtor has placed on record email dated 23.10.2020 and Debit note in order to establish the fact that there is a pre-existing dispute between the parties. The corporate debtor has also filed a debit note. The applicant in its rejoinder has not denied the fact regarding Debit Note and infact admitted that the goods were resupplied/replaced because of quality issues. This further establish the version of respondent.
5. In view of the above said discussion, the corporate debtor succeeded in establishing that there was a pre-existing dispute between the parties regarding quality of goods supplied.
6. Resultantly, the present application is rejected and dismissed.

By

7. 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.

File be consigned to record room.

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(SUMITA PURKAYASTHA)

MEMBER (T)

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(DHARMINDER SINGH)

MEMBER (J)