

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

C.P. No.536/I&BP/2019

Under section 8 &9 of the IBC, 2016

In the matter of

AMI Alloys,
273-274, Phase-1m Opp. Road No. 4A,
G.I.D.C, Kathwada, Odhavm Ahmedabad,
(Gujarat) 382430

....Petitioner

v/s.

Rappid Valves (India) Private Limited
Genesis Industrial Complex, Plot No.30,
Village Kolgaon, Palghar (East), Thane,
401404

....Corporate Debtor

Order delivered on: 22.07.2019

Coram: Hon'ble Shri Bhaskara Pantula Mohan, Member (Judicial)
Hon'ble Shri V. Nallasenapathy, Member (Technical)

For the Petitioner : PCS Dhiren R. Dave

For the Respondent: Ms. Prachi Wazalwar, Advocate

Per: V Nallasenapathy, Member (Technical)

ORDER

1. This Company Petition is filed by AMI Alloys, (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Rappid Valves (India) Private Limited, (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment to the extent of Rs. 12,47,250/- inclusive of interest by invoking the provisions of Sections 8 &9 of I & B Code (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (AAA) Rules, 2016.
2. The Petitioner submits that they had sold cast articles of alloys steel and cast articles of copper alloys of various sizes to the Corporate Debtor and raised invoices. Since, the Corporate Debtor failed to repay the dues, the Petitioner issued demand notice in Form-3 under Section 8 of the Code on 26.06.2018 demanding the repayment of Rs. 11,85,141/-. Despite receipt of the above said demand notice, the Corporate Debtor neither replied to the same nor repaid the outstanding dues. Hence this Petition.

3. The Corporate Debtor filed affidavit in reply and raised certain issues which are as under:-

- a. The Corporate Debtor submits that on the request of their client MSA from Prague, Czech Republic, for supply of certain goods, the Corporate Debtor purchased goods from the Petitioner and exported the goods to MSA on 09.03.2017 by Airway Bill No. BOM01027053.
- b. Vide email dated 22.03.2017 to 11.04.2017, the MSA raised issues with respect to quality and specification of goods and also contended that the goods were not as per the order placed by them and sought explanation for inferior quality of goods and submits that this quality issues raised on the basis of Quality Control Tests.
- c. The Corporate Debtor on 03.04.2017 wrote a email to the Petitioner which provides as below:-

*From: gaurva@rapidvalves.net
Sent: Mon, 03 Apr 2017 14:20:33 +530
To: AMI ALLOYS "amialloys@gmail.com, "AMI Alloys
"info@amialloys.com
CC: "Udayghag"udayraj@rapidvalves.net
Subject: Kindly study the reports &Pics received from our client
against casting issues. Please reply and oblige.*

*FYI
GauravDalal
Director*

- d. The Corporate submits that the Petitioner has not replied to the email dated 03.04.2017 and he again sent a reminder on 12.04.2017 and 24.04.2017 which also provides as below:-

*From: gaurva@rapidvalves.net
Sent: Mon, 12 Apr 2017 14:20:33 +530
To: AMI ALLOYS "amialloys@gmail.com, "AMI Alloys
"info@amialloys.com
CC: "Udayghag"udayraj@rapidvalves.net
Subject: FW: MSA Test Report*

*Dear Sanjay,
Please give reply to our mails we need to address all their
issues. Its most important to give them legitimate reply with
supporting documents and justification.*

*GauravDalal
Director*

- e. The Corporate Debtor in its reply also stated that the Petitioner has not replied to the aforesaid emails. They further submit that on 24.04.2017 MSA sent an email to them and requested for urgent intervention and rectification of quality issues found in the goods supplied by the Corporate Debtor. They also submits that the MSA is demanding an amount of USD 8900 incurred by them towards repairs of the said goods. The email sent by the MSA provides as below:-

From "Hoder, Petr" Petr. Hoder@msa.cz

Sent: 24 Apr 2017 14:29:59 +530

To "udayraj@rapidvalves.net, gaurva@rapidvalves.net"

Subject FW MSA Report

Dear Sir,

Many thanks for your email

Regarding points 1 and 2

Radiography in our lab revealed poor quality in critical areas which means that we switched or control from critical are to 100% area and 100% qty of received castings. All tests we made on these castings were as per ASTM E 446-ST.3. We already provided the results of all tests. I cannot confirm that you provided to our representative all test and their result. I am pretty sure that my colleagues wouldn't agree testing result, that doesn't match to required quality level. They also confirmed that MPI Fluorescent in dark we made here has to have similar result as standard magnetic particle.

Delivery of castings was delayed, it meant that the only option was to repair casting in our company. I had like to ensure you, that our intention is to order, pay and get materials (castings in this case) it didn't happen from your side. You signed/agreed our standard purchasing conditions (please point 6.8, [linkhttp://www.msa.cz/upload/ke-stazeni/general-purchase-conditions-pdf](http://www.msa.cz/upload/ke-stazeni/general-purchase-conditions-pdf).) if you would like to get any other tests result, don't hesitate to contact we. Otherwise we would like to get your final confirmation/agreement will all repair costs USD 8900 in total.

Thank you, kind regards

Petr Hoder

Purchasing Department/Nakupni

- f. The Corporate Debtor stated that there is dispute even before the issue of demand notice and said dispute clearly falls within the ambit section 5(6)(b) of the Code.
4. The Petitioner filed affidavit in rejoinder and submitted as below:-
- a. On 25.03.2019, the Corporate Debtor admitted the debt before the Adjudicating Authority handed over a Demand Draft of Rs. 1.00 Lac and seeks time to file consent terms.
 - b. On 23.01.2017 one sample was checked and approved by the Corporate Debtor.
 - c. The Petitioner stated that this is a standard practice of the industry after approval of design and sample remaining pieces are manufactured.
5. The Counsel for the Corporate Debtor submitted during the course of arguments the payment of Rs.1 Lac is with respect to the third invoice dated 26.05.2017 where there is no dispute. However in respect of the invoices dated 29.01.2017 and 06.03.2017 disputes are there.
6. In the case on hand, the email communications discussed above clearly shows there is existence of dispute on various aspects and hence those disputes squarely falls under section 5(6) of the Code which reads as below:
- “dispute includes a suit or arbitration proceedings relating to-*
- (a) The existence of the amount of debt;*
 - (b) The quality of goods or services; or*
 - (c) The breach of a representation or warranty;”*
7. The Hon’ble Supreme Court in the case of Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software (P) Limited- 2017 (SCC Online SC 1154) held as below:-

“40..... Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires 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 defense which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defense is likely to succeed. The Court does not at this stage examine the merits of the dispute except to 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”.

8. When the law laid down by the Hon’ble Supreme Court in the above case is applied to the facts of the present case it is established that there is a clear dispute relating to the existence of debt as provided u/s 5(6)(b) of the Code. Hence relying on the same judgment passed by the Hon’ble Apex Court, so long as the disputes truly exists the Petition deserves to be rejected.
9. In view of the above discussion, the Petition is dismissed. No costs.

SD/-
V. NALLASENAPATHY
Member (Technical)

SD/-
BHASKARA PANTULA MOHAN
Member (Judicial)