

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH- IV**

**IB No. 2844/ND/2019**

**IN THE MATTER OF:**

**Continuous Dyeing & Printing Mills  
B-20, Sikandrabad Industrial Area,  
Bulandshar (UP)**

**...PETITIONER/ OPERATIONAL CREDITOR**

**VERSUS**

**M/s. Bhavika Apparels Pvt. Ltd.  
CIN No. U18109DL2006PTC152618  
Registered Office- 414, Sitaram  
Apartments, IP Extension,  
Patparganj, New Delhi-110092**

**... RESPONDENT / CORPORATE DEBTOR**

**Under Section 9 of the Insolvency and Bankruptcy Code, 2016.**

**Order delivered on:. 21.12.2021**

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

**SH. PRASANTA KUMAR MOHANTY, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

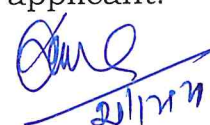

**Per: Sh. DHARMINDER SINGH, MEMBER (JUDICIAL)**

1. The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by Continuous Dyeing & Printing Mills,



(hereinafter "applicant"), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Bhavika Apparels Pvt. Ltd. (hereinafter, Respondent/Corporate Debtor).

2. Briefly stated that the corporate debtor approached the applicant for services which was accepted by the applicant. Accordingly, the applicant completed the job work of printing and finishing for corporate debtor from 04.01.2019 to 05.02.2019. The applicant then raised invoices from 04.01.2019 to 05.02.2019, out of which Rs. 35,33,737/- is still pending to be paid by corporate debtor. It is the case of the applicant that the corporate debtor after checking the details of invoices used to deduct TDS as per the invoice amounts. The Form 26A in respect of invoices raised by the applicant has been placed on record in order to show acknowledgment of invoices by corporate debtor.
3. Further, it is submitted that the applicant used to do the job work assigned by following due process of approvals from the corporate debtor as laid down and agreed mutually. It is also stated that the corporate debtor used to depute person for quality checks on the sample and further in case the deputed person cannot make decision they used to send higher authority for comments or approval.
4. Further, it is stated that till January 2019 no dispute was raised by corporate debtor and in February 2019, the corporate debtor issued a debit note. It is claimed by the applicant that the said debit note was baseless and same was not accepted by applicant vide email dated 06.02.2019. Thereafter on 18.06.2019 the corporate debtor released the payment of Rs. 10 lacs to clear the pending bills of applicant.



5. The applicant issued Demand Notice dated 16.09.2019 in terms of section 8 of the Code to corporate debtor which was served through speed post on 18.09.2019. The said Demand Notice was replied by the Corporate Debtor through letter dated 27.09.2019. It is submitted that the corporate debtor in its reply to the demand notice has raised false dispute between the parties and also claimed that a civil suit bearing number 517/19 is pending against applicant. However, the applicant has pointed out that the said civil suit is titled as "Pradeep Gupta vs. Continuous Dyeing & Printing Mills", therefore, the suit is not pending between the parties but between the director of corporate debtor in its personal capacity and applicant.
6. As per part IV of the application, Rs. 35,33,737/- , alongwith interest is still pending to paid by Corporate Debtor since 04.01.2019.
7. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:
- a) The Corporate Debtor has raised dispute regarding claim of applicant vide notice dated 23.08.2019 which was duly served upon the applicant, and there is a pre-existing dispute between the parties.
  - b) It is alleged that the corporate debtor has suffered huge losses to the tune of USD\$ 4,92,000 due to stoppage of payment and USD\$ 50,000 deduction because of defective goods supplied. Further vide notice dated 23.08.2019 the corporate debtor informed the applicant that the material/fabric supplied by the applicant was not as per specification



and of inferior quality. The said notice dated 23.08.2019 was duly replied by the applicant.

- c) It is also pointed out that the corporate debtor has filed Civil Suit vide filing number 2323/2019 which is pending before Karkarddoma Court bearing Civil Suit No. 517/19.
8. It is the claim of the corporate debtor that there is a dispute existing much prior to the issuance of demand notice under Section 8 of the Code and the application of the applicant shall be dismissed in terms of Section 9 (5)(ii) (d) of the Code.
9. The petitioner has filed rejoinder to the reply of respondent and submitted as follows:
- a. That the corporate debtor has issued the said dispute through notice when the applicant started following up for the payment of pending bills, when vide email dated 19.08.2019 the applicant threatened the corporate debtor to initiate proceeding before this Tribunal. Therefore, the dispute raised by corporate debtor is fabricated and false.
- b. It is submitted that prior to notice dated 23.08.2019 no complaint regarding quality of material was ever made by corporate debtor and the notice is an abuse of process of law by corporate debtor to avoid its liability to pay the pending dues of applicant.
- c. Further, it is also claimed that the applicant used to take up job of printing and processing and the fabric was supplied by the corporate debtor itself. It is stated that the corporate debtor used to send Greige (Kora) fabrics to applicant and after printing and processing, the corporate debtor used to make quality checking of material by



numerous quality check protocols and then cut the fabric to make the garments.

10. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and written submissions filed by the parties.

11. Learned Counsel for the applicant/Operational Creditor states that there was a supply of greece/ cora fabric directly from the supplier after purchasing from the own sources by the Corporate Debtors to the Operational Creditor for the job work processing which includes printing, dying and furnishing the fabrics and Operational Creditor used to take all the approvals prior to the bulk processing /printing work and again also at the stage of bulk by the authorized persons deputed by the Corporate Debtor. The transaction was going on, but the invoices for the period 04<sup>th</sup> June 2019 to 05<sup>th</sup> February 2019 were not paid by the Corporate Debtors. Despite the fact that the notice was issued.

12. It is further argued that while issuing a reply to the legal notice given by the Operational Creditor, it is only being submitted that the applicant herein can negotiate with him for the payment. Meaning thereby, the admission has been made on the part of the respondent qua the invoices raised during the period 04<sup>th</sup> January 2019 to 05<sup>th</sup> February 2019.


13. Further, it is also being contended by the Learned Counsel for the applicant that whatever the suit has been filed on behalf of respondent, that was not filed by the company and it was filed by the Director in individual capacity, therefore, the same was not maintained. Moreover, the invoices pertains to 04<sup>th</sup> January 2019 to 05<sup>th</sup> February 2019 and thereby conditions



to make the payment in the reasonable period, which was not actually made. Hence, demand notice was issued on 16<sup>th</sup> September 2019, but the payment was not still made.

14. Moreover, it is also contended that after raising the invoices, Rs. 40-45 Lakhs, the demand was made on 16<sup>th</sup> September 2019, after a sum of Rs. 10 Lakhs were paid on 03<sup>rd</sup> June 2019. No doubt, a notice of defective articles was issued by the Corporate Debtor on 23<sup>rd</sup> August 2019, but which was after six months of last invoice raised on 05<sup>th</sup> February 2019. The material was intentionally used/utilized by the Corporate Debtor. Meaning thereby that the material was good. Had, there been any defects, the Corporate Debtor might have returned the said articles/goods to the applicant herein. Once there is utilization of material, the liability automatically has arisen. Moreover, no such issue regarding the defective article was ever raised at the time of supply of the goods, therefore, notice dated 23<sup>rd</sup> August 2019 and the Civil Suit dated 06<sup>th</sup> September 2019 was nothing, but after thought. Accordingly, prayed for allowing the petition.

15. On the other hand, Learned Counsel for the respondent vehemently contended that there was 'pre-existing dispute' regarding the quality and the supply made by the Operational Creditor was not up to the mark. Hence, a Civil Suit was filed on 06<sup>th</sup> September 2019 i.e. prior to the demand notice issued by the Operational Creditor on 16<sup>th</sup> September 2019 and similar reply has been filed to the demand notice raising the question that the goods were not of a quality which were required to be supplied by the Operational Creditor. Hence, it is said there was a apparent dispute regarding the invoices raised.



16. Learned Counsel for the respondent stressed the arguments that the Operational Creditor demanded different amounts on different occasions. Sometimes, it is being said that Rs. 45 Lakhs has been due and on the other occasion it is being stated that Rs. 49 Lakhs or Rs. 50 Lakhs due, therefore, there were three different demands. Accordingly, the petition itself is defective and the same cannot be maintained on three different demands. Accordingly, Learned Counsel for the respondent prayed that the petition be dismissed with costs.

17. Arguments heard. Record has been thoroughly perused.

18. From the perusal of the record, it is established that invoices have been raised by the petitioner herein during the period of 04<sup>th</sup> January 2019 to 05<sup>th</sup> February 2019 and an amount of Rs. 45,33,737/- was raised towards the Corporate Debtor i.e. respondent. In response to that on 03<sup>rd</sup> June 2019, a sum of Rs. 10,00,000/- were paid and the rest of the amount is not paid. Thereafter, on 16<sup>th</sup> September 2019, a demand notice was issued on behalf of petitioner to the respondent raising demanding an amount of Rs. 35,33,737/-

19. On behalf of the respondent, a notice was issued on 23<sup>rd</sup> August 2019 to the petitioner herein raising question about the defective goods supplied by the petitioner to the respondent. Subsequent to that the petitioner issued a demand notice on 16<sup>th</sup> September 2019, demanding an amount of Rs. 35,33,737/- In the meantime, on 16<sup>th</sup> September 2019, one of the Directors of the company filed a Civil Suit before the Civil Court raising damages. However, so far as, Civil Suit is concerned, the same was filed by the Director in individual capacity, though no such resolution authorizing him



to file the said suit was there and although later on company was also impleaded at the arrays of the plaintiff therein. Therefore, the same relates back to the date of filing suit and the said suit deemed to be filed on behalf of company on the very date.

20. Apart that prior to that one notice raising question about the defective articles issued on 23<sup>rd</sup> August 2019. Although, the notice raising defects in the goods have been issued on 23<sup>rd</sup> August 2019 that is after six months of the last invoice i.e. 05<sup>th</sup> February 2019, but there was certainly dispute raised on behalf of the Corporate Debtor with respect to the defective articles prior to demand notice issued by the petitioner on 16<sup>th</sup> September 2019, therefore, there was existing a dispute between the parties herein.

21. Although, on behalf of Operational Creditor, there were different demands on different occasions, sometimes Rs. 35,00,000/- has been demanded and on other occasions a sum of Rs. 40,00,000/- or 50,00,000/- has been stated to be dues against the Corporate Debtor. There was no consistency qua the demand made by the petitioner herein against the respondent but that was merely due to the fact that **interest** component, hence, it could not be said that the demand was differently raised on different occasions.

22. In this regard, the reference can be made to citation **Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. 2018 (1) SCC 353** wherein Hon'ble Supreme Court *inter-alia* held 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*

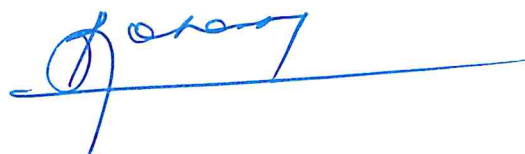


*legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so the Court does not need to be satisfied that the defence is likely to succeed. The court does not at this 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).*

23. Thus, there also exist dispute prior to demand notice with respect to the quality of the goods supplied by Operational Creditor to the Corporate Debtor and litigation is also pending qua the said dispute. The said question was also raised in the reply to the demand notice sent by the petitioner. Therefore, there was a clear 'existence of dispute', which was genuine in nature and it could not be said that the same was raised falsely just to defend the present matter. Hence, the petitioner is not entitled to the relief claimed.


24. 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.


**25. For the reasons stated above this Application filed under Sec 9 of the IBC 2016 fails and the same is rejected.**



26. 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 Applicant 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.

  
**(PRASANTA KUMAR MOHANTY)**  
**MEMBER (T)**

  
**(DHARMINDER SINGH)**  
**MEMBER (J)**