

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No.242/NCLT/AHM/2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 08.01.2021**

Name of the Company: Louis Dreyfus Company India Pvt Ltd
V/s
Nandan Denim Ltd

Section 9 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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- 1.
- 2.

ORDER

(Through Video Conferencing)

Advocate, Ms. Hirva R. Dave is present on behalf of the petitioner and Advocate Mr. Naishal Mody is present on behalf of the respondent.

The order is pronounced in the open court, vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 8th day of January 2021

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

**C.P. No. (IB) 242/9/NCLT/AHM/2020 &
C.P. No. (IB) 244/9/NCLT/AHM/2020**

In the matter of:

Louis Dreyfus Company India Private Limited
8th Floor, Tower A, Building No. 5
DLF Cyber City
DLF Phse – III
Gurgaon 122 002
HARYANA STATE

:

Petitioner
Operational Creditor

Versus

M/s. Nandan Denim Limited
Survey No. 198/1/ 203/2
Saijpur-Gopalpur
Pirana Road
Piplej
AHMEDABAD 382 405
GUJARAT STATE

:

Respondent
[Corporate Debtor]

Order delivered on 8th January, 2021

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

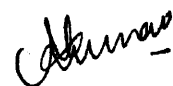
Petitioner : Ms. Hirva R, Dave, Advocate
Respondent : Mr. Naishal Mody, Advocate

COMMON ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Madhu Sharma, Chief Financial Officer, being authorised signatory of **M/s. Louis Dreyfus Company India Private Limited** filed these Petitions under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,





2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

C.P. No. (IB) 244/9/NCLT/AHM/2020

2. The applicant/operational creditor, a private limited company having identification No. U51909DL1997PTC126131 and having its registered office at Gurgaon, Haryana State, engaged in trading of agricultural commodities, has submitted that the respondent is indebted a total sum of **Rs. 2,39,03,432/- (Rupees two crores thirty-nine lacs three thousand four hundred thirty-two only)** to the applicant towards the supply of Imported American Raw Cotton in bales supplied during the period from 06.08.2019 to 08.08.2019 as per the details annexed at page No. 43-44.
3. In support of its claim, the applicant has annexed to the application copy of the documents like; invoices (page 43-44), sale contract and amendments thereof (page 39-42), bank guarantee dated 25.04.2019 (page 45-51), L.C (page 52-54), email communication exchanged between the applicant and respondent (55-76), demand notice (79-82) ledger account of the corporate debtor (115-120), affidavit of no dispute, affidavit under section 9 (3) (b) of the I & B Code etc.
4. The applicant has stated that despite repeated reminders the respondent has not paid the outstanding operational debt, therefore, the applicant was compelled to issue demand notice under Section 8 of the I & B Code in form 3 on 04.02.2020 calling upon the respondent to clear the operational debt.


Sharma


Chauhan

5. The respondent/corporate debtor is a limited company registered under the provisions Companies Act, 1956, on 9th August, 1994 and having identification No. L51909GJI994PLC022719 and having registered office at Piplej, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs.100,00,00,000/- and paid up share capital is Rs. 48,04,90,560/-.
6. The respondent/corporate debtor filed affidavit in reply inter alia denying the debt and raising various objections. The first and foremost objection raised by the respondent is that there is a pre-existing dispute and the petitioner itself has subscribed to the Arbitration and Conciliation ACT, 1996.

Findings:

7. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
8. On perusal of the records it is found that the instant petition filed on 22.06.2020 was notified for the first time on 26.06.2020. On perusal of the record it is also found that the demand notice under section 8 of the I & B Code dated 04.02.2020 is signed and issued by M/s. M. Mallu Associates, Advocates & Solicitors. Admittedly, the applicant company, vide Board Resolution dated 07.11.2019, has authorised two Directors of the company viz. Mr. Madhu Sharma and Mr. Vipin Gupta, to engage/appoint advocates/solicitors, however, the applicant has not filed with the application any authority letter signed and issued by the aforesaid Directors so authorising the aforesaid Advocates & Solicitors to issue the demand notice which is pre-requisite for initiation of CIRP proceedings. In other words, the demand notice has been issued without any authority.

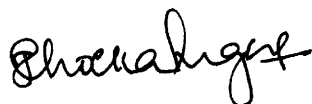


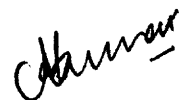


9. Notwithstanding above, on perusal of the reply filed by the corporate debtor it is found that the judgement in CS (COMM) 120/2020 & IA Nos. 3790-3796/2020 dated 01.05.2020 passed by the Hon'ble High Court of Delhi states as under: -

The parties agree to: -

- (i) the formation of a panel consisting of three arbitrators to be headed by Hon'ble Mr. Justice D.R. Dhanuka, former judge, High Court of Bombay, the other two arbitrators shall be: Hon'ble Mr. Justice S.M. Jhunjhunwala, former Judge, High Court of Bombay (respondent's nominee) and Mr. Arun B. Sekhsaria (petitioner's nominee);
 - (ii) the parties shall appear before the panel of arbitrators on a date that may be intimated to them by Hon'ble Mr. Justice D.R. Dhanuka;
 - (iii) the fees of the arbitration shall be fixed by the learned arbitrators themselves;
 - (iv) the respondent-claimant shall withdraw all its claim from the arbitration before the International Cotton Association;
 - (v) the parties shall be represented in the arbitration proceedings by lawyers and/or by duly authorised persons; and
 - (vi) the claim of the parties is not limited to what has been recorded hereinabove.
10. From the above it is clear that there exist disputes between the parties prior to filing the petition and both the parties have subscribed to the Arbitration proceedings. Moreover, the correspondence exchanged between the parties (page 145-152 of the reply) clearly demonstrates that there was/is dispute with regard to quality of the goods supplied by the applicant consequent upon which the corporate debtor filed an application before the Hon'ble High Court of Delhi,






wherein, the Hon'ble High Court made observation as said above. Thus, much before sending the demand notice there were/are disputes between the parties from 19.07.2019 onwards which reflects from the application so filed in Hon'ble Delhi High Court.

11. Under the facts and circumstances and as discussed above the petition is not maintainable and deserves to be dismissed in view of pre-existing dispute. In the result, company petition No. CP (IB) 244 of 2020 stands dismissed and disposed of without cost.

C.P. No. (IB) 242/9/NCLT/AHM/2020

12. Company petition No. CP (IB) 242 of 2020 moved on the same lines by the same petitioner against the same respondent as shown in the cause list towards claim of Rs. 2,39,03,432/- (Rupees two crores thirty-nine lacs three thousand four hundred thirty-two only) also stands dismissed and disposed of without cost on the same grounds.
12. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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