

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1



ITEM No. 301
CP(IB) 311 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

Asian Diamond bvba
V/s
DA Jewels Private Limited

.....**Applicant**

.....**Respondent**

Order delivered on. 19/09/2022

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in open Court vide separate sheet.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

C.P. (IB) No. 311 of 2020

[Application for initiation of Corporate Insolvency Resolution Process U/s 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016].

In the matter of:

Asian Diamond bvba
Hovenierstraat 2 Office # 1211 – 1213,
Box # 510, 2018 Antwerpen,
Belgium

... Applicant/Operational Creditor

VERSUS

DA Jewels Private Limited
B. No. 50, Sarjan Society,
Behind Umra Jakatnaka,
Umra Surat, Gujarat – 395 007,
India.

... Respondent/Corporate Debtor

Order pronounced on: 19.09.2023

Coram: MR. SHAMMI KHAN, HON'BLE MEMBER(J)

MR. SAMEER KAKAR, HON'BLE MEMBER(T)

Appearance:

For the Operational Creditor: Mr. Kunal Vaishnav, Advocate

For Corporate Debtor : Mr. Tarak Damani, Advocate for Mr.
Arjun Sheth, Advocate




ORDER

1. This is an application filed on 31.08.2020 by the Asian Diamonds bvba having office at Hovenierstraat 2 Office # 1211-1213, Box # 510, 2018 Antwerpen, Belgium, Represented by Hasmukh Sanghvi, Director, Asian Diamonds bvba 61 Laarstraat 2610, Wilrijk (hereinafter referred to as 'Operational Creditor') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against DA Jewels Private Limited (hereinafter referred to as 'Corporate Debtor') seeking commencement of Corporate Insolvency Resolution Process (CIRP) and appointment of IRP in declaration of moratorium.
2. It is seen that the applicant herein is a company incorporated in Belgium under Belgium Law. The application has been affirmed by one Mr. Hasmukhbhai Sanghvi who has been authorised under the Board Resolution dated 21.07.2020. The copy of said Board Resolution is annexed at page no. 16.
3. On perusal of page no. 6 of the application it is seen that the application is filed under Form I (See sub Rule (1) of Rule 4) the said sub Rule and Form 1 is applicable to Financial Creditors as per the application to Adjudicating Authority Rules, 2016 and the correct form for filing the present application is Form 5 (See Sub Rule 1 of Rule 6) be that as it may as the application clearly states that it is by Operational

Creditor, we proceed to consider this application under Section 9 of the Code.

4. From part 2 it is seen that the Corporate Debtor is DA Jewels Private Limited which was incorporated on 27.11.2009 under CIN No. U36912GJ2009PTC058723. The registered Office address of the Corporate Debtor is located at B No. 50, Sarjan Society, Behind Umra Jakatnaka, Umra Surat, Gujarat – 395 007, India.
5. The Operational Creditor has named CA Shikhar Chand Jain, having registered no. as IBBI/IPA-001/IP-P00495/2017-18/10883 on proposed IRP.
6. Perusal of the Form 4 reveals that the applicant has claimed total amount of debt as at USD 2,38,126.59/-equivalent to approximately Rs. 1,78,26,157/- along with interest at the rate of 7% per annum. The date of default is stated to be 12.08.2018.
7. It is the case of the Operational Creditor that they have supplied the rough diamonds to the Corporate Debtor in 2 consignments. The First Consignments containing 114.06 carats of rough diamonds were shipped to the Corporate Debtor in Surat on 15.05.2018. The applicant has attached the consignment advise issued by Sequel International Logistics at annexure 6. The copy of the Kimberly Process Certificate Import Confirmation dated 15.05.2018 evidencing the import of consignment into India is annexed as Annexure 7. With respect to the said consignment the Operational Creditor raised two invoices bearing no. 168/RE/2018 and



169/RE/2018 both dated 14.05.2018 for an amount of USD 45,996.75 and USD 80,362.78. It is stated that payments with respect to invoice no. 169/RE/2018 has been received.

8. The second consignment of 181.49 carats of diamonds were shipped to the Corporate Debtor on 29.05.2018 by Sequel International Logistics under consignment advise dated 30.05.2018. Kimberly Process Certificate dated 29.05.2018 is annexed at Annexure 11. With respect to the said second consignment the Operational Creditor raised the invoice bearing no. 182/RE/2018 dated 28.05.2018 for an amount of USD 1,57,763.81. The said amount has not been paid by the Corporate Debtor.
9. Demand notice under Section 8 Insolvency and Bankruptcy Code, 2016 was issued on 18.10.2019 which was replied by the Corporate Debtor vide letter dated 04.11.2019 after expiry of period of more than 10 days. Copy of the demand notice is attached as Annexure 13.
10. It is stated that even after repeated request the Corporate Debtor has not paid the said invoices and hence the present application.
11. Reply was filed by the Corporate Debtor under Diary No. 257/2021 dated 25.02.2021 in the reply the Corporate Debtor has admitted the receipt of the supply under.
12. It is stated that one Mr. Rohitbhai Sanghvi, brother of Mr. Hasmukhbhai Sanghvi (who signed the application) has been handed over certain diamonds for which the jangad receipt has been issued which is attached on page no. 10 of the reply.

Page nos. 11 to 14 are details of such Diamond which have been handed over by the respondent to the brother of the applicant.



13. It is also stated that the demand notice was served without necessary documents and was replied vide letter dated 01.11.2019.
14. The respondent has attached email correspondence which is dated 03.05.2019 which is extracted hereunder:

*“To
Sir/Mam,
Atradius*

Your mail dt.21.2.2019 is sent on me 26.2.2019 on my mail address, you have no authority to issue such a mail demanding the amount of so called transaction for which your client namely Asian Diamonds BVBA has not given true and correct information with regards to the transaction taken place between us and your client. Your client's persons namely Prakash Sanghavi, Rameshbhai Sanghavi and Rohitbhai Sanghavi came to our office on 28.1.2019 and on that day the entire dispute was settled and the entire due amount was squared up by handing over polished Diamonds worth of 1,15,806 USD, and on that day itself Jangad Receipt was signed by Mr. Rohitbhai Sanghavi as receiver of the goods i.e. polish diamonds worth of 1,15,806 USD. Which was handed over by us to your client and thereafter nothing was remained to be paid. However, owner of Asian Diamonds BVBA namely Hasmukhbhai Sanghavi along with other two persons came to my office on 4.2.2019 and issued threat to keep ready more amount on the next day i.e. on 5.2.2019 Hasmukhbhai Sanghavi and other people came to my office and took away more polished diamonds worth of 35,000 USD by issuing threat and putting me into fear. I state that on 8.2.2019 again Prakashbhai Sanghavi and other persons came to my office and taken away 13 sets of Diamond Polishing Machine (Ghanti) along with other

materials total worth of Rs 6,30,000/-. I have proof of CCTV footages of these incidents.

It seems your client has not disclosed these facts to you that I have paid and squared up the entire due amount to your client which is now being demanded by you. Therefore, nothing is remained to be paid to your client. You are misled by your client by not providing true and correct information to you. You have no authority to recover any amount.”

It is stated that the said email was never responded by the Operational Creditor.

15. With the above averments the respondent seeks dismissal of the present application.
16. Rejoinder has been filed by the applicant which is dated 21.06.2021 in rejoinder under paragraph no. 5 the Operational Creditor has stated that Mr. Rohitbhai Shanghvi is not connected to the Operational Creditor and is not the partner / director or any associated or an employee of the Operational Creditor. The Operational Creditor denies the issue of the jangad receipt.
17. Heard both the Counsels and perused the records supply has not been denied. However, the defence of the Corporate Debtor cannot be ignored, due to the reason that the Corporate Debtor has produced 1 Jangad receipt and 2 emails which are dated 04.01.2019 and 03.05.2019 addressed to Operational Creditor, his emails were never replied by the Operational Creditor and there is no whisper for the same in the rejoinder filed by the Operational Creditor. In our view, there is existence of plausible dispute between the parties.



18. The Hon'ble Supreme Court in the case of **Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software (P) Limited** in Civil Appeal number 9405 of 2017 (reported in 2017 SCC Online SC 1154) vide order dated 21.09.2017 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".

19. In view of the above, we dismiss the present application. No order as to cost.

-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

Stancy-Steno