



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-1071/(ND)/2020

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/S. MOTHER LAM PRIVATE LIMITED

Registered Office At: Shop No 308, 3rd Floor vithal plaza, opp, Naroda GEB, Off Naroda Dehgam Road, Nava Naroda Ahmendabad, Gujarat- 382330

...Applicant/Operational Creditor

Versus

M/S. 3 ACES WOOD PRIVATE LIMITED

Registered Office At: Basement & Ground Floor, Plot No-113, Block-1, Basaidarapur, Kirti Nagar Delhi West Delhi Delhi- 110015

...Respondent/Corporate Debtor



Coram:

Shri. P.S.N Prasad, Member (Judicial)

Shri. Rahul Bhatnagar, Member (Technical)

Counsel for Applicant: Adv. Sumer Singh Boparai

Counsel for Respondent: Adv Gulshan Kr. Sachdev

ORDER

PER: RAHUL BHATNAGAR, MEMBER (TECHNICAL)

Date: 16.03.2023

1. This is an application filed by the Applicant M/s. Mother Lam Private Limited seeking to initiate corporate insolvency resolution process (“CIRP”) under Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) of the Respondent M/s. 3 Aces Wood Private Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. Rs. 4,63,90,800/- [Rupees Four Crores Sixty-Three Lakhs Ninety Thousand Eight Hundred]. The details of transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:



- i. That the Operational Creditor is Manufacturer/ Importers of products of wood, cork, straw and plaiting materials, Laminate Plants and Machinery, Plywood, Veneers, Doors & had supplied Paper Based Decorative High Pressure Laminate to the Corporate Debtor, and during the course of business they had transacted with each other and a huge outstanding has been created in favour of Corporate Debtor.
- ii. That the Corporate Debtor has failed to make the payment Rs. 3,71,13,467/-(Rupees Three Crore Seventy One Lakh Thirteen Thousand Four Hundred Sixty Seven) alongwith an amount of interest of Rs. 92,77,333/-(Rupees Ninety two lakh seventy seven thousand three hundred thirty three) @ 18% per annum as per the terms of the invoice from their due date i.e. 22.07.2018 to 04.02.2019 in respect of the outstanding invoices before the issuance of demand notice under Section 8, IBC, 2016.



- iii. That on failure to pay the outstanding debt by the Corporate Debtor, the Operational Creditor was constrained to proceed against the Corporate Debtor and accordingly Demand Notice in Form 3 along with Form 4 dated 15.02.2020 was issued in the name of Corporate Debtor and to its directors as required under Section 8 (1) read with Rule 5 (1) (a) & 5 (1) (b) of the Insolvency & Bankruptcy Code, 2016.
- iv. That even after receipt of said notice under Section 8 of IBC, 2016, the Corporate Debtor failed to clear the debt of the Operational Creditor. Moreover, the Corporate Debtor has given a vague and vexatious reply to said notice.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:

- i. That there is no debt owed by the Respondent to the Petitioner or has any liability against the Petitioner. There was never any sale qua the invoices relied



upon by the Petitioner to show default or debt owed by the Respondent.

- ii. That the Respondent received a demand notice dated 15.02.2020 seeking certain amounts from the Petitioner on the basis of false and fictitious claims which was replied to in detail by the Respondent vide reply dated 25.02.2020.
- iii. That the quality of the first few batches of goods starting in February, 2018 were satisfactory, but the quality of the subsequent batches of goods sharply deteriorated overtime. Complaints were received from customers of the Respondent all over India over the poor quality of goods supplied by the Petitioner. As a result, the customers stopped payments over the goods supplied by the Respondent that were manufactured by the Petitioner. This was even conveyed to the Petitioner on several occasions but instead of improving the quality of goods as falsely assured by them, the quality of the said goods worsened.



iv. That in June, 2018, the outstanding dues of the Petitioner were Rs. 60 lakhs but in view of the relations between the parties, Rs. 75 lakhs was paid to the Petitioner. But, since 25.06.2018, supplies to the Respondent were stopped by the Petitioner for unknown reasons. Thus, even after having made payments and having raw materials of the Respondent including paper stocks and plates, the Petitioner categorically refused to supply goods to the Respondent. In a subsequent meeting arranged by the Respondent, the partners of the Petitioner demanded change of terms and conditions and demanded payment within 15 days. The same being impossible, the Respondent did not agree with the same. Thereafter, due to non-supply of goods and orders pending since long, dealers and customers of the Respondent ceased payments and requested the Respondent to take the material back. In view of the above and the fact that the raw material and machinery of the Respondent was still with the Petitioner, the Respondent was forced to change the



terms and it was mutually decided to supply 35,000 sheets till 20.08.2018 and Rs. 1.50 Cr. would be paid against the same. However, even after such change in terms, only 24,000 sheets were supplied against a payment of Rs. 1.45 Cr. On 06.09.2018, it was informed via a WhatsApp message that the Petitioner was once again stopping supplies.

- v. That the above conduct of the Petitioner and constant violation of the terms and conditions of the agreement have led to huge losses of over Rs. 25 Cr. to the Respondent.
- vi. That saddled with huge losses, the Respondent demanded that if supplies had to be stopped, then all the raw material and machinery be shifted to another factory where production and supplies could be maintained. Further, if raw material cannot be returned, then The Petitioner was asked to send the outstanding due from cost of raw materials of the Respondent. Same was conveyed vide email dated 16.05.2019.



vii. That the sheets provided by the Petitioner for which the claim in the demand notice and the petition under reply is raised were never accepted or purchased by the Respondent and the Petitioner is free to tak them back. This is also clear from the GST filings of the Petitioner where goods worth Rs. 3,23,03,844.00/- purportedly purchased by the Respondent has been reversed by the Petitioner. Further, the GST input amounting to Rs. 58,14,691.92/- was also reversed. Thus, it is clear that there was never any sale of such goods to the Respondent by the Petitioner.

3. The Counsel for the Operational Creditor has filed written statements stating that:

- i. That the goods manufactured by the Applicant were free of any defects.
- ii. That there is deemed acceptance of goods by the Respondent.
- iii. That the Respondent has acknowledged its dues on various occasions by signing confirmation of accounts



dated 01.08.2018, e-mail dated 16.05.2019 and several messages.

iv. That the GST input amounting to Rs. 58,14,691.92/- was reversed due to non-payment of bill amount upto 180 days by the Respondent.

4. The Counsel for the Corporate Debtor has filed written statements stating that:

- i. That the Respondent had provided the Applicant with raw materials and machineries worth Rs. 12.85 Crores, including 456 paper sheets and 95,111 kg of base paper stock for manufacturing the laminated sheets. The cost of the raw materials supplied by the Respondent to the Operational Creditor was to be adjusted with the invoices raised for supply of sheets.
- ii. That due to the continuous downfall in the quality and quantity of supply, the Respondent faced huge loss as the customers stopped payment due to the poor quality and irregular supply of goods.
- iii. That owing to the defaults made by the Operational Creditor, the Respondent informed the Operational Creditor vide email dated 18.05.2019 that it shall take



back its defective goods and return the raw material provided by the Respondent herein but to no avail.

iv. That the Applicant has failed to disclose the pre-existing disputes between the parties. Admittedly, the disputes between the parties had arisen much prior to the date of Demand Notice i.e., 15.02.2020. The dispute between the parties arose in June 2018. In May 2019, there are further email communications which highlight the dispute between the parties.

5. We have heard the Ld. Counsels for the Operational Creditor and Corporate Debtor and perused the averments made in the application as well as the documents enclosed with the application. The Respondent has prayed for dismissal of the present Application in light of pre-existing disputes between the parties.

6. On perusal of the Application as well as the documents enclosed, the existence of dispute prior to issuance of notice u/s 8 IBC, 2016 dated 15.02.2020 is evident from the e-mails dated 16.05.2019 and 18.05.2019 by



the Corporate Debtor addressed to the Operational Creditor highlighting issues with respect to the quality of goods supplied and informing about the complaints and rejections faced by the Corporate Debtor on account of the bad quality material supplied by the Operational Creditor. The e-mail dated 18.05.2019 by the Corporate Debtor to the Operational Creditor informing about the complaints and rejections faced by the Corporate Debtor on account of the defective material supplied by the Operational Creditor is reproduced as under:

Vishnu Gupta <vishnu@sonearply.in>
To: "Mother Lam Pvt. Ltd." <motherlam11@gmail.com>
Cc: 3aces.ahm@gmail.com, info@sonearply.com, jk jk <jk@sonearply.com>

Sat, May 18, 2019 at 5:42 PM

Dear mr rajesh

Greetings of the day !!!

We are shocked to hear such harsh words and language used by you for us. We have some ethics and have good respect for you and bhagwanji bhai and we cannot think of using such language for you ever.

Regarding the payment over due , the material which was supplied by you was of very bad quality which we had mentioned to you many times in past. Because of this bad quality material supplied by you, we had faced so much problem in market and given so many claims and deductions to our parties.

Till now because of this quality issues, our big payments are stuck in market and also we have lost business with our good clients also. We were also forced to lift material back from our clients too.

We still have the sheets supplied by you with us which is not selling because of quality issues.

You have our base paper , plates and machines as received at MLPL.

You kindly return us our basepaper, plates and machinery to us and We are ready to return you laminate sheets supplied by you which is lying with us.

We are waiting for your reply at earliest.

..arm regards

Vishnu Gupta



7. The Hon'ble Supreme Court in "**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC On Line SC 353**", analyzed the meaning of dispute with respect to Operational Creditors and observed:

"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be."

"34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?"



If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

8. The Respondent has further contended that no debt exists between the parties as the Respondent had provided the Applicant with raw materials and machineries worth Rs. 12.85 Crores, the cost of which was to be adjusted with the invoices raised for supply of sheets. The same was highlighted by the Respondent vide e-mail dated 19.02.2020. At this juncture, reliance is placed on the judgement of Hon'ble Supreme Court in the matter of *M/s. S.S. Engineers V/s Hindustan Petroleum Corporation Ltd. & Ors. Civil Appeal No. 4583 of 2022* wherein the Hon'ble Supreme Court has held as follows:

"On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonestly or deliberate failure to repay the dues



of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.”

9. From the aforesaid decisions, it is clear that an Application filed under Section 9, IBC, 2016 cannot be admitted if there are disputes existing between the parties before the issuance of notice u/s 8, IBC, 2016 and also if the amount of debt is disputed. Be that as it may, on appraisal of the arguments advanced by the Ld. Counsels and the documents produced, it emerges that there were disputes existing prior to the issuance of the Demand Notice.

10. For the reasons discussed above, since there is a pre-existing dispute between the parties, we have no option but to reject the prayer of the Operational Creditor to initiate proceedings under Section 9 of IBC, 2016.

11. Accordingly, we hereby **dismiss** the present application.

RAHUL
PRASAD
BHATNAGAR

Digitally signed by
RAHUL PRASAD
BHATNAGAR
Date: 2023.03.22
11:20:07 +05'30'

(Rahul Bhatnagar)
Member (Technical)

PATIBANDLA
SATYANARAY
ANA PRASAD

Digitally signed by
PATIBANDLA
SATYANARAYANA
PRASAD
Date: 2023.03.22 12:40:41
+05'30'

(P.S.N Prasad)
Member (Judicial)