IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT NO. V

CP (IB) 3084/MB/2019
Under Section 9 of the I&B Code, 2016
In the matter of
S. A. Engineering & Fabrication,
a proprietorship concern
Plot No. 4706/3, Shreenathji Arcade, Shop No. F-12, Meghmani Chowkdi, GDIC, Ankleshwar, Gujarat – 393 002.

…Operational Creditor/ Petitioner

v/s

Rohan Dyes and Intermediates Limited
2nd Floor, Pushpati Building No. 2, Chandanwadi, Girgaon, Mumbai – 400 002

...Corporate Debtor

AND

IA 381/2021 IN
CP (IB) 3084/MB/2019
In the matter of
S. A. Engineering & Fabrication,
a proprietorship concern

…Operational Creditor/ Petitioner

v/s

Rohan Dyes and Intermediates Limited

...Corporate Debtor

Order Delivered on: 13.05.2021

Coram:

Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri. Chandra Bhan Singh, Member (Technical)

For the Operational Creditor/Petitioner: Mr. Kunal Mehta a/w Mr. Anuj Jhaveri, Advocates.

For the Corporate Debtor: Noopur K. Dalal, Advocate.

Per: Suchitra Kanuparthi, Member (Judicial)

ORDER

1. This is an application being CP(IB)3084/MB/2019 filed by S. A. Engineering & Fabrications, a proprietorship concern through its proprietor Mr. Sherbahadur D. Yadav, Operational Creditor/Petitioner, under section 9 of Insolvency & Bankruptcy Code, 2016 (Code) against Rohan Dyes and Intermediates Limited, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The Petitioner has claimed an amount of Rs. 17,83,642/- including interest @12% p.a. from the Corporate Debtor.

BRIEF HISTORY:

3. The Petitioner is engaged in the business of fabrication work. The Corporate Debtor is engaged in the business of manufacturing & exporting of dyes and dyes intermediates. The Corporate Debtor awarded fabrication work to the Petitioner, to be taken place at Corporate Debtor’s unit situated at Survey No. 637, near Kalamsar, Dhuvaran Road, Khambat, Gujarat. The contract was awarded in

light of the quotation dated 01.07.2017 submitted by the Petitioner. The Corporate Debtor had agreed to pay 20% amount in advance and the balance amount was agreed to be paid within 7 days from the date of submitting the invoices.

4. Thereafter the Petitioner carried out fabrication work at Corporate Debtor's unit situated at Survey No. 637, near Kalamsar, Dhuvaran Road, Khambat, Gujarat and raised invoices totalling to of an amount Rs. 32,10,781.50/-. The Petitioner raised following invoices totalling to of Rs. 32,10,781.50/- which is reproduced as below;

Invoice No.	Dated	Amount Rs.
9	25.06.2017	1,69,242.05/-
4	07.09.2017	4,08,047.91/-
6	07.09.2017	1,13,866.73/-

7	07.09.2017	2,38,588.57/-
8	07.09.2017	1,09,636.75/-
10	01.11.2017	3,25,999.78/-
11	28.12.2017	38,188.07/-
13	12.01.2018	37,087.90/-
14	12.01.2018	2,30,328.94/-
15	12.01.2018	6,49,259.28/-
16	12.01.2018	31,948.07/-
17	12.01.2018	1,00,135.98/-
18	12.01.2018	18,537.80/-
19	12.01.2018	94.400.00/-
20	12.01.2018	20,900.75/-
Summary sheet	12.01.2018	5,29,332.89/-
Summary sheet, Invoice No. 25		95,279.92/-

In pursuance to the aboveCorporate Debtor made payments which are reproduced as below;

i. Rs. 1,69,242/- on 16.08.2017 vide cheque no. 619721 of State Bank of India;

ii. Rs. 3,00,000/- on 14.09.2017 vide cheque no. 619837 of State Bank of India;

iii. Rs. 1,03,118/- on 25.09.2017 vide cheque no. 619930 of State Bank of India;

iv. Rs. 3,00,000/- on 13.10.2017 vide cheque no. 620059 of State Bank of India;

v. Rs. 2,00,000/- on 15.11.2017 vide cheque no. 620152 of State Bank of India;

vi. Rs. 1,00,000/- on 15.11.2017 vide cheque no. 620175 of State Bank of India;

vii. Rs. 3,00,000/- on 30.12.2017 vide cheque no. 948673 of State Bank of India;

viii. Rs. 3,00,000/- on 05.09.2018 vide cheque no. 438922 of State Bank of India.

5. List of documents filed by the Petitioner is reproduced as below;

   a. Copy of the quotation dated 01.07.2017 given by Operational Creditor to the Corporate Debtor.

   b. Copies of invoices raised by Operational Creditor to Corporate Debtor.

   c. The working for computation of default in tabular form is attached at Exhibit "C".

   d. Copy of ledger accounts maintained by Operational Creditor in respect of Corporate Debtor for the F.Y. 2017-18, 2018-19 and 2019-20 which certifies the acknowledgement of dues by Corporate Debtor to Operational Creditor

   e. Copy of Form 26-AS certifying the TDS for the A.Y. 2018-19, which also certifies the acknowledgement of dues by Corporate Debtor to Operational Creditor along with the GST challan copy

f. Copy of the Print out of the Master - Data of the Corporate Debtor as available on the website of the Ministry of Corporate Affairs.

g. Copy of legal notice issued on behalf of Operational Creditor to Corporate Debtor

h. Copy of written complaint given by Operational Creditor against Corporate Debtor to Vatva Police Station

i. Copy of Statutory Demand Notice issued under Form-3 dated 28.06.2019 along with acknowledgement slip

6. The Petitioner had been following up regularly with the Corporate Debtor regarding the balance payment. However, the Corporate Debtor kept on giving assurance to make the payment within some time. There are several communications made by the Petitioner to the Corporate Debtor, wherein also, Corporate Debtor has assured the Petitioner to make payment. Further, the Petitioner had also visited the unit of Corporate Debtor personally for settlement of the dues. However, the Corporate Debtor gave false assurances to make the payment, which are yet to be fulfilled. It is further added that the Petitioner has already made disbursement of the GST to be paid on the said invoices. The said GST amount is yet to be paid back to the Petitioner by the Corporate Debtor which forms part of the said claim.

7. On 17.03.2018, the Petitioner, through its Advocate issued a legal notice to the Corporate Debtor calling upon the Corporate Debtor to make the balance payment. However, the Corporate Debtor failed to reply to the legal notice.

8. The Petitioner also gave written complaint dated 02.04.2018 against the Corporate Debtor to Vatva Police Station, Ahmedabad, Gujarat

for offences of criminal breach of trust, cheating, criminal intimidation, etc. under the Indian Penal Code which is yet to be adjudicated upon. The case is still pending before the said Police Station.

9. Pursuance to the written complaint, the Petitioner sent a demand notice dated 28.06.2019, as per the prescribed format under the Form – 3 through speed post. However, no reply to the same was given. The Corporate Debtor failed to reply to the demand notice of the section9 of IBC and the same was served on the Corporate Debtor on 02.07.2019 but however the Corporate Debtor has failed to reply the said demand notice and hence the Petitioner has filed section 9(3)(b) affidavit.

10. The Petitioner has filed the ledger account which shows that an outstanding amount of Rs. 17,16,465.98/- is still due and payable by the Corporate Debtor. The Petitioner has also filed Form 26 AS wherein the TDS amount as deducted by the Corporate Debtor has been reflected in the Form 26 AS.

REPLY BY THE CORPORATE DEBTOR/ WRITTEN SUBMISSIONS OF CORPORATE DEBTOR:

11. The Corporate Debtor filed a reply to the Petition and stated that the Corporate Debtor is a Public Limited Company incorporated under the erstwhile Companies Act, 1956, having its registered office at 2nd Floor, Puspawati Building No. 2, Chandanwadi, Girgaon, Mumbai – 400 002, Maharashtra and its corporate office at UG/11-12, Suryarath Complex, Opp. White House Bldg., Nr. Panchwati Circle, Ahmedabad – 380 006, Gujarat. The Corporate Debtor company was incorporated on 10.03.1992 and is engaged in business of

manufacturing and exporting of dye stuff, intermediates and chemicals worldwide.

12. The present petition filed by M/s S. A. Engineering and Fabrication is prima facie objected being defective in nature. It is humbly pointed out that the present Petition has been initiated by a Proprietorship firm, which is an entity not recognized as "Person" as per Section 3(23) of the Code, 2016 is liable to be dismissed.

13. The Petitioner has not come before this Tribunal with clean hands and the Petition suffers from the vices of *suppresso veri* and *suggestion falsi*, the Corporate Debtor therefore strongly objected to the Petition being heard by this Tribunal.

14. The Corporate debit is a solvent company with a net worth of Rs. 72.82 crores and revenue of more than Rs. 175.45 crores and have 100 employees working and 230 workers in his factory. The Corporate Debtor has manufacturing unit facilities at Khambat, Gujarat as well as Vatva, Gujarat and corporate office at Ahmedabad and Gujarat.

15. The Corporate Debtor claimed that the Petition needs to be dismissed on the ground that there is a history of pre-existing dispute pending between the parties. The Corporate Debtor further relied upon the cross police complaints filed by the Petitioner and the Corporate Debtor dated 02.04.2018 and 11.08.2018 respectively, before the issuance of demand notice on 28.06.2019.

16. The Corporate Debtor further submitted that it is evident from the copy of police complaint that there was a clear irrefutable and unquestionable dispute pre-existing between the Petitioner and

Corporate Debtor and as such the dispute is in relation to existence of amount of debt and quality of services provided by the Petitioner.

17. The Corporate Debtor had engaged the services of the Petitioner and had duly paid the Petitioner for the works genuinely undertaken till October 2017. The Corporate Debtor had paid an amount of Rs. 17,73,360/- of the works actually accomplished by the Petitioner. Subsequently the Corporate Debtor was put in an awkward position and suffered damages as the Petitioner abruptly stopped working, and leaving the work incomplete in October 2017. The Corporate Debtor had to hire other agencies Ms. Babushah Fabrication, Ms. VA Engineering, Mukesh prasad and R engineering to complete the incomplete work left by the Petitioner.

18. The Petitioner filed a police complaint on 02.04.2018 against the Corporate Debtor with Vatva Police station Ahmedabad, the Corporate Debtor also filed two complaints on 11.12.2018 and 28.08.2019 with Vatva police station Ahmedabad. Thereafter, the Corporate Debtor filed another complaint with Khambat police station on 01.08.2019.

19. The Corporate Debtor also pointed out that the complaint for GST non-deposit was filed against the Petitioner, wherein it has been expressly stated that the Petitioner did not comply with the GST requirements towards the alleged invoices. The Petitioner was obligated to pay GST dues within one month of paying phase of invoices, however, the Petitioner failed to pay in the time frame within the time prescribed thereby causing loss to the Corporate Debtor. The Corporate Debtor further claimed that even on the date of instant submission the petitioner had not uploaded the details of alleged invoices, details of GST payments made by the Petitioner.

The details of GST payment/ pending payments made by the Petitioner is as follows:

Sr No.	Invoice No	Date	Amount	GSTR 1 Filled	Filling Date	Bill No Mentioned In GSTR Return
1	9	6/25/2017	169242.1	--	--	--
2	4	9/7/2017	408047.9	YES	2/14/2019	13
3	6	9/7/2017	113866.7	YES	2/14/2019	14
4	7	9/7/2017	238588.6	YES	2/14/2019	15
5	8	9/7/2017	109636.8	YES	2/14/2019	16
6	10	11/1/2017	325999.8	NO	--	--
7	11	12/28/2017	38188.07	NO	--	--
8	13	1/12/2018	37087.9	NO	--	--
9	14	1/12/2018	230328.9	NO	--	--
10	15	1/12/2018	649259.3	NO	--	--
11	16	1/12/2018	31948.07	NO	--	--
12	17	1/12/2018	100136	NO	--	--
13	18	1/12/2018	18537.8	NO	--	--
14	19	1/12/2018	94400	NO	--	--
15	20	1/12/2018	20900.75	NO	--	--
16	Summary sheet	1/12/2018	529332.9	NO	--	--
17	25		95279.92	NO	--	--
Total			**3210781**			

20. The Corporate Debtor further submitted that the ledger account was acknowledged by the gate keeper just be keep the inward documents, which cannot be construed as acknowledgement of liability.

<u>IA 381/2021 FILED BY THE PETITIONER:</u>

21. The Petitioner had filed an IA seeking amendment of cause title in view of the fact that the present petition was filed by the Operational creditor and however, the Petitioner wanted to bring Mr. Sher Bahadur Yadav being the sole proprietor on record in view

of the technical objection taken by the Corporate Debtor. The IA 381 of 2021 is allowed and the Applicant in IA is subsumed to be represented by the sole proprietor/Petitioner.

FINDINGS

22. The Petitioner has sought to recover an amount of Rs. 17,83,642/- which includes interest of Rs. 3,45,221/-, @ 12% p. a. from 26.06.2019 which includes principal of Rs. 14,38,421.50/- towards principal plus interest. The Corporate Debtor desired to carry out the fabrication work at the unit situated at Kalamsar, Dhuvaran Road, Khambat, Gujurat therefore the Petitioner were asked to give its quotation. The Petitioner submitted its quotation on 01.07.2017. The said quotation was accepted and the Corporate Debtor agreed to pay20 % advance and the balance amount agreed to pay to within 7 days within the submission of the invoices. The Petitioner raised several invoices amounting to Rs. 32,10,781.50/- out of which the Corporate Debtor pay an amount of Rs. 17,72,360/- and the balance payment of Rs. 14,38,421.50/- remained unpaid till date.

23. The Corporate Debtor vide its reply and written submission claimed that there is a pre-existing dispute between the parties and that the CIRP cannot be initiated against the Corporate Debtor as the Petitioner is trying to misuse the provisions of the Code.

24. The Petitioner had filed a police complaint on 02.04.2018 before Vatva Police station Ahmedabad against the Corporate Debtor and the Corporate Debtor filed a cross complaint against the Petitioner on 11.08.2018 and 20.08.2018. the Corporate Debtor also filed another police complaint with Khambhat police station against the Petitioner raising issues about bogus invoices and quality of service provided by the petitioner.

25. The legal issues which arise for consideration are as follows:

a. Whether there is any pre-existing dispute which arise under the cross police complaint filed by the Corporate Debtor on 11.12.2018, 28.08.2019 with Vatva police station Ahmedabad and one police complaint with Khambhat police station on 20.08.2019?

b. Whether there is a GST complaint filed by the Corporate Debtor with regard to non-payment of GST dues with reference to the alleged invoices a claimed by the Petitioner amounts to a dispute between the parties?

26. This Bench is of the considered view that the pre-existing dispute as made out in the cross police complaint by the Corporate Debtor is well within the ratio laid down by Hon'ble Supreme Court in Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd, wherein it was held that all that adjudicating authority is to see at this stage if whether there is plausible contention which requires further investigation and that the dispute is not patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the shaft and reject the spurious defect made in bluster. However, in doing so the court does not need to be satisfy the defence is likely to succeed. The court does not at this stage examine the merits of the dispute to the extend incurred about so long as the dispute and is not spurious, hypothetical or illusory, the adjudicating authority has right to reject the application.

27. The mere fact that the police complaint was registered by the Petitioner and a cross complaint was registered by the Corporate

Debtor, is an evidential fact supported by a formal complaint recorded at Vatva Police station that there is a dispute raised by the parties and is pending investigation by Police. This dispute is not a feeble legal argument supported by police complaints filed by the Parties and hence amounts to dispute which is subjected to further investigation.

28. The Corporate Debtor further raised allegation with regard to filing of a complaint before the GST authorities against the Petitioner for non-filing of GST amounts within the prescribed one-month period of raising of invoices.

29. The aforesaid paragraph demonstrates that there is a pre-existing dispute between the parties and which required to be investigated by a regular Civil Court and hence the Petition is dismissed.

SD/-

Chandra Bhan Singh
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)