

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No. 1375/MB-IV/2020

Under Section 9 of the I&B Code, 2016

In the matter of:

**SHREE KURMDAS INDUSTRIES PRIVATE
LIMITED**

[CIN: U29309PN2022PTC208014]

[Through Prop. Ankush Tukaram Bankar]

...Operational Creditor/Applicant

V/s

TWENTYONE SUGARS LIMITED

[CIN: U15122MH2011PLC221355]

...Corporate Debtor/Respondent

Order Dated: 28.04.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Vineet Naik, Ld Counsel.

For the Respondent(s) : None.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is an Application being C.P. (IB) No. 1375/MB/C-IV/2020 filed on 24/11/2020 by SHREE KURMDAS INDUSTRIES, the Operational

Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (I&B Code) against TWENTYONE SUGARS LIMITED, Corporate Debtor, for initiating Corporate Insolvency Resolution Process (CIRP).

2. The total amount claimed by the Operational Creditor as specified in the Part 4 of the Company Petition is Rs. 2,55,45,000/- is due and payable by the Corporate Debtor. The date of default is 17.01.2020.
 - 2.1. The Operational Creditor submits that, final offer letter dated 23.09.2019 was sent by the Operational Creditor to Corporate Debtor for plant overhauling of Rs. 1,70,00,000/-. Two Letter of Intent dated 23.09.2019 (for Plant Overhauling Job) and 24.12.2019 (for supply of Manpower for Operating the said Plant) were received from the Corporate Debtor.
 - 2.2. The Operational Creditor raised invoices in furtherance of the varied services provided by it to the Corporate Debtor from time to time. Email Correspondence between both the parties has been submitted by the Operational Creditor. Letter dated 18.01.2020 sent to the Corporate Debtor vide email regarding acceptance of work note by the Operational Creditor.
 - 2.3. A Meeting was conducted to state the acceptance of maintenance charges claimed by the Corporate Debtor by the Operational Creditor. Letter dated 25.02.2020 sent to the Corporate Debtor vide email regarding the amount of Rs. 8,95,000/- incurred by the Operational Creditor towards extra work done on chargeable basis.
3. The Corporate Debtor vide its reply dated 05.03.2021 has denied each and every allegation raised by the Operational Creditor.

- 3.1. The Corporate Debtor vide letter dated 27.02.2020 denied the claim raised by the Operational Creditor and further stated that the Corporate Debtor is only liable to pay a sum of Rs. 9,26,000/-.
- 3.2. The Corporate Debtor further submits that Operational creditor was obligated to provide service of overhauling and or maintenance to the Corporate Debtor for the said plant in accordance with the scope of work agreed to there to be completed within stipulated period of 10-12 weeks. However, the same could not be done by the Operational Creditor.
- 3.3. The Corporate Debtor stated that the Operational Creditor failed to prove the stipulated number of workmen/workers/ personnel to the Corporate Debtor. The Operational Creditor has not been able to provide the same, the Operational Creditor cannot claim moneys towards supply of manpower.
4. The Operational Creditor has filed Affidavit in Rejoinder dated 27.08.2021 has denied each and every allegation raised by the Corporate Debtor.

Findings:

5. This bench has carefully gone through the documents and pleadings available on record and considered the arguments of both the sides.
 - 5.1. This Bench is of the view that, there exists a dispute between the parties which was communicated by the Corporate Debtor to the Operational Creditor vide letter dated 20.03.2020 which was prior to the issuance of Demand Notice dated 13.06.2020 and the issues raised in such letter requires adjudication to decide whether any sum is payable or not? This Bench does not have power to do so, and its jurisdiction to deal with such matter u/s 9 is precluded by existence of prior dispute in relation to debt claimed in the application.

5.2. The Hon'ble Supreme Court in *Mobilox Innovations Private Limited vs. Kirusa Software Private Limited* held that, in the event there is a pre-existing dispute between the parties, an Application under Section 9 of the Code would have to be rejected.

6. In view of the above, we find that the present case is fit for dismissal under Section 9(5)(ii)(d) read with Section 8(2)(a) and Section 5(6) of the Insolvency and Bankruptcy Code, 2016 in view of pre-existing dispute between the parties with respect to the purported claims. Hence, the present case requires adjudication which is beyond the powers granted to us to adjudicate a petition filed under sec. 9 of the code and deserves to be dismissed.

ORDER

7. The petition bearing C.P. (IB) No. 1375/MB/C-IV/2020 filed by Shree Kurmdas Industries ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Twentyone Sugars Limited ("the Corporate Debtor"), is **Dismissed**.
8. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
28.04.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)