



IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
COURT-V

Item No.-201
IB-418/ND/2020

IN THE MATTER OF:

Singla Fabrics {Through its Proprietor, Vinod Kumar}
Vs.

....Applicant

Aaryany Creations Pvt. Ltd.

.....Respondent

SECTION

U/s 9 IBC

Order delivered on 04.08.2023

CORAM:

SHRI P.S.N PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets. CP IB No.
418/ND/2020 stands **admitted.**

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(P.S.N PRASAD)
MEMBER (J)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-V, NEW DELHI**

IB NO. 418/(ND)/2020

An Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

M/s Singla Fabrics

Through its Proprietor, Mr. Vinod Kumar
Office At- X-3852, Gali No. 13, Shanti Mohala,
Gandhi Nagar, Delhi-110031

...Operational Creditor

Versus

M/s Aaryany Creations Pvt. Ltd.

B-94, First Floor, Kalra House,
Jain Park, Main Matiala Road,
Uttam Nagar, Delhi-110059

...Corporate Debtor

Order Delivered on: 04.08.2023

CORAM:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Appearances (through Video Conferencing/physical hearing)

For the Applicant: Mr. Amarendra Kumar Dubey, Adv.

For the Respondent: Ms. Purti Gupta, Ms. Heena, Advs.



O R D E R

PER: SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

- 1.** This is a Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. Vinod Kumar, Proprietor of **M/s Singla Fabrics (*‘Operational Creditor’*)** duly authorized for initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against **M/s Aaryany Creations Private Limited (*‘Corporate Debtor’*)**.
- 2.** **M/s Singla Fabrics** (Operational Creditor) is a proprietorship entity owned by Mr. Vinod Kumar, having GST No. 07AANPK7153M1Z5, having its office at X-3852, Gali No. 13, Shanti Mohola, Gandhi Nagar, Delhi-110031. **M/s Aaryany Creations Private Limited** (Corporate Debtor) is a company registered under the Companies Act, 1956 [CIN-U18109DL2009PTC193865], having its registered office at Plot No. 94, 3rd Floor, Pocket 10, Dwarka Sector 13, New Delhi, South West, Delhi-110078, India. The Corporate Debtor has Authorized Share Capital of Rs. 25,00,000 (Twenty-Five Lacs) and Paid-Up Share Capital of Rs 25,00,000 (Twenty-Five Lacs).
- 3.** The present Petition was filed on 10.01.2020 before this Adjudicating Authority by Mr. Vinod Kumar, the Proprietor of the Operational Creditor’s entity, duly authorized to initiate Corporate Insolvency Resolution Process (***‘CIRP’***) proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘Code’***). The total amount claimed is Rs 1,13,20,703 (Rupees One Crore Thirteen Lakhs Twenty Thousand Seven Hundred and Three) which is inclusive of the interest calculated at the rate of 12 % p.a. The principal amount is stated to be Rs. 74,72,075/- (Rupees Seventy-Four Lacs Seventy-Two Thousand



Seventy-Five). The date of default is recurring and the latest default occurred after the sending of demand notice dated 25.11.2019 by the Operational Creditor.

4. Submissions by the Ld. Counsel appearing on behalf of the Operational Creditor.

- a) That the Operational Creditor is engaged in the wholesale trading of cotton fabrics and started trading with the Corporate Debtor in cotton fabrics in the Financial Year 2012-13. The Corporate Debtor frequently used to place order for cotton fabrics with the Operational Creditor and the Operational Creditor supplied the goods as per the order placed.
- b) That the Corporate Debtor made the last payment of Rs. 25,000 (Twenty-Five Thousand) on 01.05.2019 and thereafter no payment was made. Hence, the Operational Creditor sent a notice to the Corporate Debtor in the month of July 2019 but no payment or reply was received by the Operational Creditor.
- c) That a legal notice dated 15.10.2019 was sent by the Operational Creditor to the Corporate Debtor. The Corporate Debtor replied to the same dated 01.11.2019, however, failed to give any proper explanation to the Operational Creditor for not making the payment.
- d) That the Operational Creditor replied and refuted the facts of the reply to the legal notice sent by the Corporate Debtor and also explained the claims made in the earlier legal notice dated 15.10.2019 and also explained the reason for difference in the earlier claimed account.



- e) That a demand notice dated 25.11.2019 under Section 8 of the Code was sent to the Corporate Debtor via speed post and also via e-mail on 29.11.2019. The demand notice sent via speed post was returned back.
- f) That the Corporate Debtor replied to the demand notice on 03.12.2019, whereby they refused to accept the pendency of any dues as claimed by the Operational Creditor. That as per the account record maintained by the Operational Creditor from the Financial Year 2012-13 till Financial Year 2019-20, the total sale to the Corporate Debtor is of Rs. 1,94,95,224 (One Crore Ninety-Four Lacs Ninety-Five Thousand Two Hundred and Twenty-Four) and the total amount that has been received by the Operational Creditor is Rs. 1,20,23,149 (One Crore Twenty Lacs Twenty-Three Thousand One Hundred and Forty-Nine).
- g) That as per the account record, the total amount which the Corporate Debtor defaulted is of Rs. 74,72,075 (Seventy-Four Lacs Seventy-Two Thousand Seventy-Five) and that the Corporate Debtor has disclosed the false amount which is not based upon any documentary evidence and no such document/record was produced in reply of the demand notice sent by the Operational Creditor under Section 8 of the Code.
- h) That the Corporate Debtor failed to produce any documents regarding existence of a dispute and also the record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute. That merely sensing a notice by the Corporate Debtor claiming the dispute is not suffice to claim a dispute under the Code.



- i) Therefore, the Operational Creditor has filed the present application seeking relief for the initiation of the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

5. Submission by the Learned Counsel appearing on behalf of the Corporate Debtor

- a) That the Corporate Debtor falls under the category of Micro, Small & Medium Enterprises and is involved in manufacturing and exporting a wide variety of women clothing.
- b) That the Corporate Debtor is engaged in business transactions with the Operational Creditor since the year 2012-13, whereby the Operational Creditor used to supply surplus cloth material ('goods') to the Corporate Debtor.
- c) That the Operational Creditor raised time to time invoices, which were cleared by the Corporate Debtor within stipulated time. That during the ongoing sale and purchase of cloth material, the Corporate Debtor received certain goods which failed to meet the desired quality standards. Hence, quality issues were raised by the Corporate Debtor, which were left unresolved by the Operational Creditor.
- d) That subsequently, the Corporate Debtor started receiving customer complaints regarding the inferior quality of textile material, which were brought into the knowledge of the Operational Creditor
- e) That the Operational Creditor issued a legal notice dated 15.10.2019 to the Corporate Debtor and sought clearance of alleged dues, which dues had already been cleared by the



Corporate Debtor but failed to produce an attested copy of the record of electronic transfer of the same. Further, vide communication dated 01.11.2019, the Corporate Debtor had raised quality issues in goods and raised certain Debit Notes for the purpose of quality rejections and returns. Hence, there exists pre-existing disputes in the matter which has occurred prior to the issuance of demand notice under Section 8 of the Code.

- f) That the Operational Creditor has deliberately concealed that he is a trader of export surplus fabrics, having no assurance of quality of fabrics. That in view of the poor-quality goods supplied by the Operational Creditor, the Corporate Debtor suffered huge financial losses and also huge intangible loss of goodwill and reputation in the market.
- g) That the Operational Creditor had deliberately stated incorrect facts and dates in the insolvency petition, in order to mislead this Adjudicating Authority. Further, the Operational Creditor has fabricated and raised several invoices throughout the period from 2013-18, in order to inflate the alleged outstanding amount.
- h) That no amount is due and payable to the Operational Creditor. Rather, the Corporate Debtor is entitled to receive a payment of Rs. 9,36,517 from the Operational Creditor. Hence, praying for the dismissal of Section 9 application.

Analysis & Findings

6. We have heard the Learned Counsels for the Operational Creditor and the Corporate Debtor, and further perused the averments made in the petition, reply filed by the Corporate Debtor, rejoinder filed by the Operational Creditor and written submissions presented by both the



Operational Creditor and the Corporate Debtor. Since the registered office of the respondent Corporate Debtor is in Delhi, this Tribunal is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

7. It is to be noted that the 'Operational Creditor' had sent a demand notice dated 25.11.2019 via speed post and 29.11.2019 via e-mail to the 'Corporate Debtor' under Section 8 of The Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. 1,13,20,703 (One Crore Thirteen Lacs Twenty Thousand Seven Hundred Three) which includes principal amount of Rupees 74,72,075/- (Seventy-Four Lacs Seventy-Two Thousand Seventy-Five) along with interest @ 12 % p.a. Further, the present petition meets the threshold limit of Rs. 1 Lac (as it was before the amendment dated 24.03.2020), as required by Section 4 of the Code.
8. In order to determine the admissibility of petition for initiating CIRP under Section 9 of the Code, the judgment of the Hon'ble Supreme Court in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** is to be taken into consideration. The said judgment makes it clear that in order to initiate CIRP proceedings under Section 9 of the Code, the Adjudicating Authority has to determine:
 - a) Whether there is an 'Operational Debt' exceeding Rs. 1 Lakh (1 Crore, in case the petition is filed after 24.03.2020) as defined under Section 4 of the IBC?



- b) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
 - c) 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 if the unpaid operational debt in relation to such dispute?
9. In the first instance, to determine that whether the said amount claimed by the Operational Creditor would fall under the ambit of 'Operational Debt', it is pertinent to analyze the definition of 'Operational Debt' as mentioned under Section 5(21) of The Insolvency and Bankruptcy Code, 2016. Under said Section, the 'Operational Debt' is defined as:

“A claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”.

While analyzing the present facts in the light of said Section 5(21), the Operational Creditor and the Corporate Debtor started trading in cotton fabrics in the Financial Year 2012-13, The Corporate Debtor used to place the order for cotton fabrics with the Operational Creditor from time to time and the Operational Creditor supplied the goods as per the order placed. It was asserted that the Corporate Debtor defaulted in making the payment to the Operational Creditor for which an action is preferred by the Operational Creditor before this Adjudicating Authority. The said Creditor claims the outstanding amount worth Rs. 1,13,20,703 (One Crore Thirteen Lacs Twenty Thousand Seven Hundred Three) from the Corporate Debtor.



Furthermore, on the appreciation of the transactional invoices and the bank statements of the Operational Creditor's account, as annexed by the Operational Creditor, and placed before us, we are of the view that there had been a transaction between the said parties and that the Operational Creditor has supplied goods to the Corporate Debtor for which the Corporate Debtor has defaulted in making the payment. Hence, this Adjudicating Authority is inclined towards believing that the debt claimed by the petitioner comes under the purview of 'Operational debt' within the meaning of Section 5(21) of the Code.

10. It is observed that as per the requirement of Section 8(2)(a) of the Code, the Corporate Debtor is required to bring into notice of the Operational Creditor, the existence of any dispute within 10 days of the receipt of the demand notice. In the present case, the Corporate Debtor has filed reply dated 03.12.2019 to the demand notice dated 25.11.2019 sent by the Operational creditor to the Corporate Debtor. Therefore, the Corporate Debtor has fulfilled the requirement of reply to demand notice within the stipulated period of 10 days of the receipt of demand notice as laid down under said Section 8(2)(a) of the Code.

11. It is also observed that the Corporate Debtor attempted to show that there is a 'Pre-existing dispute' between the parties which has arisen before the receipt of demand notice sent by the Operational Creditor to the Corporate Debtor. The Corporate Debtor claims that he has raised the dispute vide communication dated 01.11.2019 by claiming that *"Indeed, there have been several instances where you have delivered faulty fabric and poor-quality goods forcing Our Client to return the items and procure fresh cloth from other vendors. Your actions have directly led to losses for Our Client and damaged its business interests. In fact, Our Client requested you to refund the*



advance deposits due to Our Client including in relation to materials that were returned. However, you repeatedly refused. Our client was thus forced to stop placing orders on you as a result of your defective goods, poor service and refusal to repay the amount advanced by Our Client.” Therefore, it is pertinent to adjudicate upon by this Adjudicating Authority that whether there exists any ‘Pre-Existing Dispute’ as claimed by the Corporate Debtor.

12.The Corporate debtor relies on the **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353**, wherein, the Hon’ble Supreme Court has held that *“an application under Section 9 of the Code is not maintainable and ought to be rejected on there being a "pre-existing dispute". The Supreme Court had held that 'so long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the Adjudicating Authority has to reject the application”*.

13.On going through the records, it is clear that the Corporate Debtor, in his reply dated 01.11.2019, makes no admission as to the outstanding dues as claimed by the Operational Creditor. Rather, it is the contention of the Corporate Debtor that all the dues had been paid time to time by the Corporate Debtor. However, on the perusal of the communication between the parties via text messages, as enclosed for the perusal of this Adjudicating Authority, by the Operational Creditor, it is evident that the Corporate Debtor had made an admission as to the existence of dues and that all the debts will be cleared off by the said Corporate Debtor soon. Furthermore, it is pertinent to mention that before sending of Demand Notice dated 25.11.2019 by the Operational Creditor to the Corporate Debtor, a legal notice dated 07.10.2019 was sent by the Operational Creditor to the Corporate Debtor for the payment of outstanding dues. The



Corporate Debtor in his reply dated 01.11.2019 to the legal notice dated 07.10.2019 raised the dispute as to poor quality of goods and not before that. The said communication was also referred to by the Corporate Debtor in his reply to the demand notice sent by the Operational Creditor. It is observed that the Corporate Debtor raised issue as to the defective goods only after the receipt of the legal notice dated 07.10.2019 sent by the Operational Creditor. It is observed that no individual shall be entitled to approbate and reprobate at the same time. Furthermore, even if the said contention of the Corporate Debtor is taken into consideration, it is impractical on the part of the Corporate Debtor to continue placing the order for the defective goods with the same trader for 8 long years. Additionally, the Corporate Debtor had not enclosed any relevant document in support of its claim as to existence of a 'Pre-Existing Dispute'. We are of the view that mere sending of notice as to the existence of a dispute, without any substantiating document in the said regard, is mere a contention and cannot be acted upon. Therefore, the defence of the Corporate Debtor does not substantiate any plausible ground. Hence, the defence of the Corporate Debtor appears to be moonshine.

14. It is pertinent here to refer to the decision of Hon'ble Supreme Court in **Re. Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd (2018) 1 SCC 353**, wherein, the Hon'ble Supreme Court was pleased to hold, inter alia, as follows:

"It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or



the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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 defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence 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.”

In the present case, mere contention by the Corporate Debtor as to existence of any dispute does not create a plausible belief as to existence of any ‘Pre-existing dispute’. Therefore, it would be safe to conclude that there does not exist any ‘Pre-existing dispute’ in the present case.

15. Therefore, in view of the transactional invoices accompanied with bank statements of the Operational Creditor’s bank accounts, we are satisfied that there exists a debt. Furthermore, the bank account statements of the Operational Creditor and the ledger account of the Corporate Debtor signifies that there exists an Operational Debt and that the Corporate Debtor has defaulted in the payment of such debt. Hence, we are of the view that there is a *debt due and payable* and that there has been *default* on the part of the Corporate Debtor.

16. In view of the above facts and circumstances, we are satisfied that the present petition filed by the Operational Creditor fulfils the criteria laid down under the provisions of the Insolvency and Bankruptcy,



Code. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. In the light of the above facts and circumstances, it is, hereby ordered as follows: -

- a) The application bearing **CP (IB) No. 418/ND/2020** filed by, **Mr. Vinod Kumar, Proprietor of M/s Singla Fabrics**, the Operational Creditor, under Section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Aaryany Creations Pvt. Ltd.**, the Corporate Debtor, is **admitted**.
- b) The Applicant has not proposed the name of any IRP in Part-III of the application and leaves it at the discretion of this Adjudicating Authority. Therefore, Mr. Sumit Sharma, Registration Number IBBI/IPA-001/IP-P-02323/2020-2021/13513, Email: mail@sumitsharma.in is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code, subject to submission of a valid Authorization of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. It is pertinent to mention that the IRP has a valid AFA.
- c) We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Sumit Sharma, to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week



from the date of receipt of this order by the Operational Creditor. The amount, however, be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

- d) We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a)The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b)Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c)Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d)The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

- e) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code



(Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

- f) The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'.
- g) In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
- h) A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its



records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Sd/-
(Dr. Binod kumar Sinha)
Member (Technical)

Sd/-
(P.S.N. Prasad)
Member (Judicial)