

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI

IBA/1189/2019

(filed under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of M/s. Sri Lakshmi Saraswathi Impeex (India) Limited

M/s. Ramanuj Cotton Corporation (Coimbatore)
C/o. Mehala Carona Textiles Private Limited
23/1, 23/2 Alukkuli, Gobichettipalayam,
Erode – 638 453

... Petitioner/Operational Creditor

-vs-

M/s. Sri Lakshmi Saraswathi Impeex (India) Limited,
No.9, (Old No.8), Crescent Road,
Shenoy Nagar,
Chennai – 600 030

... Respondent / Corporate Debtor

Order Pronounced on 25th September, 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)
VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Petitioner : Pawan Jhabakh, Advocate
For Respondent : K. Jagannathan, Advocate



ORDER

(Hearing conducted through VC)

Per: SANJIV JAIN, MEMBER (JUDICIAL)

This application has been filed by the Operational Creditor viz.

Ramanuj Cotton Corporation (Coimbatore) against the Corporate Debtor



viz. *Sri Lakshmi Saraswathi Impeex (India) Limited* under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC', 2016) seeking thereof to initiate Corporate Insolvency Resolution Process as against the Corporate Debtor.

2. In the present Application, the Operational Creditor as on 26.09.2019 has claimed a sum of Rs.20,69,035/- (Rupees Twenty lakhs sixty-nine thousand and thirty-five only), as due and payable by the Corporate Debtor.

4. It is seen from the documents that the Operational Creditor has supplied yarns to the Corporate Debtor and in pursuance of the same, the Operational Creditor raised the following three invoices;

- (i) Invoice No. RCT/YN/0046 dated 14.04.2019 for a sum of Rs.4,24,042/-
- (ii) Invoice No. RCT/YN/0060 dated 17.04.2018 for a sum of Rs.11,40,300/-; and
- (iii) Invoice No. RCT/YN/0108 dated 30.04.2018 for a sum of Rs.11,46,743/-

The aggregate of the above three invoices amounts to Rs.27,11,085/-. It is stated that in the Ledger Statement, the Operational Creditor has given credit to a sum of Rs.9,50,250/- on account of return



of yarns. Therefore, the Corporate Debtor has to still pay a sum of Rs.17,60,835/-. The Operational Creditor has claimed interest @ 15% p.a. which comes to the tune of Rs.3,08,200/-.

5. It is stated that the Operational Creditor on 06.09.2019 served a Demand Notice upon the Corporate Debtor under Section 8 of IBC, 2016 demanding payment of a sum of Rs. 20,69,035/-. In reply to the same, the Corporate Debtor vide dated 20.06.2019 stated as follows;

Under instructions and authority from my client M/s Sri Lakshmi Saraswathi Impeex (India) Limited, having its registered office at No.9 (Old No.8)Crescent Road, Shenoy Nagar, Chennai, I send this reply notice to the Legal Notice dated 06.06.2019, under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules. 2016, sent by you and received by my client on 11.06.2019.

1] My client denies all the averments made by you in the Legal Notice dated 06 06.2019 except those averments that are specifically admitted by my client hereunder.

2] My client denies the averment that on account of the unpaid invoices my client is due and liable to pay Rs.17,60,835/- towards principal and Rs.3,08,200/- towards interest and the debt has fallen due since 17.04.2018.

3] My client, at the outset, disputes the quantum of the amount to be paid by it to you and there have been several oral communications between both the parties since the year 2017. But suppressing the above dispute, all of a sudden, you have chosen to send the above Legal Notice claiming Rs.20.69.035/-, which is completely unsustainable and fictitious.

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4] My client states that though my applicant purchased goods from you from the year 2017 onwards, there were certain disputes raised by my client regarding the quality of the goods supplied since they were not satisfactory. To this extent, there were several oral communications between you and my client and on several occasions my client made it categorically clear that only if both parties sit across for reconciliation the disputes could be resolved and thereafter appropriate payments would be released.

5] My client states that you have claimed in Column No.6 of your legal notice that as per agreed terms and plus interest applicable till the date of full payment as per invoice. But it is unilaterally mentioned in your Tax Invoice as "Interest will be charged 15% per annum if not paid within 7 days", it will not bind my client as at no point of time my client agreed to pay 15% interest per annum for the unpaid amount.

6] My client states that though you have mentioned about 3 invoices bearing various dates in Column No.7 of your legal notice, you have not provided with the dates on which goods were delivered and you have not provided with the Delivery Challans to substantiate the delivery of goods

7] My client states that if the amount of the 3 invoices given by you is totalled it comes to Rs.27,11,085/-, but you have mentioned in Column No.1 and Column No.2 that my client is due and liable to pay Rs.17,60,835/- towards principal. At this juncture it is pertinent to note that you neither furnished the Ledger Account nor stated how much amount did you from my client out of the total bill value of Rs.27,11,085/-, which makes your claim inappropriate

8] My client states that the amount demanded in your legal notice is seriously disputed by my client and therefore the same cannot be construed as a "default" committed by it as per Section 8 of the IBC 2016

9) My client states that since my client is genuinely disputing your claim and my client is ready to sit with you with account books and reconcile the dispute you are expected to withdraw your legal notice and desist from initiating corporate insolvency resolution

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process. Despite this Reply Notice disputing your claim if you proceed further to initiate proceedings for Corporate Insolvency Resolution Process, it is nothing but putting my client into insolvency resolution process prematurely for extraneous considerations and your proposed application to the National Company Law Tribunal may not be entertained at all.

Therefore, my client hereby call upon you to come to its office, sit with my client with account books and reconcile the dispute as early as possible and avoid filing any application seeking to initiate corporate insolvency resolution process as against my client and despite this Reply Notice if you approach National Company Law Tribunal, my client is ready to defend the same at your costs.

6. Thereafter, in reply to the application, the Corporate Debtor filed its counter and it is stated as under;

At the outset, the Respondent / Corporate Debtor denies all the averments in the subject IBA save those that have been specifically admitted by the Respondent herein. The Present IBA is nothing but a sheer abuse of law. The Respondent does not owe any monies to the Applicant. Not even a single document is filed by the Applicant to indicate that the Respondent has admitted any liability to the Applicant. The IBA is liable to be dismissed in limine.

(2) The Respondent Corporate Debtor most humbly states that the Respondent/Corporate Debtor placed order for yarn from the Applicant. The Applicant supplied yarn to the Respondent / Corporate Debtor in three tranches / batches and yarn in all three tranches were returned to the Applicant. Originally, vide invoice dated 14/04/2018, the Applicant supplied first batch of yarn to the Respondent, however, the quality of yarn was below average and therefore, the Respondent returned the yarn to the Applicant. Subsequently, on sensing the poor quality of the yarn, the Respondent/Corporate Debtor requested the Applicant to stop sending remaining 2 tranches of yarn. However, the Applicant insisted and sent the remaining two tranches of yarn as well, however, yarn was of poor quality and therefore, the Respondent / Corporate Debtor immediately returned the yarn to the Applicant.

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Page 23 of the Application is the ledge filed by the Applicant and in the Ledger, the Applicant has erroneously given credit of Rs. 9,50,250/- towards of Yarn Return instead of Rs. 27,11,085/-.

(3) The Respondent/Corporate Debtor most humbly states that admittedly. the Respondent / Corporate Debtor has return the yarn supplied by the Applicant to the Respondent / Corporate Debtor. Therefore, admittedly no liability subsists between the Applicant and Respondent on the date of the filing of the present IBA.

(4) The Respondent / Corporate Debtor most humbly states that the Applicant has suppressed aforementioned vital fact and filed the present IBA against the Respondent for the reason best known to it. The present IBA is nothing but a sheer abuse of law. It is very strange that till the issuance of the Demand Notice in Form 3, the Applicant has never claimed any monies from the Respondent and this itself makes its crystal clear that the Respondent does not owe any monies to the Applicant. Infact, the Applicant is liable to pay Rs. 4,24,042/- to the Respondent for having suffered loss on supply of inferior quality of yarn.

(5) The Respondent Corporate Debtor most humbly states that the Applicant has filed a fabricated ledger with false entries with an intent to initiate CIRP proceedings against the Respondent/Corporate Debtor. Infact the Respondent Corporate Debtor has sent a reply to Form 3 Demand Notice. The claim of the Applicant is seriously disputed by the Respondent/Corporate Debtor. The Claim presented by the Applicant is fictitious and unsustainable. IBC is not intended to be substitute to a recovery forum and whenever there is existence of real dispute, the IBC provisions cannot be invoked As stated supra, the admittedly, as on date of filing of IBA, the Respondent / Corporate Debtor does not owe any monies to the Applicant and thus, nothing survives in the IBA and same is liable to be dismissed in liminie.

In view of the aforesaid, the Respondents, most respectfully, pray that the Hon'ble National Company Law Tribunal be pleased to dismiss the IBA/1189/2019 with exemplary cost and thus render justice

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7. We have heard the submissions made by the Learned Counsel for the Applicant and Respondent and perused the records.

8. The main contention of the Respondent / Corporate Debtor is that the Applicant has erroneously given credit of Rs. 9,50,250/- towards of Yarn Return instead of Rs. 27,11,085/-. Further, the Operational Creditor has filed a fabricated ledger with false entries with an intent to initiate CIRP proceedings against the Corporate Debtor.

9. In the instant case, it is seen from the record that the Corporate Debtor has not placed any documents to show that the yarn returned by the Corporate Debtor is to the tune of Rs.27,11,085/-. The Corporate Debtor in reply to the Demand Notice has not made a whisper about the return of yarn and has only stated that there were certain oral communications made by the parties in relation to the quality of the yarn supplied by the Operational Creditor.

10. Further, from the record of proceedings dated 04.08.2023, it is seen that both the parties had requested time to reconcile their accounts, however it never fructified.

S. Venkatesh

[Signature]



11. In such a circumstance, we are of the view that the defense raised by the Corporate Debtor is a moonshine defense and has no legal legs to stand.

12. It is clear that the Corporate Debtor has committed the 'default' in repayment of 'operational debt' to the Operational Creditor.

13. It is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor cannot seek shelter under Section 10A of IBC, 2016. In relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1.00 Crore w.e.f 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, but in the present Application filed as on 16.09.2019, it is seen that the default arose well before the Notification effected in increasing the threshold limit from Rs.1.00 lakh to Rs.1.00 Crore as on and from 24.03.2020. The claim made in the Application exceeds a sum of Rs.1.00 lakh, therefore this Tribunal has the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor.



14. Taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Application, as filed by the Operational Creditor, is required to be **admitted** under Section 9(5) of the IBC, 2016. We order accordingly.

15. The Operational Creditor has not suggested the name of the Insolvency Resolution Professional in Part – III of the Application. Hence from the latest list provided by IBBI, we hereby appoint **MRS. S. THAMILVANI WITH REG. NO. IBBI/IPA-001/IPP00827/2017-2018/11412 (EMAIL ID:- VANITHAMIZH@YAHOO.CO.IN)** as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

16. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the



provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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 or a similar grant or right during moratorium period;

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17. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.

18. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

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- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

19. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

20. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the

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Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.



VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



SANJIV JAIN
MEMBER (JUDICIAL)

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