



THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-827/ND/2022

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF:

M/s. KHANUJA ENTERPRISES

Registered Office at: -

**143, Gorakhpur Gurudwara Road,
Jabalpur, Madhya Pradesh - 482001**

.....Operational Creditor

Versus

M/s. VLCC HEATH CARE LIMITED

Registered Office: -

**M-14, Greater Kailash- II
Commercial Complex New Delhi – 110048**

..... Corporate Debtor

Delivered on: - 02.11.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

**Appearances:**

Operational Creditor : Ms. Pallavi Tikariha, Advocate

Corporate Debtor : Mr. Pranav Sapra, Advocate

ORDER

Per: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

1. The present application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s. Khanuja Enterprises is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s. VLCC Health Care Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Applicant Company, is a Proprietorship firm and a registered MSME engaged in the business of rental and leasing activities and Corporate Debtor is a limited company engaged in the business of manufacturing health care and beauty products.

b) The Corporate Debtor has entered into a 'Lease Agreement' and 'Infrastructure and Facility Agreement' for the supply of service of premises on rent for which the Operational Creditor raised multiple invoices in favour of Corporate Debtor.



c) In accordance with terms and conditions of the agreement executed between the parties, the Operational Creditor has rendered the rental services for which invoices were raised amounting to Rs. 2,14,16,567/-. The Corporate Debtor has made part payment of Rs. 47,46,402/- only. The outstanding liability of principal amount of Rs. 1,66,70,165/- is due and payable by the Corporate Debtor.

d) It is further averred that, the Operational Creditor herein issued a Demand Notice dated 29.08.2022 for Rs. 2,15,49,705/- (Rupees Two Crores Fifteen Lakh Forty Nine Thousand Seven Hundred Five only) to the Corporate Debtor under the provisions of section – 8 of the Insolvency and Bankruptcy Code, 2016, which was duly served upon the Corporate Debtor and the Corporate Debtor vide letter dated 03.09.2022 replied to the demand notice.

3. Per contra, Corporate debtor has raised following contentions: -

I. There are pre-existing disputes between the parties, which the Operational Creditor seeks to side-step by filing the instant Application under Section – 9 of the code. It is further averred by the Corporate Debtor that, the existence of pre-existing dispute is evident from a series of emails sent by Corporate Debtor to the Operational Creditor.

II. The Present Application filed under Section – 9 of the code fails to pass the pecuniary threshold of Rs. 1 crore, and hence not maintainable as the present Application does not meet the threshold limit of the Application filed under Section – 9 of IBC, 2016, In order to cross the threshold the Operational Creditor has included and added the outstanding balance amount out of the 'Infrastructure and Facility Management Agreement' dated 06.06.2018.



III. The Operational Creditor has also levied interest, calculated interest @ 3 times the bank rate of RBI compounded with monthly interest till realisation of the entire amount which is not tenable in the eyes of law.

4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the fact that the Applicant and the Corporate Debtor have entered into a 'Lease Agreement' and 'Infrastructure and Facility Agreement' for the supply of service of premises on rent for which the Operational Creditor raised multiple invoices. The Operational Creditor has rendered the rental services for which invoices were raised amounting to Rs. 2,14,16,567/-. The Corporate Debtor has made some part payment of Rs. 47,46,402/- only. However, as on date, the payments towards the remaining invoices stands due.

6. The Corporate Debtor submitted that, there are pre-existing disputes between the parties. The Corporate Debtor relied upon an e-mail dated 31.03.2022. The relevant extract is reproduced below for reference: -

Dear Mr. Khanuja,

Since you have given various ledgers that was too after more than a year and not in proper formats it was very tough to reconcile the ledgers but after a huge exercise by VLCC accounts team the ledger could be reconciled now and attached here with complete clarity. Also it seems that your accounts have shown some unnecessary entries in your books e.g. one entry of 77.29 lakhs is coming with narration "Proforma invoice" which no one knows what is this. Even you do not know what is this as you have never tried to revert on queries from our team regarding this entry. Similarly, you have booked some entry of Rs.



11,48,543/- with narration "interest" which is also absolutely wrong and denied by us as neither you nor us is aware what type of interest is this. Our team is in continuous follow up with you for reconciliation of accounts but you never let us know what type of entry is this.

The above-mentioned e-mail was sent by the Corporate Debtor to the Operational Creditor and highlighted the issue of wrong entries in the ledger account. Further, one entry of Rs 77.29 lakhs with the narration 'Proforma Invoice' has been mentioned in the worksheet Order. We have perused the Work Order Sheet attached by the Operational Creditor carefully and observed that the opening balance as on 01.04.2021 was Rs. 12,40,624/- and out of nowhere entry number 11 for Rs. 77,29,000/- is entered and remarked as Service was completed on 31.07.2019 and proforma invoice raised on 01.04.2022. There is no answer as why there was a delay of 3 years in raising the invoices. It also proves that, the Operational Creditor has failed to maintain a proper books of accounts. The Corporate Debtor also requested to The OC get all the entries corrected and confirm the balance but Operational Creditor failed to do so. Such acts of delay raised a suspicion and establishes that the Applicant has made frivolous entries only to cross the threshold limit. The above mentioned e-mail was sent prior to the demand notice dated 29.08.2022. Hence, we hold that there is a pre-existing dispute pending in between the Operational Creditor and the Corporate Debtor.

7. It is vehemently argued by the Ld. Counsel appearing for Corporate Debtor that, in order to overcome the threshold limit the Operational Creditor has



added the outstanding amount arising allegedly out of Infrastructure and Facility Management Agreement. The Operational Creditor has placed on record Computation Sheet wherein, a sum of Rs. 1,32,68,994/- qua the Agreement dated 06.06.2018 for Amritsar Franchise and Rs. 12,76,989/- for Ludhiana Franchise. We have perused the documents available on record but both alleged agreements are not filed along with the Application.

8. As regards to the third issue, the Operational Creditor has calculated a sum of Rs. 48,79,540/- as interest @ 3 times more than the bank rate of RBI compounded with monthly interest which is not tenable in the eyes of law. It is pertinent at this stage to refer Section – 15 of MSMED Act, 2006 which states that the liability of the buyer is to make payment within 45 days of the service provided and Section – 16 states the date from interest is payable same is reproduced below for reference: -

“Where any buyer fails to make payment of the amount to the supplier, as required under Section 15, the buyer shall, notwithstanding anything contain in any agreement between the buyer and supplier or in any law for the time being in force, be liable to pay any compound interest with monthly rests to the supplier on debt amount from the appointed day or, as case may be, from the date immediately following the date agreed upon, at 3 times of the bank rate notified by the reserved bank.”

9. The Operational Creditor has placed on record a true copy of Udyam Registration Certificate wherein the Operational Creditor registered itself as MSME on 16.07.2022. The Applicant has placed on record various invoices and all the invoices were issued prior to the date of registration of MSME i.e.,
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16.07.2022. Thus, on the date of issuing of these invoices the Operational Creditor was not registered as MSME. Further, neither in the work orders nor in the invoices there exist any clause or condition about the interest on delayed payment. Thus, we are of the considered view that the interest calculated by the Operational Creditor @ 3 times more than the bank rate of RBI compounded with monthly interest is not tenable in the eyes of law nor in the eyes of facts.

10. It is pertinent at this stage to refer the decision of Hon'ble Supreme Court given in ***M/s. Vaishno Enterprises vs. Hamilton Medical AG & Anr. CIVIL APPEAL NO.1892 OF 2022.*** The relevant paragraph of the above mentioned judgement is reproduced below for reference: -

“8.2 t is not in dispute that the contract/agreement between the appellant and the respondent has been executed on 24.08.2020. Therefore, the laws of India applicable at the time of contract/agreement shall be applicable and therefore the parties shall be governed by the laws of India prevailing/applicable at the time when the contract was executed. It is admitted position that the date on which a contract/agreement was executed i.e. on 24.08.2020 the appellant was not registered MSME. Considering the relevant provisions of the MSME Act more particularly Section 2(n) read with Section 8 of the MSME Act, the provisions of the MSME Act shall be applicable in case of supplier who has filed a memorandum with the authority referred to in sub-section (1) of Section 8. Therefore, the supplier has to be a micro or small enterprise registered as MSME, registered with any of the authority mentioned in sub-section (1) of Section 8 and Section 2(n) of the MSME Act. It is admitted position that in the present case the appellant is registered as MSME only on 28.08.2020. Therefore, when the contract was entered into the appellant was not MSME and therefore the parties would not be governed by the MSME Act and the



parties shall be governed by the laws of India applicable and/or prevailing at the time of execution of the contract.”

11. Thus, after considering all the facts and circumstances of the case, we observe that the Operational Debt being the principal amount outstanding, is below the pecuniary threshold limit of Rs. 1 Crore as envisaged under Section 4 of the Code, 2016.

12. Accordingly, the present application filed under Section 9 of the Code, 2016 being non-maintainable stands ***dismissed***. No orders to costs.

SD/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

SD/-

**BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**