

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
Company Petition (IB) No.2166/ND/2019**

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

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

AND

In the matter of :

M/s Shanti Chemtrade Pvt. Ltd.

Having correspondence at:

B-400, 1st floor,

Nehru Ground, N.I.T.,

Faridabad-121001 (Haryana)

And Registered Office At:

House No. 152, Sector-31,

Faridabad-121002 (Haryana)

.....Applicant/Operational Creditor

VERSUS

M/s S.K. Dyeing and Finishing Mills Pvt. Ltd.

Having Office/Regd. Office:

D-1010, New Friends Colony,

New Delhi-110065

.....Respondent/Corporate Debtor

ORDER DELIVERED ON : 16.01.2020

CORAM :

Mr. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Ms. Saroj Rajware, Hon'ble Member (Technical)

**For the Applicant/ Operational Creditor: Adv. M. P. Sahay and
Adv. Eicha Shukla**

For the Respondent/ Corporate Debtor: CA Mr. Shantanu.

As Per: Sh. Abni Ranjan Kumar Sinha, Member, Judicial

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. "**M/s Shanti Chemtrade Pvt. Ltd.**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**M/s S.K. Dyeing and Finishing Mills Pvt. Ltd.**".
2. The Applicant/Operational creditor supplied goods being chemicals etc. in the regular and routine course of business to the corporate debtor.
3. As per averments, in all these transactions, huge amount of money fell due from the side of the Respondent/ Corporate debtor.
4. The total amount due and claimed on corporate debtor is the sum of Rs. 13,74,030/- with interest to be added @ 12% P.A. w.e.f the date of the unpaid and un-cleared invoices towards goods supplied.
5. Demand Notice under Form-3 was sent towards defaulted amount of Rs. 13,74,030/- (Approx.) with interest to be added @ 12% P.A. w.e.f. the dates of the unpaid and un-cleared invoices towards goods supplied. The demand notice was delivered upon the Corporate debtor on 06.05.2019.
6. Corporate debtor has sent the reply to the demand notice dated 13.05.2019 wherein the corporate debtor disputed the claimed amount to be erroneous.



7. The Corporate Debtor in its reply made the following submissions:

- a. There are erroneous entries made in the Ledger account, Balance Sheet, Bank Statements and Bills/ Invoices/ Vouchers and Correspondences.
- b. The debit notes were not deliberately omitted from the statement of accounts.
- c. The debit notes were raised and communicated to the Applicant/ Operational Creditor vide letter dated 26.06.2018 and 31.03.2019 with their respective courier receipts.
- d. The debit notes were raised due to the quality dispute as when the delivery of the goods was checked at the factory gate of the Corporate Debtor. The same were found incorrect.
- e. The Corporate debtor tried to resolve these issues through the Authorised Representatives of both the parties but the same was not resolved.
- f. The closing balances of the parties as on 31.03.2018 is different too.

8. We have heard the Ld. Counsel for both the parties and perused the averments made in the application as well as reply on behalf of the Corporate Debtor.

9. Ld. Counsel for the applicant in course of his arguments submitted that although after receiving the demand notice, Corporate Debtor sent a reply but nowhere in the reply he has raised any pre-existing disputes and he further submitted that in the reply, the Corporate Debtor has admitted that the default regarding the payment of

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amount mentioned in Part 4 of the application. He further submitted that in the reply, the Corporate Debtor has taken the plea of the quality of the goods but that has not been raised prior to the delivery of demand notice and for the first time in the reply this has been raised. He further submitted that he also filed the statement of ledger account in support of their claim.

10. On the other hand Ld. Counsel for the Corporate Debtor submitted that he has already issued the debit notes vide letter dated 26.06.2018 and 31.03.2019, by which he raised the quality dispute and he further submitted that there is a pre-existing disputes and so the petition is not liable to be admitted.
11. In light of the submissions made on behalf of the parties, we have gone through the averments made in the application, reply filed by the Corporate Debtor and the documents attached with the application as well as reply and we find that the demand notice was delivered to the Corporate Debtor on 04.05.2019 and vide letter dated 13.05.2019, he sent the reply. When we have gone through the reply, which is available at page No. 22 to 25 of the application filed by the applicant then we find that there is no specific averment in the reply on the basis of which, it can be said that there is a pre-existing dispute in between the parties prior to the delivery of the demand notice, of course, there is a statement regarding the defaulted amount mentioned in the application but nowhere it is referred in the reply to the demand notice for that a dispute has been raised by the Corporate Debtor.
12. At this juncture, we have again gone through the reply filed on behalf of the Corporate Debtor, and we find at Para 3 and 4, Corporate Debtor has referred a letter dated 26.06.2018 and 30.03.2019, on which, according to the Corporate Debtor, there are the debit notes sent by him to the Operational Creditor and on the basis of that debit



notes, the Corporate Debtor claims that he raised the quality disputes regarding the goods supplied to him by the Operational Creditor. Therefore, we have gone through the documents, which is annexed along with reply and we find, of course, in Para 3, Corporate Debtor has raised about the two debit notes but he alongwith his reply enclosed altogether 8 debit notes and on the basis of that Corporate Debtor claimed that he has deducted the amount against the quality of the goods. Even if debit notes are relied upon as per the contention of the Corporate Debtor and the amount of debt recalculated after deducting the amount from the account of the Operational Creditor then total amount on the basis of debit notes enclosed with the reply is of Rs. 3,81,482/- whereas the claim amount is 13,74,030/- with interest.

13. On the basis of aforesaid discussions, we find that by filing the reply the Corporate Debtor has raised about the dispute regarding the total amount of default but nowhere the Corporate Debtor denied this fact that the entire amount as claimed by the Operational Creditor has been paid or disputed, regarding quality of goods, it had not been raised by the Corporate Debtor prior to the delivery of demand notice. So we are unable to accept the contention of the Ld. Counsel for the Corporate Debtor that on the basis of debit notes, the Corporate Debtor has raised the dispute regarding the quality of the goods rather on the bottom of the every debit note, it is mentioned 'for rate difference due to low degree of caustic. Now coming to the next submissions of the applicant, on the basis of documents available on record, and for the reason discussed in aforementioned paras, we find that after receiving the demand notice, the Corporate Debtor has failed to raise the disputes or show the documents in respect to amount claimed by the Operational Creditor, has already been paid by the Corporate Debtor.



14. At this juncture, we would also like to consider these facts to trigger the provision under Section 9 that Operational Creditor is required to establish the following facts.

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any;

15. In light of the aforesaid facts when we shall consider the case in hand, then we find that the demand notice has been delivered and in pursuant to that the Corporate Debtor sent the reply but for the reason discussed in the aforementioned paras, we are of the considered view that Corporate Debtor has failed to establish the pre-existing dispute and the amount claimed by the Operational Creditor has been paid by the Corporate Debtor. So far the dispute regarding the total amount is concerned, in order to trigger the proceeding under Section 9 of the IBC, the Corporate Debtor is required to establish that there is default or not, it is immaterial whether the amount claimed by the Operational Creditor is in dispute or not. In our opinion, it is for IRP/RP to decide what are the actual amount which the Operational Creditor is entitled to get from the Corporate Debtor. Here in the case, we find if the total amount deducted by the Corporate Debtor is accepted then there is a default of more than 1 lakh rupees and Operational Creditor is entitled to invoke the jurisdiction of adjudicating authority in under Section 9 of the IBC.

16. Considering the circumstances this Adjudicating Authority is inclined to admit this petition and initiate CIRP of the Respondent.

Accordingly, this petition is admitted. A moratorium in terms of Section 14 of the Insolvency & Bankruptcy Code, 2016 shall come into effect forthwith staying:-

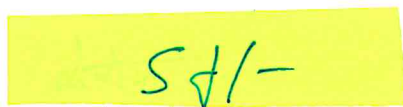
- (a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) *transferring, encumbering, alienating or disposing of by the corporate debt or 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 Securitisation 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.*

Further:

- (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.*
- (3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- (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."

17. The Operational Creditor has not proposed the name of any IRP. Accordingly, we appoint Mr. Rajeev Lochan, an Insolvency Professional, registration no. IBBI/IPA-002/IP-N00606/2018-19/11885 email- csrajeevlochan@gmail.com duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17, 18, 20 and 21 and shall file his report before the Adjudicating Authority.
18. The Operational Creditor is directed to deposit a sum of Rs. 2 lakhs to meet the immediate expenses of IRP. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.
19. Copy of the order be sent to both the parties as well as to the IRP.
20. To come up on for further consideration.



Saroj Rajware

Member (Technical)



Abni Ranjan Kumar Sinha

Member (Judicial)