

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No. 222/Chd/Chd/2020

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016 read with
Rule 6 of the Insolvency and
Bankruptcy Rules, 2016**

In the matter of:

M/s INP Computer Technology Pvt. Ltd.

At A-Wing, 504, Sanjar Enclave,
Opposite Milap Theatre, S.V. Road,
Kandivali (W), Mumbai

...Petitioner-Operational Creditor

Vs.

Chawla Digital Systems Pvt. Limited

having its registered office at
SCO 175-76, Chandigarh Sector 17-C,
Chandigarh-1600017
CIN No. U52392CH2005PTC028174

...Respondent-Corporate Debtor

Judgment delivered on: 19.07.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- : Mr. Sammer D Hatle, Advocate
Operational Creditor

For the Respondent- 1). Ms. Mehak Sood, Advocate
Corporate Debtor 2). Ms. Niharika Sood, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by M/s INP Computer Technology Pvt. Ltd. (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of Chawla Digital Systems Pvt. Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Chawla Digital Systems Pvt. Limited, is a Company incorporated on 31.03.2005 under the provisions of Companies Act, 1956 with CIN No. U52392CH2005PTC028174 with its registered office at Chandigarh, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-G.

3. The facts of the case, briefly, as stated in the petition are that The corporate debtor is a company engaged in retailer a qualitative range of industrial products, computer servers, mini laptop, barcode printers. The operational creditor is a world-class manufacturer in supply of the inclined, computer parts, processor and related server-based computer technology. From 25 June 2018, corporate debtor started raising purchase orders to operational creditor and subsequently, operational creditor then started the supply of material at location specified by corporate debtor and raised invoices dated 17.07.2019, 31.07.2018, 06.08.2018 and 19.02.2019 for

amounts- Rs. 14,16,000/-, Rs. 18,88,000, Rs. 4,53,120/-, Rs. 2,26,560/- along with delivery challans. Despite several reminders the corporate debtor failed to pay the payment. The corporate debtor intimated operational creditor to supply 42 devices in replacement of the delivered goods stating that they are inappropriate as per High Court tender requirement and promised to return back the earlier delivered machines. The operational creditor replied by replacing the same and delivered the required machines to the corporate debtor. The operational creditor reminded the corporate debtor to deliver the earlier goods for which the corporate debtor replied that these are in the custody of the High Court and once these are leased from the custody will be returned back. The corporate debtor requested an operational creditor to raise invoices for 11 machines out of 42 machines delivered and promised to return back 31 machines. However, the corporate debtor failed to clear the outstanding invoices.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 31,45,805/- (Rupees Thirty One Lakh Forty Five Thousand Eight Hundred Five Only) (Rs.28,06,720/- principal and Rs. 3,36,806/- interest). The default occurred on 26.04.2019 i.e. the date on which part payment was made by the corporate debtor. Copy of Purchase Order (Annexure-A), Invoice (Annexure-B), E-way Bills (Annexure-C), Audited Ledger Statements (Annexure-D), E-mail communications (Annexure-E) are attached with the main petition.

5. A demand notice is stated to be issued by the operational creditor on 01.11.2019 and the same has been delivered to the corporate

debtor vide registered post as the delivery report and postal receipts are attached at Annexure-F of the petition. The corporate debtor did not reply to the demand notice till date.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Dairy No. 02227/1 dated 17.02.2021. The corporate debtor has filed a reply vide diary No.02227/2 dated 28.09.2021, wherein it is stated that the dispute between the parties was existing before issuance of demand notice by the operational creditor. The operational creditor had issued purchase order on 25.05.2018 for 898 thin client model number i1000BTS which was to be delivered by 30.06.2018 and payment was to be made after the notarised agreements were sent to HARTRON, Punjab and Haryana High Court and Chawla digital. On 19.11.2019 corporate debtor conveyed to the operational creditor that a comprehensive list of the complaints are received from various courts across Punjab and Haryana regarding products delivered by operational creditors. The registrar general of Punjab and Haryana High Court sent a notice dated 02.11.2019 for a meeting to discuss the non-functioning of the display boards installed in the courtrooms. The operational creditor issued demand notice to the corporate debtor on 1.11.2019 even prior to the above mentioned meeting held by High Court on 02.11.2019 where non-functioning of DBS software was discussed with corporate debtor. The products supplied by the operational creditor were of low quality and were substandard in nature. Every time they were put to use by the end consumers, that is District courts and High Court, the system

showed errors, making it difficult to function in proper manner. The invoice number 000117/2018-19 issued on 17.07.2018 for Rs.14,16,000 for 150 unit was paid by the corporate debtor by RTGS in three cheques. Against the invoice number 000146/2018-19 issued on 31.07.2018 corporate debtor paid Rs.15,10,400 for 160 out of 200 units via cheque number 007100 and 40 damaged units would return to the operational creditor. The invoice number 000552/2018-19 issued on 19.02.2019 for Rs.2,26,560 was paid by a corporate debtor via cheque number 008793 through RTGS for delivery of 24 units. The corporate debtor made payments to the tune of Rs.60,00,800 to the operational creditor in accordance with the purchase order issued on 25.05.2018.

7. The rejoinder was filed by way of affidavit by the operational creditor vide Dairy No. 02227/10 dated 04/02/2022 wherein it is stated that respondent was communicating with company since May, 2018 and raised purchase order dated 25.05.2018 bearing reference number CDSPL/IK/617, certain terms and conditions were laid down by corporate debtor. Email dated 29.05.2018 was sent to amend the terms and conditions pertaining to the supply of material specified in the PO date 25.05.2018. Vide email dated 15.06.2018, agreed to the above amended terms/conditions and respondent issued to PDCs dated 21.09.21018 in favour of INP Computer Technology Private Limited, one cheque bearing number 008678, for Rs.14,16,000 second cheque bearing number 008680 for Rs.15,10,400. However, the cheques got dishonoured vide memo dated 21.12.2018 with reason stating payment stopped by the drawer. The petitioner supplied the goods as per the

specifications as mentioned in the purchase order dated 25.05.2018 and E-way bill dated 31.07.2018, 19.02.2019, 17.07.2018, 31.07.2018 and 06.08.2018 related to the delivered material. The respondent made the part-payment of Rs.3 lakhs. The Service Level Agreement has absolutely no binding effect on the payment. Vide email dated 9.10.2018, the petitioner reconfirmed a service support to the respondent subject to receiving due payment. The petitioners supplied model i1000BT which possess higher configuration than the model i1000BTS having 8GB storage and above. Vide email dated 17.07.2018 addressed to corporate debtor specifically calling upon to return the machines of model i1000BT. Email dated 19.07.2018, the corporate debtor was an under obligation to furnish PDC against 100 units which were supplied by the petitioner. Vide email dated 18.10.2018 the corporate debtor addressed the email stating that 24 units were found to be faulty and defective. Corporate Debtor made a part payment against the transaction for Rs.9,26,560 through RTGS against two post dated cheques issued by corporate debtor which were dishonoured on 21.12.2018. After non-compliance of issuance of PDCs on part of the corporate debtor, the petitioner issued the original warranty certificate against 350 machines which were supplied upon the corporate debtor. The issues were never raised prior to the addressing of the demand notice. The petitioner installed 898 units at the designated locations as per directions laid down in the tender, without any payment from the corporate debtor.

8. The short written submissions have been filed by the petitioner vide Diary No.02227/11 dated 13.07.2022 and by the respondent corporate debtor vide diary No.02227/12 dated 05.09.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice dated 01.11.2019 was properly served. A demand notice dated 01.11.2019 was delivered to the corporate debtor vide registered post as the delivery report and postal receipts are attached at Annexure-F of the petition. The corporate debtor did not reply to the demand notice till date. Therefore, the demand notice was duly served upon the corporate debtor.

11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 01.11.2019 attached as (Annexure F) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default 26.04.2019 i.e. the date on which part payment was made by the corporate debtor. This application was filed vide Diary No. 1806 on 05.03.2020. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit by learned counsel for the operational creditor that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt. However, vide emails dated 26.06.2018, 08.10.2018 and 19.11.2019, it is evident that parties were in dispute regarding the non-performance of the

services and quality of goods supplied by the operational creditor. The dispute existed between the parties much before the issuance of the demand notice dated 01.11.2019. The reliance can be placed upon the judgment of Hon'ble Supreme Court **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353**

wherein it was held that:

“40. 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.

43.We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).

45. Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.

(Emphasis Supplied)

The definition of a 'dispute' as provided in the Insolvency and Bankruptcy Code, 2016 is as follows-

*"5. Definitions. – In this Part, unless the context otherwise requires, –
(6) "dispute" includes a suit or arbitration proceedings relating to–
(a) the existence of the amount of debt;
(b) the quality of goods or service; or
(c) the breach of a representation or warranty;"*

In the case in hand there are allegations qua quality of the goods and services. Although, it is contended by learned counsel for petitioner that if material was defective, then it should have been returned but goods are being used by concerned Courts. However, this contention of learned counsel for petitioner is devoid of legal force because if there is any pre-existing dispute then the petition under Section 9 of Insolvency and Bankruptcy Code, 2016 cannot be admitted to recover any amount due towards petitioner. It is a settled proposition that the National Company Law Tribunal is not a recovery forum. If at all, there is any dispute between the parties regarding the said claim then the parties are at liberty to approach the appropriate Forum.

Therefore, it can be concluded that there was a pre-existing dispute between the parties.

13. As a sequel to the above discussion and the facts as well as circumstances since there is a pre-existing dispute between the parties regarding the amount claimed by the petitioner, the petition is liable to be rejected, being not maintainable in terms of Section 9 of IBC, 2016. The

petition consequently stands dismissed, however, with no order as to costs.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 19, 2023
PKA/TB