

IN THE NATIONAL COMPANY LAW TRIBUNAL

MUMBAI BENCH, COURT-I

CP (IB) 1851/MB /2019

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016

In the matter of

KB Board Mills (LLP).

...Operational Creditor/Applicant

Versus

Jainam Exports Private Limited.

204/B Bajsons Industrial Estate, Andheri Chakala
Road, Andheri(E), Opp. Maharaja Restaurant,
Mumbai-400099

...Corporate Debtor/Respondent

Order Delivered on 08.04.2024

Coram:

Sh. Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor : Mr. Amit Agrawal, Adv

For the Corporate Debtor : Mr. Arun Saxena, Adv

ORDER

Per: Justice V.G Bisht, (Retd).

1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **K B Board Mills LLP**. (“**Operational Creditor**”), seeking to initiate Corporate Insolvency Resolution Process

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 1851/MB/2019

(CIRP) against **Jainam Exports Pvt Ltd. ("Corporate Debtor ")**.

2. The Corporate Debtor is incorporated on 09.09.1996 under the Companies Act, 1956. The Corporate Debtor's registered office is situated at 204/B Bajsons Industrial Estate, Andheri Chakala Road, Andheri(E), Opp. Maharaja Restaurant, Mumbai-400099. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Present Petition is filed by the Operational Creditor as total Amount of unpaid Operational Debt is an amount of Rs.12,14,118/- including 24% P.a of interest which is outstanding since February 2018. The debt became due from time to time and lastly arisen after last Tax Invoice No.KB/1590/18-19 was raised on dated 10.11.2018 which became due on 25.12.2018.

Submissions made by the Operational creditor:

4. The Operational Creditor is manufacturer of Kraft papers Cones, paper Cone pipes and paper tubes.
5. The Operational creditor submits that Corporate Debtor approached Applicant for purchasing goods specified in the purchase orders. The Applicant sold the goods and raised tax invoices.
6. The Operational Creditor submits that the Corporate Debtor placed purchase orders and the Operational Creditor supplied goods amounting to approximately Rs.1.10 Crore over a period of just 19 months i.e from April 2017 till November 2018 as reflected in the ledger statement of Corporate debtor. Initially the payments were timely remitted however eventually respondent started delaying the remittance of payments in respect of the goods sold.
7. The Operational Creditor further submits that on 06.08.2018, the petitioner wrote an email thereby calling upon the Corporate Debtor to

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1**

CP (IB) No. 1851/MB/2019

remit unpaid debt of INR 17,41,817/- along with the interest amount of Rs.2,36,093/- for delay caused. In the said email the Corporate Debtor at no point of time bothered to issue the purported any dispute when all correspondences were conveniently communicated through email.

8. The Operational Creditor contends that no dispute/objection was raised by the Corporate Debtor even after issuance of reminder mails dated 28.05.2018 and 06.08.2018, on contrary authorized representatives of Corporate Debtor approached the Operational Creditor and asserted amicably terms to resolve the matter without resorting to legal action and even placed purchase orders for buying additional goods of the same quality as is produced and supplied by the Operational Creditor since beginning of the trade transactions.
9. The Operational Creditor submits list of other documents attached to the application in order to prove the existence of operational Debt and the amount in default:

Sr.No	Date	Tax Invoice No.
01.	20.02.2018	KB/1956/17-18
02.	29.03.2018	KB/2172/17-18
03.	30.09.2018	KB/1280/18-19
04.	10.11.2018	KB/1590/18-19
	Total=	12,14,118/- Inclusive of Interest@ 24.P.a

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1**

CP (IB) No. 1851/MB/2019

10. The Corporate Debtor denies in its written statement on the point of raising of frivolous, spurious and hypothetical dispute in respect of quality of goods
11. The Operational Creditor submits that the demand notice under section 8 of the code was firstly served on 07.08. 2018. After serving the demand notice the Corporate Debtor assured the payment of entire outstanding amount. After several reminders and request, the Corporate Debtor did not pay any heed and therefore the Operational Creditor issued another demand notice on 30.03.2019 under section 8 of the code.
12. The Operational creditor states that the respondent have duly rebutted to the statutory notices dated 07.08.2018 and 30.03.2019 by way of separate replies thereby purporting claiming there is dispute in the quality of goods is something which Operational Creditor denies.
13. The Operational Creditor Submits that there is a fabricated letter dated 14.03.2018, which was issued by Corporate Debtor in response to the 1st Statutory notice dated 07.08.2018. In support thereof , the respondent has annexed fabricated letter signed and endorsed by authorized signatory of Gopal Krishna Papers Pvt. Ltd(GKPPL) , named Kaithiresan Sornavel (Director of Corporate debtor- Jainam Export). The Operational Creditor disputes that the said letter is signed and endorsed by some random authorized signatory bearing no name and thus the letter is absolutely different when compared in the letter.
14. The Operational Creditor submits that interestingly, the registered address of Corporate Debtor and Gopal Krishna Papers Pvt. Ltd (GKPPL) is same and from the purported letter dated 14.03.2018, which implies that both the companies are sister concern entities and function from the same office whereas director of Corporate Debtor

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1**

CP (IB) No. 1851/MB/2019

named Kaithiresan Sornavel is authorized signatory of consignor company i.e GKPPL. thus, falling within the domain of “related party”.

15. The Operational Creditor submits that they have taken all the efforts to settle the matter even after filing this Application before this Tribunal. Operational Creditor to showcase readiness and willingness to resolve the issue, the Operational Creditor had written a letter dated 02.05.2019. The Operational Creditor wrote an email on 25.02.2020 to Corporate Debtor requesting them to return entire consignment of the goods that was received against the alleged disputed invoices.
16. The above email dated 25.02.2020 by the operational Creditor which was formally opposed by the Corporate Debtor via email dated 18.03.2020 where the Corporate Debtor is completely silent on returning the goods which were purportedly claimed to be defective. In rebuttal to the email dated 18.03.2020, the Operational Creditor issued another email to Corporate Debtor on 11.04.2020 further requested to return the defective goods but the email was left unanswered by the Corporate Debtor.
17. The Operational Creditor emphasizes on the fact that they have made all possible efforts to amicably resolve the subject matter in compliance of the direction issued by this Tribunal but on the Contrary the Corporate Debtor is making deliberate attempt to raise frivolous, spurious and hypothetical dispute in the quality of goods that was never in existence till the filing of instant petition. Lastly the Corporate Debtor didn't bother to return the goods and since then 5 years have elapsed however the outstanding debt remains unsettled till date.

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 1851/MB/2019

Submissions made by the Corporate Debtor:

18. The Corporate Debtor at the very outset denies all the averment made by the Operational Creditor. Also prays for the dismissal of this petition before this tribunal.
19. The Corporate Debtor takes a plea that the Operational Creditor has failed to comply with the provisions of Section 9 (3) (b) which is mandatory.
20. That the Petition is not supported by any resolution in favour of Mr. Dinesh Kochar to authorize him to represent the petitioner before this Tribunal also certificate of constitution of LLP or LLP agreement has not been placed on record therefore the Corporate Debtor on this ground seeks dismissal of this Petition.
21. The Corporate Debtor submits that they have issued copy of letter of dispute dated 14.03.2018 which was sent to the Operational Creditor, where in that letter the Corporate debtor informed that they have grievances on goods supplied about the quality of the product in respect to 2 invoices, one is the invoice number 1830 dated 30.01.2018 and invoice reference number 1956 dated 20.02.2018.
22. The Corporate Debtor submits that they have replied to the demand notice dated 30.03.2019 sent by the operational creditor on 13.04.2019 which clearly shows that there is pre-existing dispute with respect to the inferior quality of the consignment supplied to the Corporate Debtor.
23. That the Corporate Debtor has never agreed or given consent for the interest charged by the Petitioner at the rate of 24% in the Application which is not maintainable for the following reasons which is pleaded by the Corporate Debtor:

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1**

CP (IB) No. 1851/MB/2019

- That the interest rate is not mentioned on the purchase order issued by the Operational creditor against which tax invoice were issued.
- That the Invoice issued by the Petitioner itself have contradictory reference as mode of term of payment mentioned is 45 days and interest to be charged after 30 days. The calculation of interest which is mentioned in the application is incorrect because as per the tax invoice interest will be charged after 30 days from the date of issuance of invoice whereas the interest charged by the Operational Creditor is after 45 days from issuance of invoice. Therefore, the amount claimed in the Application is incorrect and the same Application is incomplete.
- The Corporate Debtor submits that Applicant has not issued any invoice and no GST was deducted while charging any interest from the Corporate Debtor and the Operational Creditor has not complied with the provision of section 15(2) (d) of the GST, 2016. Therefore it is evident that interest was never due and payable. Hence on the basis of the above averments the amount of interest is not legally recoverable.
- That the ledger account annexed by the Operational Creditor in the Application shows the same balance as shown in the ledger account of the Respondent Company in which disputed invoice are to be adjusted therefore, if two invoices dated 30.01.2018 bearing invoice number 1830 for the amount of Rs.5,90,833/- and invoice dated 20.02.2018 bearing invoice number 1956 for the amount Rs.5,83,234/- are to be adjusted then the outstanding balance will be Rs.40,051/- therefore the petition under section 9 will not be maintainable as the amount doesn't meet with the threshold of Rs.1 Lakh Rupees.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1**

CP (IB) No. 1851/MB/2019

Findings:

24. Heard learned Counsel for both the parties. Perused the records.
25. The Operational Creditor issued a Demand Notice Form 4 rule 5 on 07.08.2018 and 30.03.2019, to the Corporate Debtor for total amount of Rs. **12,14,118** and interest was calculated @ 24% P.a .The total number of invoices raised by the Operational Creditor is two (4).
26. According to the demand the Operational Creditor has from time to time supplied goods and raised tax invoices to the Corporate Debtor. But the Corporate Debtor have failed to make the payments of the balance outstanding amount which is unpaid till date. It is trite law that the default date for each invoice is to be taken into consideration and limitation with reference to each date of default is to be ascertained for the purpose of Limitation aspect. The invoices were raised by the Operational Creditor:

Sr.No	Date	Tax Invoice No.
01.	20.02.2018	KB/1956/17-18
02.	29.03.2018	KB/2172/17-18
03.	30.09.2018	KB/1280/18-19
04.	10.11.2018	KB/1590/18-19
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IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI COURT-1

CP (IB) No. 1851/MB/2019

27. We note that the Operational Creditor didn't file the affidavit of compliance under section 9(3)(b) of this code. The applicant was granted an opportunity to cure the defect vide daily order dated 02.01.2024, to file and place on record affidavit under section 9(3)(b) and also to serve upon the Corporate Debtor. However, we notice that an affidavit under 9(3)(b) is not on record, despite opportunity having been granted to Operational Creditor to cure the defect in terms of section proviso to section 9(5) of the code.
28. Needless to say, that Section 9 Petition is not maintainable if Affidavit Under Section 9(3)(B) is not filed. Accordingly, the Petition is dismissed.

Order

- a. In the above circumstances the petition bearing **CP(IB) 1851/MB/C-I/2019** filed by **K.B. Board Mills LLP**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **Jainem Exports Private Limited**, the Corporate Debtor, is dismissed.

Sd/-

Sd/-

Sh. PRABHAT KUMAR
Member (Technical)

Shivang

JUSTICE V.G BISHT
Member (Judicial)