

NATIONAL COMPANY LAW TRIBUNAL

CHANDIGARH BENCH (COURT-I)

Company Petition No. (IB) 43/CHD/PB/2019 & IA No. 108/2022

IN THE MATTER OF:

M/s. Accurate Auto Products Pvt. Ltd

...Applicant

VERSUS

M/s Osha Tools Pvt. Ltd.

... Respondent

AND IN THE MATTER OF IA No. 1318/2023: -

M/s. Accurate Auto Products Pvt. Ltd

Having its registered address at
31, 1st floor, A Block, DDA Market, Sec-16,
Rohini New Delhi- 110085.

Having its business address at Plot No-73,
Kadipur Industrial Area, Pataudi Road,
Gurgaon, Haryana- 122001

...Applicant

VERSUS

M/s Osha Tools Pvt. Ltd.

Having its registered address at
41-B, Udham Singh Nagar, Ludhiana,
Punjab, - 141001.

Having its business address at
E-444(A), Phase VI, Focal Point,
Ludhiana, Punjab – 141010

...Respondent

Section: 9 and 60(5) of the IBC, 2016

Judgement Delivered on: 01.03.2024

CORAM

SH. HARNAM SINGH THAKUR, HON'BLE MEMBER (JUDICIAL)

SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)

PRESENT:

For Applicant : Mr. Sudhir Kumar Dash, PCA

For Respondent : Sr. Advocate Anand Chhibbar

Judgement

PER: SH. L. N. GUPTA, M(T) & SH. HARNAM SINGH THAKUR, M(J)

M/s Accurate Auto Products Pvt. Ltd (for brevity, hereinafter referred to as the '**Applicant**') has filed the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Osha Tools Pvt. Ltd (for brevity, hereinafter referred to as the '**Respondent**').

2. The Respondent namely, M/s Osha Tools Pvt. Ltd is a Company incorporated on 22.12.1993 with CIN U28939PB1993PTC014043 under the provisions of the Companies Act, 1956 having its registered office at 41-B, Udham Singh Nagar, Ludhiana, Punjab, - 141001 & business address: E-444(A), Phase VI, Focal Point, Ludhiana, Punjab – 141010, which is situated within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.50,00,000/- and the Paid- up Share Capital is Rs. 29,15,000/- as per the Master Data annexed.

3. The Applicant is a Company registered under the provisions of the Companies Act 1956, and is a manufacturer of auto tools and spare parts. As per submissions, it was agreed between the Applicant and the Respondent that certain machinery being used to make a specific tool for Omax Auto Ltd would be purchased by the Respondent. Accordingly, the Applicant supplied the machinery to the Respondent in May 2014 and raised the following invoices total amounting to Rs. 8,18,286.02/-:

- i. Invoice no. 000159 dated 03.05.2014 for Rs. 6,07,532.40/-
- ii. Invoice no. 000160 dated 03.05.2014 for Rs. 67,953.62/-.
- iii. Invoice no. 000161 dated 03.05.2014 for Rs. 1,42,800/-

4. The particulars of the Operational Debt in terms of the total amount of default and the date of default are mentioned in Part IV of the application. The relevant scanned extracts are reproduced below:

| | | |
|---|--|--|
| 2 | <p>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DATES OF DEFAULT IN TABULAR FORM)</p> | <p>Rs. 10,33,394/- (principal amount of Rs. 6,50,726.77/- along with simple interest of 8% per annum)</p> <p>Date on which default occurred: 03.05.2014</p> |
|---|--|--|

Thus, as per Part IV of the application (ibid), the Applicant has claimed an unpaid Operational Debt of Rs.10,33,394/- (principal amount of Rs. 6,50,726.77/- along with simple interest of 8% per annum) and relied upon 03.05.2014 as the date of default.

5. It is stated by the Applicant that since the Respondent did not make the due payment of its operational debt, it issued a Demand Notice dated 04.06.2018 under Section 8 of IBC 2016, which was replied by the Respondent vide letter dated 12.06.2018. The Respondent tried to raise an illusionary dispute vide the said reply. The Applicant again sent a Demand Notice dated 26.11.2018, which was served to the Respondent at its registered address vide speed post. The Applicant has placed the affidavit under Section 9(3)(b) of IBC, 2016 (Pg. 58-60) stating that there was no pre-existing dispute between the parties but a fabricated dispute has been shown as an afterthought.

6. On issuance of notice, the Respondent filed its reply dated 09.07.2019 and has opposed the application mainly on the following grounds:

- i) Accurate Auto Product was supplying the components to Omax Auto Ltd. Accurate Auto Product was under financial burden & wanted to shut down business as they owed a lot of money to their suppliers running into Crores of Rupees.

The then MD Mr. Bipul Bedi had shifted to Canada without paying off his Suppliers and employees. So, on his behalf Mr. Bimal Bedi younger brother of the MD, Mr. Bipul Bedi tried to sell their defective dies & Tools to the Respondent. There are signatures of Mr. Bimal Bedi and not of Mr. Bipul Bedi on all the Bills.

- ii) It was decided that Applicant Company will send their person with the Tools and Dies and satisfy the Respondent as well as ultimate buyers with approval of samples, which they never did, even after several reminders and requests. The Applicant sent Dies of poor quality, which were not suitable for making the samples, for which the samples could not be approved by ultimate buyers. For the same, the dispute was also raised by the Respondent vide Letters of Respondent to the Applicant dated 18.06.2014; 21.06.2014 (Pg no 28 & 29 of reply) and E-mail dated 17.02.2016 (Pg no 17 of reply).
- iii) The respondent returned the tools after pre-intimation on account of substandard quality. In support of its contention, the respondent has placed on record the E-mail dated 10.12.14 (Pg no 43 & 44), Debit Note 17.01.2017 (Pg no 45) amounting to Rs. 6,51,027/- and Freight Slip dated 17.01.2017 (Pg no 46).

- iv) The Respondent has also made a part payment of Rs. 76,432.30/- on 14.12.2015 to the Applicant.
- v) The present application is not maintainable under the signature or the authority of the signing person on account of the fact that no resolution was passed to press the present application. Further, the company itself is a debtor to many and had no meeting to pass such a resolution after dated: 03.09.2018 (Annexure A-13) by authorizing the applicant to maintain the present application, therefore the present application is to be dismissed on this ground also.
- vi) The Ledger Account filed by the Applicant on Pg No. 54 in the application is not audited, and not even signed by the Applicant. Thus, cannot be taken as evidence.

7. Subsequently, the Applicant filed its rejoinder dated 07.02.2020 mainly stating the following:

- i) The allegations by the Respondent with regard to the Mr. Bipul Bedi are irrelevant to the present application for initiation of CIRP.
- ii) The Respondent had made a part payment of Rs.76,432.30 on 14.12.2015 to the Applicant and subsequently on

31.12.2015, it returned back a tool after almost 2 years of accepting and using the same. In order to ensure prompt payment of the machinery supplied to the Respondent, the Applicant agreed to accept the defective tool returned by the Respondent and credited the amount value of Rs.91,127/- regarding the machinery claimed to be in defect rendering the outstanding amount to be Rs.6,50,726.77/-.

iii) The Applicant has placed reliance upon the following two Judgments:

(i) **“Mobilox Innovations (P) Ltd. Vs. Kirusa Software (P) Ltd.”, AIR 2017 SC 4532** passed by Hon’ble Supreme Court wherein it is held that *the expression 'existence' has understood as: being real as opposed to appearance (Para 36). The expression 'genuine dispute' is one which requires an investigation. However, this does not mean that courts should accept any version of the CD which are inconsistent with the undisputed documents or a patently feeble argument or as assertion of facts unsupported by evidence (Para 37). The test is to see whether there is a plausible contention on the part of the CD which requires further investigation and that the dispute is not a patently feeble argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the*

chaff and reject spurious defence which is a mere bluster
(Para 40).

(ii) ***Pederson Consultants India Vs. Nitesh Estates Ltd.***
(Company Appeal (AT) (Insolvency) No. 720 of 2018)
passed by NCLT on 24.07.2019, wherein it was held that
merely because the CD has disputed the claim by
showing a counter claim, it cannot be held that there is
pre-existing of dispute. (Para 10 &12)

8. We have heard the parties and perused the pleadings on record including the written submissions filed by both parties. The Applicant has claimed a total debt of Rs.10,33,394/- (principal amount of Rs.6,50,726.77 along with simple interest @ 8% per annum). It has also contented that there was no pre-existing dispute and the E-mail dated 17.02.2016 sent by the respondent raising dispute is also not received and it is fabricated.

Per contra, the Respondent has submitted that the part-payment of Rs.76,432.30 was made to the respondent on 14.12.2015. Further, on 31.12.2015, the tools were returned after pre-intimation on account of substandard quality. In support of its contention the respondent has placed on record the Debit Note 17.01.2017 (Pg. 45) amounting Rs.6,51,027/-. Thus, claimed that the full principal amount stands paid as they have returned the goods of equal amount. Furthermore,

the respondent referred to the Letters issued by Respondent to the Applicant dated 18.06.2014; 21.06.2014 and E-mail dated 17.02.2016 claiming a pre-existing dispute between the parties prior to the issuance of demand notice. The Ledger Account filed by the Applicant on Pg No. 54 in the application is not audited, not even signed by the Applicant. Thus, cannot be taken as evidence.

9. At the outset, we would like to examine whether the present Application is within limitation period. As we have already noted in the present case, the date of default is 03.05.2014 and the Respondent has made the part payment of debt on 14.12.2015. We consider these facts in the following manner to arrive at conclusion whether the present Application is within limitation period :

| <u>S.No.</u> | Document/Fact | Date | Period of Limitation till |
|---------------------|---|-------------|----------------------------------|
| 1. | Part IV of Application (Particulars of Financial Debt): Date of default/NPA | 03.05.2014 | 02.05.2017 |
| 2. | Part payment (para 6, page 12 of Application) | 14.12.2015 | 13.12.2018 |
| 3. | Date of filing of Present Application | | 12.12.2018 |

Thus, we find that the present petition is well within the limitation period.

10. Now, we examine the contention of the Respondent regarding the part-payment of Rs.76,432.30 and return of tools, we refer to Para 6 of the application, which reads thus:

6. That the Corporate Debtor also made a part payment of Rs. 76,432.30/- on 14.12.2015 to the Applicant/Operational Creditor and subsequently on 31.12.2015, returned a tool back after almost 2 years of accepting and using the same. In order to ensure prompt payment of the machinery supplied to the Corporate Debtor, the Applicant/Operational Creditor agreed to accept the defective tool raised by the Corporate Debtor and credited the amount value of Rs. 91,127/- regarding the machinery claimed to be in defect rendering the outstanding amount to be Rs. 6,50,726.77/- (Rupees Six Lakh Fifty Thousand Seven Hundred and Twenty Six Rupees and seventy seven Paisa Only).

Thus, from the aforesaid averment of the Applicant, we find that the Applicant itself has admitted the fact of part-payment of Rs.76,432.30, and return of tools (with credit value of Rs. 6,50,726.77 only) made by the Respondent. Further, it has stated that the outstanding amount is Rs. 6,50,726.77 only.

11. The Respondent in its reply as well as during the course of hearing further contended that (i) the present application is not maintainable under the signature or the authority of the signing

person on account of the fact that no resolution was passed to press the present application as the Company was not in operation since 2013-14; and (ii) the Ledger Account filed by the Applicant on Pg No. 54 in the application is not audited, and not even signed by the Applicant. Thus, it cannot be taken as evidence.

12. In order to examine this contention, we first refer to the Master Data of the Applicant Company available on the MCA website in the public domain, which reads thus:

Ministry Of Corporate Affairs

Date : 28-02-2024 1:05:5 pm

Company Information

| | |
|---|--|
| CIN | U34300DL2002PTC115382 |
| Company Name | ACCURATE AUTO PRODUCTS PRIVATE LIMITED |
| ROC Name | ROC Delhi |
| Registration Number | 115382 |
| Date of Incorporation | 16/05/2002 |
| Email Id | *****angwan@gmail.com |
| Registered Address | 31, 1st Floor, A Block, DDA Market, Sector 16, Rohini, Delhi, Delhi, India, 110085 |
| Address at which the books of account are to be maintained | PLOT NO-73, KADIPUR INDUSTRIAL AREA, PATAUDI ROAD, GURGAON, Haryana, India, 122001 |
| Listed in Stock Exchange(s) (Y/N) | No |
| Category of Company | Company limited by shares |
| Subcategory of the Company | Non-government company |
| Class of Company | Private |
| ACTIVE compliance | ACTIVE Compliant |
| Authorised Capital (Rs) | 1,75,00,000 |
| Paid up Capital (Rs) | 1,74,13,900 |
| Date of last AGM | 30/09/2023 |
| Date of Balance Sheet | 31/03/2023 |
| Company Status | Active |
| Jurisdiction | |
| ROC (name and office) | ROC Delhi |
| RD (name and Region) | RD, Northern Region |

Index of Charges

| Sr. No | SRN | Charge Id | Charge Holder Name | Date of Creation | Date of Modification | Date of Satisfaction | Amount | Address | Whether charge registered by other entity | Asset Holder Name |
|--------|-----------|-----------|--------------------|------------------|----------------------|----------------------|----------|--|---|-------------------|
| 1 | B10744290 | 10280900 | Bank of India | 28/03/2011 | - | - | 7,00,000 | Old Railway Road,Gurgaon,Gurgaon, Haryana, India, 122001 | No | - |

| Sr. No | SRN | Charge Id | Charge Holder Name | Date of Creation | Date of Modification | Date of Satisfaction | Amount | Address | Whether charge registered by other entity | Asset Holder Name |
|--------|-----------|-----------|--------------------|------------------|----------------------|----------------------|-------------|---|---|-------------------|
| 2 | A96098587 | 10243471 | Bank of India | 18/08/2010 | - | - | 4,31,000 | Old Railway Road,Gurgaon,Gurgaon, Haryana, India, 122001 | No | - |
| 3 | A27909597 | 10077596 | Bank of India | 15/11/2007 | - | - | 8,50,000 | Old Railway Road,Gurgaon, Haryana, India, 122001 | No | - |
| 4 | B17495938 | 80039049 | Bank of India | 08/01/2004 | 30/06/2011 | - | 70,00,000 | Gurgaon Branch,Old Railway Road,Gurgaon, Haryana, India, 122001 | No | - |
| 5 | B17496183 | 80039050 | Bank of India | 22/12/2002 | 30/06/2011 | - | 1,80,00,000 | Gurgaon Branch,Old Railway Road,Gurgaon, Haryana, India, 122001 | No | - |

Director/Signatory Details

| Sr. No | DIN/PAN | Name | Designation | Date of Appointment | Cessation Date | Signatory |
|--------|----------|------------|---------------------|---------------------|----------------|-----------|
| 1 | 00590779 | BIPUL BEDI | Director | 31/03/2016 | - | Yes |
| 2 | 00592414 | BIMAL BEDI | Additional Director | 10/01/2022 | - | Yes |

13. From the Master Data of the Applicant Company (ibid), we find that the Applicant Company is active and has held AGM on 30.09.2023 and filed its Balance Sheet with ROC till 03/2023. Further, though alleged, the Respondent has failed to provide any proof of Director Mr. Bipul Bedi having shifted to Canada. Hence, based on material available on record, we do not find the contention of the Respondent that “no resolution was passed to press the present application” free from doubts.

14. Now, we would like to examine the next contention of the respondent that since the Ledger Account (filed by the Applicant) is not the audited one and not signed by the Applicant, it cannot be taken as evidence. In order to examine this contention, we refer to the document “Ledger Account” placed by the Applicant at Pg. 54 of its application, which reads thus:

ACCURATE AUTO PRODUCTS PVT. LTD. 2014-2015
 LEDGER ACCOUNT
 OSHA TOOLS PVT. LTD.
 E-444 (A)\$# PHASE VIS# FOCAL POINT
 LUDHIANA
 1-APR-2014 TO 31-MAR-2015

| DATE | PARTICULARS | VCH TYPE | VCH NO. | DEBIT | CREDIT | CLOSING BALNCE |
|--------------|-------------------|----------|---------|----------|--------|----------------|
| 03.05.2014 | SALE MISC ISS @2% | SALE | 159 | 607532.4 | | 607532.4 Dr |
| 03.05.2014 | SALE MISC ISS @2% | SALE | 160 | 67953.62 | | 675486.02 Dr |
| 03.05.2014 | SALE MISC ISS @2% | SALE | 161 | 142800 | | 818286.02 Dr |
| TOTAL | | | | 818286 | 0 | 818286.02 Dr |

TRUE COPY
 ADVOCATE

On perusal of the document (ibid), we find that the Ledger Account of the CD relied upon by the Applicant as “document/record/evidence of default” in part V of its application is neither signed by any Auditor nor Director and nor authenticated by the Applicant. There is no acknowledgement by Respondent too. In view of such a position, in our considered view, the aforesaid Ledger Account of the CD maintained by the Applicant cannot be taken as evidence of default.

15. Now, we examine the last contention of the respondent claiming the pre-existing dispute between the parties. We have already noted in para 5 above that the Applicant had issued two demand notices on 04.06.2018 and 26.11.2018. The Respondent has pleaded that it had issued Letters to the Applicant dated 18.06.2014; 21.06.2014 and E-mail dated 17.02.2016 (placed by the Respondent in reply on Pg. No.28, 29 & 17) raising the dispute. Therefore, we refer to these documents, which read thus:

OSHA TOOLS (P) LTD.

E-444(A), Phase-VI, Focal Point, Ludhiana-141 010. Ph.: 0181-2674653, 2677358

M/s Accurate Auto Products Pvt Ltd.
Plot No. 73, Kadipur Industrial Area,
Pataudi Road,
Gurgaon- 122001
Haryana.

DT: 18/6/2014

Dear Mr Bedi,

We have made so many Phone calls to you and send many mails regarding the defective quality of Dies & Tools sent by you. It is a matter of great concern that you have sent the Dies & Tools which are totally worn out and defective. These are not the Tools which you had shown to us.

It was decided in the meeting (MOM enclosed) at OAL that you shall send your representative to start the Production of the said components. But despite our repeated reminders nobody has come so far.

Kindly depute someone to come to our factory and help us to make samples from the Dies.

Kindly expedite the same as the delay in supply of material is affecting the Production Line of Omax Auto Ltd. We are receiving many reminders from OAL to start the supplies but we are helpless to do so due to the DEFECTIVE Dies and TOOLS supplied by you.

Kindly do the needful at the earliest.

Regards,
For Osha Tools Pvt Ltd


DIRECTOR
Encl: copy of MOM

XXXX

XXXX

XXXX

XXXX

OMAX AUTOS LIMITED

5-13 Gurgaon-Sohna Road, Village Tikri, Gurgaon-122 001, Haryana (INDIA)
Phones : 91-124-4343000 (30 Lines), Fax : 91-124-2219169
E-mail : info@omaxauto.com

OMAX

Cc to : to worthy M.D OAL.

M/s Accurate Auto Products Pvt Ltd.
Plot No. 73, Kadipur Industrial Area,
Pataudi Road,
Gurgaon- 122001
Haryana.

Date: 21st June, 2014

Dear Mr Bimal Bedi,

We are very sorry to say that we have lost lot of business and incurred heavy Losses due to your fault.

Please recall the meeting you had at our Corporate Office in which it was decided that you shall deliver Dies & Tools of Bkt Sidestand and Bracket Cushion of KTR, AAD & CDN model to M/s OTPL.

We were trying to help you come out of the financial mess so that you were able to pay to your Creditors who were seeking their payment ever since Mr Bipul Bedi MD left for Canada after shutting down the Factory.

But we are sorry to say that you have breached the Contract and the Trust by supplying inferior quality of Dies & Tools. Not only did OTPL suffered losses, we also incurred huge losses due to your fault.

So it is suggested that you pay the cost of raw material and sampling incurred by OTPL and also pay the cost of Loss of Production incurred by us.

Yours Sincerely,
For Omax Auto Ltd.

Handwritten signature
DIRECTOR

XXXX

XXXX

XXXX

XXXX



osha tools <oshatooldh@gmail.com>

Re: List of Machine

osha tools <oshatooldh@gmail.com>
 To: osha tools <oshatooldh@gmail.com>

----- Forwarded message -----

From: Accurate Auto Products Pvt. Ltd. <accurateturner@yahoo.com>
 Date: Tue, Feb 4, 2014 at 11:06 AM
 Subject: Re: List of Machine
 To: osha tools <oshatooldh@gmail.com>

Dear Sir,

Pls find attached file for your ref.

Warm Regards
 Bimal Bedi
 Accurate Auto Products Pvt Ltd.Gurgaon.

From: osha tools <oshatooldh@gmail.com>
 To: Accurate Auto Products Pvt. Ltd. <accurateturner@yahoo.com>
 Sent: wednesday, 17 February 2016 5:33 PM
 Subject: Re: Return of Dies

Dear Bediji,

I am very sorry to say that despite my repeated reminders to you you are not honouring your commitment.

Please refer to our meeting 3/4/14 wherein you were to supply goods to us and you took more than double the time to supply and we lost precious orders.

When you supplied, it was in worst condition.

Again in the meeting held at Corporate Office on 1/12/15 you assured to compensate our Losses and assured to take back the delivery of Dies and also depute Mr Satpal to visit us at Ludhiana.

You neither sent anyone to visit us nor took delivery of Dies and also did not accompany us to visit our end Customer Hero Honda.

Kindly honour your commitment and help us to run the Unit.

Regards,

Pankaj Sharma

[Quoted text hidden]

Thus, on perusal of the letters and E-mail (ibid), we find that the Respondent had raised dispute regarding the quality of Dies and Tools supplied by the Applicant as back as on 18.06.2014, 21.06.2014 & 17.02.2016 which are prior to the issuance of the Demand Notice under Section 8(1) of IBC 2016 on 04.06.2018 by the Applicant. **Thus, we find that there was a 'dispute' between the parties prior to the issuance of the demand notice.**

In this context, we refer to 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.**”*

(Emphasis Supplied)

16. Hence, there being the dispute persisting between the parties existing prior to the issuance of the Demand Notice, **the Application is misconceived and is accordingly, dismissed.**

17. However, nothing expressed herein shall be construed as an opinion in respect of the rights of parties to agitate before any other forum.

IA No. 108/2022

18. The IA No. 108/2022 has been filed by the Applicant seeking direction to the corporate debtor for submitting the affidavit under Section 65B of the Indian Evidence Act, 1872. Since, the IBC proceedings are of summary in nature and this Adjudicating Authority is not bound by the Indian Evidence Act and the fact that the reply

has been filed by the respondent by swearing in proper affidavit duly attested by notary, we do not see any merit in the prayer. **The IA is accordingly disposed of.**

Sd/-

(L. N. GUPTA)
MEMBER (T)

Sd/-

(HARNAM SINGH THAKUR)
MEMBER (J)