

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH- (Court No. 01)
KOLKATA**

C.P (IB) No. 313/KB/2020

*An application 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.*

In the matter of:

Neha Luharuwala proprietor of Neha Tech Industries

...Operational Creditor

Versus

Fireshield Engineers (India) Limited [CIN U30001WB2007PLC116920], having
registered office at 118/A, Chittaranjan Avenue, Kolkata – 700073.

...Corporate Debtor

Date of Hearing: 28.11.2022

Date of pronouncing the order: 03.01.2023

Coram:

Shri Rohit Kapoor : *Member (Judicial)*

Shri Balraj Joshi : *Member (Technical)*

Appearances (through Video Conferencing/Physical Hearing)

Mr. A. Kalavatiya, Adv. : *For the Operational Creditor*

Mr. Rishav Banerjee, Adv. : *For the Corporate Debtor*

Mr. Abhijit Chowdhary, Adv.

ORDER

Per Rohit Kapoor, Member (Judicial)

1. The Court convened *via* hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (***‘the Code’***) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Ms. Neha Luharuwala proprietor of Neha Tech Industries (***‘Operational Creditor’***), to initiation of Corporate Insolvency Resolution Process (***‘CIRP’***) against Fireshield Engineers (India) Limited(***‘Corporate Debtor’***).
3. The present Petition was filed on 27 January, 2020 before this Adjudicating Authority. The total amount claimed in default is Rs.40,67,031/- (Rupees Forty Lakh Sixty Seven Thousand Thirty One only), inclusive of interest calculated @18% p.a. from the date on which each invoice became due till date..
4. It is submitted in the Petition, Part – II that the authorised share capital of the Corporate Debtor is Rs.1,00,00,000/- (Rupees One Crore only) with paid up Capital as Rs.20,00,000/- (Rupees Twenty Lakh only). Part – IV of the Petition deals with the particulars of the Operational Debt.
5. ***Submissions by the Ld. Counsel appearing on behalf of Operational Creditor.***
 - 5.1 The Operational Creditor is engaged in the business of manufacturing of fire-fighting equipments(***‘Equipments’***). The Corporate Debtor approached the Operational Creditor for supply of the equipments.
 - 5.2 Subsequently, the Operational Creditor supplied the equipments to the Corporate Debtor and raised invoices upon delivery of such goods. Total equipments were supplied for a sum of Rs.26,67,930/- (Rupees Twenty Six Lakh Sixty Seven Thousand Nine Hundred Thirty only) with interest @18% per annum from the respective dates of invoices.

- 5.3 Despite sending several reminder emails(*Pages 67-81 of the Petition*), no response was received from the Corporate Debtor. Thereafter, Form – 4 dated 28 August, 2018 was sent by the Operational Creditor.
- 5.4 Since, the tracking report for Form – 4 could not be traced; The Operational Creditor sent a statutory demand notice dated 14 December, 2019(*Page 26 of the Petition*) under section 8 of the Code to the Corporate Debtor demanding payment of the outstanding dues. The same was delivered on 16 December, 2019 (*Page 54 of the Petition*).
- 6. *Submissions by the Ld. Counsel appearing on behalf of the Corporate Debtor***
- 6.1 The Petition has been signed by one N. kanodia, whereas, Ms. Neha Luharuwala is the sole proprietor of proprietorship firm Neha Tech Industries i.e., the Operational Creditor.
- 6.2 The Corporate Debtor by its letter dated 14 April, 2017 and 28 November, 2017 informed the Operational Creditor that the equipments provided by the Operational Creditor are of poor quality and defective. The Corporate Debtor also requested the Operational Creditor to lift the equipments(*Annexure B and C of the Reply*). However, the Operational Creditor took no appropriate steps. The Corporate Debtor also intimated to the local police requesting them to intervene in the matter, which was duly received by the local police station on 31 December, 2017(*Annexure D of the Reply*).
- 6.3 Several, falsely claimed notices dated 07 February, 2018, 28 August, 2018 and 14 December, 2019 was sent by the Operational Creditor to the Corporate Debtor. The Corporate Debtor through its advocate denied and disputed to all the notices of the Operational Creditor (*Annexure E, F and G of the Reply*). Thus, it is the case of pre-existing disputes between the parties.
- 6.4 Further, the notice dated 14 December, 2019 of the Operational Creditor is with respect to the invoices NTI/063/2016-17 dated 20 September, 2016, NTI/095/2016-17 dated 29 November, 2016, NTI/058/2016-17 dated 30

August, 2016, NTI/085/2016-17 dated 04 November, 2015 are ex-facie barred by limitation.

Analysis and Findings

7. Heard the Ld. Counsel appearing for the Financial Creditor and for the Corporate Debtor and perused the concerned documents annexed to the Petition.
8. This instant petition is alleged to be arising out of the outstanding dues claimed in the following invoices;

<i>Invoice Number</i>	<i>Invoice Date</i>	<i>Due Date</i>
NTI/058/2016-17	30.08.2016	30.08.2016
NTI/085/2016-17	04.11.2016	04.11.2016
NTI/063/2016-17	20.09.2016	20.09.2016
NTI/095/2016-17	29.11.2016	29.11.2016
NTI/107/2016-17	23.12.2016	23.12.2016
NTI/129/2016-17	04.02.2017	04.02.2017

9. On the basis of the invoices raised on 30 August 2016, 04 November 2016, 20 September 2016, 29 November 2016 and 23 December 2016, this Petition has been filed on **27 January, 2020**, which implies that the petition is ex-facie barred by limitation.
10. Further, with respect to the invoice dated 04 February, 2017. On 25 April, 2022, this Adjudicating Authority had raised a query regarding the goods supplied by the Operational Creditor to the Corporate Debtor in respect of invoice bearing no.NTI/129/2016-2017 dated 04 February, 2017. In pursuance of the said query, the Operational Creditor filed 'FORM-C', having serial no.19111716903098 dated 15 November, 2017, which was given by the Corporate Debtor to the Operational Creditor and was originally issued by the Directorate of Commercial Taxes West Bengal in respect of the invoice bearing no.NTI/129/2016-2017 dated 04 February, 2017 amounting to Rs.6,43,672/-.

11. However, be that as it may, from a bare perusal of the letters dated 14 April, 2017 (*Page 50 of the Reply*), 28 November, 2017 (*Page 51 of the Reply*), 23 February, 2018 (*Pages 24 - 29 of the Reply*), 11 September, 2018 (*Pages 39 - 44 of the Reply*) and 24 December, 2019 (*Pages 45 - 49 of the Reply*). It is forthcoming that several replies and letter were issued by the Corporate Debtor to the Operational Creditor, where in they have categorically stated that the equipments supplied by the Operational Creditor were of inferior quality. And many of their clients (i.e., the Corporate Debtors client) had raised a dispute regarding the sub-standard quality of the equipments. The same was intimated to the Operational Creditor, to which they assured to adjust the amount of Rs.2,00,000/- against the quality issue.
12. Further, the goods supplied by the Operational Creditor on 23 December, 2016 and 02 February, 2017 were highly defective. *Vide* letter dated 14 April, 2017 and 28 November, 2017, the Corporate Debtor requested the Operational Creditor to lift the defective instruments lying at the rented warehouse of the Corporate Debtor. On receiving no response or cooperation from the Operational Creditor, the Corporate Debtor intimated to the local police requesting them to intervene in the matter, which was duly received by the local police station on 31 December, 2017 (*Annexure D of the Reply*).
13. Coming to the plea of pre-existing dispute, we seek to rely on ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited***¹ where the Hon'ble Apex Court held that;
- “33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on nonpayment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with*

¹2017 (1) SCC onLine SC 353

Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2) (a)). What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.”

14. The Hon’ble Supreme Court in *Mobilox (Supra)* has observed that all that the Adjudicating Authority has to see at ‘the stage of Admission’ 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 or a moonshine defence unsupported by tangible materials/evidence.*
15. The facts and documents referred herein above, when seen on the basis of law laid down by the Hon’ble Supreme Court on pre-existing dispute, is not feeble or merely an assertions. The same is based on the documents referred above and the dispute existed prior to the demand notice issued by the Operational Creditor.
16. In view of the above, C.P (IB) No. 313/KB/2020 is *rejected*. Needless to say that the Operational Creditor is at liberty to resort to other remedies that may be available to it under any other law.
17. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

The order is pronounced on 03rd day of January, 2023

SA,LRA