

NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (Court-II)

(IB)-1029(ND)2020

IN THE MATTER OF:

**M/s Shree Jindal Soya Limited
18, Chander Lok Enclave, Pitampura
New Delhi-110034**

...Operational Creditor

VERSUS

**M/s. Diamond Traexim Private Limited
LG-10, Plot No. 31
Lower Ground Floor, Road No. 44
Community Centre, Rani Bagh, Pitampura
North West Delhi-110034**

...Corporate Debtor

Section: 9 of IBC, 2016

Order Delivered on : 14.12.2020

CORAM:

SHRI. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (J)

SHRI. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Operational Creditor : Ms. Henna George, Advocate

For the Corporate Debtor : None



ORDER

PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Shree Jindal Soya Limited through its authorized Representative Sh. Hemant Jindal (for brevity 'Operational Creditor'), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Diamond Traexim Private Limited (for brevity 'Corporate Debtor').

2. The Operational Creditor namely, M/s. Shree Jindal Soya Limited is a Company incorporated with CIN No. U15142DL1999PLC242049 under the provisions of Companies Act, 1956 having its registered office at 18 Chander Lok Enclave, Pitampura, New Delhi-110034.

3. The Corporate Debtor namely, M/s. Diamond Traexim Private Limited is a Company incorporated on 04.12.2007 with CIN No. U51101DL2007PTC354217 under the provisions of Companies Act, 1956 having its registered Office at LG-10, Plot No.31, Lower Ground Floor, Road No.44, Community Centre, Rani Bagh, Pitampura, Delhi-110034.



4. The Authorized Share Capital of the Corporate Debtor is Rs.2,00,00,000 and its Paid-up Share Capital is Rs.1,05,00,000 as per the Master Data of the Company annexed on page 62 of the application.

5. It is submitted by the Operational Creditor that a High Seas Sale Agreement dated 18.09.2018 was executed between the Operational Creditor and the Corporate Debtor. It is added that the Operational Creditor had supplied the Crude Palm Oil (Edible Grade) to the Corporate Debtor in terms of the said Agreement.

6. It is further submitted by the Operational Creditor that it had raised an invoice bearing No. 15/2018-19 dated 18.09.2018 for an amount of Rs.8,28,00,000.

7. It is stated by the Operational Creditor that the goods were supplied as per the agreed terms and no dispute whatsoever was raised by the Corporate Debtor with regard to the aforesaid goods and invoice No. 15/2018-19 dated 18.09.2018.

8. It is submitted by the Operational Creditor that since the Corporate debtor failed to make the due payments, it initiated Arbitral Proceedings against the Corporate Debtor which resulted in passing of Arbitration award dated 24.09.2019.

9. It is further stated by the Operational Creditor that since the Corporate Debtor failed to make the payments and the default was subsisting, the Operational Creditor had sent a Demand Notice dated

10.07.2020 under the Section 8 of IBC 2016 vide Registered Post, which was duly served at the registered office of the Corporate Debtor on 14.07.2020.

10. That the Corporate Debtor through his notice of dispute dated 27.07.2020 had raised an objection that a proceeding initiated under Section 34 of the Arbitration and Conciliation Act 1996 by it is pending before the Ld. District and Sessions Court Chandigarh, which is a pre-existing dispute between the parties.

11. After perusing the documents placed on record by the Operational Creditor, this Bench observes that the subject matter of the proceedings initiated under Arbitration and Conciliation Act 1996 and the debt claimed under Section 9 of the IBC 2016 are arising out of the same transaction. Further, the fact of pendency of proceedings initiated under Section 34 of the Arbitration and Conciliation Act 1996 as contended by the Corporate Debtor in its Notice of dispute dated 27.07.2020 has been admitted by the Operational Creditor in the Part (iv) of the present Petition filed under Section 9 of IBC 2016. The aforesaid admission is reproduced below :

1. *“i) Since the Corporate Debtor failed to make the due payments, the Operational Creditor then initiated arbitration proceedings against the corporate debtor in which Arbitral Award dated 24.09.2019 was passed. The same is under challenge under*



*Section 34 of Arbitration and Conciliation Act, 1996 before the
Ld. District and Session Court, Chandigarh....”*

12. That here we refer to the definition of the term ‘dispute’ as defined under Section 5(6) of the IBC 2016, which is reproduced below:

(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;

Evidently, the term “dispute” includes Arbitration proceedings.

13. In the present circumstances, it is worthwhile to refer to the Judgement of the Hon’ble Supreme Court passed in the **Civil Appeal Number 21824 of 2017 K. Kishan Vs M/s Vijay Nirman Company Pvt. Ltd**, wherein it was held that :

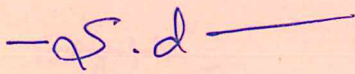
“18) We repeat with emphasis that under our Code, insofar as an operational debt is concerned, all that has to be seen is whether the said debt can be said to be disputed, and we have no doubt in stating that the filing of a Section 34 petition against an Arbitral Award shows that a pre-existing dispute which culminates at the first stage of the proceedings in an Award, continues even after the Award, at least till the final adjudicatory process under Sections 34 & 37 has taken place.”



14. In the light of the above facts and circumstances, we conclude that pendency of the Petition filed under Section 34 of the Arbitration and Conciliation Act 1996, which was preferred prior to the issuance of the Demand notice, under Section 8 of IBC 2016, will constitute a pre-existing dispute between the parties.

15. In view of the above, the petition is **dismissed** on the ground of the pre-existing dispute between the Parties.

16. It is, however, made clear that any of the observations made in this Order shall not be construed as an expression of opinion on the merits of the claim, and right of the Operational Creditor before any other forum shall not be prejudiced on account of dismissal of the instant Petition.



(L. N. Gupta)
Member (T)



(Abni Ranjan Kumar Sinha)
Member (J)