

IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH - COURT NO. V

C.P. No. 2431/I&BP/2019

Under section 8 & 9 of the IBC, 2016

In the matter of

Wishwa Neveen Traders

4/5, Joanna House, Sahar Air Cargo, near
Courier Shed, Andheri (east), Mumbai -
400 099

.... Petitioner

v/s

Cosmic Export Solutions (India) Private
Limited

C-802, Groma House, Opp. APMC
Market, Sector - 19, Turbhe, Navi
Mumbai, Thane - 400 705

.... Corporate Debtor

Order delivered on: 13.02.2020

Coram: Hon'ble Smt. Suchitra Kanuparthi, Member (Judicial)

Hon'ble Shri V. Nallasenapathy, Member (Technical)

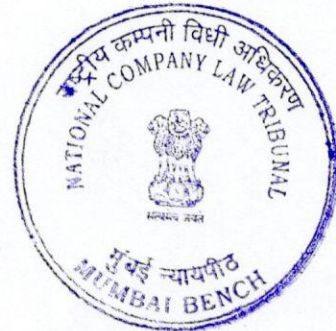
For the Petitioner: Mr. Jayesh S. Gupta a/w Mr. Ashish Mehta, Advocates i/b
Ethos Legal Alliance

For the Corporate Debtor: Ms. Suvarna Ambre i/b Mr. Ajay Basutkar, Advocates

Per: V. Nallasenapathy, Member (T)

ORDER

1. This company petition is filed by Wishwa Neveen Traders (hereinafter called "Petitioner") seeking to set in motion the Corporate Insolvency Resolution Process (CIRP) against Cosmic Export Solutions (India) Private Limited (hereinafter called "Corporate Debtor") alleging that Corporate Debtor committed default in making payment of Rs. 18,09,541/- including interest @ 24% p.a., by invoking the provisions of Section 8 and 9 of the Insolvency &



Bankruptcy Code (hereinafter called "Code") read with Rule 5 and 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The petition reveals that the Petitioner has provided customs clearing services during the period from 2015-2019 to the Corporate Debtor and raised various invoices in respect of the services provided to the Corporate Debtor.

3. The counsel for the Petitioner submitted that the Corporate Debtor has made several part-payments and still there is a principal due of Rs. 14,59,398/- and the interest @ 24% p.a. on the delayed payments works out to Rs. 3,50,234/- and thus there is a total due of Rs. 18,09,542/-.

4. The Petitioner issued a demand notice under Section 8 of the Code on 22.04.2019 demanding the said sum of Rs. 18,09,542/- to the Corporate Debtor. The Corporate Debtor by its reply to the demand notice which is a styled as 'legal notice' dated 16.05.2019 denied the liability saying that a sum of Rs. 14,17,000/- was paid to the key employees of the Petitioner viz. Mr. Shailendra Yadav (Rs. 8,81,000/-), Mr. Manoj Prajapati (Rs. 1,69,000/-), Mr. Raghav (Rs. 3,27,000/-) and to the Petitioner (Rs. 40,000/-). It is further stated that the above payment details were informed to the Petitioner, but till date the Petitioner failed to reply in respect of this aspect and hence it is assumed that the total dues of the Petitioner were paid off. The reply further adds that if the Petitioner feels that they don't have any relationship with the abovesaid 3 persons, the Petitioner may revert back to the Corporate Debtor with reply so that the Corporate Debtor can take further legal action against the abovesaid 3 persons for duping the Corporate Debtor.

5. The petition reveals that the Corporate Debtor have issued the following cheques in favor of the Petitioner and the details are as below:

Date	Cheque number	Amount	Dishonored on
11.02.2019	000232	50,000/-	22.02.2019
18.02.2019	001547	50,000/-	22.02.2019
18.02.2019	001545	50,000/-	22.02.2019
18.02.2019	001549	21,675/-	22.02.2019



18.02.2019	001546	50,000/-	22.02.2019
18.02.2019	001548	50,000/-	22.02.2019
21.02.2019	001824	59,861/-	22.02.2019
21.02.2019	001640	69,513/-	22.02.2019
Total		4,01,049/-	

6. All the abovesaid cheques when presented for payment by the Petitioner were returned as dishonored for the reason – “insufficiency of fund”.

7. The Corporate Debtor contended that they have made payment to the extent of Rs. 14,17,000/- to four persons, who are employees of the Petitioner, and the Petitioner failed to account for the same, whereas the Petitioner refutes the same, saying that those payments were towards the out of pocket expenses incurred during the process of customs clearing of Corporate Debtor's goods. It is further contended that after adjustment of the abovesaid amount and some other amounts of small denominations, the balance payable to the Corporate Debtor is only Rs. 14,758/-. If this statement of the Corporate Debtor is to be believed there is no occasion for the Corporate Debtor to issue the cheques referred in para. 5 above to the extent of Rs. 4,01,049/- especially when the liability is only Rs. 14,758/-. Hence, this contention of the Corporate Debtor is unbelievable and has to be rejected.

8. The Corporate Debtor contended that the Petitioner failed to provide the ledger and bank statement, but the Petitioner issued notice under Section 138 of the Negotiable Instrument Act on 17.04.2019. It is not the case of the Corporate Debtor that they have issued the above stated cheques despite there being no amount payable to the Petitioner. It is to be noted that unless otherwise liability is there, there is no occasion to the Corporate Debtor to issue the cheques which was subsequently dishonored. Hence the contention that the Petitioner failed to produce the statement of account is to be taken as a dispute will not hold water.

9. The Corporate Debtor contends that by an email dated 05.03.2019 they have suspended the services of the Petitioner whereas the Petitioner contends that the suspension of services was communicated only after the dishonor of the



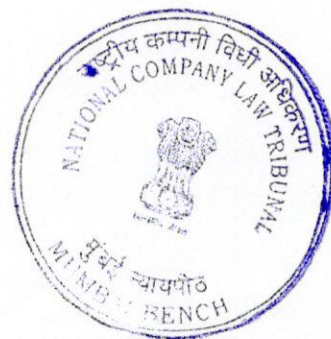
cheques in the month of February, 2019 to show that there is an existence of dispute, so that the Corporate Debtor can evade the clutches of insolvency proceedings. The suspension of services by the Corporate Debtor after the dishonor of the cheques cannot fall within the ambit of dispute as provided under Section 5(6) of the Code.

10. The Corporate Debtor contended that invoice bearing no. 008/15-16 dated 22.08.2015 and invoice bearing no. 013/15-16 dated 16.09.2015 pertains to some other party whereas the Petitioner responded saying that the Corporate Debtor cannot raise this dispute after 4 years of raising the invoice and also enclosed copies of emails to show that the transactions were executed after taking instructions from the Corporate Debtor.

11. It is beneficial to refer the reply sent by the advocate of the Corporate Debtor for the demand notice sent by the Petitioner wherein at para. 4 it is stated as below:

"4. Our Clients for your information through have already supplied the documents pertaining the manner of payment made to your key employees earlier but are annexing the Sheet wherein the details are mentioned about the date and Bank Details of payments of Rs. 14,17,000/- made to your persons as stated at para 3 as Annexure A. Please note that our Clients reserves all the rights to defend the case as by you not replying of our Clients earlier letters wherein calling to share the treatment of the said amounts made in your ledger, it is true of you accepting the fact of treating the payments made to the named persons at para 3 is the payment made to you and hence, there is no balance due in our Client's accounts. In the event, you feel that there is no relations of yours with the said named persons at para 3, please revert with your reply and then we will take further legal course of action against them to dupe our Clients by taking appropriate legal criminal action against them."

The above version clearly reveals that there is no authorization given by the Petitioner to the three persons to receive payments on behalf of the Petitioner



and the Corporate Debtor refers to some earlier letters written to the Petitioner requiring them to treat these payments as payment to the Petitioner. However, no such letters were produced by the Corporate Debtor in their pleadings. Hence the contention of the Corporate Debtor that there is no liability is not justified.

12. On hearing the arguments of either side and on going through the pleadings it is clearly established that there is a debt and default on the part of the Corporate Debtor. The disputes raised by the Corporate Debtor are not real disputes and in fact spurious and they doesn't fall under the ambit of Section 5(6) of the Code, which provides as below:

*"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;*

13. It is beneficial to refer the judgement of the Hon'ble Supreme Court in the case of "Mobilox Innovations Pvt. Ltd. v/s. Kirusa Software (P) Limited- 2017 (SCC Online SC 1154)" held as below :-

"40..... 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"

14. One Mr. Prakash Dattatraya Naringrekar, having office at 503-A, Blue Diamond CHS Ltd., Chincholi Bunder/ Link Road Junction, Malad west, Mumbai – 400 064; having email address: prakash03041956@gmail.com; having



Registration No. IBBI/IPA-002/IP-N00270/2017-18/10783 has given his consent in Form No. 2 to act as an Interim Resolution Professional.

15. This Bench having been satisfied with the petition filed by the Petitioner which is in compliance of provisions of Section 8 & 9 of the Insolvency & Bankruptcy Code admits this petition declaring Moratorium with the directions as mentioned below:

- (a) that this bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgement, decree or other in any court of law; transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (b) that the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (c) that the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (d) that the order of moratorium shall have effect from 13.02.2020 till the completion of the CIRP or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under section 33, as the case may be.
- (e) that the public announcement of the CIRP shall be made immediately as specified under Section 13 of the Code.



(f) that this Bench hereby appoints Mr. Prakash Dattatraya Naringrekar, having office at 503-A, Blue Diamond CHS Ltd., Chincholi Bunder/ Link Road Junction, Malad west, Mumbai - 400 064; having email address: prakash03041956@gmail.com; having Registration No. IBBI/IPA-002/IP-N00270/2017-18/10783 as Interim Resolution Professional to carry the functions as mentioned under the Code.

16. The Registry is hereby directed to communicate this order to both the parties and to the Interim Resolution Professional immediately.

SD/-

V. Nallasenapathy
Member (Technical)

SD/-

Suchitra Kanuparthi
Member (Judicial)



Certified True Copy
Copy Issued "free of cost"
On 24.02.2020



Assistant Registrar
National Company Law Tribunal Mumbai Bench