

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 201
IB-468/ND/2023

IN THE MATTER OF:

Star Synthetics Pvt. Ltd.

...

Applicant/Petitioner

Versus

Vastrani Export Pvt. Ltd.

...

Respondent

Under Section: 9 of IBC, 2016

Order delivered on 01.01.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ
HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH
HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Mr. Ashish Upadhayay Adv.

For the Respondent : Adv. Anjali Pandey, Adv. Tanisha Bhatia,
Adv. Dhan Mohan, Adv. Ratnesh Kumar
Tiwari

Hearing Through: VC and Physical (Hybrid) Mode

ORDER

As can be seen from the text of the application, the issue raised therein, arises out of commercial transactions between the Applicant and the Operational Creditor. The Applicant is a private limited company duly incorporated and registered with the Registrar of the Companies. The Operational Creditor is leading trader of wholesale fabrics of all kinds while the Corporate Debtor is into the business sale of garments specially the ladies' garments. Issue alleged in the petition is that during the course of the business, the Applicant/Operational Creditors had supplied fabric to the CD against the orders and bills/invoices were raised regularly against the sale of fabrics. Till May 2022, the Corporate Debtor defaulted in making payment against 61 invoices. The amount involved in the invoices was Rs. 2,44,38,661. The details of the amount as also the date of default are mentioned in Part-4 of the application which reads thus:

PART IV
PARTICULARS OF OPERATIONAL DEBT

1	<p>Total Amount Of Debt, Details Of Transactions On Account Of Which Debt Fell Due, And The Date From Which Such Debt Fell Due</p>	<p>Total Amount of Debt is Rs. 2,44,38,661/- (Rupees Two Crore Forty Four Lakh Thirty Thousand Six Hundred and Sixty One Only) towards Sale of Fabric as per the outstanding Invoices. Interest on delayed shall be calculated @ 24% p.a. and payable till actual realization.</p> <p>Details of Transactions:</p> <ol style="list-style-type: none"> 1. The Corporate Debtor is engaged into the business of manufacturing and trading of garments specially the ladies garments. For manufacturing the printed garments Greige fabric is required and hence the officials of the
		<p>Corporate Debtor approached the Operational Creditor for purchasing the Fabric.</p> <ol style="list-style-type: none"> 2. The Corporate Debtor used to purchase fabrics from the Operational Creditor during the course of the business relation and the Operational Creditor used to raise Invoices at the time of Sale of Fabrics. 3. Operational Creditor always supplied high quality fabric to the satisfaction of the Corporate Debtor since the beginning of the Business Arrangement and no concerns/ disputes over quality etc were ever raised by the Corporate Debtor.

		<p>4. The “fabric” was supplied to the Units of the Corporate Debtor and the bills/invoices were raised against those supplies.</p> <p>5. The Corporate Debtor has defaulted in making the payments against 61 invoices amounting to Rs. 2,44,38,661/- (Rupees Two Crore Forty Four Lakh Thirty Thousand Six Hundred and Sixty One Only) from till May 2022.</p> <p>6. The said amount of Rs. 2,44,38,661/- (Rupees Two Crore Forty Four Lakh Thirty Thousand Six Hundred and Sixty One Only) is only towards sell of the “fabric” and interest on delayed shall be calculated @ 24% p.a. and payable till actual realization.</p> <p>Date From Which Such Debt Fell Due:</p> <p>Thus, each invoice has corresponding default dates and first default date is . 30/01/2022 i.e. after giving two months credit period as per the Purchase Order from the date of Invoice i.e. 30/11/2021). The date of first default calculated from the first unpaid invoice (Issued from Delhi) after giving due account to all the payments made and the credit period of 60 days. The defaults have been recurring since thereon and till date.</p>
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		<p>Notice of Demand dated 26/04/2023 in terms of Section 8(1) of the Insolvency & Bankruptcy Code 2016, was sent to the corporate debtor on 27/04/2023, through Post and E Mail's in accordance with law demanding a sum of Rs. 2,44,38,661/- (Rupees Two Crore Forty Four Lakh Thirty Thousand Six Hundred and Sixty One Only) i.e., the amount in default.</p> <p>After receiving the Legal Notice the Corporate Debtor failed to give any reply to the Legal Notice.</p>
2	<p>Amount Claimed To Be In Default And The Date On Which The Default</p> <p>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. 2,44,38,661/- (Rupees Two Crore Forty Four Lakh Thirty Thousand Six Hundred and Sixty One Only) towards</p> <p>Forty Four Lakh Thirty Thousand Six Hundred and Sixty One Only) towards Sale of Fabric as per the outstanding Invoices. Interest on delayed shall be calculated @ 24% p.a. and payable till actual realization.</p> <p>Default took place on each occasion when the Corporate Debtor failed to make the payment in whole/ part in respect of the invoices raised by the Operational Creditor. Thus, each invoice has corresponding default dates, but for the convenience the default date is considered to be 30/01/2022 i.e., the date of first default calculated from the first unpaid invoice after giving due account to all the payments made and the credit period. The defaults have been recurring since</p> <p>thereon.</p> <p>Workings For Computation Of Amount And Default In Tabular Form is attached.</p>

The Respondent/CD did not care to file any reply despite the opportunity granted for the purpose. On 30.11.2023 we passed the following order:-

ORDER

Ld. Counsel appearing for the Petitioner concluded his submissions. Ld. Counsel appearing for the CD submitted that she had moved an application for recalling the order dated 11.10.2023 and for taking the reply on record. At this stage, when we started dictating the order, she submitted that she was only the proxy counsel, and the matter be passed over for the appearance of the arguing counsel. In the interest of justice, pass over was granted.

When the matter is called again at 3:15 PM, the situation is no way different than what it was in the morning, and again, the same proxy counsel appeared and submitted that since the Petitioner has filed an application for recalling the order dated 11.10.2023, the hearing in the captioned petition may be deferred to 14.12.2023. The said application is not before us.

We may not be oblivious to the fact that the statute provides only 14 days to make a decision either to admit or reject the application. During the hearing the Ld. Proxy counsel could not give any cogent reason that has to what prevented the CD from filing a reply within time. In the present case, when the order forfeiting the right of the CD to file a reply was passed on 11.10.2023, today we can't simply ignore the statutory limit only because the Ld. Proxy Counsel for the Respondent/CD is submitting that they have filed an application for recalling the order dated 11.10.2023. Further, we are also surprised to note that on the previous date, the CD was represented by Mr. Dhan Mohan, Mr. Ravi Mishra, Ms. Tanisha, Ms. Pooja, Mr. Ratnesh, Mr. Lalan Thakur Advocates, none of them have filed their Vakalatnama to represent till date. It shows that the CD is not serious about pursuing the matter.

We have heard the arguments put forth by the Ld. Counsel for the Petitioner. As the Respondents are not represented by any authorized counsel and it has also failed to file a reply, in the wake, they are set ex parte.

List on 14.12.2023.

Despite, sufficient opportunities having been granted to the CD, the CD did not avail the same. In the wake, on 14.12.2023 we had to set the proceedings qua the CD as ex parte, the order passed on said date reads thus:

ORDER

As can be seen from the order dated 30.11.2023, the proceedings qua the CD have already been set ex-parte. Let the petition be listed for hearing before the regular bench on 01.01.2024.

Today, Ld. Counsel appearing for the Applicant could draw our attention to the invoices placed on record as Annexure-A4. The demand notice given by the Applicant to CD in terms of the provision of Section 8(1) of IBC, 2016 is enclosed with the petition as Annexure-A6. In the affidavit filed by the Operational Creditor in terms of the provision of Section 9(3)(b) of IBC, 2016 there is specific averment that the CD did not give any reply to the demand notice. Apparently, the CD has not availed the opportunity to file the reply, even before this Tribunal. During the course of the hearing the Ld. Counsel for the Petitioner submitted that the present petition is not amenable to jurisdiction of this Tribunal, as the invoices raised contained the address of the consignee that of Gujarat. She further submitted that the Petitioner/OC had made complaints dated 26.06.2023 to PS Faridabad as also to the economic offences, thus the present proceedings initiated by Applicant are not maintainable. We heard the counsels for the parties and perused the record. Indubitably, the Operational Creditor had raised the invoices, which are available on record. There is no document or affidavit placed on behalf of the CD on record to rebut the aforementioned plea raised on behalf of the OC. As can be seen from the provisions of Section 9 of IBC, 2016 while taking a view regarding the admission of an application, this Adjudicating Authority need to satisfy itself that the application is complete, there is no payment of unpaid Operational debt, the invoice or notice of payment to the Corporate Debtor has been delivered by the Operational Creditor, no notice of dispute has been received by the Operational Creditor and there is record of dispute in the information utility. On hearing the counsels for the parties and perusal of the record, we do not find any specific plea espoused on behalf of the CD regarding the deficiency in fulfilment of requirement of Section 9(5) of IBC, 2016. Ld. Counsel for the Operational Creditor specifically stated that the Operational Creditor has not suggested the name of any IP to be appointed as IRP and it is open for this Adjudicating Authority to take a view in this regard. As can be seen from Part-4 of the petition, the amount of default is above one crore and satisfy the threshold limit. The date of default specifically mentioned in the

application is 30.01.2022. It would not be out of place to refer to Regulation 7 of IBBI CIRP Regulation, 2016 while examining the issue of admission of an application filed by the Operational Creditor. As can be seen from the Regulation 7, the existence of debt due to the Operational Creditor can be proved on the basis of the record available with an information utility, if any, or from the contents of supply of goods & services with Corporate Debtor or an invoice demanding payment for goods & services supplied to the CD or an order of Court or Tribunal that has adjudicated upon the non-payment of debt, if any, or the financial account. The Regulation 7 (2) reads thus:-

- (2) The existence of debt due to the operational creditor under this Regulation may be proved on the basis of-
 - (a) the records available with an information utility, if any; or
 - (b) other relevant documents, including -
 - (i) a contract for the supply of goods and services with corporate debtor;
 - (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor;
 - (iii) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; or
 - (iv) financial accounts.

In the present case, the Applicant has placed on record the demand notice, the invoices raised by CD as also the excerpt from Banker's Book to show that the no payment regarding the amount raised in terms of the invoices could be received by Operational Creditor. The statement is on record as enclosure A-8 to the application. As far as the plea of jurisdiction raised on behalf of the CD is concerned, the registered office of the CD is in Delhi i.e. within Jurisdiction of this Adjudicating Authority, thus the objection cannot be accepted. As far as the complaints of fraud made by the Petitioner against the CD, we are of the considered view that the scope of the criminal proceedings and the proceedings in terms of provision of IBC, 2016 are independent of each other. The object and intent of IBC, 2016 is to put the CD back to its feet. The Code is a beneficial statute, brought into operation to rescue the Corporate Debtor. In the wake, the plea of making complaints to investigating agency against CD

and no action being taken thereon can be no ground to nix the present application. **In view of the aforementioned, we are left with no option but to admit the present application.** Ordered accordingly.

The Company Petition **IB-468/ND/2023** is **admitted in terms of Section 9 of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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;
- (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

Since there is no IRP proposed by the Operational Creditor, this Bench appoints Mr. Sunil Kumar Agarwal having IBBI Registration No. IBBI/IPA-002/IP-N00081/2017-18/10222 and Email ID aggarwalsk21@yahoo.com and Mob. No. 9811347648 from the list of panels of IPs recommended by IBBI to this Adjudicating Authority, subject to the condition that there is no

disciplinary proceeding pending against the said IRP. The Adjudicating Authority further orders that :

“Mr. Sunil Kumar Agarwal, IRP (Email ID aggarwalsk21@yahoo.com) having registration no. IBBI/IPA-002/IP-N00081/2017-18/10222 shall take charge of the CIRP of the Respondent with immediate effect. Further, the IRP is directed to take steps under Section 15, 17, 18, 20 and 21 of the IBC, 2016.”

The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.

The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

A copy of this Order shall be communicated to the Operational Creditor, the Respondent and the IRP mentioned above, by the Court/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)