

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

IB No. 604/ND/2018

CORAM: SHRI R. VARADHANRAJAN, MEMBER
(JUDICIAL)

IN THE MATTER OF SECTION 9 OF IBC, 2016.

IN THE MATTER OF:

Vyankatesh Udyog (India) Pvt. Ltd.
M-12/1, M.I.D.C,
Hingna, Nagpur- 440016

...OPERATIONAL CREDITOR

VERSUS

Safeflex International Ltd.
15, Jaijawan Scheme No. 1, Tonk Road.
Jaipur, Rajasthan- 302015

...OPERATIONAL DEBTOR

FOR PETITIONER (S) : MR. PRASHANT AGGARWAL, ADV

FOR RESPONDENT(S) : MR. SANJIV PANDEY, ADV.

ORDER

1. This application has been filed by M/s Vyankatesh Udyog (India) Pvt. Ltd. in the capacity of an Operational Creditor against M/s Safeflex International Ltd. as its Operational Debtor under the provisions of Section-9 of Insolvency and Bankruptcy Code, 2016 (IBC, 2016). It is averred by the Operational Creditor that it is involved in the business of supplying printing inks and that based on the request of the operational Debtor, it started supplying printing inks and the supply commenced from the Financial year 2014-15 and continued till the month of May, 2017. The supply of inks was effected to two units of the Corporate Debtor and in relation to the said invoices as well as lorry receipts for its due delivery have also been obtained by the Operational Creditor.
2. It is further stated that even though supply of materials to the extent of Rs. 1,46,863/- was returned by the Corporate Debtor and the said amount also stands adjusted in the ledger account an amount of Rs. 5,93,204/- remain unpaid despite repeated phone calls and e-mails. It is averred by the operational Creditor that the sum was not cleared and ultimately the operational Creditor issued a demand notice dated 28.02.2018 in Form-3 as prescribed under IBC,2016 and that the notice was also served at the registered office of the Corporate Debtor on 10.03.2018. Since the demand notice did not invoke any response from and on the part of the Corporate Debtor either by way of settlement of claim or in the alternative of sending notice of dispute, the Operational Creditor is constrained



to approach this Tribunal seeking to invoke the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor. The name of Mr. Saimbhu Lal Agrawal has been proposed as Interim Resolution Professional (IRP).

3. Pursuant to the notice served upon the Corporate Debtor/ Respondent, a reply has been filed by the Corporate Debtor, wherein it is contended that since there is a pre-existing dispute as between the Operational Creditor and the Corporate Debtor in relation to the quality of materials supplied, the petition per se is not maintainable.
4. It is also contended in the reply that the proceedings which has been initiated by the Operational Creditor has been filed on false and misleading statements made on oath/ affidavits and that the e-mail communications as transpired between the Corporate Debtor and the Operational Creditor have not been disclosed in full, wherein the Corporate Debtor has clearly brought out the issue of quality of goods supplied by the Operational Creditor which also clearly points out that the dispute is pre-existing even prior to the issue of Section- 8 notice under IBC, 2016 by the Operational Creditor.
5. On merits, it is submitted that due to the poor quality of materials supplied by the operational Creditor to the Corporate Debtor and the Corporate Debtor being an export-oriented unit suffered serious losses in view of the high standards set by the foreign buyers and which it is required to meet in order to satisfy the foreign buyers. In this regard communications have also been enclosed and the counter claim in view of the losses suffered by the Corporate Debtor because of rejection

by the Foreign Buyers have also been quantified to the extent of Rs. 5,63,427/- in the reply.

6. During the course of oral submissions in addition to what has been stated in the pleadings including the rejoinder as filed by the petitioner, learned counsel for the petitioner pointed out that the dispute which is sought to be raised by the respondent/ Corporate Debtor is not bona-fide as also in relation to defective quality of materials supplied due credit has been given to the Corporate Debtor and the amount claimed in this petition is in addition to what has been already deducted by the operational Creditor and the same remains unpaid which clearly points out to insolvency of the Corporate Debtor.
7. On the other hand, learned counsel for the Corporate Debtor contends that it is an export-oriented unit and that its turnover is from foreign supplies of the goods and that the company is making significant profits and even though the amount claimed by the Operational Creditor in comparison is very small, however, since the Corporate Debtor has suffered losses due to poor quality of material supplied by the operational Creditor due to which it has suffered rejection of its goods is not required to pay the sums due to counter-claim.
8. This Tribunal has carefully considered the rival contentions of the parties in the matter. The crux of the issue is whether there is a pre-existing dispute as between the parties and in case if there is a pre-existing dispute which can be shown by the Corporate Debtor then it gets away from the net of the provisions of IBC, 2016.



9. In order to establish the pre-existing dispute, learned counsel for the respondent pointed out the e-mail communication dated 26.09.2017 as transpired between the parties.

To,

Safeflex International Ltd.

Indore

Dear Sir,

This is with reference to a debit note raised by you against our company. Sir, we are not liable nor in a state to accept the sent debit note by you as we are not in the practice of the same and nor we have such commitment in written or verbal with our valuable customers. We are always ready to supply as per your demand and we believe that the purchased material should be first checked at your end, before using it for complete printing process. And if you find the product OK at your laboratory then use it or else return the material, but you had printed it completely and after that had come up the problems which ever you are facing.

Because the material what we are supplying is tested in our QC department and then we use supply. So, it's our kind request to clear our complete amount which is outstanding in both the Units.

We hope you will cooperate for the same.

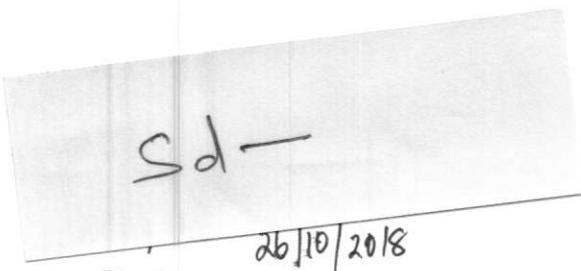
--

Regards,

Mayank Gupta.

10. Perusal of the above e-mail clearly shows that there has been dispute between the parties regarding the quality of goods supplied by operational Creditor to the Corporate Debtor. Section 8 notice as sent by Operational Creditor is dated 28.02.2018, which is much after the above e-mail as extracted. Further even according to the admission of the Operational Creditor there has been instances of products supplied to Corporate Debtor being taken back and credit given for return of goods on quality issues which makes the dispute presently raised as a

plausible one. It is by now trite that where there is a pre-existing dispute between the parties in relation to Operational Creditor the petition under IBC will not lie against the Corporate Debtor. As rightly pointed out by the learned counsel for the respondent relying on the citation of GAC Logiostic Pvt. Ltd. Vs. AI Nafees Frozen Foods Exports Pvt. Ltd. pronounced by Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 237 of 2018 as well as taking into consideration the facts and circumstances of the case and the position of law as enunciated by Hon'ble NCLAT in the above judgement and as we find that there is a pre-existing dispute as between the parties in relation to quality of goods supplied, this Tribunal is constrained to dismiss this petition, however, without cost.


(R. Varadharajan)
Member (Judicial)

Shakti
05.10.2018