

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-195/(ND)/2023

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016
and Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rules, 2016.

In the matter of -

MR. ABDUL WAJID PM,

Proprietor of M/s THW International,
A proprietorship Concern,
No. 1475/A, P.J Nehru Street,
Cutchery Road,
Vaniyambadi-635751, Tamil Nadu

...Applicant/Operational Creditor

Versus

M/s. P&G ENTERPRISES PVT LTD.,

Represented by its Director,
Mr. Mahesh Kumar Tuli
D-135, Okhla Industrial Area, Phase-I,
New Delhi 110020

...Respondent/Corporate Debtor

CORAM:

SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI. RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)

Counsel for the Petitioner

Adv Mahima Dasain

Counsel for the Corporate Debtor

Mrs. Sonali Sharma Advocate.

Mr. Preet pal singh, Mr. Saurabh

Sharma Advocate.

ORDER

PER – MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

Date: 07.05.2024

1. The present application has been filed by the Petitioner i.e., Mr. Abdul Wajid (hereinafter referred to as the Operational Creditor) on 18.01.2023 to initiate Corporate Insolvency Resolution Process (“CIRP”) in accordance with Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) against the Respondent i.e., M/s. P&G ENTERPRISES PVT LTD (hereinafter referred to as the Corporate Debtor) for the alleged default on the part of the Respondent in clearing the debt of INR 1,57,61,249/- being the total amount due (out of which INR 1,01,56,233/- being the principal amount, INR 1,29,518.04/- being the 'C' Form charges paid by the OPERATIONAL CREDITOR towards non issuance of 'C' form for Sales Tax concession by CORPORATE DEBTOR and INR 53,92,853 being the interest at the rate of 18% per annum for the

delayed period from appropriate dates of invoices till 05.01.2023. The particulars of transactions leading to the filing of the present application as averred by the Applicant/Operational Creditor are as under –

- i. The CORPORATE DEBTOR had placed orders with OPERATIONAL CREDITOR for the supply of finished leather materials, which had been delivered to them, and tanning job work under various invoice bills and delivery challans for an outstanding Principal sum of Rs. 1,01,56,233/- (Rupees One Crore One Lakh Fifty-Six Thousand Two Hundred and Thirty- Three only).
- ii. The OPERATIONAL CREDITOR had requested the CORPORATE DEBTOR to pay the outstanding due amount under the invoices due as on 29.01.2020 and to issue 'C' Forms for Sales Tax concession as required by the Tax Authorities.
- iii. However, the CORPORATE DEBTOR failed to issue 'C' Forms for Sales Tax concession and the OPERATIONAL CREDITOR was forced to pay the said charges a sum of INR 1,29,518/- to concerned Tax authorities for non-issuance of the Form "C" by the CORPORATE DEBTOR.
- iv. The CORPORATE DEBTOR is liable to pay the OPERATIONAL CREDITOR a total outstanding due amount of INR 1,02,85,751/- (Rupees One Crore Two Lakhs Eighty-Five Thousand Seven Hundred and Fifty-One Only) which is inclusive of the outstanding

principal sum of INR 1,01,56,233/- (Rupees One Crore One Lakh Fifty-Six Thousand Two Hundred and Thirty- Three Only) along with the charges of sum of INR 1,29,518/- paid towards the non-issuance of Form 'C' for Sales Tax concession by the CORPORATE DEBTOR.

- v. The CORPORATE DEBTOR, failed to pay the said outstanding debts of INR 1,01,56,233/- within the due dates of the said invoices and 'C' Forms charges of INR 1,29,518/-. The OPERATIONAL CREDITOR on several occasions reminded the CORPORATE DEBTOR to pay the said legitimate outstanding debts due in respect of the leather materials supplied, tanning job work and 'C' form charges paid by the OPERATIONAL CREDITOR for non-issuance of the 'C' Form for Sales Tax concession.
- vi. The OPERATIONAL CREDITOR submits that the invoices and C' Form charges paid by the OPERATIONAL CREDITOR totally amounting to a sum of INR 1,02,85,751/- (Rupees One Crore Two Lakhs Eighty-Five Thousand Seven Hundred and Fifty-One Only) were raised by OPERATIONAL CREDITOR were duly accepted by CORPORATE DEBTOR without any demur or protest at the time of delivery of goods and on raising the invoice.
- vii. Therefore, the Operational Creditor submits that INR 1,57,61,249/- being the total amount due (out of which INR 1,01,56,233/- being the principal amount, INR 1,29,518.04/-

being the 'C' Form charges paid by the OPERATIONAL CREDITOR towards non issuance of 'C' form for Sales Tax concession by CORPORATE DEBTOR and INR 53,92,853 being the interest at the rate of 18% per annum for the delayed period from appropriate dates of invoices till 05.01.2023 (Interest calculation annexed hereto and marked as "Annexure A102"), arising from a supply of leather materials and tanning job work detailed in Invoices raised from time to time, and further interest at the rate of 18% per annum on the principal sum thereafter till the payment/realization of the said amount.

2. The Corporate Debtor has filed its corresponding reply and made following averments -

- i. That the Application neither fulfills the basic fundamental essential requirement for dispute to be adjudicated under the provisions of the Insolvency Bankruptcy Code, 2016 (as amended in 2020) nor amount (much less as being in the present Application) qualify as "Debt" within the ambit of the Insolvency Bankruptcy Code, 2016 (as amended in 2020) nor the substantial part of the alleged claim are legally recoverable amounts being barred by Law. That the Operational Creditor.
- ii. That the Operational Creditor has made an alleged claim of Rs. 1,01,56,233/- against 95 Invoices as detailed in the present

Application. It is submitted that out of these, 15 Invoices have already been paid and settled amounting to Rs. 15,06,308/- and further 6 Invoices as allegedly claimed amounting to Rs. 28,956/- are barred by law.

- iii. Further, the alleged invoice shown at Serial number 1 THW/16-17/0072 dated 31st March 2017 for an alleged amount of INR 4,58,960 is not reflecting in the books of the corporate debtor as such its authenticity and veracity is denied.
- iv. It is further submitted that the charges allegedly claimed against "C" Form for the period 01.04.2017 till 30.06.2017 amounting to INR 1,29,518.04/- are also barred by law of limitation, thus in the present matter the alleged disputed claim is much below the threshold of Rs. 1 Crore, which otherwise is also disputed and thus the present application is not maintainable and is liable to be dismissed.
- v. That it is pertinent to mention herein that the Operational Creditor has filed forged and fabricated Invoice in the present application. It is submitted that in the Invoice bearing THWI17- 18/0036 dated 27.04.2017 filed by the Operational Creditor amount is shown as INR 3,05,785/- whereas the Correct Invoice sent by Operational Creditor and received by Corporate Debtor against which payment is made is for INR 2,79,439/-.

- vi. That there exists a pre-existing dispute with respect to the alleged amount of debt as falsely claimed by Operational Creditor and the same is denied in toto on account of breach of warranty by Operational Creditor by supplying inferior quality sub – standard goods/raw material.
 - vii. The present Application has been filed with malafide intentions on false and frivolous grounds by OC as a part of his nefarious design to harass Corporate Debtor and extort money from it in order to give a legal cover to his mis-representations and supply of inferior quality goods and further to create a moonshine defense and as such the Application is not maintainable and is liable to be dismissed.
3. The Petitioner has filed its rejoinder and made the following averments -
- i. The Operational Creditor also vehemently denies the contentions of the Corporate Debtor that the substantial part of the alleged claim are legally not recoverable as being barred by law and that the Operational Creditor has inflated the outstanding amounts to meet the threshold and that the invoices included are barred by law.
 - ii. The Operational Creditor submits that the Corporate Debtor has failed to make the payment towards 95 invoices issued for supply of leather materials and tanning job work provided which has been outstanding for a period of three years from 31/03/2017 to 29/01/2020. Further it is submitted by the Operational Creditor that the invoices are not barred by law as the Operational Creditor maintained an open and

- running account, i.e., whenever the payment was made by the Corporate Debtor, the payment would be adjusted with the outstanding invoices in chronological order, starting from the earliest date.
- iii. The Operational Creditor vehemently denies the contention of the Corporate Debtor that the invoices were raised against the supply of inferior quality sub-standard raw materials. It is submitted by the Operational Creditor that the Corporate Debtor has not come before this Hon'ble Tribunal with clean hands and has purposely made frivolous allegations only to harass the Operational Creditor in order to avoid the Corporate Insolvency Resolution Proceedings ("CIRP"). It is submitted that the Operational Creditor had supplied superior quality leather materials and tanning job work to the Corporate Debtor.
- iv. The Operational Creditor denies the contention of the Corporate Debtor that 15 invoices have already been paid and an amount of Rs. 15,06,308/- has been settled. It is submitted by the Operational Creditor that the payment vouchers annexed by the Corporate Debtor are self-made and have never been provided to the Operational Creditor before. It is submitted that as claimed by the Corporate Debtor, if the amount was paid by the Corporate Debtor then the payment vouchers ought to have been shared with the Operational Creditor to have the ledger reconciled, but the same was never shared by the Corporate Debtor even on constant request from the Operational Creditor.

- v. The Operational Creditor denies the contention of the Corporate Debtor that the invoices annexed with the application are forged and fabricated. It is submitted by the Operational creditor that the Corporate Debtor has falsely alleged that the invoices have been forged and fabricated only to manipulate this Hon'ble Tribunal in order to avoid the Corporate Insolvency Resolution Proceedings ("CIRP").
4. We have perused the documents filed by the Operational Creditor as well as Corporate Debtor and have heard the arguments made by the counsels appearing for both the parties.
 5. The Corporate Debtor in the present case has raised the multiple contentions in their reply against the application filed by the Operational Creditor, the main contentions of the Corporate Debtor have been summarized as under –
 - I. That the raw material i.e. tanned leather supplied by the Operational Creditor were not up to the stipulated standards and the products that were made from the aforesaid raw material were rejected by the buyer, the Corporate Debtor had informed the Operational Creditor of the defects in the products.
 - II. That out of the 95 invoices that form a majority of the claim, 15 Invoices have already been settled amounting to Rs. 15,06,308/- and

further 6 Invoices as allegedly claimed amounting to Rs. 28,956/- are barred by law. Further, it has been alleged by the Corporate Debtor that certain invoices had been barred by the virtue of law of limitation.

In pursuance of the aforementioned contentions, the Corporate Debtor had annexed copies of the payment vouchers as under –

No.	As per Application	Invoice			Payment made under	
		Date	Number	Amount (In Rs.)	Voucher No.	Dated
1.	3.	15-04-17	THW/17-18/0022	3428	999110	12-10-17

2.	4.	17-04-17	THW/17-18/0026	3045	999110	12-10-17
3.	5.	18-04-17	THW/17-18/0028	65182	999110	12-10-17
4.	6.	19-04-17	THW/17-18/0029	305801	999110	12-10-17
5.	7.	19-04-17	THW/17-18/0031	14256	999110	12-10-17
6.	8.	21-04-17	THW/17-18/0033	6537	999110	12-10-17
7.	9.	24-04-17	THW/17-18/0035	337418	999110 999442	12-10-17 20-12-17
*8.	10.	27-04-17	THW/17-18/0036	305785	999442	20-12-17
9.	16.	22-05-17	THW/17-18/0058	429707	999624	04-02-18
10.	17.	26-05-17	THW/17-18/0064	77442	999625	09-02-18

11.	18.	25-04-18	THW/18-19/0045	87497	686198	25-07-19
12.	19.	26-04-18	THW/18-19/0046	103494	686198	25-07-19
13.	20.	28-04-18	THW/18-19/0051	3726	686196	15-07-19
14.	21.	29-04-18	THW/18-19/0052	93869	686198	25-07-19
15.	72.	20-11-18	THW/18-19/0368	9820	683780	11-01-19
Total Amount				Rs. 15,06,308/-		

It can be inferred from the aforesaid contentions and the allied proof annexed in the present application that the CD has submitted that –

- I. The claim made by the OC does not meet the threshold, to initiate CRIP against the CD, when the amount that is already settled by the virtue of payment vouchers is deducted from the total claim amount.
- II. There was a pre-existing dispute pertaining to the quality of the raw material supplied by the OC to the CD, in light of the end product being rejected by the buyer.
- III. The veracity of the invoices raised by the OC have been disputed in addition to certain invoices being barred by law of limitation.

OBSERVATIONS AND FINDINGS

6. Consequently, in light of the contentions made by the OC, and the reply given by the CD against the said contentions read in conjunction with the rejoinder filed by the OC, we are of the opinion that –

- I. It is evident from the documents placed on record by the Corporate Debtor that there exists a pre-existing dispute between the parties before issuance of the demand notice pertaining to the quality of the goods supplied. The averment pertaining to the pre-existing dispute between the OC and the CD has been substantiated by the virtue of emails received from the end buyer, which explicitly state that the quality of the goods provided by the CD were not up to the stipulated standard, the emails elucidating the said rejection are as under –



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Fwd: 3138/350/707 P&G - GARMENTS NOT ACCEPTABLE

1 message

P&G <manoj@pgleather.com>
To: Chambers of Preet Pal Singh <chamberppsingh@gmail.com>

Tue, 20 Dec, 2022 at 18:29

FAO - MR. PP SINGH / FROM MANOJ TULI - P&G ENTERPRISES PVT.LTD.

CONVERSATION BETWEEN US & ZARA BUYER WITH REGARD TO QUALITY OF LEATHER SHIPMENT MADE USING THE MATERIAL SENT BY THW .

From: Maria Ugarte Casado [<mailto:mariauca@inditex.com>]
Sent: 19 December 2018 23:05
To: Mani; carlos@pgleather.com; 'sanjay'; simran@pgleather.com; Valentin Díaz Garrido
Cc: manoj@pgleather.com; Jose Antonio Fernandez Costas
Subject: 3138/350/707 P&G - GARMENTS NOT ACCEPTABLE
Importance: High

Dear All,

After checking all the units of these production and as Mr. Valentin already informed you, we cannot accept this production because of all the problems we found out:

- There are many color shades.
- There are many spots on the leather.
- There are defective colour changing panels.

This is a very serious situation but we want to close this issue as soon as possible.

Therefore we need to know which option do you prefer among the following:

- Take the units from our warehouse (supplier need to pay for the transportation cost and all the labels from Zara must be removed)
- Destroy the garments (we can do it, but supplier need to pay for it)
- Donate these units to non-profit associations

Please let us know your final decision tomorrow.

As this order has been already paid, we need to know if you have any pending order with other departments in Zara in order to take the money back that we have already paid P&G leather.

We will be waiting for your reply.

For P & G Enterprises Pvt. Ltd.

Director

Best regards,

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María Ugarte

De: Jose Antonio Fernandez Costas

Enviado el: viernes, 14 de diciembre de 2018 11:44

Para: Mani <mani@pgleather.com>; carlos@pgleather.com; 'sanjay' <sanjay@pgleather.com>; Yolanda Zas Sanchez <yolandazs@inditex.com>; simran@pgleather.com; Maria Ugarte Casado <mariauca@inditex.com>; Valentin Díaz Garrido <ValentinDG@inditex.com>

CC: manoj@pgleather.com; Audrey Daubian <audreyda@inditex.com>; Sandra Noelia Ruidiaz <sandranru@inditex.com>

Asunto: RE:Please find the inspection report for 3138/350/707 P&G, from our warehouse.

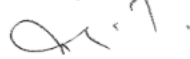
Dear all;

Please find the inspection report for 3138/350/707 P&G, from our warehouse.

-This is NOT acceptable for any ZARA MAN productions.

-There are many color shades.

For P & G Enterprises Pvt. Ltd.



Director

- II. Subsequently, the OC was informed about the deficiencies in the quality of the raw material (i.e., the leather) provided by the OC. The CD, through a WhatsApp chat dated 03.11.2021 (prior to the issuance of the demand notice by the OC) was told about the said deficiencies in the raw material and that the corresponding payments were held due to the deficiencies in the raw material.
- III. The withholding of the aforesaid payments has been disputed by the OC on multiple grounds. However, it would be imprudent for this Adjudicating Authority to delve into the particulars of the dispute between the parties. It can be deduced from the aforesaid documents

placed on record that a pre-existing dispute existed between the OC and the CD.

- IV. Consequently, it is the mandate of law that if there is a pre-existing dispute between the parties the Adjudicating Authority is liable to reject the application under section 9(5)(ii)(d). Reliance can be placed on the landmark precedent of Hon'ble Supreme Court in *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Private Limited 2018 1 Supreme Court Cases 353*. Para 40 of the aforesaid judgement which reads as under -

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, **the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor** or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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.”

V. 15 payment vouchers have been annexed with the reply filed by the CD, the said payment vouchers serve as proof for the payment made to the OC in lieu the material supplied, it has been observed that the payment vouchers also depict the mode of payment, inter alia RTGS. The cumulative amount disbursed by way of the aforesaid vouchers comes to INR 15,06,308, one of the payment vouchers has been elucidated as under for convince –

P&G Enterprises Private Limited (Manesar)

PLOT NO 9, SECTOR-6

IMT, MANESAR

GURGAON, HARYANA

State Name : Haryana, Code : 06

Payment Voucher

No. : 999110

Dated : 12-Oct-17

Particulars	Amount
Account :	
THW International	5,00,000.00
Agst Ref 014/17-18 3,394.00 Dr	
Agst Ref 022/17-18 3,394.00 Dr	
Agst Ref 026/17-18 3,015.00 Dr	
Agst Ref 028/17-18 64,530.00 Dr	
Agst Ref 029/17-18 3,02,743.00 Dr	
Agst Ref 031 14,256.00 Dr	
Agst Ref 033/17-18 6,537.00 Dr	
Agst Ref 035/17-18 1,02,131.00 Dr	
Indian Overseas Bank Janpath (4357- JANPATH)	(-)5,00,000.00
Less :	
Through :	
On Account of :	
999110RTGS.NEFT PMT IOBAN17285420796	
Amount (in words) :	
NOT AN AMOUNT OR NUMBER Only	

Receiver's Signature :

Authorised Signatory

- VI. Further, it must be stated that the specific payments made by the virtue of the aforesaid payment vouchers have not been denied by the OC, the OC has only raised disputes pertaining to the nature of the account maintained by the CD.
- VII. In view of the of the aforesaid proof of payment filed by the CD, the claim made by the OC does not clear the threshold amount in accordance with Section 4 of the IBC to initiate CIRP against the CD owing to the fact that when the settled amount is deducted from the total claim amount, the claim amount comes down to INR 87,79,443.04.
7. At this juncture, it is pivotal to state that the dispute with respect to forgery cannot be decided by this Adjudicating Authority. It is settled law that proceedings before NCLT are summary in nature and adversarial evidence cannot be led and appraised by this Tribunal. The aforesaid summary jurisdiction of the NCLT has been affirmed in *Rakesh Kumar V. Flourish Paper & Chemicals Ltd. (Company Appeal (AT)(Insolvency) No. 1161 of 2022)*, the relevant portion of the said precedent has been reproduced as under –

“It has also been rightly observed that disputes surrounding claims and counter-claims cannot be adjudicated or determined by the Adjudicating Authority given their summary jurisdiction.”

8. This Adjudicating Authority is not expected to ascertain the veracity of documents in a summary proceeding, if the Tribunal starts adjudicating these types of issues, then the purpose of the statute of enacting speedy

disposal by the mechanism will be defeated. Therefore, the Applicant may explore other legal remedies.

9. Therefore, from the aforesaid observations and findings we found that –

- I. A pre-existing dispute existed between the parties pertaining to the quality of the goods i.e., the raw material, supplied by the OC and the and the rejection of the goods manufactured from the aforesaid raw material, at the time when the section 8 notice was given.
- II. Further, in view of the payment vouchers amounting to INR 15,06,308, the claim made by the OC also falls below the requisite threshold to initiate CIRP against the CD in the present case.

10. In the light of the above, this Tribunal **dismisses** the present application filed by Operational Creditor. However, the claim under any other law, if permissible, can be pursued by the Petitioner as prescribed under that law.

-SD/-

(RAHUL BHATNAGAR)
MEMBER (TECHNICAL)

-SD/-

(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)