

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV
Company Petition No. (IB)-236(ND)/2021**

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

**IN THE MATTER OF:
Belgotex India Pvt. Ltd.**

**.... Operational Creditor/Applicant
Vs.**

Puneet India Pvt. Ltd

.... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)**

**DR. SANJEEV RANJAN,
HON'BLE MEMBER (TECHNICAL)**

Order Delivered on: 17.05.2024

PRESENT:

For the Applicant : Ms. Komal Mundhra, Adv.

For the Respondent : Mr. Chaitanya Mathur , Adv.

ORDER

PER: MANNI SANKARIAH SHANMUGA SUNDARAM, MEMBER (J)

1. This instant application was filed by **M/s. Belgotex India Pvt. Ltd.** (hereinafter referred as 'Applicant'/ 'Operational Creditor') through its authorized representative Mr. Pankaj Talreja, (Director), having registered office at U-22, Ground Floor, Green Park Extension, New Delhi - 110016, under

Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') with a prayer to initiate Corporate Insolvency Resolution Process in respect of **M/s Puneet India Pvt. Ltd.** (hereinafter referred as 'Respondent' or 'Corporate Debtor') for defaulting the payment of outstanding amount of Rs. 1,45,58,945 (Rupees One Crore Forty-Five Lakhs Fifty-Eight Thousand Nine Hundred and Forty Five) along with interest @ 24% per annum aggregating to a total sum of Rs. 1,86,30,116/- (Rupees One Crore Eighty Six Lakhs Thirty Thousand One hundred and Sixteen Only) to be paid by the Corporate Debtor.

2. The Corporate Debtor of M/s Puneet India Pvt. Ltd. having CIN: U74899DL1995PTC074164 incorporated under the provisions of the Companies Act, 2013 is having its registered office situated at 23, Yashwant Place, Chanakyapuri, New Delhi -110021. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.

3. **Briefly stated the facts of the present case as averred by the Applicant/ Operational Creditor are: -**

- i. The Operational Creditor is engaged in the business of trading floor coverings, such as nylon and polypropylene modular carpet tiles & planks, carpet rolls, artificial grass, etc., having its operations in various countries across the globe. In order to run its business, the Operational Creditor appoints dealers and distributors on exclusive and non-exclusive basis.

- ii. It is submitted by the Applicant that the Corporate Debtor was desirous of becoming the authorized dealer / distributor of the Operational Creditor. Accordingly, the Corporate Debtor approached the Operational Creditor, by representing that it had the necessary infrastructure, resources, experience and expertise, in marketing and distribution of the products of the Operational Creditor.
- iii. Accordingly, Corporate Debtor and Operational Creditor entered into a Dealership / Distribution Agreement dated 15.10.2019 whereby the Corporate Debtor was appointed as the Authorized Dealer / Distributor of the Operational Creditor on an exclusive basis in Delhi-NCR region, for a period of Three (3) years.
- iv. As per the terms of the agreement the Corporate Debtor was required to clear the invoices of the Operational Creditor within the credit period as mentioned in the purchase order, not exceeding a period of forty (40) days and/ or ninety (90) days, in case the dispatch is made from Indian or international warehouse, respectively. Further, till the Operational Creditor does not receive the time the payment, it shall have lien over the goods dispatched to the Corporate Debtor.
- v. Pursuant to the execution of the aforesaid Agreement, the Corporate Debtor issued several Purchase Orders to the Operational Creditor. The Corporate Debtor made requisite payments against the goods purchased by it in the month of October, 2019.
- vi. It has been alleged by the Operational Creditor that several invoices were raised and out of the total outstanding amount of Rs.

2,41,30,811/- (Rupees Two Crores Forty-One Lakhs Thirty Thousand Eight Hundred and Eleven Only), the Corporate Debtor has made a payment of only Rs. 95,71,865/-(Rupees Ninety Five Lakhs Seventy One Thousand Eight Hundred and Sixty Five Only). Thereby, a sum of Rs.1,45,58,946/- (Rupees One Crore Forty-Five Lakhs Fifty-Eight Thousand Nine Hundred and Forty-Six Only) is still due and payable by the Corporate Debtor to the Operational Creditor.

- vii. In view of its outstanding liabilities towards the Operational Creditor, the Corporate Debtor issued four (4) cheques to Operational Creditor. However, all the cheques issued by the Corporate Debtor to the Operational Creditor, got dishonored for the reason being funds insufficient. Thereafter, Operational Creditor issued Statutory Demand Notice under Section 138, Negotiable Instruments Act, 1881 to the Corporate Debtor on 30.04.2020 and 05.05.2020, with respect to dishonored cheques.
- viii. It has been further submitted by the Operational Creditor that pursuant to debt and default, it had served the Corporate Debtor with a demand notice dated 08.05.2020 as per the provisions of Section 8, of the Code, read with Rule 5, Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. However, despite being duly served there has been no reply by the Corporate Debtor to the Demand notice nor any repayment of the debt.

4. **Submissions of the Ld. Counsel appearing for the Respondent/Corporate**

Debtor are:

- i. Respondent/Corporate Debtor appeared through its counsel and filed Reply denying various averments made in the Application. The Corporate Debtor has submitted that the instant application is not maintainable owing to several discrepancies and inconsistencies in the Application. The respondent has claimed that the Applicant has not approached this Adjudicating Authority with clean hands and it has and concealed material facts of the dispute.
- ii. The Respondent has challenged the veracity of demand notice dated 08.05.2021 as they are not in terms of Rule 5 of the IBBI (Application to Adjudicating Authority) Rules.
- iii. It has been submitted that there have been payments made in installment to the OC. It is stated that as per the said annexure, the payment amounting to Rs. 44,26,924/- (Rupees Forty Four Lakhs Twenty Six Thousand Nine Hundred Twenty Four Only) has been received by the Petitioner in instalments from January 2020 to March 2020, i.e., starting from 17.01.2020, ending on 21.03.2020.
- iv. Further, the Corporate Debtor has already made payments to the tune of Rs. 15,28,597/- (Rupees Fifteen Lakhs Twenty-Eight Thousand Five Hundred Ninety-Seven Only) in respect of the said cheques.
- v. The Respondent has claimed that a sum of Rs. 57,31,227.88/- is due and payable by the Applicants for installation of the carpets by the Respondent for E&Y as commission charges.

5. **Submissions of the Ld. Counsel appearing for the Operational Creditor in the Rejoinder are:**

- i. The Operational Creditor/ Applicant has stated that it has deposited the input tax credit against the said invoices, payments for which are yet to be received by it, to the tune of Rs. 25,15,214/-(Rupees Twenty Five Lakhs Fifteen Thousand Two Hundred and Fourteen Only) in the GST Account of the Corporate Debtor. However, despite availing the benefit of the input tax credit, the Corporate Debtor has failed to make any payments.
- ii. It is submitted that a typographical error, an inadvertent error, on the part of the counsel for the Operational Creditor, can be rectified and has relied **Hon'ble Supreme Court, judgment in Vijaya Bank v. Shyamal Kumar Lodh** (Civil Appeal Nos. 4211-12/2007 decided on 06.07.2010) wherein it was held that –

"16 Incorrect label of the application and mentioning wrong provision neither confers jurisdiction nor denudes the Court of its jurisdiction. Relief sought for, if falls within the jurisdiction of the Court, it cannot be thrown out on the ground of its erroneous label or wrong mentioning of provision "
- iii. It has been submitted by the Applicant as per claims of the Corporate Debtor for a sum of Rs. 57,31,227.88/- Non-Payment of Commission from E&Y, the said sum includes an amount of Rs. 25.04 lakhs as detention / demurrage charges and a sum of Rs. 25.17 lakhs as commission.

iv. Pursuant to installation of the carpets by the CD for E&Y, several complaints were raised regarding the poor finish work of the work. The said amount of commission has been forfeited by the Corporate Debtor to the Operational Creditor, in view of the Agreement dated 27.04.2020, entered into between Belgotex Floorcoverings Ltd., Belgotex India Pvt. Ltd. and Puneet India Pvt. Ltd. As per the said Agreement dated 27.04.2020, it has been agreed that any amount receivable by the Corporate Debtor from the Operational Creditor for the E&Y Account, would be paid to Belgotex South Africa in view of indebtedness of the Corporate Debtor. Therefore, the commission, if any, receivable by the Corporate Debtor from the account of E&Y, would be retained to the Belgotex South Africa.

ANALYSIS AND FINDINGS

6. We have heard the Ld. Counsel on behalf of the Applicant/Operational Creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, Rejoinder by the Applicant, Additional Affidavits and written submission presented by Operational Creditor and Corporate Debtor. Since, the registered office of the Respondent/ Corporate Debtor is in Delhi, this Adjudicating Authority is having territorial jurisdiction as the Adjudicating Authority in relation to prayer for initiation of Corporate Insolvency Resolution Process (CIRP) under Section 9 of The Insolvency and Bankruptcy Code, 2016, against the Corporate Debtor. Further, the present petition is filed within the period of limitation.

7. It is observed that the Operational Creditor has sent a demand notice dated 08.05.2020 to the Corporate Debtor under Section 8 of the Insolvency and Bankruptcy Code, 2016 demanding payment of outstanding dues worth Rs. 1,61,71,305/-
8. On a perusal of Part-IV of Form 5 giving particulars of the operational debt claimed by the applicant in the instant we notice that the applicant had claimed principal outstanding amount of Rs. 1,45,58,946/- (Rupees One Crore Forty Five Lakhs Fifty Eight Thousand Nine Hundred and Forty Six Only) along with interest at the rate of 24% per annum, aggregating to a total sum of Rs. 1,86,30,116/- (Rupees One Crore Eighty Six Lakhs Thirty Thousand One Hundred and Sixteen Only).
9. For admission of the Section 9 application, one of the principal requirements is that there should not be any pre-existing dispute between the Operational creditor and the Corporate debtor before issue of the Section 8(1) notice.
10. The **Hon'ble Supreme Court** in **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited (Civil Appeal No. 9405 Of 2017)** passed on 21.09.2017 has held:

“We have also seen that one of the objects of the Code qua operational debts is to ensure that the amount of such debts, which is usually smaller than that of financial debts, does not enable operational creditors to put the corporate debtor into the insolvency resolution process prematurely or initiate the process for extraneous considerations. It is for this reason that it is enough that a dispute exists 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.”

11. The abovementioned judgment has again been reiterated by the **Hon’ble Supreme Court** in its judgement delivered on January 04, 2023 in the matter of **Sabarmati Gas Limited vs. Shah Alloys Limited (Civil Appeal No. 1669 of 2020)** has held:

“It is enough that a dispute exists between the parties and in other words, what is to be seen is whether there was a plausible contention requiring investigation for the purpose of adjudication. Taking note of the nature of the dispute of the respondent as referred hereinbefore in respect of the claim made by the appellant, we do not find any reason to disagree with the concurrent findings of the Tribunals that there existed a ‘pre-existing dispute’ between the parties before the receipt of demand notice under Section 8, IBC. In other words, the dismissal of the application under Section 9, IBC on the ground of ‘pre-existing dispute’ cannot be held to be patently illegal or perverse. We also do not find any reason, in the facts and

circumstances, to hold that the case set up by the respondent was a patently feeble legal argument. At any rate, we are not inclined to brush aside the case of the respondent as spurious. We may hasten to add here that we shall not be understood to have held that the dispute set by the respondent regarding the dues is ultimately to be upheld. Certainly, when the expression 'pre-existing dispute' is used it will only indicate the existence of a dispute prior to the receipt of a demand notice under Section 8, IBC, and the correctness or its truthfulness is a matter of evidence. In short, the respondent has succeeded in raising a dispute describable as 'pre-existing dispute'. In that view of the matter once we find that the Tribunals have rightfully held that there existed a 'pre-existing dispute' between the parties there cannot be an order of remand of the matter to the Tribunal for reconsideration of Section 9 application under IBC.”

12. Upon consideration of the facts in the present case, it is evident that there are certain disputes/conflicts vis-à-vis the alleged outstanding amount sought by the applicant herein prior to the issuance of the statutory demand notice and the institution of the present application. It is submitted that the parties had entered into a Tripartite Memorandum Agreement dated 27.04.2020 between Belgotex Floorcoverings Limited, Belgotex India Private Limited, and Puneet India Private Limited as a joint venture project to install flooring with Ernst and Young in India.
13. The Corporate Debtor has claimed that a sum of Rs. 57,31,227.88/- (Rs. 25.04 lakhs as detention/demurrage charges and a sum of Rs. 25.17 lakhs as

commission) is due and payable by the Operational Creditor on the E&Y Account. The relevant email exchange has been reproduced below-

From: Puneet India P Ltd <puneetindia@puneet-india.com>
Sent: Tuesday, April 6, 2021 11:56 AM
To: Khalid, Mohd @ Gurgaon <Mohd.Khalid@cbre.co.in>
Cc: 'Ashwani Bhardwaj' <Ashwani.Bhardwaj@gds.ey.com>; 'Amar Jain' <amarjain@puneet-india.com>; 'Ramesh Jain' <rameshjain@puneet-india.com>; rajneesh.srivastava@belgotex.co.za; 'Pankaj Kumar Talreja' <pankaj.talreja@belgotex.co.za>
Subject: Carpet Cleaning

External

Dear Sir,

As discussed with you over call in regards to the cleaning of carpet for the balance area, the same shall be completed by this weekend. Post this is done 100% work will be completed from our end in terms of the 2 work orders issued to us. We request you to please release at least 85% of the payment against the work order for EYGDS. Also the demurrage and detention amount paid on behalf of EY has still not be reimbursed to us. It has already been close to 9 months and still the same has not been cleared. We request you to please take the necessary steps to clear our payment on priority.

Also I would like to highlight here that the payment for the installation that was done against the work order issued to us by woodcraft has also not been cleared till now. We request you to please take this up with woodcraft and get this payment cleared ASAP.

Awaiting your revert.

Best Regards,
AMAR JAIN

14. The Operational Creditor through its email has raised the quality issues pertaining to the carpet installation. Since there were snags in the installation, the payment of commission has been withheld by Ernst and Young (E&Y). Further vide abovementioned tripartite Agreement dated 27.04.2020, it had been agreed that any amount receivable by the from the Operational Creditor for the E&Y Account, would be paid to Belgotex South Africa in view of the indebtedness of the Corporate Debtor to it.
15. Further, on perusal of the record we find that certain invoices in the present matter fall under the exclusion period of Section 10A period. The provisions of section 10A of the Code,2016 are reproduced herein -

“10A. Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process

of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf: **Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.**

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

16. The details of the invoices on account of which due amount of Rs.1,45,58,946/- as per Section 9 Application in the present application are extracted below:-

S. No.	Date of Invoice	Ending of the Period of 90 days	Amount covered under S. 10A in Rupees	Amount beyond S.10A in Rupees
1.	22.11.2019	20.02.2020		4,26,196
2.	27.11.2019	25.02.2020		4,60,378
3.	28.11.2019	26.02.2020		22,13,220
4.	17.12.2019	16.03.2020		17,12,706
5.	21.12.2019	20.03.2020		58,53,408
6.	26.12.2019	25.03.2020	12,28,517	
7.	26.12.2019	25.03.2020	9,82,912	
8.	30.12.2019	29.03.2020	5,953	
9.	02.01.2020	01.04.2020	14,34,921	
10.	20.03.2020	18.06.2020	17,34,096	
		Total	53,86,399	

Considering the various facts and figures as submitted by both the parties, we observe that certain amount of default as claimed by the applicants in Section 9 application falls under the exclusion period of Section 10A period.

17. In the light of the positions thus settled in Mobilox Innovations (P) Ltd. (supra) and Sabarmati Gas Limited, we have examined the question whether there was a 'pre-existing dispute' between the parties, warranting dismissal of the application for initiation of CIRP filed by the Applicant. The Corporate Debtor has raised the issue of pre-existing disputes and place on record a series of emails which shows that there is a dispute between them on various issues related to detention/demurrage charges and Commission charges. It is pertinent to note that in the instant case, the principal amount of debt in the Demand Notice dated 08.05.2020 and principal amount of debt in the present Section 9 Petition are different. Further, no specific date of default is mentioned in the application. Keeping in mind the judgement passed in **Mobilox Innovations Private Limited vs. Kirusa Software Private Limited**, we are of the opinion that the pre-existing disputes in the instant case are not mere feeble arguments. There appears that the disputes truly exist and is not the hypothetical.
18. In the light of the above findings, we are of the considered view that the petitioner has not made out a case for initiation of CIRP under Section 9 of the Insolvency and Bankruptcy Code, 2016, therefore, present Section 9 petition is dismissed, however without cost.

Sd/-

**(DR. SANJEEV RANJAN)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**