

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-/(ND)/775 /ND/2020

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:

Swastik Pipe Limited
Registered Office at: 4 Central Market
Punjabi Bagh, New Delhi-110026

...Operational Creditor/Petitioner

Versus

M/S PSR Aqua and Engineers Private Limited
Registered Office at:
1589, Madarsa Road, Kashmere Gate
New Delhi-110006

...Corporate Debtor/Respondent Company

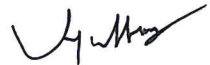
Coram:

SHRI. P.S.N PRASAD
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ
Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Sanjay Jain, Advocate

Order Delivered on: 23.12.2020



ORDER


As per Dr. V.K Subburaj, Member(T)

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.
2. The applicant, M/s Swastik Pipe Limited has filed the present application claiming as the operational creditor with the prayer for initiation of Corporate Insolvency Resolution Process under the provisions of the Code.
3. It is the case of the applicant that it had supplied HRPO Sheets/Coil to PSR Aqua and Engineers Private Limited (Corporate Debtor) and has raised invoices. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:-
 - a. That the Applicant supplied HRPO Sheets/Coil, C.R Sheets, Mild Steel/Sheet/ Carbon Steel ERW Black and Galvanized Pipes/Tubes to the Corporate Debtor.
 - b. That the Corporate Debtor has made payment through cheques bearing nos. 672385, 672386 and 672384 dated 15.03.2019 amounting for Rs. 7,19,210/-, Rs.6,63,496/- and Rs. 2,79,336/- respectively and the same was dishonoured with remarks "EXCEED ARRANGEMENT".
 - c. That the operational creditor sent a Demand Notice dated 24.12.2019 demanding payment of an unpaid operational debt as per provisions under Rule 5 of the Insolvency and Bankruptcy



(Application to Adjudicating Authority) Rules, 2016. Copy of the Demand Notice demanding payment in prescribed Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 duly served upon the address as per the website of Ministry of Corporate Affairs, Government of India, where the operational creditor supplied coil to the Corporate Debtor.

4. The Corporate Debtor in its reply to the application submits that:
 - a. There is a pre-existing dispute between the parties prior to the issuance of the alleged demand notice and with respect to the alleged operational debt is being claimed to be payable by the respondent to the petitioner. Further it is submitted that in the Demand Notice, the debt note amount of Rs. 400000 has also been included which is admittedly is a disputed amount by the respondent prior to the issuance of the statutory Demand notice.
 - b. That the claim of the Applicant that the cheques issued against the invoices were dishonoured and is false and frivolous. It is submitted that the applicant failed to disclose the fact that cheque bearing no. 672384 was a security cheque against the invoice no.04024 dated 20.12.2018 and the cheque bearing no. 672385 was security cheque against the invoice no. 04687 dated 30.01.2019. Furthermore the amount of both the invoices were already paid by the corporate debtor through RTGS vide reference no. 672392 dated 18.03.2019 in respect of the same an email dated 15.02.2019



was also sent by the corporate debtor stating the operational creditor to return the security cheque.

Copy of email dated 15.02.2019 is annexed alongwith.

- c. It is submitted that even after the payment of the invoices bearing nos. 04024 and 04687 by the corporate debtor through RTGS, the operational creditor instead of returning the said security cheques had deposited the same for encashment of the alleged payments under the invoices for which the payments were in dispute between the parties.

Copy of the details of payment through RTGS vide reference no. 672392 dated 18.03.2019 and copy of email dated 12.06.2019 are attached alongwith.

- d. It is pertinent to mention that in pursuant to the issuance of the debit notes, materials were also supplied by the operational creditor and payments were also made by the corporate debtor which is apparent from the ledger of the petitioner maintained in the records of the respondent.

5. Heard the parties and perused the case records.
6. In respect of definition of "dispute" in the Code, Hon'ble Supreme Court has held in the case of Mobilox Innovative Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. 2018 1 SCC 353 *inter-alia* that:

"Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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 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.***” (emphasis given).

7. It is the case of the respondent that there has been a pre-existing dispute between the parties in respect of HRPO coil by the applicant. The respondent has placed on record the details of the payments made through RTGS and the emails to prove its claim. The applicant has denied the allegations. However, the documents on records show that the respondent raised its dispute much before issuance of demand notice.
8. In the factual background it is seen that there has been no admission of operational debt by the respondent. In fact, there has been a dispute regarding bills raised and material supplied by the applicant. Respondent had raised counter debit notes. There was existence of dispute much prior to the issuance of notice under Section 8 of the Code. Respondent has raised dispute with sufficient particulars. The amount of claim raised by the applicant clearly falls within the ambit of disputed claim. The claim of dispute suggests the need of elaborate investigation. In the facts it is reiterated that existence of genuine dispute in the present case cannot be ruled out.
9. As per Section 9 (5) (ii) (d) of the Code provides that adjudicating authority shall reject the application if notice of dispute has been received



by the operational creditor or there is a record of dispute in the information utility.

10. For the reasons stated above this petition fails and the same is rejected.

11. We make it clear that any observations made in this order shall not be construed as an expression of opinion on the merit of the controversy and the right of the Applicants before any other forum shall not be prejudiced on account of dismissal of instant application.

Let the copy of the order be served to the parties.

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(Dr. V.K Subburaj)

Member (T)

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(P.S.N Prasad)

Member (J)