

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH-VI

CP (IB) No.292/MB/2020

[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:

SECURE METERS LIMITED

[CIN: U74899RJ1987PLC029106]

Registered Office: E-class

Pratapnagar Industrial Area

Udaipur-313003

Rajasthan.

...Operational Creditor

VERSUS

SIGNET PRODUCTS PRIVATE LIMITED

[CIN: U51909MH1999PTC122876]

Registered Office: Plot No. 16/16A

N-5, South Sector, CIDCO

Aurangabad-431003

Maharashtra.

...Corporate Debtor

Pronounced: 09.05.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Ranit Basu, Adv. Maitri Malde

a/w Adv. Dua Shaikh

Corporate Debtor: Adv. Manoj Harit & Co.

ORDER

[Per: SANJIV DUTT, MEMBER (TECHNICAL)]

1. BACKGROUND

- 1.1 This Application bearing C.P.(IB) No.292/MB/2020 was filed by Secure Meters Limited, the Operational Creditor on 22.01.2020 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “the Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in respect of Signet Products Private Limited, the Corporate Debtor.
- 1.2 The Operational Creditor is involved in the business of manufacturing and sale of electronic meters and other related products. The Corporate Debtor, on the other hand, specialises in manufacturing of electrical equipment and services power infrastructure solutions for data centres, automation, transmission and distribution.
- 1.3 The Operational Creditor supplied various meters, meter-related products and other related devices and equipment to the Corporate Debtor as per the purchase orders and invoices were raised from 18.06.2018 to 12.07.2018. However, these invoices remained unpaid despite reminders. The total amount of debt claimed to be due from the Corporate Debtor is stated to be Rs.91,84,691/- (Ninety-One Lakhs Eighty-Four Thousand Six Hundred Ninety-One Rupees) comprising principal debt of Rs.82,58,544/- and interest @12% P.A. of Rs.9,26,147/- as on 03.07.2019.

1.4 The Operational Creditor issued a Demand Notice dated 03.07.2019 to the Corporate Debtor, as required under Section 8 of the Code, seeking payment of outstanding operational debt within 10 days of receipt of the notice. The Corporate Debtor neither replied to the said notice nor made payment of the aforementioned amount of operational debt due and payable to the Operational Creditor. Consequently, the Operational Creditor filed the present Application seeking initiation of CIRP in respect of the Corporate Debtor.

2. AVERMENTS OF THE OPERATIONAL CREDITOR

- 2.1 The Corporate Debtor placed purchase orders for various meter-related products and other related devices and equipment on the Operational Creditor between February, 2018 and June, 2018.
- 2.2 The Operational Creditor supplied goods in a timely manner as per the specifications and description of equipment given by the Corporate Debtor in the purchase orders. No objection regarding the quality of the goods supplied was raised by the Corporate Debtor.
- 2.3 The Operational Creditor sent several reminders to the Corporate Debtor to pay the outstanding sum. It addressed a written communication dated 08.01.2019 to which the Corporate Debtor replied on 10.01.2019 assuring that it would fulfil the commitment to the Operational Creditor in a time-bound manner but later failed to pay the outstanding operational debt.

- 2.4 Consequently, the Operational Creditor issued a Demand Notice dated 03.07.2019 by way of Regd./ Speed Post as well as e-mail to the Corporate Debtor, as required under Section 8 of the Code, seeking payment of outstanding operational debt aggregating to Rs.91,84,691/- consisting of principal amount of invoices of Rs.82,58,544/- and further interest of Rs.9,26,147/-.
- 2.5 In spite of delivery of the Demand Notice, the Corporate Debtor failed to reply to the same. Failure of the Corporate Debtor to reply to the Demand Notice itself establishes that there is no dispute regarding the transaction in question and no plausible contentions can arise at the end of the Corporate Debtor.
- 2.6 As regards alleged non-compliance with Section 9(3)(c) of the Code, the Operational Creditor has relied upon the judgment of Hon'ble Supreme Court in **Macquarie Bank Ltd. Vs. Silpi Cable Technologies Ltd.** in CA 15135/2017 dated 15.12.2017, wherein it was held that the requirement of certificate from the financial institution/ bank is not mandatory.
- 2.7 With regard to the Corporate Debtor's plea that the ledger report annexed to the Application is frivolous and inaccurate, reliance is placed on judgment of Hon'ble Gujarat High Court in **Jay Ambe Industries Prop. Shri Dineshkumar Bajranglal Somani Vs. Garnet Specialty Paper Ltd.** dated 07.01.2022 in R/First Appeal No.5228 of 2019 wherein it was held that once the document has been exhibited, the initial burden of proof stands discharged by the original plaintiff and it is for the original defendant to deny

the same with cogent rebuttal evidence. In the absence of such rebuttal evidence, the exhibited evidence could not be ignored. In view of above submissions, it is prayed that CIRP be initiated in respect of the Corporate Debtor.

3. CONTENTIONS OF CORPORATE DEBTOR

- 3.1 The Corporate Debtor submits that there is some amount due to the Operational Creditor, but disputes the amount claimed in the Application. It contends that the reason for being tentative about the amount due is that the Corporate Debtor has been a victim of massive fraud committed by a former Director, leading to ongoing investigations by the CBI and Enforcement Directorate. This situation has made it impossible for the Corporate Debtor to provide a timely and comprehensive response along with documents in support within the stipulated period of ten days.
- 3.2 The Corporate Debtor submits that the present Application is full of defects and deserves to be dismissed at the threshold. The figure of claim (without interest) of Rs.82,58,544/- stated in Part-IV of the Application does not match with the figure of Rs.63,34,811/- shown as outstanding as per the Operational Creditor's own Ledger. The Demand Notice is incomplete and bears evident interpolation and overwriting thereon, rendering it invalid. This indicates that the purported Demand Notice was prepared as an afterthought. The Bank Statement annexed to the Application is for the period from 04.01.2020 to 04.01.2020, a period or date irrelevant vis-à-vis the transaction period or possible payment record. Such misleading

submission of supportive documents amounts to suppression of material facts and, therefore, renders the claim untenable and unsustainable.

3.3 The Demand Notice claims that the invoices issued by the Operational Creditor provide for a payment period of 15 days from the date of invoices, whereas the invoices are annotated with the term of payment as 100% advance. Consequently, for many transactions, payment was made in advance. Thus, in the absence of any substantial and crystallized dues being ascertained, the instant Application is not maintainable and hence deserves to be dismissed at the threshold. Additionally, the Corporate Debtor contends that the Operational Creditor failed to provide a certificate from the financial institution confirming the unpaid debt, as required by Section 9(3)(c) and also violated other stipulations under Section 9(3)(b) and Section 9(3)(d) of the Code.

3.4 The Corporate Debtor submits that the ledger report annexed to the Application is actually a sub-ledger accounting report of ORACLE instead of the regular ledger report of Tally ERP, as usually furnished. The Corporate Debtor submits that out of the total 253 pages of the Application, 199 pages are the purported ledger report. Further, out of the 199-page report, 66 pages belong to a financial year prior to the one in which the impugned transactions took place. This frivolousness is in addition to the inaccurate and excessive amount of demand made in the Application vis-à-vis the purported ledger, disentitling the Operational Creditor to any dues. All these show that the Operational Creditor has come to this Tribunal to abuse the provisions of the Code.

3.5 Finally, the Corporate Debtor asserts that the Operational Creditor failed to provide evidence of delivery of supplies, rendering the invoices insufficient as evidence of debt or dues in a commercial transaction. In view of the above, it is submitted that the Application being incomplete may be dismissed.

4. ANALYSIS AND FINDINGS

4.1 Upon due consideration of the pleadings along with the materials available on record and hearing the Ld. Counsel for the Operational Creditor and the Corporate Debtor, our findings in the matter are as under:-

4.2 It is well-settled that while examining an application under Section 9 of the Code, the Adjudicating Authority will have to determine (a) whether there is an 'operational debt' as defined under Section 5(21) exceeding the threshold limit under Section 4 of the Code; (b) whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid and (c) whether there is existence of a dispute between the parties or the record of pendency of a suit or arbitration proceeding filed before the receipt of the Demand Notice of the unpaid operational debt in relation to such dispute? If any of the aforesaid conditions is lacking, the application will have to be rejected [*Mobilox Innovations Private Limited v. Kirusa Software Private Limited (2018) 1 SCC 353*]. It is also a settled proposition of law that an application under Section 9 of the Code has to be mandatorily admitted if all the conditions stipulated in clauses (a) to (e) of Section 9(5)(i) are satisfied.

4.3 It is well-established that an application under Section 9 of the Code requires strict proof of debt and default. The burden to prove the existence of operational debt and default thereof by way of relevant and credible documentary evidence lies on the operational creditor. In the instant case, the Operational Creditor has placed on record copies of purchase orders, commercial invoices, its own bank statement and Ledger of the Corporate Debtor. On perusal of the commercial invoices, it is noticed that none of the ten invoices aggregating to Rs.82,58,544/- bears signature of the Operational Creditor or its authorised signatory and, therefore, such invoices have little evidentiary value. Besides, the Operational Creditor has not annexed to the Application proof of delivery of goods such as copies of relevant delivery challans, lorry/ transportation receipts, etc. In the absence of delivery challans/ lorry receipts, the submission of invoices by itself cannot be treated as sufficient evidence of debt. The Operational Creditor has also submitted copy of statement of its Bank Account No.0163515014200 maintained with the IDBI Bank Ltd., Udaipur just for one day, viz., 04.01.2020, which admittedly does not signify anything as it does not reveal any payment made by the Corporate Debtor. Besides, it is noticed from the record that the amount claimed to be in default by the Operational Creditor is not at all a crystallised amount. While the Operational Creditor has claimed the amount in default to be Rs.82,58,543/- in Part-IV of the Application, a perusal of the Ledger Report of the Corporate Debtor in the books of the Operational Creditor shows that the amount due is Rs.63,34,811/- (rounded off) as on 06.01.2020, i.e., just before the filing of the Application.

4.4 Further, it is noticed that the Ledger Report of the Corporate Debtor annexed to the Application covers not only the ten invoices issued over a period of less than a month between 18.06.2018 and 12.07.2018 but also transactions of earlier Financial Years 2015-16 and 2017-18 which have no relevance to the amount claimed to be in default in the present Application. The said Ledger Report is titled as “Third Party Balances Report” and runs into almost 200 pages. It is actually sub-ledger accounting report of ORACLE as against the regular Ledger Account of Tally ERP which is ordinarily furnished as one of the supportive documents of claim of debt. It has 8 columns such as Journal Category, GL Date, Event Class, Transaction Number, Transaction Date, Line Description, Debit and Credit. For the purpose of adjudication of the present Application, the relevant details of transactions between the Operational Creditor and the Corporate Debtor reflected in the Ledger Report as are available at **Pages 160, 161 and 162** of the Application are scanned and pasted below:- **Page 160**

ORACLE Subledger Accounting		Third Party Balances Report				Report Date	06-Jan-20	
		Date From	2018-04-01T00:00:00.000+05:30	Date To	2019-03-31T06:00:00.000+05:30	Page	54 of 72	
Journal Category	GL Date	Event Class	Transaction Number	Transaction Date	Line Description	Debit	Credit	
Receipts	Jun 18, 2018	Receipt	Credited	Jun 18, 2018	19101816 Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902301159 Transaction Document Number 19101794		43,660.00	
Receipts	Jun 18, 2018	Receipt	Credited	Jun 18, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902301587 Transaction Document Number 19102624		3,186,000.00	
Period Total						3,186,000.00	3,235,660.00	
Ending Balance for Period						Jun-18	0.00	
Beginning Balance for Period						Jul-18	0.00	
Journal Category	GL Date	Event Class	Transaction Number	Transaction Date	Line Description	Debit	Credit	
Sales Invoices	Jul 6, 2018	Invoice	1902302133	Jul 6, 2018	Being Invoice Number 1902302133, dated 06-JUL-18, currency INR, raised in the name of SIGNET PRODUCTS PRIVATE LIMITED, against document sequencing number 19103285	18,880.00		
Sales Invoices	Jul 12, 2018	Invoice	1902302240	Jul 12, 2018	Being Invoice Number 1902302240, dated 12-JUL-18, currency INR, raised in the name of SIGNET PRODUCTS PRIVATE LIMITED, against document sequencing number 19103411	1,170,560.00		
Sales Invoices	Jul 12, 2018	Invoice	1902302238	Jul 12, 2018	Being Invoice Number 1902302238, dated 12-JUL-18, currency INR, raised in the name of SIGNET PRODUCTS PRIVATE LIMITED, against document sequencing number 19103415	1,170,560.00		
Sales Invoices	Jul 12, 2018	Invoice	1902302236	Jul 12, 2018	Being Invoice Number 1902302236, dated 12-JUL-18, currency INR, raised in the name of SIGNET PRODUCTS PRIVATE LIMITED, against document sequencing number 19103416	1,170,560.00		
Sales Invoices	Jul 12, 2018	Invoice	1902302235	Jul 12, 2018	Being Invoice Number 1902302235, dated 12-JUL-18, currency INR, raised in the name of SIGNET PRODUCTS PRIVATE LIMITED, against document sequencing number 19103413	1,170,560.00		
Sales Invoices	Jul 12, 2018	Invoice	1902302234	Jul 12, 2018	Being Invoice Number 1902302234, dated 12-JUL-18, currency INR, raised in the name of SIGNET PRODUCTS PRIVATE LIMITED, against document sequencing number 19103413	1,170,560.00		

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ORACLE Subledger Accounting

Third Party Balances Report

Report Date 06-Jan-20

Date From 2018-04-01T00:00:00.000+05:30 Date To 2019-03-31T00:00:00.000+05:30 Page 55 of 72

Journal Category	GL Date	Event Class	Transaction Number	Transaction Date	Line Description	Debit	Credit
Sales Invoices	Jul 12, 2018	Invoice	1902302233	Jul 12, 2018	against document sequencing number 19103417 Being Invoice Number 1902302233, dated 12-JUL-18, currency INR, raised in the name of SIGNET PRODUCTS PRIVATE LIMITED.	1,170,560.00	
Sales Invoices	Jul 12, 2018	Invoice	1902302239	Jul 12, 2018	against document sequencing number 19103412 Being Invoice Number 1902302239, dated 12-JUL-18, currency INR, raised in the name of SIGNET PRODUCTS PRIVATE LIMITED.	1,170,560.00	
Receipts	Jul 31, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302234 Transaction Document Number 19103417		1,170,560.00
Receipts	Jul 31, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302235 Transaction Document Number 19103415		1,170,560.00
Receipts	Jul 31, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302240 Transaction Document Number 19103411		1,170,560.00
Receipts	Jul 31, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302239 Transaction Document Number 19103414		1,170,560.00
Receipts	Jul 31, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302233 Transaction Document Number 19103412		1,170,560.00
Receipts	Jul 31, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302239 Transaction Document Number 19103415		1,170,560.00
Receipts	Jul 31, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302236 Transaction Document Number 19103416		1,170,560.00
Period Total						8,212,800.00	8,193,920.00
Ending Balance for Period Jul-18						18,880.00	0.00

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ORACLE Subledger Accounting

Third Party Balances Report

Report Date 06-Jan-20 162

Date From 2018-04-01T00:00:00.000+05:30 Date To 2019-03-31T00:00:00.000+05:30 Page 56 of 72

Journal Category	GL Date	Event Class	Transaction Number	Transaction Date	Line Description	Debit	Credit
Beginning Balance for Period Aug-18						18,880.00	
Receipts	Aug 2, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302236 Transaction Document Number 19103415	1,170,560.00	
Receipts	Aug 2, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302234 Transaction Document Number 19103417	1,170,560.00	
Receipts	Aug 2, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302239 Transaction Document Number 19103414	1,170,560.00	
Receipts	Aug 2, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302233 Transaction Document Number 19103412	1,170,560.00	
Receipts	Aug 2, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302240 Transaction Document Number 19103411	1,170,560.00	
Receipts	Aug 2, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302239 Transaction Document Number 19103415	1,170,560.00	
Receipts	Aug 2, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302236 Transaction Document Number 19103416	1,170,560.00	
Receipts	Aug 2, 2018	Receipt	001162	Jul 31, 2018	Receipt Application to Transaction Type - Domestic Mfg-BTD Transaction Number 1902302235 Transaction Document Number 19103413	1,170,560.00	
Period Total						8,193,920.00	0.00
Ending Balance for Period Aug-18						8,212,800.00	0.00
Beginning Balance for Period Sep-18						8,212,800.00	
Journal Category	GL Date	Event Class	Transaction Number	Transaction Date	Line Description	Debit	Credit

A perusal of the above extract of the Ledger Report of the Corporate Debtor on page 161 clearly reveals that the Operational Creditor had received payments against pending invoices amounting to Rs.81,93,320/- on 31.07.2018 and recorded the same in the Ledger Report leaving an outstanding balance of only Rs.18,880/- as on 31.07.2018.

4.5 In order to ascertain the veracity of the transactions recorded on above pages from the Operational Creditor, the matter was fixed for clarification on 01.04.2024, 26.04.2024, 29.04.2024, 03.05.2024 and 08.05.2024. The Ld. Counsel for the Operational Creditor after seeking necessary clarification from his client submitted on 08.05.2024 that the Operational Creditor had received payment of Rs.81,93,920/- by cheques from the Corporate Debtor on 31.07.2018 and given due credit to the Corporate Debtor at Page 161 of the Ledger Report as on 31.07.2018. However, the learned Counsel claimed that the cheques issued by the Corporate Debtor got bounced and the credit entries made in the account of the Corporate Debtor on 31.07.2018 were reversed on 02.08.2018 as shown from Page 162. On perusal of the pleadings made by the Operational Creditor in its Application, it is noticed that for reasons best known to the Operational Creditor, there is no mention regarding dishonouring of any cheques issued by the Corporate Debtor between 31.07.2018 and 02.08.2018. Strangely enough, the Operational Creditor has in the Application neither annexed copies of the aforesaid dishonoured cheques nor copies of the return memos issued by the Bank concerned.

4.6 This leads us to the question of ascertaining the evidentiary value of the said Ledger Report. In this regard, the settled legal position has been summed up by the Hon'ble Gujarat High Court in ***Jai Ambe Industries*** (supra) cited by the Operational Creditor itself. It is well-established that a ledger, though an account book, has no evidentiary value unless the entries made therein are proved by independent evidence. No liability can be fastened on the basis of an entry in the ledger alone unless it is corroborated by some other evidence. In other words, there must be corroboration of entries which can be supplied by proving the transaction or by proving the entries in the daily cash book or *roznama*. Without corroboration, entries in the ledger account cannot be brought within the purview of Section 34 of the Evidence Act, 1872.

4.7 In the instant case, since no corroborative evidence in support of the entries of alleged dishonouring of cheques issued by the Corporate Debtor has been placed on record, we have no hesitation in rejecting the aforesaid Ledger Report as unreliable and lacking in evidentiary value. The reliance placed by the Operational Creditor in this regard on its e-mail dated 08.01.2019 addressed to the Corporate Debtor informing the latter "regarding payment dishonoured by bank" and requesting it "to deposit the same via electronic fund transfer" will be of no avail, because it refers not to alleged dishonouring of cheques between 31.07.2018 and 02.08.2018 but to a subsequent event happening on 08.01.2019. Similarly, a perusal of the e-mail dated 10.01.2019 sent by Mr. Narendra Korde, Director of the Corporate Debtor to the Operational Creditor merely shows willingness of the former to pay the dues of the latter on disbursement of all loans, but it nowhere speaks of any

acknowledgement on his part of the amount claimed in the Application. Thus, it clearly emerges that the documentary evidences annexed by the Operational Creditor to the Application fail to establish existence of operational debt as claimed in the Application and default in payment thereof.

4.8 It is also seen from the record that there was no provision for charging of interest under the purchase orders issued by the Corporate Debtor on the Operational Creditor and 15 days' credit was to be allowed. It is well-established that interest cannot be claimed as a matter of right when there is no agreement between the parties for the same. Therefore, in the absence of mutual agreement between the parties and owing to its failure to prove the very existence of operational debt in the instant case, the Operational Creditor's claim for interest @12% P.A. is found to be untenable.

4.9 In view of aforesaid findings, it clearly emerges that the Operational Creditor has failed to demonstrate existence of an operational debt exceeding the threshold limit under Section 4 of the Code and default thereof which is *sine qua non* for admission of an application under Section 9 of the Code. In these circumstances, we are of the considered view that the present Application filed by the Operational Creditor under Section 9 of the Code deserves to be dismissed.

ORDER

In view of the aforesaid findings, this Application bearing C.P.(IB) No.292/MB/2020 filed under Section 9 of the Code by Secure Meters Limited,

the Operational Creditor, for initiating CIRP in respect of Signet products Private Limited, the Corporate Debtor is **rejected**.

Sd/-

SANJIV DUTT
MEMBER (TECHNICAL)
deepa/JNK

Sd/-

K. R. SAJI KUMAR
MEMBER(JUDICIAL)