

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 235/Chd/Pb/2020**

**Under Section 9 of IBC, 2016**

**In the matter of C.P. (IB) No. 235/Chd/Pb/2020**

**SKM Cotton Company**

Having its Registered Office at  
104 (D-1), M Square, 2nd Floor  
73 Swastik SOperational Creditority, Behind City Centre  
Navrangpura, Ahmedabad- 380009

...Petitioner/Operational Creditor

Vs.

**Ahuja Cotspin Private Limited**

Having its registered office at  
B-VI-I, Kucha No.1  
Madhopuri Ludhiana,  
Ludhiana, Punjab - 141008

...Respondent/Corporate Debtor

**Judgement delivered on: 06.05.2024**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. L.N. GUPTA, MEMBER (TECHNICAL)**

**Present:**

**For the petitioner/Operational Creditor: Mr. Vishav Bharti Gupta, Advocate**

**For the respondent/ Corporate Debtor: Mr. Vaibhav Sahni and Ms. Swati  
Vashisth, PCA**

**Per: Sh. Harnam Singh Thakur, Member (Judicial)  
Sh. L.N. Gupta, Member (Technical)**

## **JUDGEMENT**

The instant application has been filed by SKM Cotton Company, (hereinafter referred to as **“Operational Creditor/Operational Creditor”**) against Ahuja Cotspin Private Limited (hereinafter referred to as **“Corporate Debtor/Corporate Debtor”**) 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, seeking initiation of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor on account of default in the payment of Rs. 3,15,75,190/- (Rupees Three Crore Fifteen Lakh Seventy Five Thousand One Hundred and Ninety only) by the Corporate Debtor, plus 15% interest per annum till the final disposal of the application.

2. It is averred that the Operational Creditor supplied various goods to the Corporate Debtor worth Rs. 3,15,75,190/- through various bills from April 2018 till November 2019, for which the payment has not been received. It is further stated that:

2.1. Both parties agreed upon the condition that the payment shall be made within 30 days, from the goods received by the Corporate Debtor.

2.2. The last payment made by the Corporate Debtor in the name of the Operational Creditor was on 24.09.2019 for an amount of Rs. 1,00,000/- (Rupees One Lakh only). After the said payment, all the cheques issued by the Corporate Debtor bounced, and an amount of Rs. 3,15,75,190/- still remains unpaid. The default amount as of 20.01.2020 is Rs. 3,36,62,606/- (Rupees Three Crore Thirty Six Lakh Sixty Two Thousand Six Hundred and Six), including running interest at 15% per annum. The Operational Creditor

submitted that it exchanged numerous emails with the Corporate Debtor, requesting the payment of the remaining amount

- 2.3. The Operational Creditor issued statutory demand notice dated 20.01.2020, under Section 8 of the Code in relevant Form-3, calling upon the Corporate Debtor to pay the said sum within a period of 10 days from the date of receipt of the notice. The Operational Creditor has not received a reply to the said notice till date.
- 2.4. The date of default as mentioned in Part IV of the petition is 31.07.2019, as the amount claimed became due on 01.08.2019.

3. Notice was issued to the Corporate Debtor as to why the said petition should not be admitted. An affidavit of service dated 02.03.2021 was filed vide diary no. 02229/01. The Corporate Debtor in its reply dated 03.08.2022 filed vide diary no. 02229/2, submitted that the present petition is liable to be dismissed as there exists a pre-existing dispute between the parties.

- 3.1. The Corporate Debtor further submitted that a suit is pending before the Court of Civil Judge, Ludhiana (Civil Suit No. 285 of 2020), filed by the Corporate Debtor against the Operational Creditor on 17.01.2020, seeking a decree for damages on account of loss suffered by the Corporate Debtor due to the supply of very inferior quality raw materials supplied by the Operational Creditor to the Corporate Debtor.
- 3.2. The Corporate Debtor stated that during the course of business, it issued various cheques as security in favour of the Operational Creditor on the assurance that the same would not be misused by the Operational Creditor.

However, when the Corporate Debtor apprised the Operational Creditor about the supply of inferior quality goods, the Operational Creditor without resolving the issue, presented the cheques for encashment, without informing the Corporate Debtor. The said cheques were issued as a security only, not to discharge any of its existing liability.

3.3. The Corporate Debtor submitted that it issued a legal notice dated 20.12.2019, to the Operational Creditor, to pay a sum of Rs. 5.15 crores on account of damages suffered by the Corporate Debtor due to the supply of inferior quality goods by the Operational Creditor.

3.4. After the issue of the said notice, the Corporate Debtor filed the civil suit before the Court of Civil Judge, Ludhiana, mentioned above, which is pending for adjudication.

4. The Operational Creditor in its rejoinder dated 18.10.2022, filed vide diary no. 02229/3 stated that the Corporate Debtor never raised any issue with respect to the goods supplied and further stated the following:

4.1. The Operational Creditor admitted that a civil suit is pending before the Court of Civil Judge, Ludhiana, which has been filed to evade the clutches of the IBC, 2016. The Corporate Debtor issued several post-dated cheques in order to partly fulfill its liability to pay for the goods purchased from the Operational Creditor, which were dishonoured, and the Operational Creditor filed complaints dated 16.12.2019 for 5 cheques and complaints dated 04.01.2020 for 2 cheques, under Section 138 of The Negotiable Instruments

Act, 1881. The said complaints were filed before the issue of the legal notice by Corporate Debtor.

4.2. The Operational Creditor submitted that it had duly informed the Corporate Debtor through an email dated 12.08.2019, before encashing the cheques issued by the Corporate Debtor to the Operational Creditor.

5. Written submissions dated 23.01.2023, were filed by the Operational Creditor vide diary no. 02229/5, reiterating the facts of the petition and rejoinder. Written submissions dated 22.12.2022 were filed by the Corporate Debtor vide diary no. 02229/4 .

6. During the course of arguments, it is contended by the Ld. Counsel for the Operational Creditor that the dispute was raised by Corporate Debtor to save itself from the clutches of IBC, after criminal proceedings under Section 138 of the Negotiable Instruments Act, 1881, were initiated by Operational Creditor against the Corporate Debtor. Further, the Corporate Debtor failed to reply to the demand notice dated 20.01.2020, within 10 days from receipt of the said notice. Hence, the petition should be admitted for CIRP of the Corporate Debtor. The Ld. Counsel for the Corporate Debtor contested that:

6.1. The dispute regarding the alleged debt and quality of goods supplied by the Operational Creditor to the Corporate Debtor dates prior to the date of issuance of the demand notice dated 20.01.2020. Further, proceedings relating to the dispute are already pending before the Court of Civil Judge, Ludhiana, which further evidences the existence of pre-existing dispute between the parties, and hence, the present petition shall be dismissed.

Reliance is placed upon the Hon'ble Supreme Court's authority in the case of **Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd. (2018) 1 SCC 353**, which is reproduced hereunder:

*“51. 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.”*

- 6.2. The Ld. Counsel has also referred to the following authorities of the Hon'ble Supreme Court in: (i) **Engineers vs. Hindustan Petroleum Corporation Ltd. & Ors., Civil Appeal No. 4583 of 2022**; (ii) **Transmission Corpn. Of A.P. Ltd. vs. Equipment Conductors & Cables Ltd., (2019) 12 SCC 697**;

and (iii) ***Kay Bouvet Engg. Ltd. vs. Overseas Infrastructure Alliance (India) (P) Ltd., (2021) 10 SCC 483.***

7. After hearing both parties and a careful perusal of the records produced before us, we would examine the case on merits:

- 7.1. Whether the petition has been filed within the period of limitation? The date of default, as stated in Part IV of the petition, is 31.07.2019, and the present petition was filed on 11.03.2020. Thus, the petition is well within the period of limitation.
- 7.2. The second issue for consideration is whether there is any pre-existing dispute between the parties.

From the record, it is seen that the Corporate Debtor issued a legal notice dated 20.12.2019 to the Operational Creditor to pay a sum of Rs. 5.5 crore on account of the loss suffered by the Corporate Debtor due to the supply of inferior quality goods by the Operational Creditor. Moreover, a civil suit before the Court of Civil Judge, Ludhiana, was filed by the Corporate Debtor against the Operational Creditor on 17.01.2020, which is prior to the date of the issue of demand notice by the Operational Creditor. This fact of the pendency of a civil suit for loss and damages is admitted by the Petitioner in its rejoinder.

Although it is contended by the Ld. Counsel for the Petitioner that the dispute has been raised by the Corporate Debtor only to save itself from the clutches of CIRP, when criminal proceedings under Section 138 of the

Negotiable Instruments Act were initiated against the Corporate Debtor, but the filing of a civil suit by the Corporate Debtor before the issuance of a demand notice by the Petitioner shows that the dispute is pre-existing.

Apart from this, a legal notice dated 20.12.2019 was issued by the Corporate Debtor to the Petitioner about the defective quality of goods supplied by the Petitioner, before the issuance of the demand notice dated 20.01.2020. Thus, there is sufficient and convincing evidence available on record to establish a pre-existing dispute between the parties. Reliance can be placed upon the authority (*supra*), **Mobilox Innovations Pvt. Ltd. vs. Kirusa Software Pvt. Ltd.** as referred to by the Ld. Counsel for the Respondent.

8. After due consideration of the issues involved, we are of the considered view that a pre-existing dispute existed between the parties before the demand notice and filing of the present petition. Thus, as per Section 9(5)(ii)(d), where notice of dispute has been received by the operational creditor, the Adjudicating Authority may reject an application filed under Section 9 of the Code.

9. As a sequel to the above discussion and reasons recorded hereinbefore, the present petition stands dismissed, however, without any order as to costs.

Sd/-

**(L.N. Gupta)**  
**Member (Technical)**

May 06 , 2024  
ASG

Sd/-

**(Harnam Singh Thakur)**  
**Member (Judicial)**