

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No.160/KB/2022**

***An application under section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6(1) of the Insolvency and Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016.***

**IN THE MATTER OF:**

**Tamra Dhatu Udyog Private Limited**

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

***Versus***

**Eastern Copper Manufacturing Company Private Limited**

**...Corporate Debtor/ Respondent.**

**Date of Pronouncement: May 01, 2024.**

**CORAM:**

**SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)  
SHRI. D. ARVIND, HON'BLE MEMBER (TECHNICAL)**

**Appearances:**

<b>For the Applicant:</b>	<b>Mr. Vibhor Kapoor, Adv. Ms. Mahima Sekhawat, Adv.</b>
<b>For the Respondent:</b>	<b>Ms. Neha Somani, Pr. CS.</b>

**ORDER**

**Per: Bidisha Banerjee, Member (Judicial)**

1. This Court is congregated through a hybrid mode.
2. We have heard the Ld. Counsels for the parties.
3. This application has been preferred by **Tamra Dhatu Udyog Private Limited** hereinafter referred to as "Operational Creditor"/ Applicant under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity "I&B Code" seeking to initiate a Corporate Insolvency Resolution Process (CIR Process) against **Eastern Copper**

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No.160/KB/2022**

**Manufacturing Company Private Limited**, hereinafter referred to as “Corporate Debtor”/ “Respondent”.

4. The total amount claimed to be in default is Rs. Rs. 2,10,09,089.11/- in which the principal amount, due and outstanding is Rs. 1,39,41,382/- along with the interest at the rate of 24% per annum on and from 24.10.2019. The date of default is claimed on 24.10.2019.

***Facts in Nutshell:***

5. That the Corporate Debtor issued five purchase orders from 03.05.2019 to 27.09.2019 on the Operational Creditor for the supply of the “Annealed Tinned Copper Conductor- Class- 2” which was duly delivered at the site of the Corporate Debtor at Domjur in Howrah.

6. That, pursuant to the supply of the goods as required by the Corporate Debtor, the Operational Creditor raised and delivered the invoices to the Corporate Debtor. The Corporate Debtor has made a part payment of the outstanding amount towards the due. However, the applicant has failed a major part of the outstanding amount. A notice demanding the outstanding was issued by the applicant on 07.12.2021 and a reply to the notice was issued on 03.01.2022. Further, the demand notice under Section 8 of the I&B Code was issued on 28.01.2022 demanding the outstanding amount of Rs. 2,10,09,089.11/-. In reply to the demand notice, the Corporate Debtor issued a letter in reply on 10.03.2022 towards the Operational Creditor.

***The case of the Applicant:***

7. The Learned Counsel appearing on behalf of the Applicant would submit that against the supply of materials duly received by the corporate debtor sans demur, the operational creditor has raised invoices

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No.160/KB/2022**

from 20/06/2019 to 24/10/2019 for the actual quantity supplied by them and received by the corporate debtor.

**8.** It is further submitted that the said tax invoices were duly received by the corporate debtor, and they were under a contractual and legal obligation to make payments towards the same as per the agreed terms. The said five invoices also provided for payment of interest at the rate of 24% p.a. on the overdue amount and accordingly the Corporate Debtor has made part payment of a sum of Rs.85,26,531/-, up to October 24, 2019.

**9.** It is contended that on 07.12.2021, the operational creditor issued a demand notice under Section 8 of the Code demanding Rs. 2,10,09,089.11/-, as on 02.12.2021. In its reply, the Corporate Debtor issued a letter on 03.01.2022, raising disputes in the invoices and informing the filing of a suit being Title Suit No. 1380 of 2021 on December 24, 2021, by the corporate debtor against the operational creditor.

***Per contra submissions by the Respondent:***

**10.** The Learned Counsel for the Respondent per contra submit that the alleged dues are already been paid by the Corporate Debtor, thus, the respondent is extinguished from its liability towards the outstanding.

**11.** Further, the Learned Counsel for the respondent took us through the bank statements of the corporate debtor annexed at pages 11-61 to the Reply Affidavit, which substantiate that the corporate debtor had made payment in full which was raised in the alleged invoices by the operational creditor. Further, it is claimed that the corporate debtor made payment in excess of stated in the tax invoices aggregating to Rs.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No.160/KB/2022**

75,627/-, which would be evident from the ledger as well as in the correspondence between the parties by way of emails, annexed at Pages 62-68 to the Reply Affidavit.

**12.** Further, it is contended that in respect of two alleged invoices issued by the Operational Creditor, the Corporate Debtor has instituted a civil suit being T.S. 1380 of 2021 before the Learned Civil Judge (Junior Division) at Howrah, inter alia, praying for a declaration that no sum was due and payable by the Corporate Debtor to the Operational Creditor. The fact was also indicated in the reply to the demand notice.

***In counter to the Respondent, the Applicant would submit:***

**13.** That the three ledgers that have been provided by the Respondent to the Applicant are related to Sumo Metallic Private Limited which stands merged with the Applicant.

**14.** That, the excess balance of Rs. 75,627/-, as claimed by the Respondent, is only for the one Pathredi Unit wherein the net payable amount is of Rs. 47,26,700.65/-.

**15.** That the title suit being T.S. 1380 of 2021 instituted before the Civil Judge Jr. Div. at Howrah has been mischievously filed by the Corporate Debtor on 24.12.2021, only after receipt of a notice demanding the outstanding on 07.12.2021.

**16.** We have duly considered the submissions of both parties and perused the documents placed before us.

***Analysis and Finding:***

**17.** It would be evident that the Corporate Debtor issued five purchase orders to the Operational Creditor for the supply of goods of various

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No.160/KB/2022**

weights and qualities on 03.05.2021, 27.06.2019, 03.07.2019, 05.09.2019 and 27.09.2019. Upon supply of the goods in terms of the said purchase orders, the Operational Creditor raised tax invoices on 20.06.2019, 10.07.2019, 31.08.2019, 18.09.2019 and 24.09.2019 claiming an aggregated amount of Rs. 2,24,67,913/-. It is claimed that the Corporate Debtor has made part payment of Rs. 85,26,531/- against the said aggregated amount. Thus, the amount due and outstanding would be Rs. 1,39,41,382/-, which is claimed as the principal amount in default.

**18.** It would further be evident that a statutory notice of demand under Section 8 of the I&B Code has been issued by the applicant claiming the said outstanding with 24% interest per annum. In reply to the demand notice annexed at page 115 to the application, the Corporate Debtor raised the dispute in the supply of goods and pursuant that a title suit has been preferred which is pending for consideration.

**19.** It is averred by the respondent that the corporate debtor had made payment in full which was raised in invoices by the operational creditor and further, the corporate debtor paid an excess amount to the tune of Rs. 75,627/- to the Operational Creditor. To substantiate its claim, the Learned Counsel for the respondent has supplied the bank statement of the corporate debtor.

**20.** We have found that at the time of filing this Section 9 application, there is a pending title suit being T.S. 1380 of 2021 instituted on 24.12.2021, before the Learned Civil Judge, Jr. Div. at Howrah dealing with the “dispute” in relating to the invoices raised on 08.10.2019.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No.160/KB/2022**

**21.** It is the settled position of law that “dispute” as inclusive of **a suit** or arbitration proceedings relating to (a) the existence of the amount of debt; (b) the quality of goods or services; or (c) the breach of a representation or warranty, in terms of the Section 5(6) of the I&B Code. The Hon’ble Apex Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited** reported at **(2018)1SCC353**, held that:

*“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.”*

**(Emphasis Added)**

**22.** We would infer that in the present case, there is a “pre-existing dispute” prior to the issuance of the statutory notice of demand by the applicant, and such has been raised as Section 9(5)(ii)(d) of the I&B Code

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

**Company Petition (IB) No.160/KB/2022**

envisages and that was duly received by the applicant. Further, there is a pending suit before the Learned Civil Judge Jr. Div. dealing with that dispute and so long as a dispute exists in fact between the parties, relating to payment and/or invoices raised, that would fall within the **inclusive** definition contained in Section 5(6) of the I&B Code, thus, the application is liable to be rejected.

**23.** Hence, we **dismiss** this Application sans further probe in the merits of the dispute.

**24.** The Registry of this Adjudicating Authority shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), to whom the company(ies) are registered with, by all available means. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

**25.** The certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind  
Member (Technical)**

**Bidisha Banerjee  
Member (Judicial)**

**This order is signed on the 01st Day of May, 2024.**

Bose, R.K. [LRA]/ A.S. [LRA]