

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - I

ITEM No.303
CP(IB) 589 of 2019

Order under Section 9 IBC

IN THE MATTER OF:

Vaibhav Enterprise
V/s
KRN Alloys Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 16/04/2024

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon,ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH -I, AHMEDABAD**

CP/IB/589/AHM/2019

(Application for initiation of Corporate Insolvency Resolution Process U/s 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of

VAIBHAV ENTERPRISES

Inside Asop Ki Pole,
Juni Mandi, Jodhpur – 342001.

... Applicant/Operational Creditor

VERSUS

KRN ALLOYS PRIVATE LIMITED

(CIN: U63011GJ2001PTC040311)
Jimmy Tower Shop No. 209,
Opp. Gurukul Gondle Road,
Rajkot, Gujarat-360002.

... Respondent/Corporate Debtor

Order Pronounced on 16.04.2024

CORAM :

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For Operational Creditor : Mr. Paurami Sheth, Advocate

For Corporate Debtor : Mr. D. K. Trivedi, Advocate

ORDER
(PER: BENCH)

1. The present application is filed on 07.08.2019 by one

M/s. VAIBHAV ENTERPRISES (hereinafter referred to

as **'Applicant/Operational Creditor'**) under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, **'IBC, 2016'**) r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. KRN ALLOYS PRIVATE LIMITED** (hereinafter referred to as **'Respondent/Corporate Debtor'**). The application is filed with prayer to initiate the Corporate Insolvency Resolution Process (hereinafter referred to as **'CIRP'**), appoint Interim Resolution Professional ("hereinafter referred to as **'IRP'**) and declare moratorium with respect to the Corporate Debtor.

2. A perusal of Part-I of the Form-V reveals that the Applicant is one M/s. Vaibhav Enterprises, having address at Inside Asop Ki Pole, Juni Mandi, Jodhpur – 342001. The application is affirmed by one Mr. Chandan Chanderkant Dave in his capacity as Authorized Representative of the Propriety Firm. Affirmation is dated 30.07.2019.
3. On perusal of Part-II of the Form-V reveals that the Corporate Debtor is one M/s. KRN Alloys Pvt. Ltd.,

having its CIN No. U63011GJ2001PTC040311 incorporated on 09.04.2008, having its address at Jimmy Tower Shop 209, Opp. Gurukul Gondle Road, Rajkot-360002.

4. On perusal of Part-III of the Form-V reveals that the Applicant has named Mr. Dakshesh Pravinchandra Choksi, having Registration No. IBBI/IPA-001/IP-P00718/2017-2018/11300 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).
5. On perusal of Part-IV of the Form-V reveals that the Applicant has supplied MS Scrap to KRN Alloys Pvt. Ltd., from time to time and has raised 20 invoices for various values. The first date of the invoice is 26.04.2018 and the last date of the invoice is 01.05.2018. The aggregate value of the invoices comes to Rs.1,54,72,541/-.
6. It is stated that the Applicant has received payment of Rs. 1,49,96,288/- and a sum of Rs. 4,76,253/- was outstanding amount as on 30.04.2019.

7. The Applicant, thereafter, has calculated interest at the rate of 12% and is presently claiming an amount of Rs.8,77,390/-.
8. The Applicant relied upon the invoices supported by E-way bill and Lorry Receipts in respect of sales made, ledger account for the period April, 2018 till the date of application.
9. It is stated that upon failure of the Respondent to pay the outstanding amount, a demand notice dated 01.05.2019 was issued by the Operational Creditor which is appended at page no. 122 of the application and the same was delivered to the Corporate Debtor on 10.05.2019 and the track consignment report is attached at page no. 129 of the application.
10. It is stated at page no. 11 of the application that “upon receipt of the said demand notice, Respondent herein for the first time, raised a mala fide and frivolous dispute with respect to the rate already agreed between them. It is interesting to note that at no point of time, the Corporate Debtor, ever questioned the invoices raised by

the Applicant and accepted without any protest. This clearly establishes that the reply is sent with a view to create the picture that the dispute exists which is nothing but false, bogus, vague and afterthought and deserves to be rejected”.

11. It is stated that the Corporate Debtor also sent a demand notice dated 22.06.2019 to the Petitioner and other group concerns so as to bring pressure on them. A copy of the same is appended at page no. 139 of the application.
12. The Applicant has not filed affidavit under Section 9(3)(b) of the IBC, 2016.
13. Reply was filed by the Corporate Debtor under diary no. 13030 dated 18.11.2019 which is affirmed by one Mr. Ranjit Sahu – Director of the Corporate Debtor. The main contention of the Corporate Debtor in reply are summarised as under:-

- I. The petition is filed by one Mr. Chandan Dave in his capacity as an authorized person, however, no

authority letter has been annexed along with the petition.

- II. M/s. Vaibhav Enterprises is a propriety firm of Shri Dinesh Vyas who has signed the demand notice dated 01.05.2019. In response to which a detailed reply was submitted by the Petitioner on 27.05.2019.
- III. Shri Dinesh Vyas is the proprietor of M/s. Vaibhav Enterprises and another propriety firm of M/s. Shrimali Alloys and a demand notice dated 04.03.2019 was raised by the said M/s. Shrimali Alloys on the Respondent which was replied on 21.03.2019 by the Respondent. In the said reply dated 21.03.2019 the Respondent has clarified his position regarding dues to M/s. Vaibhav Enterprises in detail. According to the Respondent, there were mutual dues which was set off against each other.
- IV. It is the contention of the Respondent that Shri Dinesh Vyas has following five firms:-

- i. M/s. Shrimali Industries P. Ltd., Jodhpur;*
- ii. M/s. Shrimali Industries P. Ltd., Gandhidham;*
- iii. M/s. Shrimali Industries P. Ltd., Unit-II Gandhidham;
[the above three firms are Petitioner herein]*
- iv. M/s. Shrimali Alloys, Gandhidham (Branch at Rajkot)*
- v. Vaibhav Enterprises, Jodhpur.*

- V. It is stated that the Respondent is one of the large-scale buyer and used to open the rates of the different short of MS Scrap.
- VI. There is a huge difference between the prices of various quality of MS Scrap. Upon negotiation and confirmation over the telephone, the supplier used to supply the material to the Corporate Debtor.
- VII. On arrival of the vehicle in the raw material shed, the quality of the raw material was being inspected and examined.
- VIII. In case of quality variation, material was put on hold and the supplier was being contacted and only upon re-negotiation and confirmation, the material was unloaded.

- IX. Final payments were being done based upon the re-negotiated price. The difference in price was being either adjusted in the rate of the next supply or by issuing the debit note.
- X. All these five firms of Mr. Dinesh Vyas were using a common e-mail ID and Mr. Chandan Dave used to contact the Corporate Debtor as common representative of all five firms.
- XI. It is stated that the discrepancies were found in the supplies made by the above firms in 2017-18 and 2018-19 as the MS Scrap supplied was found highly inferior quality. These discrepancies were brought to the notice of the Applicant and Mr. Chandan Dave.
- XII. There were quality issues which were communicated by the Corporate Debtor to the Applicant/firms.
- XIII. Account status of all five firms of Dinesh Vyas were shown to Shri Chandan Dave, are as under:-

- i. There are no pending dues to M/s. Shrimali Industries P Ltd, Unit-II Gandhidham and Vaibhav Enterprises, Jodhpur;
- ii. There is excess payment of Rs. 7,17,368/- to M/s Shrimali Industries P Ltd, Gandhidham which required to be re-paid to respondent herein;
- iii. With regard to M/s Shrimali Ind P Ltd Jodhpur, as discussed herein above, there was an adjustment of Rs.58,40,533/- against supply of total Rs.5,29,53,431/- towards supply of inferior quality of material. Accordingly Rs. 57,79,825/- remained payable to M/s Shrimali Ind P. Ltd Jodhpur.
- iv. A detailed invoice wise statement of debit notes was prepared in respect of M/s Shrimali Alloys and M/s Shrimali Ind. P Ltd Jodhpur showing Billed amount, an amount deductible (debit notes) on account of supply of inferior quality of material and revised Bill amount. The detailed sheet was supplied/provided to Shri Chandan Dave which he acknowledged by putting seal of the firm.

v. With regard to petitioner herein, as discussed herein above, there was an adjustment of Rs. 0.05 Crore against supply of total Rs. 7.42 Crores towards loss incurred by supply of inferior quality of material.

XIV. After detailed discussion and perusal of these detailed worksheets, a further discussion was made on account of losses incurred due to inferior quality of material and resulted into process losses, as discussed herein above in forgoing paras, and a tentative amount to be compensated was decided to be Rs. 2,00,00,000/- (Rupees Two Crores).

XV. Shri Chandan Dave, after concluding discussion, requested some time to decide the mechanism to settle the account with regard to amount deductible for supply of inferior quality through debit notes. However, he requested to re-negotiate the losses incurred due to inferior quality of material and resulted into process losses.

XVI. Shri Dinesh Vyas was released on bail on 25/09/2018. Shri Chandan Dave along with Shri

Dinesh Vyas, visited office of respondent herein at Beawar on 6th October 2018 to re-negotiate the losses incurred due to inferior quality of material and resulted into process losses but could be formulated finally.

XVII. Thereafter, there was no effective communication from either side.

XVIII. On 30/11/2018, respondent herein received e-mail from Shri Chandan Dave wherein he submitted account statements of all the firms without incorporating the amount of debit notes arise out of quality issue and compensation consequent losses, as communicated to him and sought confirmation of the said account. The said statements were also forwarded by post.

XIX. Immediately Shri Chandan Dave was contacted and asked the reason for deviation from agreed/confirmed stand on amount to be adjusted toward quality issue and compensation consequent losses, however, he did not respond.

XX. Thereafter, an email response was communicated on 14.12.2018 that “we do not confirm the balance”, and was forwarded. Copy of trail mail is annexed in this reply as Annexure-R-4.

XXI. The true and correct account position with regard to five firms of Shri Dinesh Vyas which were operated and handled by Shri Chandan Dave are as under:-

Name of Supplier firm	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19
Shrimali Alloys					125697736	108351841
Shrimali Industries P Ltd Jodhpur	5404751	147636857	138648661	175470677	17291160	35662271
Shrimali Industries P Ltd Gandhidham				89450874	608020233	108339302
Shrimali Industries P Ltd U-II Gandhidham				2169500	6127047	
Vaibhav Entreprise			42533569	12383784	4323569	15472541
	5404751	147636857	181182230	279474835	761459745	267825955

	Total Amount (Above table)	Amount deductible toward inferior quality	Net Payable	Amount Paid	Net Balance
Shrimali Alloys	234049577	33920624	200128953	200128953	0
Shrimali Industries P Ltd Jodhpur	520114377	5840533	514273844	508494019	5779825
Shrimali Industries P Ltd Gandhidham	805810409		805810409	806527777	-717368
Shrimali Industries P Ltd U-II Gandhidham	8296547		8296547	8296547	0
Vaibhav Entreprise	74713463		74713463	74713463	0
	1642984373	39761157	1603223216	1603223216	5062457

A	Total amount billed toward supplies of MS Scrap by all five firms	1642984373
B	Amount deductible toward inferior quality in respect of supplies from M/s Shrimali Alloys and M/s Shrimali Ind P Ltd.	39761157
C	Net payable against supply of MS Scrap by all five firms	1603223216
D	Payment made through banking system AND Amount receivable toward sale of material to these firms	1597443391
G	Balance payable	5062457
H	Amount attributed toward losses incurred due to inferior quality of material and resulted into process losses.	20000000
I	Net PAYABLE/RECEIVABLE	(-)14937543

XXII. It is stated that on 31.05.2018, there was specific instruction from Shri Chandan Dave, authorized person of the Petitioner, to make payment of Rs. 5,00,000/- in the Bank of Baroda Account No. 24970500006606 of M/s. Shrimali Industries P. Ltd. as against amount due/payable to M/s Vaibhav Enterprises. Accordingly, a payment of Rs. 5,00,000/- in the Bank of Baroda Account No. 24970500006606 of M/s Shri Mali Industries P. Ltd., was made as against payable/due to the Petitioner (M/s. Vaibhav Enterprises).

XXIII. It is stated that the Bank statement of the account of Respondent shows payment of Rs. 5,00,000/- on 31.05.2018 in the Bank of Baroda Account No.

24970500006606 of M/s Shrimali Industries P. Ltd. reflecting a remark payment made for M/s Vaibhav Enterprises. Copy is annexed as Annexure-R-6.

XXIV. Thus, according to the Respondent, the following position emerges: -

Total amount of invoices for supply of MS Scrap during 2015-16 to 2018-19	Rs. 7,47,13,463/-
Amount of payment made	Rs. 7,47,13,463/-
Amount of Debit Notes issued for compensation of losses of inferior quality	Rs. 5,00,000/-
Erroneous payment made to M/s Vabhav Enterprises instead of Vimal Elecricals	Rs. 23747
Net payable /Receivable (-)	Rs. (-5,23,747)

14. Rebuttal affidavit was filed by the Applicant herein under diary no. 8837 dated 28.10.2020. The main contentions are as under:-

- I. Technical objections are being raised by the Respondent.
- II. A response to the demand notice was for another company/firm
- III. Petitioner is concerned with the present application herein.

- IV. There was no settlement as has been alleged by the Respondent.
- V. Respondent has unilaterally issued certain debit note.
- VI. Respondent has raised moonshine defence as to the quality of goods.
15. Written submissions have been filed by both the sides and the same have been considered.
16. The Applicant has relied upon the following judgments:
- i. Ahluwalia Contracts (India) Ltd. vs. Raheja Developers Ltd. [Company Appeal (AT) (Insolvency) No. 703 of 2018]*
 - ii. Next Education India Pvt. Ltd. vs. K12 Techno Services Pvt. Ltd. [Company Appeal (AT) (Insolvency) No. 98 of 2019]*
17. The Respondent has relied upon the following judgments:-
- i. Shrimali Alloys vs. KRN Alloys Private Limited [CP(IB) 430/NCLT/AHM/2019]*
 - ii. Shrimali Industries Private Limited vs. KRN Alloys Private Limited [CP/IB/587/AHM/2019]*
18. We have heard the counsels appearing in the matter.

19. From the records, it is seen that the Applicant was dealing with the Respondent through its various firms and companies.
20. It is also seen that none of the parties have presented before us any written purchase orders.
21. Reply to the demand notice was delayed, however, in reply the Respondent has relied upon a reply to demand notice sent by another firm Shrimali Alloys for which the proprietor is same.
22. Shrimali Alloys has earlier filed a petition under Section 9 of IBC, 2016 being CP(IB) No. 430 of 2019 against the same Respondent which was decided by this Tribunal on 01.06.2022 and the said application was rejected.
23. Respondent has raised certain debit notes for inferior quality of goods and has uploaded the same on GST portal.
24. Despite specific objection from the Corporate Debtor to disclose the authority of the said Mr. Chandan Dave who has affirmed the present petition in his capacity as

Authorized Signatory, no authority letter was ever filed by the Applicant herein in the present petition.

25. Further, the Applicant had sent incorrect accounts by email dated 30.11.2018, 06.12.2018 and 13.12.2028 asking the Respondent to confirm the same. The corporate debtor had categorically denied to accept the said accounts and in reply to various emails of the applicant, Corporate Debtor had raised dispute dated 14.12.2018 which reads as under:

“Balance not confirmed”

The said email is prior to issuance of notice under Section 8 of the Code. The corporate debtor had also raised dispute while replying to said statutory notice and contested the debt.

26. From the above discussions it is clear that a dispute was in existence prior to issuance of the statutory demand notice under Section 8 of the Code. There is sufficient evidence to prove the pre-existence of dispute. We are supported by the judgement of the Hon'ble Supreme Court in the matter of **“Mobilox Innovative Private**

Limited Vs. Kirusa Software Private Limited” that in case of genuine dispute raised by the corporate debtor, the application cannot be admitted, the relevant para is reproduced hereunder:

“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.”

27. Under the facts and circumstances and as discussed above, in our view, the instant application cannot be considered for admission and needs to be rejected. The instant application stands rejected and disposed off.
28. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

**-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)**

Rajeev/P.S.