

NATIONAL COMPANY LAW TRIBUNAL

COURT ROOM NO. 1,

MUMBAI BENCH

Item No. 25

IA 2591/2024 (NEW IA) in C.P. (IB)/1851(MB)2019

CORAM:

SH. PRABHAT KUMAR JUSTICE VIRENDRASINGH BISHT (Retd.)
HON'BLE MEMBER (TECHNICAL) HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF THE HEARING ON **04.06.2024**

NAME OF THE PARTIES: **K B BOARD MILLS LLP VS JAINAM**
EXPORTS PVT LTD

Section 9 of the Insolvency and Bankruptcy Code, 2016 & Rule 11

ORDER

IA 2591/2024 (NEW IA) in C.P. (IB)/1851(MB)2019

- 1) Mr. Amit Agrawal, Ld. Counsel for the Applicant is present.
- 2) The present Interlocutory Application has been filed by the Applicant/Operational Creditor under Rule 11 of National Company Law Tribunal Rules, 2016 for recalling of impugned order dt. 08.04.2024.
- 3) The Operational Creditor has filed the main Company Petition seeking initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for defaulted in remittance of an unpaid Operational Debt. Applicant submits that Affidavit u/s 9 (3) (b) of the Insolvency and Bankruptcy Code,

2016 was available on record since inception and thus, finding of this Bench contained in impugned order dated 08.04.2024 is perverse, erroneous and misconceived and thus calls for reconsideration.

- 4) It is further submitted that the Applicant was not served with the purported letter dated 14.03.2018 during the continuous trade transactions despite the fact that both the companies were continuously communicating via e-mails.
- 5) Heard Ld. Counsel for the Applicant/Operational Creditor. Perused record.
- 6) Section 9(3)(b) of the Code provides that *the Operational Creditor shall along with the Application furnish an Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of the unpaid Operational Debt*. The Petitioner has filed an Affidavit dt. 01.05.2024, averring the following:
 - 7) From the bare reading of the averments, it is clear that the requirement of Section 9(3)(b) were not met. This fact was brought to the Notice of the Operational Creditor on 02.01.2024, on the objection raised by the Corporate Debtor and the Operational Creditor submitted that Operational Creditor shall file and place on record Affidavit u/s 9 (3) (b) and shall have it served upon the Corporate Debtor from page No. 17 onwards of the Petition; however, no such Affidavit was filed. On 26.02.2024, this Tribunal invited attention of the Counsel for the Operational Creditor to this effect and it was submitted that the said Affidavit is already forming part of the Petition. Accordingly, this Tribunal proceeded to dismiss the Company Petition on

account of non-compliance of the provisions of Section 9(3)(b) as the Affidavit in place did not meets the requirements thereof.

- 8) In view thereof, we do not find any contention of the submission of the Applicant to recall of the order. Accordingly, the present Interlocutory Application is dismissed. There will, however, be no order as to costs.

Ordered Accordingly.

Sd/-

**PRABHAT KUMAR
MEMBER (TECHNICAL)**

Sd/-

**JUSTICE VIRENDRASINGH BISHT
MEMBER (JUDICIAL)**

Vedant Kedare