

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO: II**

**Hearing Through: VC and Physical (Hybrid) Mode**

**CORAM: SHRI. RAJEEV BHARDWAJ, HON'BLE MEMBER (J)**

**CORAM: SHRI. SANJAY PURI, - HON'BLE MEMBER (T)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 19.04.2024 AT 10:30 AM**

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| <b>TRANSFER PETITION NO.</b>            |  |
| <b>COMPANY PETITION/APPLICATION NO.</b> | <b>Company Petition IB/376/2022</b>          |
| <b>NAME OF THE COMPANY</b>              | <b>Viswa Sowbhagya Milk Products Pvt Ltd</b> |
| <b>NAME OF THE PETITIONER(S)</b>        | <b>Sri Vyshnavi Foods Pvt Ltd</b>            |
| <b>NAME OF THE RESPONDENT(S)</b>        | <b>Viswa Sowbhagya Milk Products Pvt Ltd</b> |
| <b>UNDER SECTION</b>                    | <b>9 of IBC</b>                              |

**ORDER**

Orders pronounced, recorded vide separate sheets. In the result, the petition is dismissed.

**Sd/-**  
**MEMBER (T)**

**Sd/-**  
**MEMBER (J)**

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**HYDERABAD BENCH – II**

**CP (IB) No.376/9/HDB/2022**  
**U/s. 9 of IB Code, 2016**

**Between:**

M/s. Viswa Sowbhagya Milk Products Pvt Ltd,  
D.No.12-1-12, Flat No.301, SVR's Empires,  
Sanakkayala Factory Road,  
Kothapeta, Guntur,  
Andhra Pradesh – 522 001.

....Operational Creditor

Vs

M/s. Sri Vyshnavi Foods Private Limited,  
6-2-102/2, 3<sup>rd</sup> Floor,  
Zammibanda, Khammam,  
Telangana – 507 002.

....Corporate Debtor

**Date of Order : 19.04.2024**

**CORAM:**

Sri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Sri Sanjay Puri, Hon'ble Member (Technical)

**Counsels present:**

For the Applicant : Mr. P. Girish Kumar, Senior Advocate  
on behalf of Mr. P. Soma Sekhar Naidu,  
Advocate

For the Respondent : Mr. A. Venkatesh, Senior Advocate  
on behalf of Mr. Mayur Mundra, Advocate

Heard on : 15.04.2024

**Per : Sanjay Puri, Member (Technical)**

**ORDER**

1. This petition has been filed by M/s. Viswa Sowbhagya Milk Products, the Operational Creditor (**OC**) against M/s. Sri Vyshnavi Foods Private Limited, the Corporate Debtor (**CD**). The OC alleges that the CD has failed to clear an operational debt totalling Rs 6,30,11,275. This amount comprises the principal and interest accrued up to October 31, 2022, along with compensation for losses suffered by the OC due to the CD's failure to take delivery of the milk supplied under their Supply Agreement. The date of default is identified as 09.03.2022 the date on which, the last payment was received from the CD by the OC. The relevant factors leading to this petition, are as follows:
2. It is submitted that, the OC has been supplying the milk to the CD for 20 years. On 01.05.2017, both parties formalized this arrangement by entering into a Written Agreement for the supply of milk. This agreement had a term of one year but was subsequently renewed annually. The agreement remained in effect until 30.04.2022, at which point it was terminated.
3. It is further submitted that, as per the terms of the said Agreement, the CD was to clear outstanding milk bills for every 10 days i.e. on 1st, 11th and 21st of every month. Despite this, payments were delayed, and the CD had been failing to pay both the principal and interest for several years. In response to these payment delays, the OC issued a Legal Notice on 15.12.2021, demanding payment of

the total outstanding balance of Rs 4.50 crores, along with interest @24% per annum. The CD responded to this notice on 27.12.2021, contending that the actual outstanding amount was only Rs 1,61,29,760, and proposed an amicable settlement by agreeing to pay this reduced amount.

4. It is stated that, considering the offer of the CD to settle the issue amicably, the Managing Director of the OC along with two mediators visited the office of the CD on 14.06.2022 where a meeting was held with the Representatives of the CD. This meeting yielded no response to the OC.
5. It is stated that, since the CD inspite of several demands did not pay the outstanding dues, the OC issued Demand Notice under Section 8 of IBC on 09.11.2022 which was served on CD on 11.11.2022. In its reply dated 22.11.2022, the CD reiterated the amount of Rs 1,61,29,760 which according to them the OC was entitled to. Since the claimed amount was of Rs 6,30,11,275 as against the admitted debt of Rs 1,61,29,760, the OC has filed the present petition.

**Counter:**

6. In their Counter reply, the CD has denied and disputed the claim of the operational debt of Rs 6,30,11,275. Instead the CD has claimed Rs 9,41,05,404 from the OC towards loss suffered due to diversification of milk and Rs 2,21,80,291 on account of inferior quality of milk supplied and short supply.
7. It is stated that, in reply to the Legal Notice dated 15.12.2021 the CD had disputed the outstanding amount of Rs 4.50 Crores plus

interest claimed in the said Legal Notice and also raised the issue of supply of inferior quality of milk.

8. During the pendency of this petition, the CD sought to pay the admitted liability of Rs 1,61,29,760 to the OC by way of Demand Draft on 02.06.2023. The OC however refused to accept the same. Later on 05.08.2023 the same amount was transferred to the OC's Account by way of RTGS which was also returned by the OC to the CD.

**Decision:**

9. Considering all the facts and circumstances of the case, there arise two questions before us. The first one is, whether an application under Section 9 of IBC can be admitted when the claimed operational debt differs from the amount admitted by the debtor, and the admitted amount is above the statutory threshold limit. The second question that needs to be answered is about the applicability of Section 9 in instances where there is an existing dispute over the claim of the operational debt prior to the OC issuing the Demand Notice under Section 8 of the IBC to the CD. These two issues are central to determining the legal course and the enforceability of claims under the IBC.
10. Answer to the first question, according to the Ld. Counsel of OC is in the affirmative and he placed his reliance in the case of ***Manmohan Gupta vs. MDS Digital Media Pvt Ltd and Anr***<sup>1</sup>, wherein the Hon'ble NCLAT held that:

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<sup>1</sup> in Company Appeal (AT) (Insolvency) No.202 of 2023:: (2023) ibclaw.in 241 NCLAT

“When the admitted amount is more than the threshold, the Adjudicating Authority did not commit any error in admitting Section 9 application.”

We might have concurred with the learned counsel of the OC if it were not for the pivotal second question outlined previously: whether Section 9 can be invoked when there is an existing dispute about the outstanding amount prior to the issuance of the Section 8 Notice? The answer to this question is definitively negative.

11. Furthermore, the case of **Manmohan Gupta**<sup>2</sup> and other similar cases cited by the learned counsel of the OC are distinguishable on the grounds that, in those cases, there was no instance of a pre-existing dispute concerning the outstanding amounts. This key difference underscores that the precedents set by these cases do not apply to situations where disputes about the debt itself existed before formal demand notice under section 8 of IBC was issued.
12. In the present case, existence of the dispute concerning the outstanding amount and about the quantity and quality of the product supplied (milk), is clearly discernible from the reply of the CD in letter dated 27.12.2021 to the Legal Notice.

“That as per the accounts being maintained by my clients company which are being verified by your client in regular intervals from time-to-time being a reputed Chartered Account and your client is ratifying the same and in fact your client is entitled to Rs 1,61,29,759.91 as on 15.12.2021 from my client’s company. Your client can verify the account of my client’s company with the accounts being maintained by your client. **The claim of your client that he is entitled to Rs 4.50 crores and interest on it from my client’s company is incorrect.**”

(emphasis supplied)

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<sup>2</sup> Supra.

and

“That though **your client is supplying inferior quality milk** perhaps due to his sudden ill health and due to **his** non-personal attendance on the dairy business and due to depending on his employees only in the said dairy business for the last more than 15 months, only since my client’s company is due amounts to him on milk bills in a good gesture is lifting the milk so supplied by your client all these months but since my client’s company is getting frequent complaints from its customers, my client’s company started deducting the amounts since one month when they are **getting the inferior quality milk** against to the agreed standards. My client’s company also informed to your client regarding the quality of the milk many a time.”

(emphasis supplied)

13. It is also noticed that before issue of the Demand Notice under Section 8, the parties i.e. the OC and the CD attempted to resolve the issue of outstanding amounts through mediation on 14.06.2022. The mere fact that the mediators were involved to resolve the issue of the outstanding amounts shows that, a dispute concerning the same existed.
14. Here, we would like to refer the decision of the Hon’ble Supreme Court in the case of “**Mobilox**<sup>3</sup> wherein, the Hon’ble Supreme Court has held in relation to Section 9 proceedings that;

*“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*

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<sup>3</sup> Mobilox Innovations Private Limited vs. Kirusa Software Private Limited in Civil Appeal No. 9405 o 2017

*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 supplied)

This view has been reiterated by the Hon’ble Supreme Court in the cases of **Sabarmati Gas Ltd**<sup>4</sup> and **Rajratan B Agarwal**<sup>5</sup> also, where again it has been unequivocally held that any “*plausible contention requiring investigation*” will constitute a dispute and if raised prior to the issue of section 8 notice, will result in rejection of Application under section 9 of the IBC.

15. In the present case, since there were indeed plausible contentions required investigation and reconciliation of accounts, pre existence of dispute concerning the operational debt is clearly established and for that reason, we are not inclined to admit the present application.

Therefore, the application is dismissed with the above remarks.

**Sd/-**

**(SANJAY PURI)  
MEMBER (TECHNICAL)**

**Sd/-**

**(RAJEEV BHARDWAJ)  
MEMBER (JUDICIAL)**

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<sup>4</sup> Sabarmati Gas Ltd Vs Shah Alloys Ltd (2023) 3 SCC 229 [p.256]

<sup>5</sup> Rajratan Babulal Agarwal Vs Solartex India Pvt Ltd (2023) 1 SCC 115 [p.150]