
(2021) 06 NCLT CK 0015

In the National Company Law Appellate Tribunal, Pricipal Bench, New Delhi

Case No : Company Petition No. IB- 3393/ND Of 2019

Huangyang Zhedong Rubber Auxiliay Imp./Exp. Co. Limited APPELLANT
Vs

Dalmia Ploymers LLP RESPONDENT

Date of Decision : 03-06-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 8, 9, 9(5), 14(1), 14(2), 14(4)
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 — Rule 5, 6

Citation : (2021) 06 NCLT CK 0015

Hon'ble Judges : Dr. Deepti Mukesh, Member (J); Sumita Purkayastha, Member (T)

Bench : Division Bench

Advocate : Sachin Jain, Kamal Ahuja

Judgement

Dr. Deepti Mukesh, Member (J)

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity â??IBC, 2016â??)read with Rule 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity â??the Rulesâ??) by Huangyang Zhedong Rubber

Auxiliay Imp./Exp. Co.Limited (for brevity â??Applicantâ??) through its authorized representative, Mr. Akhil Sharma with a prayer to initiate the

Corporate Insolvency process against Dalmia Polymers LLP (for brevity â??Corporate Debtorâ??).

2. The Applicant is a limited company based in China and is having its registered office at 14 Floor, General Chamber of Commerce Huangyan Laobei

Road, Zhejiang Province China, PC 318020.

3. The Corporate Debtor is a LLP incorporated on 12.06.2015 with the Registrar

of Companies, Delhi & Haryana, under the provisions of Limited

Liability Partnership Act, 2008 having identification no. LLPIN AAE-1581. The applicant is having its registered office at D-2 Block D Grenn Park

Exten New Delhi-110016.

4. The Applicant submits that the Corporate Debtor placed orders for the supply of rubber and chemical goods with the applicant from time to time.

The applicant raised various Proforma invoice/contract from 31.10.2018 to 13.03.2019 for various amounts in USD. The goods were supplied by the

applicant and were duly received by the Corporate Debtor.

5. The applicant submits that hecd had received the invoices but the payment was not made of the entire amount due and had not raised dispute but

the amount remain unpaid. The applicant submits that several emails were sent to the corporate debtor to make payment for the debt due and the debt

was duly acknowledged by the Corporate Debtor vide emails dated 11.04.2019, 07.05.2019, 30.05.2019, 03.06.2019 and 05.06.2019, but despite

making several assurances to clear their outstanding dues in the said emails, no payments was made by the corporate debtor.

6. The applicant issued a demand notice dated 13.06.2019 under Section 8 of the I & B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy

(Application to Adjudicating Authority) Rules, 2016 calling upon to pay the outstanding amount of USD 306,03125/-. The Corporate Debtor replied to

the notice complaining about inferior materials supplied by the applicant and deviating the goods from the agreed quantity, quality and even timelines

which has caused irreparable harm to the business of corporate debtor.

7. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application through speed post at its registered

address as reflected on the MCA website.

8. The corporate debtor has replied to the application and has contended as follows:

i. That the applicant has provided the goods to the corporate debtor deviating from the agreed quantity, quality and even timelines which has caused irreparable harm

to the business of corporate debtor.

ii. That the Applicant has breached the terms of the contract and also caused breach of trust, by changing the unit price

therebyconsequentiallyresultingintohugefinanciallosstothe corporate debtor.

iii. That the applicant have dispatched the inferior materials against the materials required and dispatched the goods not matching with the standards and which is evident from the unit price they changed with the delay of more than 43 days. That the corporate

debtor has not received the payments from his customers and third party for over more than 9-10 months and resulting into shortage of cash flow movement.

iv. That the corporate debtor had sent a proposal for settlement subject to the terms agreed between the parties.

9. The applicant has filed a rejoinder controverting the averments made in the reply and has asserted as follows:

i. That the corporate debtor acknowledged its liability and due debt in the emails dated 11.04.2019, 07.05.2019, 03.06.2019 and 05.06.2019. The perusal of the said emails

shows that instead of raising any dispute regarding the supply of material, the Corporate Debtor inquired about the quotes for further delivery along with the

acknowledgment of its liability to pay to the applicant and gave assurance to the applicant in clearing their outstanding due.

ii. That the satisfaction of the corporate debtor in terms of the goods received (including but not limited to quantity or quality or the time of the delivery) is also

evident from the fact that before the receipt of the demand notice under Section 8 of IBC, no dispute, or objection of any kind was ever raised by the Corporate

Debtor.

iii. That the goods were not of inferior quality and were as per standard. It is further denied that the delay on part of applicant. Since, no evidence is placed, to show

defects or loss. That in email dated 05.06.2019, the Corporate Debtor has admitted its complete liability without any demur.

iv. That, on one hand, the Corporate Debtor is claiming losses and breach of contract and denying its liability to pay. On the other hand, the Corporate Debtor is

offering settlement of the due debt. That the said settlement proposal was not acceptable to the applicant.

10. Heard both the sides and perused the documents on record, we observed that the default has occurred with respect to the payment of the

operational debt due to the Applicant. It is observed that corporate debtor after

receipt of goods, acknowledged its liability and due debt in emails dated 11.04.2019, 07.05.2019, 30.05.2019, 03.06.2019 and 05.06.2019 and the perusal of the said emails shows that instead of raising any dispute regarding the supply of material, the Corporate Debtor assured for payment. The email dated 03.06.2019 & 30.05.2019 mentions "we will make the payment as soon as possible".

That the satisfaction of the Corporate Debtor in terms of the goods received (including but not limited to quantity or quality or the time of the delivery)

is also evident since no evidence of dispute is placed on record which was sent by corporate debtor before receipt of section 8 notice to the

applicant. Whatever dispute mentioned by corporate debtor is only after receiving the section 8 notice which is an afterthought to shrug off the liability by

the corporate debtor. Hence, the alleged dispute is patently feeble legal argument as described in the judgement of "Mobilox Innovations Pvt. Ltd.

Vs. Kirusa Software (P) Limited" 2017 SCC On Line SC 115, Hon'ble Supreme Court held:

"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."

In the present case, there is no such dispute pre-existing and the same is a merely a spurious defense. Further, that the proposal for settlement

amounts to admission on part of the Corporate Debtor. We are satisfied that the operational debt has become due and default has occurred and

application being complete needs to be admitted.

11. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

12. The date of default is 16.05.2019, and the present application was filed on 06.12.2019, hence the debt is not time barred and the application is filed

within the period of limitation.

13. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in

payment of the operational debt beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.

14. Since the Applicant has not proposed the name of IRP, we be and hereby appoint from the list furnished by IBBI, Mr. Umesh Singhal as IRP of

corporate debtor having registration number IBBI/IPA-002/IP-N-00124/2017-18/10293 (email-singhaluk@Hotmail.com) as IRP subject to the

condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent

and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make

disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the

date of this order.

15. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Umesh Singhal to meet out

the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency

Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the

Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution

Professional, and shall be paid back to the Operational Creditor.

16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of

Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the

moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

17. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the

order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of

this order be also sent to the ROC for updating the Master Data. ROC shall send

compliance report to the Registrar, NCLT.