

(2021) 10 NCLT CK 0009

In the National Company Law Tribunal

Case No : IA No. 1509/2021 In C.P. No. 934/IBC/MB/2020??Interocean Fincap Services Private Limited Vs Max Alert Systems Limited

Mr. Amit Sangal Proprietor of M/s. Nitin Plastic Vs M/s. Prince MFG Industries Private Limited ????Interocean Fincap Services Private Limited Vs Max Alert Systems Limited

Date of Decision : 05-10-2021

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 5(6), 5(7), 5(8), 5(8)(a), 5(8)(f), 7, 8, 9
Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016) — Rule 6
Companies Act, 2013 — Section 366

Citation : (2021) 10 NCLT CK 0009

Hon'ble Judges : H.V. Subba Rao, Member (J);Chandra Bhan Singh, Member (T)

Bench : Division Bench

Final Decision : Allowed

Judgement

Shyam Babu Gautam, Member Technical

1. This Company Petition is filed by Mr. Amit Sangal, Proprietor of M/s. Nitin Plastic (hereinafter called "Operational Creditor") seeking to initiate Corporate Insolvency Resolution Process (CIRP) against M/s. Prince MFG Industries Private Limited (hereinafter called "Corporate Debtor") alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy Code, 2016 (hereinafter called "Code") read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of Principal sum of Rs. 1,24,35,102/- (Rupees One Crore Twenty-Four Lakhs Thirty-Five Thousand One Hundred Two Only) together with interest up to dated 18.06.2020 of Rs. 19,36,364/- @ 18% per annum aggregating to Rs. 1,43,71,465/- (Rupees One Crore Fort Three Lakhs Seventy One Thousand Four Hundred Sixty Five only).

3. The Submissions of the Operational Creditor are as follows:

- a. The Operational Creditor is engaged in the business of trading of Plastic Raw Materials i.e. PVC, PP, HDPE, LDPE, LLDPE etc.
- b. The Corporate Debtor had converted from partnership Firm to the Company under section 366 and other applicable provisions of the Companies Act, 2013 and incorporated as Private Limited Company dated 13.02.2019.
- c. The Corporate Debtor had purchased PPCP AER003N, PVC RESIN - 1 and also accordingly copy of invoices, E-way Bills and Lorry Receipts. The Corporate Debtor was supposed to make payments to the Operational Creditor within due dates i.e. 30 days of all Invoices. Consequently, the Corporate Debtor failed to pay the payment of the respective invoices. It is also stated that 3 cheques of the Corporate Debtor were bounced.
- d. The Operational Creditor further submits that the Operational Creditor continuously made endeavor to clear the outstanding amount from the Corporate Debtor and also it stopped giving materials on credit to the Corporate Debtor against advance payment of invoices.
- e. Further, the Operational Creditor had demanded payment on defaulted invoices through telephonic conversation and WhatsApp messages, emails etc. the said messages, emails are produced on record.
- f. The Operational Creditor sent a Demand Notice under section 8 in Form 4 of the Code dated 19.06.2020 on the email of the registered e-mail on MCA and also the Demand Notice was sent on the email id's of the Directors/officers due to Covid-19 pandemic. The Operational Creditor also sent physical copy of the Demand Notice to the Registered office of the Corporate Debtor Company dated 25.06.2020 which was successfully delivered. The Operational Creditor has annexed the courier receipt of the tracking report showing that the Notice was delivered to the Corporate Debtor. The Corporate Debtor did not file any Reply to the Demand Notice and no dispute was raised by the Corporate Debtor under section 5(6) of the Code.
- g. The Operational Creditor has uploaded all the data/information on the Information Utility (NeSL) on 20.06.2020 in Form C. The Operational Creditor received the record of Default/Debt/Authentication as submitted to and held by NeSL on 06.07.2020.
- h. The Operational Creditor has also submitted the ledger account of the Corporate Debtor in the books of the Operational Creditor which corroborates the amount claimed.

4. Submissions of the Corporate Debtor are as follows :-

- a. The Corporate Debtor has appeared on every hearings. The Corporate Debtor has neither replied to the Demand Notice sent to it u/s 8 of the Code nor has filed an Affidavit in reply to the present Petition. The matter was listed on various

dates and when the matter was fixed for final hearing on 04.08.2021, the Corporate Debtor filed their Written note of arguments on 04.08.2021 to put their defense.

b. The Corporate Debtor made a ground as to Pre-existing dispute between the Operational Creditor and the Corporate Debtor. The Corporate Debtor submits that reason for nonpayment of the invoices is because the Operational Creditor failed and neglected to supply the quality as per the specifications as ordered by the Corporate Debtor Company.

c. Further the Corporate Debtor alleged that materials were not sold and supplied to the Corporate Debtor for the Bills and Lorry Receipts which are annexed by the Operational Creditor in the Petition. The Corporate Debtor submits that the Invoices are not acknowledged nor there is any seal or stamp by the Corporate Debtor.

d. The Corporate Debtor submits that a part payment of Rs. 25,00,000/- (Rupees Twenty-Five Lakhs Only) was made by the Corporate Debtor on 07.04.2021. The Corporate Debtor submits that by making the said part payment the amount claimed by the Operational Creditor has been reduced from Rs. 1,43,71,465/- to Rs. 1,18,71,466/-. Therefore, the present Company Petition filed by the Operational Creditor becomes in-fructuous.

e. The Corporate Debtor further states that there were several purchase Orders placed by the Corporate Debtor and each Purchase Order create a separate cause of action therefore the Operational Creditor needs to file separate Company Petition.

f. The Corporate Debtor submitted that due to Covid-19 Pandemic, the offices, institutions were closed and the Corporate Debtor did not receive the Demand Notice and since the office of the Corporate Debtor is situated in the commercial building which was not operational in the lockdown, the Corporate Debtor did not receive the demand notice. The Corporate Debtor further said that demand notice sent on the email id of the company is not applicable since the office of the Company was not working so going through the contents of the email cannot be presumed.

FINDINGS

5. We have heard the submissions of the Counsel appearing for the Operational Creditor and Counsel appearing for the Corporate Debtor. It is seen from the records that this Tribunal had given sufficient chances to the Corporate Debtor to file its Reply. However, on 04.11.2020, this bench directed the Corporate Debtor to file its Reply within 2 weeks before the next date of hearing and the matter was listed on 10.12.2020. However, on 10.12.2020, in the name of settlement, the Corporate Debtor did not file its Reply. This act itself shows that the amount is due and payable to the Operational Creditor.

6. Further, on the very same day on 10.12.2020, the Corporate Debtor submitted

that a post-dated cheque of Rs. 1.43 crores in the name of the Operational Creditor to show its bonafide towards the settlement. However, again on 21.01.2021 another advocate on behalf of the Corporate Debtor appeared and submitted that the Corporate Debtor had requested the Operational Creditor not to deposit the cheque because of financial difficulty of the Corporate Debtor and assured to make the full and final payment on 31.01.2021. This Tribunal had granted last opportunity to the Corporate Debtor to settle the matter or the bench would pass appropriate Orders in the next hearing.

7. Subsequently, the matter got adjourned due to poor connectivity and paucity of time. Further on 05.04.2021 another advocate appeared on behalf of the Corporate Debtor and submitted that the Corporate Debtor is ready to settle the matter. The Corporate Debtor made a part payment of Rs. 25,00,000/- and the matter was listed on 09.04.2021 to report the settlement. The consent terms were executed but the Operational Creditor submitted that the consent terms were not according to the terms of the Operational Creditor. It is observed by this bench that the part payment made by the Corporate Debtor proves that it owes the claimed amount to the Operational Creditor and hence it is deemed to be an admission on the part of the Corporate Debtor.

8. Further it is seen that the Corporate Debtor itself has made contradictory statements in its written note of arguments as to first about the existing pre-dispute between the parties, denial of the goods received by the Corporate Debtor and part payment done by the Corporate Debtor. This conduct on the part of the Corporate Debtor speaks and proves that the Corporate Debtor is simply buying time even without filing any reply more so he is changing different advocates from time to time.

9. The Corporate Debtor submitted that they did not receive the demand notice. But it can be seen from the records that the Operational Creditor had also sent the emails on the email id of the Company and also on its directors. The stand taken by the Corporate Debtor that as the offices were closed, they were not able to access the email is baseless.

10. The Corporate Debtor raised the issue of pre-existing dispute between the parties. The Counsel for the Operational Creditor invites attention of this Bench to the demand notice and submits that the Corporate Debtor has not sent any reply to the notice. The Corporate Debtor did not issue any reply within the statutory period in response to the demand notice nor raised any issue regarding to price, quality of service prior to issuing the demand notice. Therefore, the above contention raised by the Corporate Debtor will not stand to the test of legal scrutiny. Under these circumstances, this bench is of the view that there is no pre-existing dispute between the parties and accordingly the above issue is decided against the Corporate Debtor.

11. Further it is seen that the Corporate Debtor has filed an IA No. 1509 of 2021 thereby praying to dismiss the present Company Petition and also direct the

Operational Creditor to refund the amount of Rs. 25,00,000/-with interest to the Corporate Debtor. The Corporate Debtor further prayed to stay the present Company petition until the said IA 1509 of 2021 is decided. This bench clearly visualizes the tactic played on the part of the Corporate Debtor to delay the proceedings. The Corporate Debtor after a year of filing this Petition filed the present IA to dismiss the Petition and also after making the part payment. This shows a blatant behavior on the part of the Corporate Debtor to harass the Operational Creditor and leave him no where but to suffer irreparable mental agony.

12. The Operational Creditor has successfully demonstrated and proved the debt and default in this case and has also proved that there is absolutely no reason for the Corporate Debtor to hold on to the payment of the invoices. The Operational Creditor has also suggested the name of proposed Interim Resolution Professional along with his consent letter in Form-2. Hence this Bench is left with no option except to admit the above Company Petition, since the above Company Petition in hand satisfies all necessary legal ingredients for admission under Section 9 of the Code.

13. For the foregoing reasons, the above Company Petition is liable to be admitted, and accordingly the same is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) -934(MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against M/s Prince MFG Industries private Limited. The IA 1509 of 2021 is hereby rejected in view of the admission of the present Company Petition.

b. This Bench hereby appoints Mr. Kairav Anil Trivedi, Insolvency Professional, Registration No: IBBI/IPA-002/IP-N00728/2018-19/12332 as the Interim Resolution Professional having registered office at 23A, 5th Floor, Jyoti Bldg, Barquatali Dargah Marg to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.

e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.

h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the concerned Registrar of Companies for updating the Master Data of the Corporate Debtor.

Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.