
(2022) 03 NCLT CK 0085
In the National Company Law Tribunal
Case No : CP(IB)/21/KOB/2022

M/s. Flexi Plast Industries

APPELLANT

Vs

M/s. K K R Products and Marketing Private Limited

RESPONDENT

Date of Decision : 31-03-2022

Acts Referred:

Insolvency and Bankruptcy Code, 2016 — Section 4, 7, 8, 9

Citation : (2022) 03 NCLT CK 0085

Hon'ble Judges : Ashok Kumar Borah, Member (J); Anil Kumar. B, Member (T)

Bench : Division Bench

Advocate : Jack Thalakkottu

Final Decision : Dismissed

Judgement

Ashok Kumar Borah, Member (J)

1. This is an application filed under Section 9 of the IBC, 2016 by the Operational Creditor M/s. Flexi Plast Industries against the Corporate Debtor M/s. K K R Products and Marketing Private Limited claiming an amount of Rs. 1,78,708/- (now enhanced to Rs. 7,78,708/-) for the remaining unpaid Invoices for supply of materials.

2. It is stated that Operational Creditor has supplied various Flexible Packing materials, to the Corporate Debtor as per requirements of the Operational Debtor. The Corporate Debtor was making payments against the supplied goods intermittently. The payments from the Corporate Debtors were delayed and gradually the payments were stopped completely. The total outstanding Invoices against the supplies of materials to the Corporate Debtor is Rs. 1,78,708/- (now Rs. 7,78,708/-).

3. It is also stated that the total debt (default) amount was due since 10.09.2019. Hence, a Demand Notice in Form 3 of unpaid Operational Debts was served on the Corporate Debtor on 06/03/2020. However, the Corporate Debtor within a period of 10 days from the service of the Demand Notice or thereafter

brought to the notice of the Operational Creditor the existence of any dispute or made any payments towards the Operational Debts. Hence, the Operational Creditor has filed this Petition.

4. We have heard the learned counsel for the Applicant and thoroughly perused the whole case records. The claim of the applicant is for a total debt amount of Rs. 7,78,708/-, which includes an amount of Rs. 6,00,000/- to be received from KKR Agro Mills Pvt. Ltd. In this connection, it may be noted that the case filed by the same applicant in IBA/40/KOB/2020, has been withdrawn on 12/03/2021 by the applicant therein (who is the applicant herein) as the matter was settled between the parties.

5. Hence it is clear that the applicant has clubbed these two amounts and filed this case claiming a due amount of Rs. 7,78,708/-. The applicant is not sure about the Debt amount because on one hand he stated that he has filed this application for CIRP to the debt amount of Rs. 1,78,708/- on the other hand he had stated that he has filed a case IBA/40/KOB/2020 for a debt amount of Rs. 6,00,000/- receivable from KKR Agro Mills Private Limited and later it was withdrawn. The applicant cannot club that amount with the amount in the instant case. Last but not least the application filed by the Operational Creditor on 18/2/2022 for the initiation of the CIRP to the debt amount of Rs. 7,78,708/-.

6. In addition to that, the Government of India issued a Gazette Notification No. S.O. 1205(E) which is as under:

MINISTRY OF CORPORATE AFFAIRS

NOTIFICATION

New Delhi, the 24th March, 2020

S.O. 1205(E). -In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.

GYANESHWAR KUMAR SINGH, Jt. Secy.

7. The Demand Notice under Section 8 was issued on 6/3/2020 i.e., prior to 24/3/2020. As already stated above in the notification, the threshold amount for the application filed under Section 9 on 24/3/2020 shall not be less than 1 Crore.

8. The applicant is totally silent why the Operational Creditor did not file the case even after there was no reply by the corporate Debtor within 10 days from the receipt of the notice. The Operational Creditor has filed this application under Section 9 of the IBC only on 18/2/2022. The applicant is totally silent about the time taken for filing the Insolvency Proceedings (this application) i.e., about 1 year and 11 months.

9. It is profitable to quote Section 8 of the IBC, 2016 which is as under:

Section 8.

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—

(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) the repayment of unpaid operational debt—

(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. —For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

10 In this respect two decisions of the Hon'ble NCLAT which are relevant is quoted below: -

It has been held in (2022) ibclaw.in 196 NCLAT is as under:

"NCLAT holds that a mere running of the eye of the ingredients of Section 9 of the Code makes it lucidly clear that the date of initiation of CIRP shall be on the date on which an application is made. To put it precisely, the date of default is not to come into operative play and the same ought not to be taken into account for anything but computing the period of limitation. In this connection, it is to be relevantly pointed out that a litigant has no vested right to choose a particular Forum, although he has an actionable right. It cannot be gain said that a change in Law is a procedural one and a Litigant is to adhere to the letter and spirit of the Law, without any deviation whatsoever, in the considered of this Tribunal."

In (2021) ibclaw.in 497 NCLAT (Jumbo Paper Products Vs. Hansraj Agrofresh Pvt. Ltd.) is as under:

"NCLAT upheld decision of the Adjudicating Authority) where AA had dismissed the CIRP application filed u/s 9 on the basis of notification S.O 1205(E) dated 24.3.2020. NCLAT held that it is seen that notification dated 24.3.2020 makes it unambiguously clear that the threshold limit to be considered for section 9 application will be Rs. 1 crore. This threshold limit will be applicable for application filed u/s 7 or 9 on or after 24.3.2020 even if debt is of a date earlier

than 24.3.2020. Since the application under section 9 which is the subject matter of this appeal was filed on 13.9.2020, therefore the threshold limit of Rs. 1 crore of debt will be applicable in the present case.”

11. In the instant case as stated above the case was filed on 18/2/2022 for a debt amount of Rs. 7,78,708/- which is less than the threshold amount as fixed by the aforesaid notification. In addition to that the applicant is claiming an amount of Rs. 6,00,000/-, it is not relevant to the facts to be considered against the present Corporate Debtor, they cannot do so for initiation of CIRP against the present Corporate Debtor

12. In view of the above on both counts, this application fails and hence, this CP(IB)/21/KOB/2022 is dismissed without costs.