

(2019) 09 NCLT CK 0074

In the National Company Law Appellate Tribunal

Case No : Company Petition No. IB-1005/ND Of 2018

M/S Swastik Interchem Pvt. Ltd.

APPELLANT

Vs

M/S A.M. Vinyl Pvt. Ltd.

RESPONDENT

Date of Decision : 04-09-2019

Acts Referred:

Insolvency And Bankruptcy (Application To Adjudicating Authority) Rules, 2016 — Rule 6
Insolvency And Bankruptcy Code, 2016 — Section 8, 8(1), 9, 9(3)(c), 9(5), 14(1), 14(2), 14(3), 15, 17, 18, 20, 21

Citation : (2019) 09 NCLT CK 0074

Hon'ble Judges : Dr. Deepti Mukesh, J; Hemant Kumar Sarangi, Member (Technical)

Bench : Division Bench

Advocate : Navneet Dugar, Rukmini Mukherjee, Kunal Sharma

Final Decision : Allowed

Judgement

,PARTICULARS OF OPERATIONAL DEBT,

1. TOTAL AMOUNT OF DEBT,, "An amount of Rs. 1,98,59,216/- (Rupees One Crore Ninety- Eight Lakhs Fifty-Nine Thousand Two Hundred and Sixteen only) is payable including interest on unpaid amount as on 16.07.2018.

2. AMOUNT CLAIMED TO BE IN DEFAULT

AND THE DATE ON WHICH THE DEFAULT

OCCURRED",, "An amount of Rs. 1,98,59,216/- (Rupees One Crore Ninety- Eight Lakhs Fifty-Nine Thousand Two Hundred and Sixteen only) is payable including interest

on unpaid amount as on 16.07.2018

was of sub-standard quality and the same has caused a monetary and loss of goodwill to the Respondent. A copy of the inspection reports dated,,

11.04.2017 to 08.01.2018 of the same are annexed with the reply.,,,

15. Due to the defect in the quantity and quality of the product, the Respondent was unable to service few purchase orders causing them a loss of Rs.",,,

39,79,000/-, the copy of said purchase orders are annexed with the reply.",,,

16. A rejoinder to the reply has been filed by the Operational Creditor reiterating the submissions made in the application and controverting the,,

assertions in the reply. It is submitted that colour pigments supplied were of good quality and were duly received by the Corporate Debtor, there was",,,

no complaint ever by the Corporate Debtor regarding inferior quality of goods. The copy of inspection report of the Corporate Debtor is an,,

afterthought. Various cheques between 18.03.2018 to 26.09.2018 issued by the Corporate Debtor have been dishonored as the Corporate debtor is,,

unable to pay its debts.,,,

17. It is seen that the Corporate Debtor has neither filed any document to show that they had raised the issue of bad quality of goods with Operational,,

Creditor any time before receiving Section 8 notice on 19.06.2018, though the supply of goods and invoices raised are from 11.04.2017 to 03.01.2018.",,,

18. Facts which are material to the controversy raised with respect to "pre-existing dispute",,,

In "Innoventive Industries Ltd.(Supra)", the Hon'ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice",,,

or invoices was received by the "Corporate Debtor". Any subsequent dispute raised while replying to the demand notice under Section 8(1),,,

cannot be taken into consideration to hold that there is a pre-existing dispute.,,,

Therefore, the reply given by the "Corporate Debtor" only after the receipt of notice under Section 8 of the Code is to be ignored for finding out",,,

whether there is pre-existence of dispute or not.,,,

19. Further the Hon'ble Supreme of India in Mobilox Innovations Private Limited vs. Kirusa Software Private limited held that "a dispute,,

truly exists in fact and is not spurious, hypothetical or illusory. Here there is no such dispute was pre-existing apart from that a hypothetical or illusory",,,

dispute which has been raised by the Corporate Debtor while replying to the demand notice served under Section 8(1) by the Operational,

Creditor. In the present case also, the Corporate Debtor has created so called dispute only after receiving Section 8 notice.",

20. In view of the aforesaid fact, we hold that there is no pre-existing dispute in the present case.",

21. The applicant has attached the copy of the Bank statement issued by ICICI Bank for the period starting from 10.06.2018 to 17.07.2018 in,

compliance of Section 9(3) (c).,

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

23. The present application is filed on 21.07.2018 which is within the period of limitation.,

24. 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, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is",

admitted.,

25. 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 Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period,",

terms of Section 14(2) to 14(3) of the Code shall come in vogue.,

26. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Ms. Sujata",

Sharma having registration no. IBBI/IPA-001/IP-P01418/2018-19/12188 having email address sujatasharma2205@gmail.com and contact number is,

9810079081 as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in",

terms of Sections 15,17,18,20 and 21 of the Code.",

27. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016.",

28. The applicant/Operational Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses to be incurred and,

accounted for by the IRP. The amount shall be reimbursed to Operational

Creditor after the COC has approved the expenses of the IRP before,,
appointing Resolution Professional.,,

29. A copy of the order shall be communicated to the Applicant as well as to the Respondent Company above named by the Registry. Further the IRP,,
above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for",,,
its records.,,