



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI BENCH-VI

CP (IB) No. 886/MB/2022

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

HIMATSINGKA SEIDE LIMITED

[CIN: L17112KA1985PLC006647]

Registered Office: 10/24

Kumara Krupa Road, High Grounds

Bangalore-560001, Karnataka.

...Operational Creditor

V/s

TEXTILE PROFESSIONAL LLP

[LLPIN: AAJ-0177]

Registered Office: P.T. No. 1284/4

Trishan Layout, Dube Layout, Jaitala

Nagpur-410016, Maharashtra.

...Corporate Debtor

Pronounced: 21.03.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Ranjit Shetty a/w. Adv. Yuvraj Choksy and Adv.

Arjun Amin i/b Argus Partners

Corporate Debtor: Adv. Avinash Khanolkar a/w. Adv. Yachika Jain & Adv.

Surekha Yadav

**ORDER*****[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]*****1. BACKGROUND**

1.1 This C.P. (IB) No. 886MB/2022 (Application) was filed on 27.07.2022 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AAA Rules) by Himatsingka Seide Limited, the Operational Creditor (OC), through Mr. P. Rama Krishna, Senior General Manager-Legal of the OC, authorised for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Textile Professional LLP, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.1,29,07,257.60/- (One Crore Twenty-Nine Lakh Seven Thousand Two Hundred Fifty-Seven Rupees and Sixty Paise), which also includes the amount of Rs.8,78,383.60/- as interest calculated at the rate of 18 (Eighteen) per cent per annum from respective due dates of invoices till 12.05.2022. The alleged default amount is based on 5 (Five) unpaid invoices issued by the OC in lieu of supplying cotton fibre to the CD during the period of 2021-2022.

1.3 The date of default is not expressly mentioned in Part-IV of the Application. However, the OC placed invoices dated 16.12.2021 to 19.01.2022 on record, showing due dates of payment for each unpaid invoice i.e., 30 (Thirty) days from the invoice date. Since the CD defaulted in payment of its outstanding dues, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.



2. CONTENTIONS OF OC

2.1 The OC is involved in the business of manufacture and distribution of home textile products, while the CD is a Mumbai-based partnership firm, engaged in the textile industry. For supply of cotton fibre, the CD made a request to the OC by email dated 06.12.2021, pursuant to which both the parties entered into an arrangement whereby the OC would supply cotton fibre and raise invoice for the same to the CD while the CD shall convert the supplied cotton into yarn through its identified consignee, i.e., Shree Gajanan Sahakari Soot Girni Limited (Gajanan Sahakari) in lieu of conversion cost which was to be borne by the OC. In view of such arrangement, the OC supplied bales of cotton fibre to the CD during the period of December, 2021 to January, 2022.

2.2 The OC raised invoices in lieu of supplying goods to the CD. As per the invoices, interest would be charged at the rate of 18% per annum, in the event of non-payment on the due date of payment, which was 30 (Thirty) days from the date of each invoice. The OC issued the following invoices which remain unpaid: -

Sr. No.	Invoice No	Date of Invoice	Due Date of Payment	Invoice Amount (Rs.)
1.	26140985	16.12.2021	15.01.2022	1,00,02,892/-
2.	26140992	21.12.2021	20.01.2022	32,57,831/-
3.	26141001	25.12.2021	24.01.2022	33,39,626/-
4.	26141004	30.12.2021	29.01.2022	32,48,854/-
5.	26141022	19.01.2022	18.02.2022	33,31,646/-



- 2.3 On account of CD's failure in clearing the outstanding dues, the OC issued demand notice dated 13.05.2022 under Section 8 of IBC in Form-3, wherein the CD was called upon to pay the amount of Rs.1,29,07,257.60/-. The said demand notice was sent at the addresses of the CD's directors. Later, the CD, *vide* its reply notice dated 09.06.2022, denied its liability towards the OC on the ground of pre-existing dispute over payments and quality of goods.
- 2.4 The OC placed the Affidavit under Section 9(3)(b) of the IBC on record to show that the CD had failed to give reply about any dispute over the operational debt within 10 days from the receipt of its demand notice.
- 2.5 The aforesaid invoices are undisputed and the CD never raised any dispute over quality or quantity of the goods before the issuance of the demand notice. In fact, the CD's emails dated 03.11.2021 and 10.01.2022 contradict the CD's stance on pre-existing dispute but rather they refer to continuing the contractual relationship for obtaining bulk supplies of goods. Thus, the CD's contention on pre-existing dispute is nothing but a feeble legal argument which is unacceptable.
- 2.6 The OC denies engagement of one Mr. Rajeev Rathore as mediator on its own or joint basis with the CD and further contended that its representatives attended the meeting dated 06.04.2022, merely to verify the accounts and had never signed the minutes of the same. Hence, the CD cannot escape from its obligations towards the OC after accepting the goods without any demur as per the law laid down by the Hon'ble NCLAT in *Deepak Modi Vs Shalfeyo Industries.*, [(2023) SCC OnLine NCLAT 169].



3. CONTENTIONS OF CD

3.1 There is no contractual relationship between the OC and the CD through any agreement. In fact, the OC never supplied any goods to the CD. Rather the CD provided its services to the OC as facilitator. The OC failed to produce any evidence to show fulfillment of duties as a seller on its part while the veracity of the invoices produced is questionable, considering the absence of details regarding Truck Number, e-way bills or transportation of goods to the CD. Thus, OC is not an actual operational creditor and it is the CD, being the actual operational creditor, which had filed the application under Section 9 of IBC before NCLT Bengaluru Bench.

3.2 The present Application is not maintainable on account of pre-existing dispute between the OC, CD and Gajanan Sahakari even though the material facts about the issuance of demand notice dated 13.05.2022 to the Shree Gajanan Sahakari Sootgirni Maryadit, Dhamangaon (Railway), was concealed from this Tribunal. The tri-partite dispute arose out of the OC's failure to make payments to its consignee i.e., Gajanan Sahakari for conversion charges, despite repeated requests from the CD, which compelled the CD to make payments from its own pocket. The OC also supplied inferior quality of cotton fibre to Gajanan Sahakari, which caused production losses to it.

3.3 Due to dispute over payments and supply of goods, the OC appointed Mr. Rajeev Rathore, as mediator and the meeting took place on 06.04.2022 between the representatives of the OC and the CD, for settling the dispute in amicable manner. However, the OC abandoned the mediation process for no valid reasons, pursuant to which the CD not only filed the Application under Section 84 of Maharashtra Co-Operative Societies Act, 1960, before the Ld.



Textile Commissioner/Registrar, Nagpur on 25.04.2022, for seeking recovery of Rs.1,98,35,630/- against the OC's consignee, but also filed WP No. 5308/2022 before the Hon'ble Bombay High Court (Nagpur Bench) on 20.08.2022. To substantiate its contention, the CD placed the copies of its emails dated 11.04.2022 and 18.05.2022 and the order dated 30.08.2022, passed by the Hon'ble Bombay High Court.

3.4 The OC did not produce the CD's reply to the demand notice. However, the CD, *vide* its Additional Affidavit dated 13.06.2023, placed on record its reply notice dated 09.06.2022. The said reply notice as well as copies of invoices and several emails attached to it indicate the existence of dispute between the OC and the CD.

3.5 The OC has approached this Tribunal with malafide intention to harass the CD for recovery of money, which is contrary to the objectives of the IBC.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard the Ld. Counsel for the OC and the CD.

4.2 The sole issue to be determined in the instant matter is whether there is pre-existing dispute between the parties. It is submitted by the Ld. Counsel for the OC that the CD accepted the supplied goods without any demur over its quantity or quality, which the CD denied and challenged the veracity of invoices raised by the OC. The CD's emails dated 10.01.2022; 11.01.2022; 15.01.2022 and 21.01.2022, addressed to the OC categorically bring to light that there were disputes as to inferior quality of supplied goods as well as delayed payments as raised by the CD. Interestingly, the OC has not replied to or challenged any of these emails as alleged by the CD. There is evidence to



show that the representative of the OC attended the meeting dated 06.04.2022 with the CD and Mr. Rajeev Rathore was shown as the mediator in the draft minutes produced by the CD in its additional reply. Although the minutes were not signed by any of the parties, the draft minutes were forwarded to the OC by the CD by email dated 11.04.2022. The Ld. Counsel for the OC submitted that the meeting was arranged only for verifying the accounts. Hence, it is seen that the OC has admitted that the meeting was held between its representatives and the CD. Moreover, there is nothing to show that the OC has ever challenged the said meeting even after receiving the email dated 11.04.2022, sent by the CD attaching the draft minutes. It is seen that the minutes contain disputes raised by the CD, which deal with issues relating to quality, payment and issues relating to non-appointment of any person from the OC's team to discuss and redress the grievances of the CD. Although the CD replied to the OC's demand notice dated 13.05.2022 only on 09.06.2022, it submitted in its reply that it had already raised the disputes prior to the filing of the present Application. Therefore, we hold that non-replying to the Section 8 IBC notice, within ten days from the receipt of notice, does not prevent the CD from raising the issue of pre-existing dispute in the matter, especially when the CD had already raised the same with the OC even before the demand notice was issued by the OC. Further, in *Brand Realty Services Ltd. Vs. Sir John Bakeries India Pvt. Ltd.* [Company Appeal (AT) (Insolvency) No. 958 of 2020], the Hon'ble NCLAT, Principal Bench, New Delhi, held that mere fact that reply to notice under Section 8(1) had not been given within ten days or no reply to demand notice had been filed by the corporate debtor does not



preclude it from bringing relevant materials before the adjudicating authority to establish pre-existing dispute.

4.3 It is seen that the demand notice was issued by the OC on 13.05.2022. However, the CD had already raised disputes as regards quality of supplied goods and payment issues *vide* emails referred to above much before the receipt of demand notice. Further, the CD also reminded the OC regarding the meeting of representatives held on 06.04.2022; however, the OC still kept mum. Hence, the OC's contention that the CD accepted the goods without demur cannot be accepted and *Deepak Modi (Supra)* is inapplicable in the present matter. The fact that CD filed the applications before different fora as well as various emails exchanged between the parties indicate the existence of prior dispute between the parties. Since the disputes were raised before filing the present Application, and also much prior to the issuance of OC's demand notice, it cannot be said that there existed an undisputed operational debt. When pre-existing dispute is proved, there is no need to deal with any other contention or rival contention agitated by the parties. In view of the above, we hold that since there is pre-existing dispute between the CD and the OC, this application deserves to be rejected.

ORDER

In the result, CP (IB) No. 886/MB/2022 filed by Himatsingka Seide Limited, the OC, under Section 9 of the IBC read with Rule 6 of AAA Rules, for initiating CIRP in respect of Textile Professional LLP, the CD, is **rejected**.



We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the OC before any other judicial forum shall not be prejudiced on the ground of rejection of this Application.

**Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)**

**Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)**

//Tanmay Jain//