

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB-394/ND/2019**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016
Read with Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016

IN THE MATTER OF:

FINE GROUP CORPORATION LIMITED

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

LEMON ELECTRONICS LIMITED

...RESPONDENT/ CORPORATE DEBTOR

JUDGMENT PRONOUNCED ON: 27.02.2020

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

SH. HEMANT KUMAR SARANGI

HON'BLE MEMBER (TECHNICAL)

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MEMO OF PARTIES**FINE GROUP CORPORATION LIMITED**

Registered office:

20F, Champion Building 287-291

Des Voeux Road Central

Sheung Wan

Hong Kong

...Applicant/Operational Creditor

Versus

LEMON ELECTRONICS LIMITED

Registered office:

B-4, Ground Floor, Shankar Garden

Vikas Puri, New Delhi, West Delhi-18

India

...Respondent/ Corporate Debtor

FOR THE APPLICANT :

FOR THE RESPONDENT : MR. RAJESH SHARMA, Adv.

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ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by Fine Group Corporation Limited (for brevity 'Applicant') through Mr. Sandeep Kumar who has been authorized vide power of attorney dated 16.07.2018, copy annexed with a prayer to initiate the Corporate Insolvency process against Lemon Electronics Limited (for brevity 'Corporate Debtor').
2. The Applicant is a company incorporated in Hong Kong under the Companies Ordinance (Chapter 32 of the Laws of Hong Kong) having its registered office at 20F, Champion Building 287-291, Des Voeux Road Central, Sheung Wan Hong Kong and is limited company having a sole director. The name and address of person resident in India authorized to accept service of process on its behalf is Mr. Sandeep Kumar, resident of V.P.O Chhawala, South west Delhi-110071. The applicant deals in variety of goods such as memory cards, micro cards, storage devices and also steel products, Kitchen utensils, cell phones, computer and ancillary goods.
3. The Corporate Debtor is a company limited by shares, registered with Registrar of Companies, Delhi, incorporated on 09.06.2008 under the provisions of Companies Act, 1956 in the name of Fast Track Communication bearing CIN U64200DL2008PLC179213 with its registered office at B-4, Ground Floor, Shankar Garden Vikas Puri, New Delhi, West

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Delhi-18, India and corporate headquarters at Greater Noida. The Authorized Share Capital of the company is 20,00,00,000/- and the paid up share capital is Rs 11,72,73,200/-. In around November 2017 the name of the company was changed to Lemon Electronics Pvt. Ltd., largely engaged into business of trading /import of mobile handsets, memory cards and other mobile accessories.

4. It is submitted that the corporate debtor placed 6 Purchase orders between 06.08.2018 to 27.09.2018 for purchasing specific products which were discussed orally and thereafter applicant procured specific goods as per order and dispatched the same at the designated address. It is further stated that it was also agreed between the parties that the full and final payment shall be made after the desired goods are delivered at the designated address to the satisfaction of the corporate debtor.

5. The applicant submits that as per oral communications between the applicant and the corporate debtor post delivery of goods, the corporate debtor duly confirmed that the goods have been received by it and that the same are exactly as per the description. Applicant states that no complaint was received with respect to goods from corporate debtor. It is further submitted by the applicant that six invoices were raised for the goods supplied and the said invoices issued by the applicant to the corporate debtor were duly sent and received by the accounts officer of the corporate debtor by giving proper acknowledgement and confirmation on phone. Also, assurance was received from the corporate debtor that the payment shall be released soon.

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6. It is stated that the applicant had requested for payment of said invoices and sent reminder but the corporate debtor failed to honour its obligation. The applicant further submits that the corporate debtor never complained of anything nor denied the due payment.
7. On non-receiving the payment due, the applicant issued a demand notice dated 10.12.2018 in Form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with copy of invoices, corresponding packing lists and copy of airway bills calling upon the corporate debtor to pay the total outstanding amount of \$505506.48 USD i.e. INR Rs.3,53,85,453.60/-(Calculated @ of 1 USD = INR 70/-).
8. That vide reply dated 26.12.2018, to the demand notice the corporate debtor submitted that they do not acknowledge any liability in the claimed amount and stated that certain Purchase orders were executed for which the payment was to be released only for goods that were as per the description. Further the corporate debtor submits that the applicant had failed to deliver the goods on time and since the goods were neither delivered on time and nor were as per the description with respect to the quality of the goods being contrary to the description, there stands no liability or unpaid debt due as demanded by the applicant.
9. The Applicant filed the present Application under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per service affidavit through speed post and email.
10. As per Form V, the total debt outstanding is \$505506.48 USD i.e. INR Rs.3,53,85,453.60/-(Calculated @ of 1 USD = INR 70/-) from 12.09.2018 till

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date of filing of application which is due and payable by the corporate debtor to the applicant.

11. The Corporate Debtor filed reply and submitted the following :

- a) No default has occurred and therefore the provisions of the code cannot be triggered.
- b) The corporate debtor contended that all invoices in question were not sent to Corporate Debtor by applicant and never raised any demand for payment towards supply of goods, hence the said application is liable to be rejected as the applicant failed to deliver the invoices to the corporate debtor.
- c) There exists a pre-existing dispute between the parties in respect of the goods supplied and goods to be deficient and defective.
- d) There exists no written agreement between the parties and no payment schedule was ever agreed upon. The stipulation of 90 days in the purported invoices is vehemently disputed.
- e) The corporate debtor has relied upon the Judgment of Supreme Court, in *Innoventive Industries Vs. ICICI Bank* (2018)1 SCC 407 and *Macquarie Bank Ltd. Vs. Shilpi Cable Technologies Ltd.* (2018) 2 SCC 674, and submitted that no default has occurred.
- f) The Corporate Debtor has also challenged the jurisdiction of tribunal and also stated that the application is barred by limitation.

12. Considering the documents on records and submissions of counsels, it manifests that the corporate debtor has tried to create and establish a pre-existing dispute by asserting that the goods were defective and deficient, delayed delivery and the invoices not being delivered only after receiving the notice under Section 8 of Insolvency and Bankruptcy code. However, no

documentary evidence or correspondence is placed on record by the corporate debtor to support the contentions and the said dispute was raised for the first time only after notice under Section 8 of IBC was issued. None of the defences taken by the corporate debtor stands the test of proving any pre existing dispute. They are only statements made by Corporate Debtor but not even single objection is substantiated with any proof in support of evidence

13. The corporate debtor has not placed on record any document which exhibits the plausible dispute between the parties. There is no merit in the so-called dispute raised by the corporate debtor as mere reply without document filed by the corporate debtor to the present application, is unable to establish any pre-existing dispute of genuine nature. This leaves no doubt that the default has occurred for the payment of the operational debt of the applicant and the so called dispute raised by the corporate debtor is merely a moonshine dispute as laid down in “**Mobilox Innovative Private Limited vs. Kirusa Software Private Limited**”, “*Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required 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.*”

In view of the above observation it can be concluded that the dispute raised by the corporate debtor, is spurious, plainly frivolous, vexatious and does not categorize a genuine dispute as reproduced above and the contention of the corporate debtor, of a pre-existing dispute without any evidence and merit is a clear after thought to defeat the claim of the applicant.

14. The date of default is 12.09.2018 and the present application is filed on 05/01/2019. Hence the application is not time barred and filed within the period of limitation.
15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. It is pertinent to note that the corporate debtor has not placed on record any correspondences between the parties with respect to any disputes raised by the corporate debtor.
17. The Applicant has filed an affidavit in compliance of section 9(3) (b).
18. The present application is filed on the Performa prescribed under Rule 6 of the Insolvency and Bankruptcy Code, 2016 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 r/w Section 9 of the code and is complete. The applicant is entitled to claim its dues, establishing the default in payment of the operational debt. Hence, the application is admitted.
19. The Applicant has named Mr. Umesh Garg, having email address umeshg60@gmail.com, mob : 9818990001 and office at 2nd Floor, 3 Scindia House, Janpath, New Delhi-110001, who is registered vide registration number IBBI/IPA-001/IP-P00135/2017-18/10277 as the Interim Resolution Professional who is hereby appointed 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. The specific consent has been filed in Form 2 of Insolvency and Bankruptcy

Board of India (Application to Adjudicating Authority) Rule, 2016 and disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 have been made.

20. 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.
21. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Umesh Garg to meet out the expenses and 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.
22. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be

forwarded to IBBI for its records and to ROC for updating the Master Data.
ROC shall send compliance report to the Registrar, NCLT.

Sd/-

HEMANT KUMAR SARANGI
MEMBER (T)

Sd/-

DR. DEEPTI MUKESH
MEMBER (J)

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