

**NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH  
COURT HALL NO:II**

**SPECIAL BENCH(Video Conference)**

**CORAM: HON'BLE MADAN BHALCHANDRA GOSAVI – MEMBER JUDICIAL  
HON'BLE DR.BINOD KUMAR SINHA-MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,  
HYDERABAD BENCH, HELD ON 15.07.2021 AT 12:30 PM THROUGH VIDEO CONFERENCE**

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.203/2020 in CP(IB) No.668/9/HDB/2019
NAME OF THE COMPANY	S.P.Y.Agro Industries Ltd
NAME OF THE PETITIONER(S)	P.Laxman Kumar & Company
NAME OF THE RESPONDENT(S)	S.P.Y.Agro Industries Ltd
UNDER SECTION	9 of IBC

**Counsel for Petitioner(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**Counsel for Respondent(s):**

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

**ORDER**

**CP(IB) 668/9/HDB/2019** is listed for orders. CP rejected. Orders pronounced vide separate Order.

  
**MEMBER (T)**

  
**MEMBER (J)**

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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

CP (IB) No.668/9/HDB/2019  
Under section 9 of the IB Code, 2016  
Read with Rule 6 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority) Rules, 2016

**In the matter of:**

**M/s. SPY AGRO INDUSTRIES LIMITED**

**BETWEEN:**

M/s. P. Laxman Kumar & Company,  
Balaji Market Yard Shop no.9,  
Nawabpet Mandal – 509340,  
Dist., Mahabubnagar,  
Telangana, India.

**...Operational Creditor**

**And**

M/s. S.P.Y. Agro Industries Limited,  
D.No. 8-3-833/188, Plot No.188,  
1<sup>st</sup> Floor Phase – ii, Kamalapuri Colony,  
Hyderabad – 500 073.  
Telangana, India.

**...Corporate Debtor**

**Date of Order: 15.07.2021**

**Coram: Madan B. Gosavi, Member Judicial.**

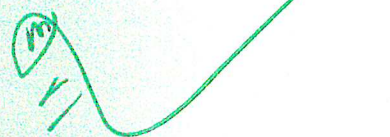
**Dr. Binod Kumar Sinha, Member Technical.**

**Parties/ Counsels Present:-**

For the Applicant : Mr.Amir Bavani, Counsel

For the Respondent : Mr. J.Basava Raju, Counsel





**[Per Bench]**

1. Under consideration before us is the petition filed by Messrs P.Laxman Kumar & Company / Operational Creditor herein stating that Messrs S.P.Y.Agro Industries Limited/ Corporate Debtor committed default of Rs.51,36,288/- as on 20.07.2019. Hence, this petition is filed under Section 9 of Insolvency & Bankruptcy Code, 2016, R/w Rule 6 of Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, seeking admission of the Petition, commencement of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. Averments made by the operational creditor in brief:
  - a. The Operational Creditor supplied Maize to the Corporate Debtor, pursuant to which the Operational Creditor raised Invoices / Cash-Credit Bills of Rs.63,15,178/- from the year 2016 till 2018. Upon receipt of the invoices / cash-credit bills, the Corporate Debtor made part payment of Rs.22,01,370/- by 19.03.2018. Thereafter, the Corporate Debtor failed to pay the balance principal amount of Rs.41,13,808/- and interest of Rs.11,97,480/- @18% per annum (calculated upto 20.07.2019) totalling to an amount of Rs.53,11,288/-. It is essential to note herein that a sum of Rs.1,75,000/- was received in the year 2019 and hence, the amount due and payable as on 20.07.2019 is Rs.51,36,288/-.
  - b. It is averred that operational creditor had made several efforts for recovery of the debt from the corporate debtor but failed and thus issued a demand notice to the Corporate Debtor under Section 8 of the Code on 26.08.2019 which was

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received by the Corporate Debtor on 27.08.2019. The Corporate Debtor replied to the said demand notice on 14.09.2019 (received on 18.09.2019).

- c. It is further stated that there was no pre-existing dispute between the parties and the corporate debtor in their reply stated that invoices has not been received and also stated that the payments were settled by way of adjustments on account of supply of cement from the corporate debtor's group company which is false and baseless.
- d. It is further stated that the adjustments done if any are prior to 26.09.2017 as on which the date an amount of Rs.4,79,389/- was due and payable by the corporate debtor. Further, the email dated 23.07.2019 was sent by the corporate debtor clearly depicts an outstanding amount of Rs.41,13,808/- in the books of the corporate debtor which has been reflected in the ledger of the operational creditor as well. Hence corporate debtor itself has acknowledged its liability and that it has no valid defence to rebut the same.

**3. Memo of Arguments Submitted by the Respondent/Corporate Debtor:**

- a. Corporate Debtor stated that they have not received any invoices / goods from the Operational Creditor from 4.10.2016 to 26.9.2017, 7.10.2017 & 12.9.2018 for an amount of Rs.4,79,000/-, Rs.1,48,670/- and Rs.4,01,460/- respectively i.e., for a total sum of Rs.10,29,519/-. Further in the reply stated that there is a difference of weight of goods supplied by the operational creditor and requested the operational creditor to give appropriate credit to that effect for which operational creditor failed to do so. Further, certain payments to an extent of Rs.18,38,724/- were settled by way of adjustments on account of supply of

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cement from corporate debtor group company and also some of the payments through their group companies and the details of the same were stated in the counter. The respondent also raised that there is no contract for payment of interest @ 18% p.a. and as such the claim of Rs.11,97,480/- which was claimed in the application towards the interest till 27.9.2019 for which the applicant is not entitled. There is no clause in respect of the rate of interest in the invoices etc.

- b. It is averred that form No.3 notice which was filed by the applicant annexed at page No.19 to 24 of the petition. The contention of the respondent is that the documents referred in column No.7 were not attached to the Form No.III which was issued to the respondent. A perusal of postal receipt clearly establishes that these documents were not enclosed since the amount paid to the postal department is only Rs.29.50 Ps. Only. The total documents i.e., pages is 89. If the said 89 pages were enclosed the fees payable is much higher than Rs.29.50 Ps. The postal receipt filed by the applicant clearly establishes the said Documents were not enclosed in Form No.3 notice issued to the respondent which is a mandatory. The Act provides the format of the Form No. III notice and in the said statutory proforma it is mandatory to enclose all the documents including invoices, etc., to establish the claim. Hence, on this ground alone the application is liable to dismissed.
- c. A perusal of the application in Part-IV at page 6 the applicant has referred invoices from 4.10.2016 to 12.9.2018 by giving serial No.1 to 21 but a single serial number 1 was given in respect of invoices arise from 4.10.2016 to 26.9.2017. A perusal of the application shows that the applicant has not placed before this

Adjudicating Authority the invoices from 4.10.2016 to 26.9.2017 and invoice dt.17.10.2017 and invoice dt.12.9.2018. The total amount of all the invoices comes around Rs.10,29,519/- which shows the applicant has not placed the invoices to prove the claim to an extent of Rs.10,29,519/-. By taking into consideration the claim of Rs.51,36,288/- is not a valid claim and the applicant has not placed the relevant invoices to prove the claim to an extent of Rs.10,29,519/- and as such the application is defective in nature and the applicant has chose not to file the said invoices in the rejoinder also even there is a specific plea taken in the counter as well as in the reply notice to the Form No.3. Hence, on this ground alone the application is liable to be rejected/dismissed.

- d. The applicant has made a claim of Rs.51,36,288/-. In Part-IV of the application the applicant has stated that the total amount of material supplied from 4.10.2016 to 12.9.2018 is a sum of Rs. 63,15,178/-. The part payments received in respect of the invoices referred above is Rs.22,01,370/- i.e., upto 19.3.2018. The amount of interest claimed is Rs.11,97,480/- @18% p.a. calculated upto 20.7.2019. With interest the gross balance payable was mentioned as Rs.53,11,288/-. However, it was stated that a sum of Rs.1,75,000/- was received as part payment in the year 2019 and after deducting the same the balance amount/claim amount was referred in the application as Rs.51,36,288/-. Thus the question arises whether the applicant has placed the documents i.e., invoices to the extent of total claim of Rs.63,15,178/-.
- e. The applicant/Operational creditor has not supplied any material or filed the invoices from 4.10.2016 to

26.9.2017, 17.10.2017 and 12.9.2018. The value of the said invoices were mentioned in the part-IV of the application as Rs.4,79,000/, Rs.1,48,670/- an Rs.4,01,460/- respectively i.e., for a total sum of Rs.10,29,519/-. The applicant failed to furnish the said invoices to prove the claim and as such the claim of Rs.51,36,288/- is illegal.

- f. On perusal of the invoices filed by the applicant does not speaks the applicant is entitled for the interest. Hence, the claim of the applicant to an extent of Rs.11,97,480/- towards interest is illegal.
- g. It is further stated that Sec3(11) of the I&B Code defines "Liability or obligation in respect of a claim which is due from any person and includes financial debt and operational debt". Further the default was defined under Sec3(12) and it means non-payment of debt which has become due and payable and is not paid by the debtor. By taking into consideration of above facts there is no liability or obligation on part of the respondent to pay the claim amount referred in the application. By taking into consideration of above facts it established the claim made by the applicant is not genuine and is liable to be dismissed.
- h. Finally stated that in the Company Appeal (AT) (Insolvency) No.1354/2019 filed before National Company Appellate Tribunal, New Delhi in the matter of Neeraj Jain Vs. Cloudwalker Streaming Technologies Private Limited and another, the issues, facts are same and applicable to the present case. Thus the Hon'ble Court may please to reject or dismiss the Company Petition in the interest of Justice.

**4. Submission of Additional documents by the corporate debtor by way of IA No. 203/2021:**

The corporate debtor has filed an IA No.203/2021 for receiving certain documents for establishing its claim of repayment /adjustment of the alleged debt amount in full. The said IA NO.203/2021 was argued extensively individually by both sides and we have allowed the said IA No.203/2021 to receive the documents following principles of natural justice.

**5. Final rejoinder/written submissions by the operational creditor in brief :**

- a. It is submitted that an email dated 23.07.2019 sent by the Corporate Debtor clearly depicts an outstanding amount of Rs.41,13,808/- in the books of the Corporate Debtor and the same is reflected in the ledger of the Operational Creditor as well.
- b. That the ledger accounts provided by the Corporate Debtor in the interim application indicates a default of Rs.7,33,799/-. The said amount is sufficient enough for initiation of CIRP qua the Corporate Debtor. It is humbly brought to the notice of this Adjudicating Authority that there is an acknowledgment of debt which duly complies with the threshold limit of one lakh rupees, as per section 4 of the Code (prior to Amendment) which was very much in force at the time the instant matter was filed.
- c. Further as per the recent Judgment of the Hon'ble National Company Law Appellate Tribunal (NCLAT) in *Company appeal (AT) (Insolvency) No.412 of 2020 – in the matter of Apya Capital Services Private Limited vs. Guardian Homes Private Limited dated 08.12.2020*, the Hon'ble NCLAT has rightfully concluded that once

there exists an admitted liability, dispute in regard to quantum, of debt would be immaterial.

- d. That without prejudice, the disputed documentary evidence submitted by the corporate Debtor through an interim application indicates a default exceeding one lakh rupees. Accordingly, referring to the judgment of Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. v. ICICI Bank and Anr. In Civil Appeal Nos. 8337-8338 of 2017* stated that, "27. ....For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor." Hence, there is an existence of an undisputed debt for which the application for CIRP is to be admitted against the Corporate Debtor.
- e. That the Corporate Debtor has blatantly violated the statutory requirement as under Section 8(2) of the Code, in failing to bring to the notice of the Operational Creditor record of pre-existing dispute within the statutory period of 10 days from the receipt of the demand notice.
- f. It is averred that the Corporate Debtor has miserably failed to show the existence of dispute and has merely been dragging the instant matter on fallacious and baseless grounds.
- g. It is averred that the Corporate Debtor has asserted that certain payments were settled by way of adjustments on account of supply of cement from the

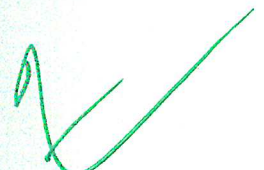
Corporate Debtor's group company. The Corporate Debtor has failed to provide any genuine or bonafide documents to evidence the same.

- h. It is averred that the adjustments, if any undertaken are prior to 26.09.2017 as on which date an amount of Rs.4,79,389 was due and payable to Operational Creditor. Hence, it is evident that contentions of the Corporate Debtor regarding the adjustment of debt amount are baseless.
- i. In view of the above circumstances of present case, it is prayed by the operational creditor to initiate CIRP process against the corporate debtor.

6. Heard both the learned counsels and perused the records and evidences placed thereon. In the instant case the petitioner/operational creditor has made a claim of Rs. **53,11,288/-** which according to the petitioner includes principal amount of Rs.41,13,808/- and interest charged on the principal amount at 18% p.a is Rs.11,97,480/- totaling to an amount of Rs.53,11,288.
7. According to the petitioner they had supplied maize to corporate debtor during the period 04.10.16 to 12.09.18. The total amount of such supply of maize was Rs.63,15,178/-, upon which corporate debtor had made part payment to the operational creditor of Rs.22,01,370/- by 19.03.2018 and another amount of Rs. 1,75,000 was received during 2019. Thus the principal amount of 41,13,808 and interest of Rs. 11,97,480/- totaling to an amount of Rs. 53,11,288/- remained due and payable by the corporate debtor.
8. From the record it is seen that the operational creditor had sent a notice in Form-3 to the corporate debtor dated 26/08/2019 which was served on 27/08/2019. This demand notice was replied by the corporate debtor through their counsel on 14.09.2019 which was received on 18.09.2019. In this reply the

- corporate debtor had denied the contention raised in the demand notice and stated that they made all the payment against supplies received from the operational creditor and that no amount was due and payable by the corporate debtor to the operational creditor.
9. The corporate debtor further raised specific disputes regarding not having received invoices for the period 04.10.2016 to 26.09.2017, and for 17.10.2017 and 12.09.2018 as claimed by the operational creditor. The value of the said invoices are Rs.4,79,389/- and Rs.4,01,460/- and Rs.1,48,670/- respectively aggregating to Rs. 10,29,519/-. The corporate debtor, therefore, alleged that the said amount was falsely claimed. The corporate debtor also mentioned in the reply that there have been difference in the weight of goods supplied by the operational creditor and the said fact was brought to the notice of operational creditor for giving appropriate credit for the same which they failed to do.
10. The corporate debtor has also specifically mentioned that as per the instructions of the operational creditor, certain payments were settled by way of adjustments on account of supply of cement from Corporate Debtor's group company and also by making payments from two of the group companies of the corporate debtor and details of such payments are given in a tabular form in the reply. The total amount of said adjustments/payments comes to the tune of Rs. 18, 38,724/- . The Corporate debtor has also raised the point that there is no agreement for payment of interest and the invoices raised by the operational creditor also do not include any clause for payment of interest. Thus according to the corporate debtor, the claim for interest is illegal and impugned interest amount is wrongly claimed by the operational creditor.
11. A careful perusal of the documents placed on record indicates the following:

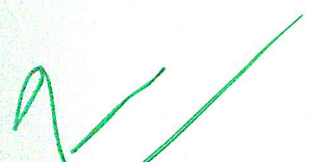
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- a. Out of the list of 21 invoices as mentioned in Form-3 invoices relating to 3, dates i.e 04.10.2016 to 26.09.2017 Rs.4,79,389/-, invoice dated 17.10.2017 of Rs.1,48,670/- and invoice dated 12.09.2018 of Rs.4,01,416/- are not available.
  - b. Although the operational creditor has claimed that only a sum of Rs.22,01,370/- and Rs.1,75,000 totaling to Rs. 23,76,370/- was paid by the corporate debtor against maize supplies to the tune of Rs.63,59,178, their own bank account attached with the petition as Annexure-A8 (from pages 53-111) which is for the period of 18.10.17 to 20.07.19 shows the total credits of Rs. 40,80,000/- as payments received from the corporate debtor. This fact has not been disputed by the petitioner during submissions of rejoinder.
  - c. The ledger account of operational creditor in corporate debtor's books shows Rs.30, 06,339/- for the period of 04.10.16 to 26.09.2017. However, the ledger account of corporate debtor in operational creditor's books shows only the sum of Rs.4, 79,389/- as balance for the said period. Therefore, there is a definite mismatch between their acknowledgement of same transactions, showing existence of a dispute.
12. From the above facts it appears that the claim made by the operational creditor in the petition dated 01.10.2019 does not reflect the true picture of debt and default. It is to be noted that the Hon' ble supreme court in the case of Mobilox Innovations (P) Ltd. V.Kirusa Software (P) Ltd , (2018) 1 SCC 353: laid down the following principles for examining an application U/s.9 of the Code.

**“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:**





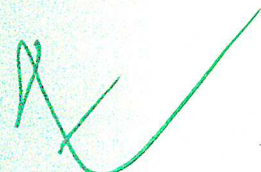
- i. **Whether there is an “Operational Debt” as defined exceeding Rs.1 Lakh? (See Section 4 of the Act).**
- ii. **Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and had not yet been paid? And**
- iii. **Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceedings filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?”**

**If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9 , as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”**

13. Further in the case of Ramco Systems versus Spice jet Ltd ., 2019 SCC Online NCLAT 354 it was held that:

“10. There is nothing on the record to suggest that the invoices dated 23<sup>rd</sup> July 2014 were forwarded or received by the Respondent- ‘Spicejet Limited’. Therefore, the demand notice issued on 24<sup>th</sup> April 2017 as relates to invoice dated 23<sup>rd</sup> July, 2014 through it cannot be held to be barred by limitation, but in the absence of specific evidence relating to invoices forwarded by the appellant and there being a doubt, we hold that the Adjudicating Authority has rightly refused to entertain application under Section 9 of which requires strict proof of debt and default.”(Emphasis supplied)





14. In the instant case, the claim of interest charges are also disputed. While the operational creditor has made a claim of interest @18 p.a the corporate debtor has disputed the liability to pay any interest. Therefore such a claim would need crystallization by appropriate authority and the Adjudicating Authority under summary jurisdiction cannot adjudicate and determine the claim on account of interest payable to the operational creditor.
15. As laid down by Hon'ble Supreme Court in case of Mobilox Innovations (supra) , once the operational creditor filed an application , the Adjudicating Authority must reject the application under sec 9(5) (2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such a reply notice must bring to the attention of the operational creditor the "Existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires 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 remember here that Hon'ble Supreme Court have clarified that in such a case, the court does not need to be satisfied that the defense is likely to succeed. The court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.
16. As pointed out earlier, there have been several factual disputes between parties as emerged from our examination of record. The operational creditor has argued that even if the claim of the corporate debtor regarding payment is accepted, the document submitted along with IA No. 203/2021 which is the ledger account of operational creditor in the books of corporate





debtor, it still shows the amount of Rs.7,33,799/- as closing balance payable to the operational creditor and since this amount is more than Rs.1,00,000/- the application filed under section 9 of the code should be admitted .

17. The above contention of the operational creditor is not acceptable because we have found that the demand notice delivered u/s 8 of the Code itself was defective in so far as it showed the amount already paid by the corporate debtor at Rs.23,76,370/- whereas their own Bank Account statement showed total payment of Rs.40,80,000/-. The notice was also incomplete in the sense that certain invoices enlisted therein were not made available to the corporate debtor, whereas the corporate debtor has placed on record certain evidence to show that no amount remains due and payable.
18. The operational creditor has argued that the application must be admitted in view of the fact that the corporate debtor failed to bring to the notice of the operational creditor , the record of dispute within the statutory period of 10 days. On a consideration, we are of the view that the period of 10 days u/s 9(1) is given as a waiting period to the operational creditor before filing the application, so that the corporate debtor can bring to its attention, "existence" of a dispute. In the instant case the corporate debtor furnished the reply to the statutory notice by 14.09.2019, which was admittedly received by the operational creditor on 18.09.2019 whereas the instant application was filed by the operational creditor on 01.10.2019 i.e after more than 12 days of receipt of the reply notice giving notice of disputes. Therefore the operational creditor was very much aware of the reply of the corporate debtor which raised specific disputes regarding its claim when it filed this application. Since the operational creditor was fully aware of the disputes raised by the corporate debtor almost two weeks before filing the instant application under section 9, we are of the view that their

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arguments of violation of Section 8(2) is too technical and doesn't not hold much water.

19. Thus in view of the fact that corporate debtor has raised dispute while replying to the demand notice u/s 8 which was served on the corporate debtor much before filing this application and this Adjudicating Authority cannot adjudicate and determine the same without further investigation which is not possible in these summary proceedings, we have no option but to reject this application filed u/sec 9.
20. In view of the above discussion the application filed under section 9 bearing CP(IB)No.668/9/HDB/2019 stands rejected and disposed of. Copies may be forwarded to both parties. No order as to costs.

**DR. BINOD KUMAR SINHA**  
**MEMBER TECHNICAL**

**MADAN B. GOSAVI**  
**MEMBER JUDICIAL**

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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, HYDERABAD**

IA No.203/2020  
CP (IB) No.668/9/HDB/2019  
Under Section 60(5) of I&B Code, 2016  
R/w Section 8,11 &32 of NCLT Rules, 2016

**In the matter of :**  
**M/s. SPY AGRO INDUSTRIES LIMITED**

**BETWEEN:**

M/s. S.P.Y. Agro Industries Limited,  
D.No. 8-3-833/188, Plot No.188,  
1<sup>st</sup> Floor Phase – II, Kamalapuri Colony,  
Hyderabad – 500 073.  
Telangana, India.

**...Applicant/  
Corporate Debtor**

And

M/s. P. Laxman Kumar & Company,  
Balaji Market Yard Shop no.9,  
Nawabpet Mandal – 509340,  
Dist., Mahabubnagar,  
Telangana, India.

**...Operational  
Creditor/Respondent**

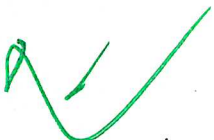
**Date of Order: 15.07.2021**

**Coram: Madan B. Gosavi, Member Judicial.  
Dr. Binod Kumar Sinha, Member Technical.**

**Parties/ Counsels Present:-**

For the Applicant: Mr. J. Basava Raju,  
Ms. A. Sandhya Rani, Counsels  
For the Respondent: Dhir & Dhir Associates Counsels





**[Per Bench]**

1. The present Application bearing IA No.203/2020 is filed under Section 60(5) of Insolvency and Bankruptcy Code, 2016 Read with Section 8,11 & 32 of NCLT Rules, 2016 praying the Tribunal to receive the documents on record which clearly shows the existence of pre-existing dispute by allowing the I.A. 203 of 2020 in C.P. No.668/9/HDB/2019 in the interest of justice and equity.
2. Brief facts as stated by the counsel for the Applicant are as follows:-
  - a) It is averred that CP(IB)No. 668/9/HDB/2019 has been filed by the operational creditor/Respondent herein to initiate CIRP process. The Corporate Debtor/Applicant herein has filed its counter affidavit and the Operational creditor had filed its rejoinder affidavit.
  - b) It is averred by the Corporate Debtor/Applicant that at the time of filing the counter affidavit they could not file the relevant documents for proof of payment due to concerned Accountant is left from the Corporate Debtor Company. Therefore the corporate debtor seeks to file the proof of payments made to the operational creditor which are crucial bearing on the facts and circumstances of the present case.
  - c) Further stated that non-filing of documents is neither wilful nor wanton but for the reasons stated above. It is averred that the Operational Creditor is in gross suppression of material facts and filed the petition for initiation of CIRP with unclean hands. Based on the documents filed it is clear that there is pre-existing dispute exists much before the issuance of the demand notice.





3. The Operational Creditor has filed the Counter Affidavit as under:

- i. It is averred that the application filed by the corporate debtor is liable to be dismissed as it has exceeded the statutory period as prescribed in Section 8(2) of the I&B Code, 2016.
- ii. It is further averred that there is no pre-existing dispute between the parties. Further stated that corporate debtor has violated the statutory requirements as under Section 8(2) of the IBC in failing to bring to the notice of the Operational creditor regarding pre-existing dispute within the statutory period of 10 days from the receipt of the demand notice. The Judgement of "Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited given by a division Bench of the Hon'ble Supreme Court in 2017 stated that:  
*" Another thing of importance is the timelines within which the insolvency resolution process is to be triggered. The corporate debtor is given 10 days from the date of receipt of demand notice or copy of invoice to either point out that a dispute exists between parties or that he has since repaid operational debt. If neither exists, then an application once failed has to be disposed of by the Adjudicating Authority within 14 days of its receipt , either by admitting it or rejecting it".*
- iii. It is further stated that corporate debtor has fabricated documents and has now submitted them with the intention to prolong the proceedings and abuse the process of law.
- iv. It is further stated that corporate debtor has acknowledged the debt owned vide its email dated 23.07.2019 for an amount of Rs.41,13,808/-, which has been reflected in the ledger account of the operational creditor.

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- v. It is stated that in the matter of National Company Law Appellate Tribunal in the case of Ahluwalia Contracts(India) Limited Vs. Raheja Developers Limited in 2019 is emphasized as below:

*“ It is clear that the existence of dispute must be pre-existing i.e it must exist before the receipt of the demand notice or invoice. If it comes to the notice of the Adjudicating Authority that the operational debt is exceeding Rs.1 lakh and the application shows that the aforesaid debt is due and payable and has not been paid, in such case, in absence of any existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt, the application under Section 9 can't be rejected and is required to be admitted.”*

- vi. Accordingly, referring to the judgment of Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. v. ICICI Bank and Anr. In Civil Appeal Nos. 8337-8338 of 2017* stated that, “27. ....For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.” Hence, there is an existence of an undisputed debt for which the application for CIRP is to be admitted against the Corporate Debtor.
- vii. In view of the above instant application filed by the corporate debtor is liable to be dismissed with costs.

*Arora*

*A ✓*

4. Heard. Perused the record.
5. Considering all the facts and arguments adduced by both sides, we are of the view that the applicant/corporate debtor should be allowed to place on record the documents for establishing his claim before us. Copies of these documents are already served to the respondent/ operational creditor herein. Therefore, the documents submitted by the corporate debtor are taken on record.
6. The instant IA No.203/2020 is disposed of accordingly.

  
**DR. BINOD KUMAR SINHA**  
**MEMBER TECHNICAL**

  
**MADAN B. GOSAVI**  
**MEMBER JUDICIAL**

Pavani