

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENGALURU BENCH**

C.P. (IB) No.58/BB/2020
U/s 9 of I&B Code, 2016
R/w Rule 6 of I&B (AAA) Rules, 2016

In the matter of:

M/s. Zest Intertrade LLP

Godown No. E-33, Ground Floor,
APMC Market-I, Masala Market,
Phase-II, Sector-19, Vash-I,
Navi Mumbai, Thane,
Maharashtra – 400 703.

- Petitioner / Operational Creditor

Versus

M/s. Vaatika Spices LLP

Regd. Off: 49/1-16,
Yeshwantpur Industrial Suburb,
Tumkur Road, Near Ullhas Theatre,
Bengaluru – 560 022.

- Respondent / Corporate Debtor

Date of Order: 26th April, 2021

Coram: 1. Hon'ble Shri Rajeswara Rao Vittanala, Member (Judicial)
2. Hon'ble Shri Ashutosh Chandra, Member (Technical)

Parties/Counsels Present (Through Video Conferencing):

For the Petitioner : Mr. Vijay Narayan, Advocate

For the Respondent : - -

ORDER

Per: Ashutosh Chandra, Member (Technical)

1. C.P. (IB) No.58/BB/2020 is filed by Mr. Rakesh Jayantilal Doshi, Authorised Representative of M/s. Zest Intertrade LLP (hereinafter as 'Petitioner / Operational Creditor') under Section 9 of the I&B Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s. Vaatika Spices LLP (hereinafter as 'Respondent / Corporate Debtor') by *inter alia* seeking to initiate Corporate Insolvency



Resolution Process (CIRP) in respect of the Corporate Debtor for committing a default in payment of Rs.5,90,579 (Rupees Five Lakhs Ninety Thousand Five Hundred Seventy Nine only) along with an amount of Rs.48,929 (Rupees Forty Eight Thousand Nine Hundred Twenty Nine only) being interest @ 18% per annum, total amounting to Rs.6,39,508 (Rupees Six Lakhs Thirty Nine Thousand Five Hundred Eight only).

2. Brief facts of the case, as mentioned in the Petition, are as follows:

- (1) M/s. Zest Intertrade LLP, the Petitioner / Operational Creditor herein, is a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 on 15.05.2013 with the Registrar of Companies Mumbai, vide LLPIN: AAB-5255, having its registered office at Godown No. E-33, Ground Floor, APMC Market-I, Masala Market, Phase-II, Sector-19, Vash-I, Navi Mumbai, Thane, Maharashtra-400703.
- (2) M/s. Vaatika Spices LLP, the Respondent / Corporate Debtor herein, is a Limited Liability Partnership registered under the Limited Liability Partnership Act, 2008 on 12.05.2016 with the Registrar of Companies Bangalore, vide LLPIN: AAG-3502, having its registered office at 49/1-16, Yeshwantpur Industrial Suburb, Tumkur Road, Near Ullhas Theatre, Bengaluru-560022. The total obligation of contribution is Rs.1,00,000 (Rupees One Lakh only).
- (3) The Operational Creditor is an importer, exporter and supplier of various spices, herbs, pulses, food ingredients and chemicals, etc., and had supplied cloves to the Corporate Debtor who is an exporter, importer and supplier of various agriculture products like spices, wooden cold pressed groundnut oil, sesame oil, coconut oil, dry fruits etc.
- (4) It is stated that the Cloves were received and accepted by the Corporate Debtor and there was no dispute at the time of delivery of the same or thereafter relating to the quantity and quality of goods, but subsequently the Corporate Debtor had failed to make the payment for the outstanding invoice dated 11.12.2018 amounting to Rs.5,90,579 (Rupees Five Lakhs Ninety Thousand Five Hundred Seventy-Nine only).



- (5) Further, the Corporate Debtor is also liable to pay an interest on the outstanding due amounting to Rs.48,929 (Rupees Forty-Eight Thousand Nine Hundred Twenty-Nine only) @ 18% per annum from the due date of the invoice till the date of the demand notice.
 - (6) After giving several reminders, the Operational Creditor had issued the Statutory Demand Notice in Form 3 along with Form 4 dated 28.06.2019 under Section 8 of the I&B Code, 2016, to the Corporate Debtor at its Registered Office and also to the Directors of the Corporate Debtor along with requisite documents and also at the registered E-mail ID of the Corporate Debtor.
 - (7) It is stated that the Corporate Debtor had issued the cheque bearing No.000017 to the Operational Creditor of HDFC Bank amounting to Rs.1,00,000 (Rupees One Lakh only), the Operational Creditor had deposited the said Cheque with its banker i.e., Kotak Mahindra Bank which had been dishonoured by the Operational Creditor's Banker stating the reason 'Funds Insufficient'.
 - (8) The Corporate Debtor had assured to clear the outstanding dues through the Email dated 08.07.2019 but thereafter it had failed to clear the outstanding dues till date.
 - (9) It is also stated that post the issue of Demand Notice, the Corporate Debtor formally replied to the Operational Creditor through the reply letter dated 27.7.2019 without taking any substantial objection against the transactions between the parties, the reply sent by the Corporate Debtor is vague, ambiguous, and up-through nearly to raise false and fabricated dispute to escape the provisions of the Code. Hence, the instant application is filed.
3. Heard Mr. Vijay Narayan, learned Counsel for the Petitioner, through Video Conferencing. We have carefully perused the pleadings of the Party and extant provisions of the I&B Code, 2016 and the Rules made thereunder.
 4. The case was listed for admission on various dates viz., 18.02.2020, 16.03.2020, 13.01.2021, 27.01.2021, 16.02.2021, 10.03.2021, 01.04.2021,



and 19.04.2021, and it was adjourned on the above dates, at the request of the Party, on one ground or the other, including to issue notice, etc.

5. It is a settled position of law that the provisions of Code cannot be invoked for justified reasons as per the Code. The Hon'ble Supreme Court in the case of *Mobilox Innovations Private Limited v. Kirusa Software Private Limited*¹ has inter alia held that I & B Code, 2016 is not intended to be a substitute to a recovery forum and cannot be used to jeopardise the financial health of an otherwise solvent company by pushing it into insolvency. It is also pertinent to mention here that the Hon'ble Supreme Court in the case of *K. Kishan v. Vijay Nirman Company Private Limited*² clarified that the Petitioners cannot use IBC either prematurely or for extraneous considerations or as substitute for debt enforcement procedures.
6. On perusal of the Reply to Demand Notice dated 28.06.2019, by the Corporate Debtor, it is seen that it has denied the debt as well as the interest payable. It is mentioned that the Respondent is willing to make payments as per oral agreement though the quality of cloves that was supplied was lower than what was demanded and the same was supplied with a delay of 6 days which put a cost on the Respondent. However, it is submitted that part payments have been made and remaining payments will be made. It is stated that question of interest does not arise as payments have been made from 11.12.2018 as per oral agreements.
7. In the light of above discussion, the Petitioner has to make a case that there is a clear undisputed debt and a default and also that the Respondent is insolvent and has lost its ability to pay its debts. In the absence of these basic ingredients, the proceedings become mere recovery proceedings which is not intended by the legislature in introducing the I & B Code, 2016. Especially as in this case part payments have admittedly already been made.
8. On perusal of the Application, the documents and the Respondent's reply to the Demand Notice it appears that the amounts to be paid can be settled

¹ 2018 (1) SCC 353

² (C A) No.9597 of 2018 dated 23rd October, 2018, (147 CLA 112 (SC)



among the parties and the matter can be resolved amicably and pushing an ongoing company which is conducting business into the rigours of the Insolvency and Bankruptcy Code, 2016 and admitting the company into corporate insolvency resolution process will only harm the stakeholders of the company. An application under section 9 of the IBC, 2016 cannot be used as a recovery tool substituting the regular course of recovery of monies due.

9. Further, the Petitioner has failed to establish that the Respondent is insolvent with substantial evidentiary support. No financial statements of the Respondent company have been placed before us to show that the company is insolvent. In such situation we are not inclined to push a company carrying on business into insolvency proceedings. We are of the considered opinion that this petition has been filed with an intention to substitute recovery proceedings with an application under section 9 of the Code, 2016. Also, the situation faced by the industries from the past year on account of Covid 19 curbs and lockdown is unprecedented. We are not inclined to admit a viable company into CIRP as that would defeat the purpose of the Code. Further, the Respondent has expressed its willingness to repay the debt. However, the Petitioner is free to initiate proceedings for recovering its dues before any other relevant forum.
10. In view of the foregoing, C.P. (IB) No.58/BB/2020 is hereby dismissed with no order as to costs.

**ASHUTOSH CHANDRA
MEMBER, TECHNICAL**

Krishna

**RAJESWARA RAO VITTANALA
MEMBER, JUDICIAL**