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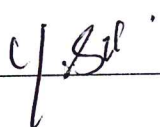
**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI BIKKI RAVEENDRA BABU – MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 06.09.2018 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No. 101/9/HDB/2018
NAME OF THE COMPANY	Rajvir Industries Ltd
NAME OF THE PETITIONER(S)	Samkit Bio Farms Pvt Ltd
NAME OF THE RESPONDENT(S)	Rajvir Industries Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Y. Suryanarayana	Adv	9899566350	

Counsel for Respondent(s):

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

ORDER

Learned counsel Mr.Y.Suryanarayana present for Petitioner

Order pronounced in open court.

Petition is rejected.

No order as to costs.

Vide separate order.


MEMBER JUDICIAL

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

**CP (IB) No.101/9/HDB/2018
Under Section 9 of the IB Code 2016**

In the matter of:

SAMKIT BIO FARMS PVT. LTD.
212, B.M. Tower,
Sapna-Sangeeta Road,
Indore (M.P.) – 452001.

...Petitioner

VS

RAJVIR INDUSTRIES LIMITED
1st Floor, Surya Towers,
105, S.P.Road, Secunderabad,
Telangana – 500003.

...Respondent

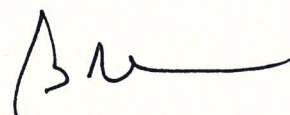
Date of Order: 06.09.2018

CORAM:-

**Hon'ble Shri Bikki Raveendra Babu, Member
Judicial**

Parties/Counsel present:-

1. Learned counsel Mr.Y.Suryanarayana along with Mr.Rishabh Gupta and Ms.C.Shilpa present for the Petitioner.



2. Learned counsel Mr.S.Rajagopalan present for the Respondent.

Order

1. Samkit Bio Farms Pvt. Ltd. herein after referred as SBF styling itself as Operational Creditor filed this Petition U/s. 9 of the Insolvency and Bankruptcy Code 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules, 2016), with a request to trigger CIRP Process in respect of Rajvir Industries Limited treating it as the Corporate Debtor.
2. The Petitioner sold cotton bales to the Corporate Debtor vide Invoices no.07 dated 09.07.2017 for Rs.11,02,117 out of which according to the Petitioner an amount of Rs. 7,37,983/- is due and payable to it. The Petitioner claimed Rs. 3,05,579/- towards interest. Total claim of the Petitioner against the Corporate Debtor is 10,43,562/- as on 20.11.2017.
3. The Petitioner issued demand notice dated 20.11.2017 in Form-3 to the Corporate Debtor. It was dispatched on 22.11.2017 and it was delivered to the Corporate Debtor on 27.11.2017.
4. It is stated by the Petitioner that the Respondent has not issued any reply notice to the demand notice.
5. The Respondent filed counter stating that the consignment miserably failed the quality test and as a result of which the Corporate Debtor has out rightly rejected the entire consignment after conducting quality tests. It is further the case of



the Respondent that the Petitioner is liable to pay damages to the Respondent.

6. It is also the case of the Respondent that there exists a dispute between the Petitioner and the Respondent pertaining to the quality of Material supplied by the Petitioner pertaining vide invoice dated IND/CO/17-18/07 dated 09.07.2017 dispatched 50 bales of Organic cotton weighing 81.50 quintals at the rate of 12878.95 per quintal and the value of the said 81.50 quintals of organic cotton was Rs.11,02,117/-.
7. According to the Respondent, the cotton supplied by the Petitioner was contaminated (Poor quality) by virtue of it being:-
 - A) Water patched cotton where in the moisture content grossly exceeded the stipulated Moisture content in the Sauda confirmation sheet issued by APEX COTTON AGENCY(I) PVT LTD.
 - B) Contained extraneous (Non-Lint) particles wherein the Extraneous (Trash/Non Lint) far exceeded the stipulated Trash/Non Lint Content in the Sauda confirmation sheet issued by Apex Confirmation sheet and
 - C) That the aforementioned contaminations in the consignment had substantially impacted the value of the Consignment and that the contaminations in the said cotton left the Respondent with no other option other than to reject the entire consignment of 125 Bales so supplied by the Petitioner and that the present Petition is NOT admissible on the grounds that the Petitioner cannot claim payment more so

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when the entire consignment was found to be contaminated and not fit for use and the same had been communicated to the Petitioner and APEX COTTON AGENCY(I) LTD (Market Intermediary).

8. It is also stated that M/s.RS COTTMARK (I) PVT LIMITED filed CP(IB)NO.100/2018 whereas, M/s.KRISHNA BIOTECH filed CP(IB)No.102/2018 against the same Corporate Debtor U/s. 9 of the IB Code.
9. The respondent further stated that the books of accounts of the Petitioner and the Respondent has been reconciled vide Debit Notes (DRN) raised by the Respondent on the Petitioner as well as Bank Payments (BP) as per the following entries and as such the Petitioner has willfully concealed the below mentioned transactions before this Authority:-

SL. No.	Date	Voucher No	Particulars	Amount in Rupees
1	30.09.2017	DRN	R.O being amount debited to Samkit Bio Farms for weight shortage Vide Inv No 6 and 7	20,606
2	30.09.2017	DRN	R.O being amount debited to Samkit Bio Farm for Quality difference Vide B.No 1@ Rs.1000/- Per candy	44,767
3	30.09.2017	DRN	R.O being amount debited to Samkit Bio Farms for Quality difference	1,63,633
4	30.09.2017	DRN	R.O. being amount debited to Samkit Bio Farms for Quality difference	3,30,880

5	30.09.2017	BP	SBI Cash Credit. R.O.Towards L/C Payment to M/s.SAMKIT BIO FARMS	19,20,932
6	30.09.2017	BP	SBI Cash Credit Towards L/C payment to SAMKIT BIO FARMS	39,57,172
7	04.01.2018	DRN	R.O Being Amount debited to your account towards Lorry freight charges	56,100
8	31.01.2018	BP	SBI C.A.33864159247 debited to SAMKIT BIO FARMS towards LC	39,15,148

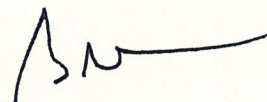
10. It is also the case of the Respondent that the issue of quality of the cotton supplied by the Petitioner to the Respondent has been referred to M/s.APEX Cotton Agency (I) Pvt Limited who is the market intermediary and exchange serving the primary function of –

- a) Defining rules and regulations of trading to carry out uniform trading practice and
- b) Provides dispute resolution and settlement mechanism and
- c) Circulates price movements and market news to participating members.

11. M/s.APEX Cotton Agencies (I) PVT Limited as a marked intermediary resolves claims, differences or disputes between the Buyer and Seller arising out of dealings, contracts and transactions and any disputes in relation to the quality and quantity of the physical delivery for transactions


that are routed through M/s.Apex Cotton Agencies (I) Pvt Ltd.

12. The Respondent informed the rejection of the entire consignment to the Petitioner and to the intermediary namely, M/s.Apex Cotton Agencies (I) PVT. Ltd. and requested the Petitioner to take back the defective consignment.
13. It is stated that the quality of the cotton supplied would affect the overall economics of Textile industry and that on account of the higher trash content and also on account of higher moisture content, the yarn realization goes down substantially which in turn would affect the rotor spinning performance and yarn properties.
14. It is stated that although the Petitioner admitted the defect in the material, refused to take back the material.
15. It is further stated in the counter that M/s.APEX Cotton Agency (I) Pvt Limited had initiated dispute reconciliation discussions in the month of November 2017 with all the stakeholders including the Petitioner, M/s.RS COTTMARK (I) PVT LIMITED, M/s.SAMKIT BIO FARMS PVT LTD. and in the said dispute reconciliation meeting, it was resolved that the parties shall in good faith and trust agreed the proceedings as follows:-
 - a) It was agreed that on account of weight shortage in the consignment the Respondent may be permitted to issue Debit Note and accordingly the Respondent had issued a debit note dated 30.09.2017, numbered as 103 with debit entry titled as R.O being amount Debited to Petitioner for weight



shortage for a sum of Rs.44,767/- was issued to the Petitioner and the Market Intermediary namely M/s.Apex Cotton Agencies (I) Pvt Ltd and

- b) It was agreed that the Respondent agree to the plea of the Petitioner to deduct 44% of the value of the material and accordingly the Respondent issued a Debit Note numbered as 105 and 106 dated 30.09.2017 with debit entries titled as R.O being amount Debited to Petitioner for Quality Difference for a sum of Rs.1,63,633/- and Rs.3,30,880/- and
- c) The Outstanding of RS COTTMARK (I) PVT Limited vide invoices Numbered as 87 dated 28 February 2017 for 100 Bales of BCI Cotton (Jamner Station) amounting to Rs.20,58,679/- and Invoice numbered as 857 dated 08.03.2017 for 50 bales of BCI Cotton (BAGOD Station) amounting to Rs.5,23,876/- which were pending on account of rejection of entire consignment on account of quality and weight issues by the Respondent
- d) The outstanding of KRISHNA BIOTECH which is nothing but a firm belonging to the promoters of RS COTTMARK(I) PVT Limited vide Invoices numbered as 372, dated 13.06.2017 for 50 Bales of C&A organic cotton(Bagod Station) amounting to Rs.9,18,627/- and Invoice numbered as 13 dated 09.07.2017 for 50 bales of C&A Cotton (Sendhwa station) amounting to Rs.10,83,861/- which were pending on account of rejection of entire consignment on



account quality and weight issues by the Respondent and

Be resolved by the Respondent volunteering to come forward and make a full and final settlement of amount of Rs.39,15,148/- which is at 85% of the total outstanding of both RS COTTMARK and KRISHNA BIOTECH and

- e) Since the said firms M/s.RS COTTMARK (I) PVT LTD and M/s.KRISHNA BIO TECH did not have Letter of Credit limit facility with their bankers, the said payment of Rs.39,15,148/- shall be made by the Respondent by availing letter of credit facility with his banker and the said Letter of Credit will be drawn in the name of the Petitioner namely M/s.SAMKIT BIO FARMS LIMITED by the Respondent and
- f) M/s.SAMKIT BIO FARMS shall make payment to RS COTTMARK (I) PVT LTD and M/s.KRISHNA BIO TECH out the said Rs.39,15,148/- and that there shall be no further claims from either RS COTTMARK (I) PVT LTD or M/s.KRISHNA BIOTECH or M/s. SAMKIT BIO FARMS on any past transactions/invoices/DRN's between the parties.

16. In accordance with the agreement reached as per the above said Reconciliation proceedings held on 01.12.2017, the Respondent herein got issued an Irrevocable Letter of Credit numbered as 0910317LC000097 in favour of M/s.SAMKIT BIO FARMS LIMITED from its bankers namely State Bank of India, Industrial Finance Branch, Hyderabad for a sum of Rs.39,15,148/- on

01.12.2017 and the said Letter of Credit was honoured by the Respondent Banker's on 20.01.2018 and the account of Respondent was debited on 31.01.2018 to an extent of Rs.39,15,148/- .

17. The Respondent stated that the Petitioner, M/s.RS COTTMARK (I) PVT LIMITED and M/s.KRISHNA BIOTECH got issued a legal notice dated 20.11.2017 and the notices were received by the Respondent on 23.11.2017 during the pendency of above mentioned dispute resolution meetings.
18. When the Respondent questioned about the notices, the Petitioner, M/s.RS COTTMARK (I) PVT LIMITED, M/s.KRISHNA BIOTECH and M/s.APEX Cotton Agency (I) PVT Limited agreed that the said stakeholders shall withdraw the said legal notice and that the Respondent need not worry about the same.
19. It is stated by the Respondent that inspite of the Resolution of the dispute, the Petitioner has chosen to file the present petition before this Authority only with the sole intention to extract money from the Respondent.
20. The Respondent also disputed an accumulated interest of Rs.3,05,579.56 /-.
21. In the counter it is also stated that the Petitioner has miserably failed to settle the monies to M/s.RS COTTMARK(I) PVT LTD and to M/s.KRISHNA BIOTECH as per the terms of negotiations held on 01.12.2017 and despite being in possession of Letter of Credit dated 01.12.2017 and despite receiving payments from the Respondent on 20.01.2018.



22. It is further stated that the Petitioner willfully and wantonly suppressed the facts before this Tribunal.
23. The Petitioner is aware that the Respondent has issued a Letter of Credit dated 01.12.2017 in favour of M/s.SAMKIT BIO FARMS PVT LIMITED from its bankers namely State Bank of India, Industrial Finance Branch for a sum of Rs.39,15,148/- on 01.12.2017 and the said Letter of Credit was honoured by the Respondent Banker's on 20.01.2018 and the account of Respondent was debited on 31.01.2018 to an extent of Rs.39,15,148/-.
24. The Hon'ble Supreme Court in Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited reported in AIR2017SC4532 in Civil Appeal No.9405 of 2017 in Para 25 held as follows:-
- "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?
 - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has 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 proceeding 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.”

25. The claim made by the Petitioner in this case relate to supply of cotton bales made by the Petitioner to the Respondent/Corporate Debtor.
26. The Operational Debt is defined in Section 5(21) which reads as under:-

“Operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

27. Since the claim in this case is in respect of the provision of goods, the claim in this case can be treated as Operational Debt.
28. Another important ingredient that is required to be established basing on the documentary evidence furnished by the Petitioner is, whether the debt is due and payable and has not yet been paid.
29. In the instant case the Respondent/Corporate Debtor is not disputing the existence of Operational Debt. It is the case of the Corporate Debtor that the disputes between the Petitioner and the Respondent have been referred to

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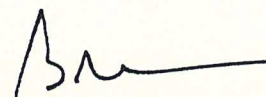
mediation to M/s.Apex Cotton Agency (I) Pvt. Ltd. which is one of the dispute mechanism resolutions between the buyers and sellers arising out of dealings, contracts and transactions in respect of disputes relating to quantity and quality or the physical delivery for transactions in the cotton trading.

30. It is also the case of the Corporate Debtor that on account of the Resolution of the disputes between the Petitioner and the Respondent, the Respondent issued an irrevocable Letter of Credit numbered as 0910317LC000097 in favour of M/s.Samkit Bio Farms Limited from its bankers namely State Bank of India, Industrial Finance Branch, Hyderabad for a sum of Rs.39,15,148/- and the said Letter of Credit was honoured by the Respondent Banker's on 20.01.2018 and the account of the Respondent was debited on 31.01.2018 to an extent of Rs.39,15,148/-.
31. Further, it is the case of the Respondent that out of the said letter of credit payment of Rs.20,18,313/- was to be made as full and final settlement to M/s.R.S.COTTMARK (INDIA) PVT LTD and payment of Rs.19,32,864 was to be made as full and final settlement to M/s.KRISHNA BIO TECH against pending invoices and claims by M/s.SAMKIT BIO FARMS LIMITED for and on behalf of the Respondent/Corporate Debtor.
32. It is the case of the Respondent that on the date of commencement of mediation in the month of November, 2017 M/s.SAMKIT BIO FARMS LIMITED had a surplus balance of Rs.3,44,593/-



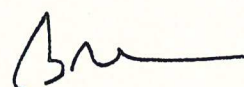
and the said amount has to be paid to the Respondent.

33. It is also the case of the Respondent that the entire 50 bales of cotton supplied by the Petitioner to the Respondent vide invoice no.7 dated 09.07.2017 has been rejected as it is not fit for production and the same has been informed to M/s.SAMKIT BIO FARMS PVT LIMITED i.e., Petitioner herein.
34. A perusal of the email dated 01.01.2018 clearly goes to show that the Respondent issued letter of credit for an amount of Rs. 39,15,148/- in favour of M/s.SAMKIT BIO FARMS PVT LIMITED with an understanding that M/s.SAMKIT BIO FARMS PVT LIMITED i.e., Petitioner herein shall pay the said amount to M/s.R.S. COTTMARK (INDIA) PVT LTD and M/s.KRISHNA BIO TECH.
35. The Petitioner herein is not in a position to deny the issuance of LC or the credit of LC amount to the account of the Petitioner.
36. It is not even the case of the Petitioner that the Petitioner has paid the said amount to M/s.R.S.COTTMARK (INDIA) PVT LTD and M/s.KRISHNA BIO TECH.
37. On the other hand it is the contention of the learned counsel for the Petitioner that the payment made to the M/s.SAMKIT BIO FARMS PVT LIMITED is not a valid discharge of the outstandings due to M/s.SAMKIT BIO FARMS PVT LIMITED and M/s.R.S.COTTMARK (INDIA) PVT LTD.
38. In case the said argument of the learned counsel for the Petitioner is to be accepted the fact remain that the entire LC amount of



Rs.39,15,148/- which is credited to the account of M/s.SAMKIT BIO FARMS PVT LIMITED stands as a valid discharge of the claim of the Petitioner, if any.

39. However, it is the case of the Respondent/Corporate Debtor that the disputes regarding the quality and quantity of the cotton bales supplied by the Petitioner, M/s.R.S.COTTMARK (INDIA) PVT LTD and M/s.KRISHNA BIO TECH has been referred to M/s. APEX COTTON AGENCY (I) PVT LTD and as a result of the resolution of the dispute only LC was issued for Rs.39,15,148/- in favour of M/s.SAMKIT BIO FARMS PVT LIMITED with an understanding that the Petitioner/ M/s.SAMKIT BIO FARMS PVT LIMITED has to pay the said amount to M/s.KRISHNA BIO TECH and M/s.R.S.COTTMARK (INDIA) PVT LTD.
40. The payment of Rs.39,15,148/- is towards all the pending invoices. The respondent filed along with the counter copy of the ledger for the period of 01.04.2017 to 31.03.2018.
41. A perusal of the said ledger shows that the debit notes were issued for quality and quantity difference after 09.07.2017 i.e., the date of invoice.
42. In view of the above discussion it can only be held that the Operational Debt if any due to the Petitioner is said to have been repaid.
43. Even if it is held that there is no payment of Operational Debt due to the Petitioner still the material on record goes to show that there exist dispute between the Petitioner and Respondent



in respect of the Operational Debt claimed by the Petitioner.

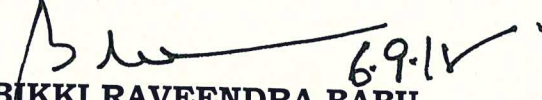
44. In the Judgement referred supra the Hon'ble Supreme Court held that the Adjudicating Authority has to see the existence of a dispute. It is also held by Hon'ble Supreme Court that the Adjudicating Authority has to see whether there is any plausible contention which requires further investigation and that the dispute is not a patently feeble legal argument or an assertion of fact unsupported by evidence.
45. This Tribunal is of the view that there exists a dispute and because of the resolution of the said dispute only, Respondent/Corporate Debtor issued LC for Rs.39,15,148/- in favour of M/s.SAMKIT BIO FARMS LIMITED with an understanding that after encashment of LC, M/s.SAMKIT BIO FARMS LIMITED would pay amounts to the Petitioner and M/s.KRISHNA BIO TECH.
46. Therefore, the contention of the Respondent require further investigation and enquiry. It requires oral evidence even from the Company that acted as mediator in the resolution process.
47. In fact, the Respondent/Corporate Debtor also raised dispute regarding the quality of the cotton bales supplied. Further, it is the case of the Respondent that the consignment of cotton bales has been rejected. There are endorsements on the copies of the invoices filed by the Corporate Debtor along with the counter to the effect that consignment has been rejected with date 29.03.2017. According to the Respondent the same has been communicated to the Petitioner



but the Petitioner denies the same. Therefore, a dispute has already been raised by the Respondent even in respect of the quality of the cotton supplied by the Petitioner.

48. Therefore, in view of the above findings there are no merits to admit this Petition.

49. Petition is rejected. No order as to costs.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL