

IN THE NATIONAL COMPANY LAW TRIBUNAL : NEW DELHI

(COURT-III)

(IB)-309/ND/2018

SECTION : UNDER SECTION 9 of IBC CODE, 2016

IN THE MATTER OF :

JUNGHEINRICH LIFT TRUCK TRUCK (INDIA) PVT. LTDPETITIONER

Vs.

UNITED COLD CHAIN AND FOOD PROCESSING LTD .. RESPONDENT

ORDER DELIVERED ON _____

Coram :

R. VARADHARAJAN,
Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ,
Member (Technical)

For the Petitioner : Mr. Rahul, Company Secretary
For the Respondent : Mr. Sandeep Sharma, Advocate

ORDER

This is a Petition which has been filed under the provisions of Insolvency & Bankruptcy Code, 2016 by the Operational Creditor against the respondent, named as Corporate Debtor in relation to the claim of Rs.35,50,800/- inclusive of interest of 24% Per annum payable on the outstanding amount claiming that there has been default in relation to the payment of the abovesaid amount.

Page | 1

IB-309/ND/2018

Jungheinrich Lift Truck (India) Pvt. Ltd Vs. United Cold Chain and Food Processing Ltd

The transaction detail giving rise to the abovesaid claim is averred by the Petitioner/Operational Creditor arises out of an Invoice raised upon the delivery of Double Deep Reach Truck and the Invoice claimed to have been raised dated 29.9.2015.

2. In support of the abovesaid claim, Purchase Order dated 28.3.2015 and Invoice raised against the said Purchase Order dated 29th Sept, 2015 has been enclosed. Further, the Bill of Lading and Invoice issued by one M/s. Jungheinrich Lift Truck Corporation to the Operational Creditor have also been enclosed. Also, a copy of the booking confirmation evidencing receipt of consignment of the goods at the place of Operational Creditor has also been filed. Further, a contract Agreement dated 15.9.2015 as entered into the parties has also been filed.

3. In spite of all these documents evidencing the supply of goods, the Corporate Debtor it is averred has failed to pay the money due against the Invoice and in the circumstances, the petitioner was constrained to issue a Demand Notice under IBC, 2016 dated 18th September, 2017 wherein the claim of Rs.35,50,800/- along with the interest @ 24% per month calculated from the date of Invoice, being 29th Sept, 2015 till 15th December, 2017 was claimed as



due and that along with the Notice, the documents referred to above inter-alia are also duly enclosed.

4. It is further averred in the petition that no dispute has been raised in relation to the claim as made by the Operational Creditor and in the circumstances, this petition has been filed before this Tribunal under Section 9 of IBC, 2016 and taking into consideration the facts as well as provisions of law to admit the petition for initiating Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.

5. Consequent to the service of Notice of the application upon the Corporate Debtor, the Corporate Debtor entered its appearance on 03.4.2018 and subsequently, had also filed a reply and the point put forth in its defence in relation to the claim made against it by the Corporate Debtor is based on the following grounds :

a) The petitioner has not approached this Tribunal with clean hands as the material facts have been concealed and suppressed in as much as admitted pending dispute regarding the cost of Machines by buy-back of the Machines and in respect of the adjustments of cost and loss suffered by the Respondent have not been disclosed ;



b) The provisions of IBC, 2016 are sought to be mis-used and the same has been filed with malafide intention to exhort money from the respondent/Corporate Debtor.

c) The Affidavit which has been filed along with the petition is not proper and as specified in IBC, 2016 and hence, the petition is liable to be rejected.

6. On facts, it is contended in the reply that the Corporate Debtor had placed the orders for two Machines to be supplied by the petitioner, one relating to the supply of BOPT equipment and another for the supply of Double Deep Reach Truck and that in relation to BOPT machine, the payment has already been made to the tune of Rs.9,20,000/- and nothing remains to be paid. However, as on 10.6.2015, since a major fire broke out in the premises of Respondent Corporate Debtor, situated at Sonapat, Haryana, second machine was not supplied by the petitioner. In the meanwhile, Respondent had lodged its Insurance claim with the National Insurance Company as the entire project was lost in the fire and it was specifically mentioned by the respondent to the petitioner that 2nd machine was not to be supplied as the payment can be made only after the receipt of claim for insurance lodged with the Insurer. However, in the meanwhile, the petitioner pressed the respondent to take the



delivery of goods ordered as already the import of the machinery has been made from Germany and the same was awaiting clearance from the Port and that day to day expenditure was incurred by the petitioner towards the demurrage charges.

7. By way of accommodation including based on the repeated insistence on the part of the Operational Creditor, the Corporate Debtor took the delivery of the same on the condition that payment will be made only after receipt of the insurance claim from the Insurer, to which, it was agreed to by the Operational Creditor.

8. Consequent to the taking of delivery of goods, the attitude of the Operational Creditor changed and the Operational Creditor started insisting on clearance of payment in relation to the supply of the Truck. Unable to bear the pressure, it is contended by the Corporate Debtor that in the month of November and December, 2016, the petitioners were asked to take back the machines and lifted back from the premises of Respondent as the Respondent/Corporate Debtor was incurring cost in relation to the Warehouse and security including other charges in order to keep the machines safe and secure.



9. Based on the above, the Petitioner also showed intention to lift the machine if the payment is not forthcoming, to which, no objection was raised by the respondent. However, the same was not lifted and finally on 14.12.2016, the payment schedule was provided by the petitioner to the respondent wherein subject to settling of insurance claim, payments will be made and in relation to the same, a part payment of Rs.4 lakhs was also made to the petitioner on 15.12.2016.

10. Pending insurance claim on 14 & 15th Nov, 2017, in order to settle the issue of machinery with respect to buy-back, copy of e-Mail dated 16.11.2017 was exchanged between the parties and thereafter, a draft MOU was also sent vide e-Mail dated 20.11.2017 by the petitioner to the respondent for consideration in order to arrive at the settlement pertaining to the machinery. However, MOU could not be carried forward as a dispute arose relating to the value of the machines as well as in relation to the adjustments of loss and expenditures claimed by the Respondent vide e-Mail dated 23.11.2017.

11. Thus, it is seen that on the one hand, the petitioner was holding Meetings for settlement with the respondent to resolve the dispute but on the other hand, trying to recover the money in relation to Machine which was



forcibly supplied to the respondent even though the respondent had lodged F.I.R. and that there has been delay in the settlement of the claim.

13. A rejoinder has also been filed to the abovesaid detailed reply as filed by the respondent where the averments in the Petition have been reiterated.

14. The facts narrated by both the petitioner and the respondent in the respective pleadings as well as the documents annexed therewith including the e-Mail exchanged between the parties, it is clear that the parties have sought to arrive at a Memorandum of Understanding, a copy of which has been annexed as Annexure R-8 at page No.23 of the typed set filed along with the reply by Respondent. The said MOU, however, has not been executed by the parties in view of the dispute in relation to the value of goods supplied as well as in relation to certain expenses which it is alleged to have been incurred by the Corporate Debtor, however, not being agreeable to by the Operational Creditor, for such deductions. It is pertinent to also note that the petition has come to be filed before this Tribunal on 26.2.2018 after the failure of talks between the parties, namely, the petitioner and the Corporate Debtor which clearly points out that there has been a pre-existing dispute between the parties in relation to the value of goods supplied as well as in relation to the expenditure as claimed by the Corporate Debtor to have been incurred by it in



view of shortage of goods in its premises supply it is averred made by the Petitioner/Operational Creditor, based on compulsion. This Tribunal in exercise of summary of jurisdiction cannot to go into the merits of the dispute and cannot venture into a detailed examination of the veracity of these disputes in much detail as required of Civil Courts based on trial.

14. This Tribunal in exercise of the limited jurisdiction as held by the Hon'ble Supreme Court of India in the matter titled as, **Mobilox Innovations Pvt. Ltd vs. Kirusa Software Pvt. Ltd SLT 269 in para Nos.29, 30 and 40** is required to ascertain whether plausible contention has been raised on the part of Corporate Debtor in relation to the amount claimed in default of which presently we are satisfied.

15. Taking into consideration the existence of pre-existing dispute, prior to the filing of the petition, this Tribunal is of the view that a plausible contention has been raised by the Respondent/Corporate Debtor in relation to the claim as made by the Operational Creditor and in the circumstances, the application stands rejected, however, without costs.

— Sd/

28/08/18

(DR. V.K. SUBBURAJ)
MEMBER (TECH.)

n

— Sd/

28/08/18

(R. VARADHARAJAN)
MEMBER (JUDICIAL)

Surjit