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BEFORE THE AJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD

C.P. (I.B) No. 38/9/NCLT/AHM/2017


Coram:

Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 03.08.2017

Name of the Company: Acme Specialities  
V/s.  
Entire Ceramics Ltd.


Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy  
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	WASIF. S. KADRI	ADV	OPERATIONAL CREDITOR	W. Kadri
2.	HARMISH K. SHAH	ADV.	Respondent.	

**ORDER**

Learned Advocate Mr. Wasif S. Kadri i/b Learned Advocate Mr. Hiren Raval present for Operational Creditor/ Applicant. Learned Advocate Mr. Harmish Shah present for Respondent.

Order pronounced in open Court. Vide separate sheet.

  
BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL

Dated this the 3rd day of August, 2017.

**BEFORE THE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH**

**CP(IB) No.38/NCLT/AHM/2017**

In the matter of :-

Acme Specialities,  
A partnership firm  
Through its authorised partner,  
Mr. Pratik Kiran Sanghvi,  
Admin Office at 206,  
Venus Benecia,  
Nr. Pakvan Dining Hall-II,  
Bodakdev, SG Highway,  
Ahmedabad.

... Applicant/Operational Creditor

Vs.

Entire Ceramics Limited,  
Having its Registered Office  
At 202, Parishram Elegant,  
Nr. Sola Over Bridge,  
Science City Road, Sola,  
Ahmedabad.

... Respondent/Corporate Debtor

Order delivered on 3<sup>rd</sup> August, 2017

**Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)**

**Appearance:**

1. Mr. Wasif S. Kadri, Advocate for the Applicant/Operational Creditor.
2. Mr. Harmish Shah, Advocate for the Respondent/Corporate Debtor.

**ORDER**

1. M/s Acme Specialities, a partnership firm, filed this application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking commencement of Corporate Insolvency Resolution

Process in respect of Entire Ceramics Limited, which is a company registered under the provisions of the Companies Act.

2. The facts, in brief, that are necessary for the disposal of this application, at the admission stage, are as follows :-

3. The applicant is a partnership firm that deals in supply of various raw materials and chemical products to number of reputed companies in public and private sector, both in India and abroad. The respondent is a limited company that manufactures finished glazed tiles. Basing on the orders placed by the respondent, the applicant delivered materials to the respondent at Chitradurg, Kaarnataka and sometimes the respondent collected the material from the applicant's factory in Chhatral. The applicant used to supply the materials against tax invoice together with delivery challan. At times, the applicant accommodated delay payment from the respondent for the supply of raw materials. During the financial years 2015 to 2017, the applicant supplied raw materials and digital inks to the respondent worth Rs.1,50,00,000/- approximately. The respondent used to make lump sum payments against outstanding invoices. From April 2016 onwards, the applicant supplied compound and digital inks on the request of the respondent. As per the accounts of the applicant, the total outstanding, as on 31.12.2016, was Rs.70,39,096/-. Further,

delay interest charge of Rs.1,40,782/- was added in the ledger making the amount as Rs.71,79,878/- and it remained unpaid. Copies of the invoices and debit notes are shown as Annexure-F. According to the applicant, in spite of repeated demands, the respondent did not make payment of the outstanding amount. The applicant stated that the respondent, in its reply dated 27.1.2017, confirmed the due amount to be paid to the applicant as Rs.91,83,476/- and mentioned that there was substantial mismatch in the ledger of the applicant and the respondent. The applicant gave true and correct statement of accounts to the respondent for the period from 1.4.2016 to 31.12.2016 stating that the actual amount outstanding was Rs.71,79,878/-. According to the applicant, in the reply dated 27.1.2017, the respondent raised the issue of debit note of Rs.1,10,00,000/- by stating that on account of inferior quality of material supplied by the applicant as well as on account of low grade production, it suffered loss of fixed production cost due to delay and obstruction in production and total material loss (breakage) by using the defective materials supplied by the applicant and demanded to compensate the same. The respondent also sent a copy of ledger accounts of the applicant for the period from 1.4.2015 to 25.01.2017, in which Rs.30,00,000/- were shown as trade deposit, which was made without the consent of the applicant and against the accounting practice. According to the applicant, in order to avoid the payment of outstanding amount due to the applicant, the respondent has created a baseless debit



note of Rs.1,10,00,000/- and demanded Rs.18,16,524/- as compensation.

4. The applicant filed a petition under the Code on 18.4.2017 and a copy of the said application was served to the respondent and the matter was listed on 21.4.2017. But the applicant withdrew the said application on 21.4.2017 since the demand notice was not in Form 3 with liberty to file a fresh application. Thereafter, according to the applicant, the respondent company, having come to know about the initiation of corporate insolvency resolution process by the applicant, with a mala fide intention filed Commercial Suit No.89 of 2017 on 24.4.2017 with a view to delay the claim of the applicant.

5. This application came to be filed before the Registry of this Tribunal on 31<sup>st</sup> May, 2017 and listed before this Adjudicating Authority, for the first time, on 6.7.2017. The respondent appeared through its counsel on 13.7.2017 and requested for time to file objections. Thereafter, on request of both the sides, the matter underwent two adjournments and, ultimately, the matter was heard on 28<sup>th</sup> July, 2017.

6. The case of the respondent, as can be seen from the objections filed by it, is that the applicant supplied inferior quality goods and because of that, the respondent suffered heavy

loss and, therefore, it raised a debit note of Rs.1,10,00,000/-.

The total loss suffered by the respondent company is approximately 56,000 sq. metres of tiles produced during July to September, 2016 and the same is mentioned in the reply dated 11.5.2017 given to the legal notice. It is also stated by the respondent that Commercial Suit No.89 of 2017 has been filed by the respondent in the Commercial Court, Ahmedabad for compensation and damages for the supply of faulty raw material, damages for breakdown of machinery and loss of profit and it is pending. The respondent filed copy of the plaint in Commercial Suit No.89 of 2017 on the file of Commercial Court, at Ahmedabad, filed on 24.4.2017 and a copy of the reply to notice dated 11.5.2017.

7. The applicant issued demand notice in Form 3 and Form 4 dated 2.5.2017 to the respondent. The applicant also enclosed copies of invoices with Form 4. The applicant also enclosed copies of bank account of the applicant from 1.8.2015 to 31.10.2016. The applicant also filed confirmation of accounts sent to the respondent. The respondent gave reply to the demand notice on 11.5.2017.

8. The main defence of the respondent in this case is that it has raised a dispute regarding the quality of goods supplied by the applicant to it under the invoices, on the basis of which the

applicant claimed the amount. The respondent also filed Commercial Suit No.89 of 2017 on 2.5.2017, i.e. even before the date of demand notice. In the reply to the demand notice also, the respondent raised the plea of defective supply of goods. The argument of the learned counsel for the applicant is that, the respondent, taking advantage of knowledge of the earlier application filed by the applicant initiating the Corporate Insolvency Resolution Process and its withdrawal on technical grounds, filed Commercial Suit No.89 of 2017 and raised the defence regarding quality of goods. In the application, in paragraph 15, it is stated as follows :-

*“15. When the petitioner demanded the outstanding dues repeatedly, the respondent in response to that have suddenly raised issue of debit note of Rs.1,10,00,000/- (Rupees One Crore Ten Lakhs Only) by making false allegation in the reply dated 17/01/2017 stating that on account of inferior quality material supplied by the petitioner as well as on account of low grade production, loss of fixed production cost due to delay and obstruction in production and total material loss (breakage) by using the defective materials supplied by the petitioner to the respondent and have illegally demanded to compensate the same.”*

Therefore, the above said averment indicates that even by 17.1.2017, the respondent raised a plea regarding quality of goods supplied and debit note was also raised for Rs.1,10,00,000/-. The first application for initiation of Corporate



Insolvency Resolution Process was filed by the applicant in April, 2017. That means even prior to that, i.e. in January, 2017 itself, the respondent raised a dispute regarding quality of goods supplied. Therefore, the argument of the learned counsel for the applicant that on coming to know about the earlier application filed by the applicant, the Commercial Suit was instituted does not merit acceptance.

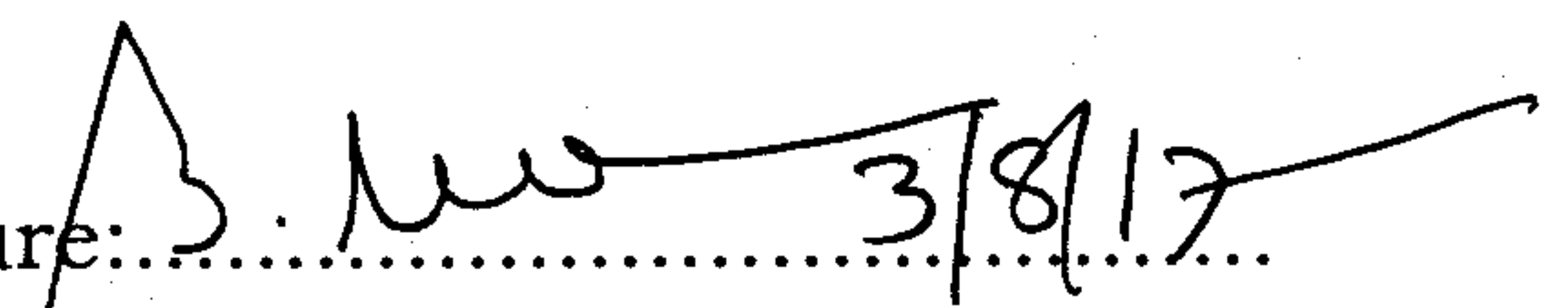
9. The Honourable National Company Law Appellate Tribunal, in ***Kirusa Software Private Limited v. Mobilox Innovations Private Limited***, Company Appeal (AT)(Insolvency) 6 of 2017, taking into consideration the definitions of “Claim”, “Debt”, “Default” and “Dispute”, gave finding that dispute under I&B Code, 2016 must relate to specified nature in clause (a), (b) or (c), i.e. existence of amount of debt or quality of goods or service or breach of representation or warranty. The Appellate Tribunal also held that the dispute not only be discernible in a suit or arbitration but from any document related to it. The Honourable Appellate Tribunal also held that mere raising of dispute, for the sake of dispute, unrelated or related to clause (a) or (b) or (c) of sub-section (6) of Section 5, if not raised prior to application and not pending before any competent court or authority cannot be relied upon to hold that there is a dispute raised by the Corporate Debtor. In another judgment rendered by the Honourable National Company Law Appellate Tribunal in ***Philips India Limited v. Goodwill Hospital & Research***



**Centre Limited**, Company Appeal (AT)(Insolvency) No.14 of 2017, following the decision in Kirusa Software Private Limited (supra) held that when a dispute is raised much prior to the issuance of notice under Section 8 of the Code regarding the quality of service, then there is no need to admit the application under Section 9.

10. In the case on hand, the dispute regarding the quality of goods was raised much prior to the issuance of demand notice and, moreover, the respondent also filed a Commercial Suit claiming compensation on the ground that the material supplied is of defective quality. Therefore, this Authority is of the considered view that it is not a fit case to commence Corporate Insolvency Resolution Process by admitting the application.

11. In the result, this application is dismissed. No order as to costs.

Signature:..........3/8/17  
[Bikki Raveendra Babu, Member (J)]

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