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In the National Company Law Tribunal
Mumbai Bench.

CP No. 170/I&BC/MB/NCLT/2017

Under Section 8 & 9 of Insolvency & Bankruptcy Code 2016 (Under Rule 6 of the
Insolvency and bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of

Jagdishchandra Mansukhani & Ors.

V/s

Man Industries Limited

Order delivered on: 21.09.2017

Coram: 1. Hon'ble Shri M.K. Shrawat, Member (Judicial)
2. Hon'ble Shri Bhaskara Pantula Mohan (Judicial)

For the Petitioner(s): : 1. Mr. Aditya Pimple, Advocate;
2. Ms. Sayalee Kulkarni, i/b Orbit Law
Services.

For the Respondent(s): : 1. Mr. Mayor Khandeparkar, Advocate;
2. Ms. Meghna Rao, i/b Vatives Patners.

Per M.K. Shrawat, Member (Judicial).

ORDER

1. Initially, a requisite Form was submitted on 07.03.2017 wherein under the head of Particulars of "**Operational Debt**" an amount of outstanding Debt was stated to be ₹1,64,23,918/-. Inadvertently under the head Corporate Debtor the name of the Company was not mentioned. The Petitioner thought it proper to correct certain mistakes hence the said form was revised and the corrected revised form was submitted on 07.08.2017. According to this revised Form, the "**Operational Creditors**" were stated to be Jagdishchandra Mansukhani, Priyal Mansukhani, Anita Mansukhani, Jagdish Mansukhani HUF, JPA Solutions Private Limited, Man Tubinox Limited (Formerly known as Man Steel and Power Limited).
2. Under the head "**Particulars of Corporate Debtor**" the name of the Debtor is Man Industries (India) Limited, Man House, Vile Parle, Mumbai. Further, under the head 'Particulars of Operational Debt', the narration is "Total Dividend Amount ₹1,58,27,061/-payable by Man Industries (India) Limited as on date of declaration of dividend i.e. 28.12.2015 along with interest @ 18% p.a.". The bifurcation as per the claimants is as under :-

<i>Sr. No.</i>	<i>Names</i>	<i>Principal amount of Dividend due on the date of declaration of Dividend i.e. 28.12.2015</i>
1	Jagdishchandtra Jamaklal Mansukhani	₹ 1,33,51,932/-
2	Priyal Mansukhani	₹3,05,143.50/-
3	Mrs. Anita Mansukhani	₹2370/-
4	Jagdishchandra Jhamaklal Mansukhani HUF	₹86,250/-
5	JPA Solutions Pvt. Ltd.	₹9,77,332.50/-
6	Man Tubinox Limited (formerly known as Man Steel and Power Ltd)	₹11,04,033/-
	<i>Total</i>	₹1,58,27,061/-

3. From the side of the Petitioner, Learned Counsel has informed that the claim was made as "Operational Debt" due to the reason that the non-payment of dividend was in the nature of "Goods" as defined under the Sales of Goods Act, 1930, means "every kind of moveable property other than actionable claim and money, and includes stock and shares". He has further mentioned that in the said Act a definition of "Insolvent" is also provided according to which "a person is said to be **"Insolvent"** who has ceased to pay his debts in the ordinary course of business, or cannot pay his debts as they become due, whether he has committed an act of insolvency or not;" Learned Counsel has also referred the clauses of the Report of Bankruptcy Law Reform Committee, according to which "Operational Creditors" are those whose liability from the entity comes from a transaction on operations.
4. From the records he has demonstrated that the Creditors were holding shares in the Debtor Company and in this regard as an evidence the shareholding pattern in the books of Debtor Company are also placed on Record. Our attention has also been drawn on the outcome of AGM held on 28.12.2015 wherein Dividend was declared, through Ordinary Resolution, to Equity Shareholders. For the Financial Year 2014-15, as per the Director's Report, Dividend was recommended of ₹1.50 (30%) per share of face value of ₹5/- and Re.1 (20%) per share face value of ₹5 on ordinary equity shares. The Dividend was to be paid subject to the approval of the AGM. According to him the declaration of Dividend was undisputed and the Applicants were entitled as per law for the declared Dividend, however, it was not paid by the Company. Hence, it is pleaded that the amount in question was due and admittedly payable by the Respondent Debtor, however, even after several reminders the **Debtor Company had not paid the Dividend amount**, hence compelled to file this Application.
5. At the outset, a preliminary technical objection has been raised that the amount in question was a **"disputed"** amount since its declaration and the "dispute" is pending before several other Judicial Authorities, hence the Petition is **not 'maintainable'** as prescribed under section 8 and 9 of the Insolvency Code. **As**

per section 8 of The Code an 'Operational Creditor' may, on occurrence of a default, deliver a Demand Notice of unpaid Operational Debt to be served upon the Debtor. If the Corporate Debtor is not convinced and according to him there is an existence of "dispute" a reply is to be filed within 10 days objecting the invocation of Insolvency Proceedings against the Corporate Debtor.

6. In the present case, to establish the existence of the "dispute", an Affidavit is filed on 07.08.2017 wherein it was vehemently stated on oath that the Petitioner was very well aware about the existence of the "dispute" pending before other judicial authorities hence the Petition is not maintainable and the Insolvency commencement is illegal. The "dispute" is among two brothers, one is Ramesh Mansukhani Group (**RCM Group**) and the other is Jagdish Mansukhani Group (**JCM Group**). There is a mention of a **Deed of Settlement of September 2013**, duly signed by both the Groups, however, dividend was not paid. It was informed by the Company on 01.02.2016 that the payment of dividend had been kept in abeyance.
7. From the side of the Respondent reliance was placed on an opinion of a solicitor sought by the Company according to which in a situation when a "dispute" is pending then it is legal and appropriate for the Company to keep the payment of dividend in abeyance. The Company had always taken a stand that the existence of the "dispute", is a valid ground for non-payment of dividend. It has also been intimated that in the past there was a litigation under section 397-398 of the Companies Act 1956 before the Company Law Board, Mumbai. It is also intimated that as far as the payment of dividend to other shareholders is concerned it was duly distributed for the Financial Year 2014-15 and there is no controversy about the said distribution of dividend.
8. Certain other related facts have also been brought to our notice. A Deed of Settlement was executed between RCM Group and JCM Group and one of the term was that certain number of shares to be swapped between the groups, however, due to noncompliance by the JCM group in swapping the shares to RCM Group, the Company had taken a step to keep the payment of dividend in abeyance. There was a failure for not performing the obligation on the part of the JCM group as agreed upon in the said Deed. According to the Respondent there were several disputes related to the ownership and title as also accrual of benefits on such shares, hence the payment of dividend was stopped.
9. A compilation of documents is also placed for the consideration of the Bench containing order dated 18.07.2017 passed in a Criminal Application No.411 of 2017, and a copy of the said Criminal Complaint. The JCM Group has also filed a Petition bearing No. CP 67 of 2016 before the Company Law Board under section 397-398 of the Companies Act 1956 wherein one of the ground was non-payment of dividend to the Petitioners even though the dividend was declared by the

Respondent Company. Our attention was drawn on para 10.14 of the said Petition wherein the name of the shareholders and respective folio numbers are referred and pleaded that the Respondent Company had illegally denied the dividend. In the said para certain facts were mentioned that the Company Secretary had informed that the RCM Group had made a representation due to which the payment of dividend had been withheld. Before us, all these instances are quoted from the side of the Respondent only to demonstrate that there was a genuine controversy due to which the payment was stopped.

10. One more litigation has been pointed out which was initiated by RCM Group in Company Appeal No.55 of 2013 pertaining to the **family settlement** signed and **executed on 11.09.2013**, however, could not be acted upon. In the said Deed of family settlement as per clause 8 it was agreed upon "*Clause 8. JCM Group agrees and declares that as on this date, JCM Group has out of the said 1,48,23,704 equity shares of Man Industries. Pledged about 96,70,194 equity shares of Man Industries and JCM Group agrees and undertakes to RCM Group that JCM Group shall get all such shares released from the pledge on or before the scheme of Merger / Demerger becoming effective*".
11. Further elaborating the nature of dispute our attention has been drawn on a criminal application which was filed against Jagdishchandra Mansukhani & Ors as Respondents wherein it was alleged that the dispute ascended between JCM and RCM group about the control and Management of affairs of Man Industries (India) Limited (in short, MIIL). For oppression and mismanagement JCM group has filed a Petition in the year 2010 and also in the year 2012, however, both were respectively dismissed and strictures were passed against JCM Group. To resolve the dispute a **family settlement** was executed on **11.09.2013** according to which a Scheme of Arrangement was formulated between MIIL as a Transferor Company and Man Infraprojects Limited (In short MIPL) as Transferee Company. According to the proposed Scheme, the Real Estate division of MIIL was to be transferred to MIPL. To fulfil the conditions of the agreement, the RCM Group has resigned as Directors from MIPL and the control and Management was handed over to JCM Group. The real estate division of MIIL stood transferred and vested in MIPL at a book value of ₹183 crores. The grievances of the Respondent of this Petition are that the RCM Group has completed all its obligation but the JCM Group had not only failed to perform his obligations but sold the properties. Due to the mismanagement by JCM group the value of MIPL had gone down drastically. The JCM group was removed as Directors of MIPL and new persons were appointed. As the Consent Terms were violated by JCM Group, the RCM Group had instituted a Petition under Contempt of Court Act, 1970 (Contempt Petition No.14 of 2015) and one of the Prayer was that pending hearing and final disposal the JCM Group be restrained for exercising their voting rights and to be restrained from receiving dividend in respect of the shares held.

12. **FINDINGS :-** Both the sides have been heard at length and carefully perused the number of evidences as discussed, although in short, in the foregoing paragraphs. The provisions of **Section 8(2) of the Insolvency and Bankruptcy Code 2016** prescribes that the Corporate Debtor shall bring to the notice of the Operational Creditor the existence of a "dispute" in respect of the unpaid Operational Debt. In case of existence of dispute, the provisions of section 9(5)(i)(d) of The Code shall come into operation. According to the provisions, the Adjudicating Authority shall, by an order, reject such application if there is a **notice of dispute** received by the Operational Creditor or there is record of 'dispute in existence'. In the case of **Kirusa Software Private Limited Vs. Mobilox Innovations Private Limited, Company Appeal (AT) (Insolvency) 6 of 2017 order dated 24.05.2017**, the meaning of the term "dispute" has been clarified and held that the existence of "dispute" does not confer any discretion to verify adequacy of the dispute. An observation in the said cited decision is, quote "*Though the words 'prima facie' are missing in Sections 8 and 9 of the Code, yet the Adjudicating Authority would examine whether notice of dispute in fact raises the dispute and that too within the parameters of two definitions – 'debt' and 'default' and then it has to reject the application if it apparently finds that the notice of dispute does really raise a dispute and no other factual ascertainment is required. On the other hand, if the Adjudicating Authority finds that the notice of dispute lacks in particulars or does not raise a dispute, it may admit the application but in either case, there is neither an ascertainment of the dispute, nor satisfaction of the Adjudicating Authority.*" unquote. Following this decision and considering the totality of the facts and circumstances of the case and the several instances narrating the nature of dispute, in our considered opinion the Petition is not maintainable. The litigation as examined in the above paragraphs has clearly established that the non-payment of dividend was not because of any other reason but because of multiple litigation existed among the parties, particularly the present Petitioner and the Respondents. The existence of "dispute" thus has been fully established. As a result, this Petition is not entitled for admission under the Insolvency Code. Dismissed. No order as to cost. To be consigned to Records.

Sd/-

BHASKARA NANTULA MOHAN

Member (Judicial)

Date : 21.09.2017

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Sd/-

M.K. SHRAWAT

Member (Judicial)