

**In the National Company Law Tribunal
Single Bench, Chennai**

TCP/50/(IB)/CB/2017

Under Section 9 of the IBC, 2016

In the matter of

Sri Ramaa Cotton Ginning and Oil Mills

V/s

Laksmi Ganesh Textiles Pvt. Ltd.

Order delivered on: 25.07.2017

For the Petitioner/OC: K. Ramasamy, Advocate

For the Respondent/CD: Vaibhav R Venkatesh, Advocate

Per: ANANTHA PADMANABHA SWAMY, MEMBER (J)

ORDER

1. Under Consideration is a Company Petition filed by Sri Ramaa Cotton Ginning and Oil Mills (in short, '**Petitioner/Operational Creditor**') against Laksmi Ganesh Textiles Pvt. Ltd. (in short, '**Respondent/Corporate Debtor**') under section 433 (e) and (f), 434 (i) (a) and 439 (i) (b) of the Companies Act, 1956 before the Hon'ble Madras High Court which has been transferred to this tribunal pursuant to the Companies (Transfer of Pending Proceedings) Rules, 2016. Now, pursuant to the Central Government notification number GSR 119(E) dated 07.12.2017, this petition needs determination as per the provisions of the Insolvency and Bankruptcy Code 2016 (In short, '**IB Code 2016**').

2. Before proceeding with this matter, it would be appropriate to make a note of background facts for the purpose of determination of this petition.
3. Shri K. Ramasamy, the learned counsel appearing on behalf of the petitioner submitted that the Petitioner is a Partnership firm and is carrying on business in cotton and cotton products whereas the Respondent is a Company and carrying on business in manufacturing of Yarn. In the ordinary course of business, the Respondent approached the Petitioner for purchasing cotton and the petitioner has supplied cotton as required by the respondent, ever since pursuant to various purchase orders placed by the respondent company.
4. It is further submitted that the respondent received and utilized the cotton supplied by the petitioner in good faith but the respondent failed and neglected to pay the dues to the tune of Rs. 1,60,00,421/-. It is also submitted that the cheques issued by the defendant for payment of dues were dishonoured by its banker and a criminal case for dishonouring of cheques under section 138 of the Negotiable Instruments Act, 1881 was filed by the petitioner in this regard. Ultimately, the petitioner, having awaited inordinately for a long period of time for their legitimate dues, issued a statutory notice dated 20.10.2015 under section

434 of the Companies Act, 1956 and thus now claimed to be an Operational Creditor under the provisions of the IB Code 2016 and prayed to initiate Corporate Insolvency Resolution Process against the Respondent

5. Shri Vaibhav R Venkatesh, the learned counsel appearing on behalf of the Respondent Company vehemently opposed the contentions put forth by the counsel for the Petitioner and submitted that the instant petition filed by the Petitioner is false, vexatious and also barred by limitation as it was filed after four years of alleged supply of goods which took place in year 2011. It is submitted that during 2010-2011, the plaintiff supplied poor quality of raw cotton bales which was put into process for manufacturing of yarn. Due to the said poor quality of raw cotton, the quality of yarn also come down. When the issue of poor quality of yarn was taken up with the plaintiff, the plaintiff agreed to compensate the loss suffered but nothing was done to that effect.
6. He further submitted that the petitioner has filed a suit for recovery of the money against the respondent company in O.S. No. 357 of 2015 in District Court, Guntur and the said suit is still pending. In the said suit, the respondent has also filed its Written Statement.

7. Apart from mentioning several other instances averred in the affidavit, the respondent during submissions prayed to dismiss this petition as not maintainable, further submitting that whatever has been claimed by the petitioner is not a 'debt' and also there is an existing dispute as per the definition and the meaning of the IB Code 2016.
8. Now, the point for consideration is that whether this petition is maintainable under the provisions of the IB Code 2016?
9. Considering the submissions put forth by both the counsel and on perusal of documents, the main submission of the Petitioner is that there is a debt to be paid by the respondent whereas the counsel for the respondent contended that there is no existence of any debt but it's mere a claim and also there is an existing dispute. Moreover, the claim cannot be accepted as the respondent company has already filed a Written Statement in O.S. 357 of 2015 disputing the claim made by the petitioner before District Court, Guntur, Andhra Pradesh.
10. Also, in **M/s. Kirusa Software Private Limited V. Mobilox Innovations Private Limited**, the Hon'ble NCLAT is of the opinion *that a debt would arise only when it has to be due & payable and it has not been paid.*

11. In the above mentioned case, the Hon'ble NCLAT further held that *the definition of 'dispute' is 'inclusive' and not 'exhaustive'. The same has to be given wide meaning provided it is relatable to the existence of the amount of debt, quality of goods or service or breach of a representation or warranty.*
12. Further, in the instant case, it is on record that the petitioner has filed a civil suit for recovery of outstanding amount before District Court, Guntur wherein the Respondent Company has already raised the dispute by filing its Written Statement. Therefore, I am of the opinion that the instant Petition is hit by virtue of section 9(3)(b) of the IB Code, 2016 for the reason the petitioner failed to prove that there is no existing 'dispute' between the parties prior to approaching this Adjudicating Authority.
13. In view of the above discussions and adopting & reiterating the reasoning given in the above cited judgement, this bench is unable to accept the claim made by the petitioner.
14. Accordingly, the petition is rejected.



(ANANTHA PADMANABHA SWAMY)
MEMBER (J)