

IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH – V, NEW DELHI
C.P (IB)/215(ND)2020

An application under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

IN THE MATTER OF:

MAYFAIR BIOTECH PVT. LTD.

Regd. Office at: 67A/68,
Industrial Area Mehatpur,
District- Una, Himachal Pradesh- 174315.
Ph. No. 9816099175.
Email ID: mayfairbio@gmail.com

... Operational Creditor

VERSUS

GOOD VALUE CHEMICALS PVT. LTD.

Regd. Office at: C 103,
Antriksh Apartments, Sector 14,
Rohini, Delhi 110085.
Ph. No. 9810198565

... Corporate Debtor

Order Delivered on: 11.07.2024

CORAM:

SHRI MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

DR. SANJEEV RANJAN HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Rajesh Agrawal, Adv

For the Respondent : Mr. Ajay Singh, Adv

ORDER

PER: MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)

1. The instant application is filed by Mayfair Biotech Private Limited, (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the CODE/IBC') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against Good Value Chemicals Private Limited (hereinafter referred as 'Respondent/Corporate Debtor') for failing to make the payment of Operational Debtor amounting Rs 2,16,90,392/- (Rupees Two Crore Sixteen Lakhs Ninety Thousand Three Hundred And Ninety Two Rupees Only).
2. The Respondent Company "Good Value Chemicals Private Limited" was incorporated on 25.05.2004 under the provisions of the Companies Act, 1956 having its registered office situated at C 103, Antriksh Apartments, Sector 14, Rohini, Delhi 110085. Since the registered office of the Respondent/Corporate Debtor is in New Delhi, this Tribunal having

territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor.

Averments of the Applicants:

3. Briefly stated the facts of the present case as averred by the applicant are that as per the agreed term executed through letter dated 10.04.2015 between the parties the Operational Creditor has been supplying various goods/chemicals to Corporate Debtor and providing their services for selling the products (i.e Chemical products) of the Corporate Debtor to various other parties. However, the Corporate Debtor after purchasing the goods as well as availing the services of Operational Creditor, the Corporate Debtor started delaying in making the payment which resulted in huge dues. Applicant further submitted that the Corporate Debtor made the last payment 02.01.2017, which is duly recorded in running statement of account of the Corporate debtor maintained by Operational Creditor.
4. Applicant submitted that the Operational Creditor stopped the supply of goods and services for want of payment from the Corporate Debtor. The Operational Creditor continued to remind the Corporate Debtor towards the outstanding dues time to time and Corporate Debtor continued to seek some more time but failed to pay and thus unable to pay/ clear the huge dues of Operational Creditor. The Operational Creditor has given numerous reminders to the Corporate Debtor but all went in vain and Corporate Debtor failed to make the payments towards the dues.
5. Applicant further submitted that being aggrieved by non-payment by the Corporate Debtor, the Operational Creditor served a Demand Notice

dated 21.12.2019 in terms of Section 8 of the IBC for realizing its unpaid debt amounting Rs. 2,16,90,392/- and *pendente lite* interest till the date of payment or till the date of admission of the this application. The Corporate Debtor instead of paying the admitted outstanding dues to Operational Creditor sent its reply dated 31.12.2019, and raised false pleas of pre-existing dispute for the first time without any basis. Further the Applicant submitted that the Corporate Debtor in its reply dated 31.12.2019 stated that Operational Creditor had also filed its request for the same alleged due payment against the Corporate Debtor under the Micro, Small and Medium Enterprises Development Act, 2006 (“MSME Act”), for a sum of Rs. 1,04,71,053/-. However, the intimation issued by the 'Micro and Small Enterprises Facilitation Council' is summary information and have referred some invoices only and not all the invoices.

6. Applicant further submitted that the Operational Creditor is always open for settlement as suffering a lot due to lack of funds but the Corporate Debtor is unable to pay the dues of Operational Creditor. Moreover, claim of Operational Creditor before the MSME facilitation council is in consonance with the provisions of IBC, 2016 and in no way effect the special rights provided under IBC, 2016 to Operational Creditor.

Reply of the Respondent Corporate Debtor:

7. On the other hand, the respondent through his reply submitted that all averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety.

- 8.** Respondent submitted that the Corporate Debtor issued the notice of the existence of a dispute on time, and the Applicant herein deliberately concealed this material fact from the Adjudicating Authority. Further the Respondent submitted that the Operational Creditor also initiated proceedings under the MSME Act, claiming Rs. 1,04,71,053 based on invoices dated 10.01.2017, 23.12.2016, and 08.12.2016. However, the total of these invoices is only Rs. 4,54,697.
- 9.** Respondent submitted that the Corporate Debtor has been regularly making payment in favour of operational creditor against the goods supplied by him and it is agreed between both the parties not to charge any interest upon the payments which were rarely charged. However, since the Operational Creditor has charged interest, which itself is a highly exaggerated amount. It is further submitted that the bare perusal of the demand notice and the statements of accounts annexed with the notice, evidenced that operational creditor charged "Sale Service" which is a kind of commission allegedly to be paid by corporate debtor and there is no such consensus or agreement between the parties.
- 10.** Respondent further submitted that the quality of raw materials supplied by operational creditor to corporate debtor were very bad and sub standard quality due to which corporate debtor has incurred losses and had to spent huge amount from its own pockets, the factum of which was already brought to the operational Creditor knowledge and Mr. Anand Ramachandran (acting on behalf of operational creditor) to bear the said losses in equal proportions, resultantly corporate debtor issued 2 debit notes dated 02.04.2019 and 04.04.2019 which operational creditor concealing now and put burden of Operational Creditor sub standard products fully on Corporate Debtor. Respondent submitted that the corporate debtor only has to pay a sum of Rs 80.903/- to operational

creditor and is always willing and ready to pay the said amount of Rs 80,903/- only. The copies of Debit Notes and Ledger are annexed as Annexure B and Annexure C respectively with the present reply.

11. Applicant submitted that the Applicant has concealed receipt of notice of existence of disputes and filed the present petition on false and frivolous grounds.

Rejoinder by the Applicants

12. The Operational Creditor through its rejoinder has submitted that the reply filed by the Corporate Debtor is totally false, frivolous and vexatious and is devoid of any merit. Applicant further submitted that the operational creditor has sent the present application upon corporate debtor by speed post on dated 09.01.2020 and it were duly served upon the corporate debtor on 17.01.2020.
13. Applicant further submitted that in order to reduce his liability, operational creditor has filed a wrong ledger in which two wrong debit notes dated 02.04.2019 & 04.04.2019 have been mentioned. It is obvious to escape from his liability, corporate debtor has forged the accounts by forging two debit notes dated 02.04.2019 & 04.04.2019, though corporate debtor has neither filed debit note dated 02.04.2019 with this Adjudicating Authority nor has given/supplied the copy of the same to the operational creditor. Applicant further submitted that the Corporate Debtor by way of forged debit note dated 04.04.2019, falsify its books of accounts and fraudulently reduced its liability without any description as to which item of the goods was defective.
14. Applicant submitted that there was not even a single whisper of substandard/ defective material during 26.05.2016 prior to 31.12.2019

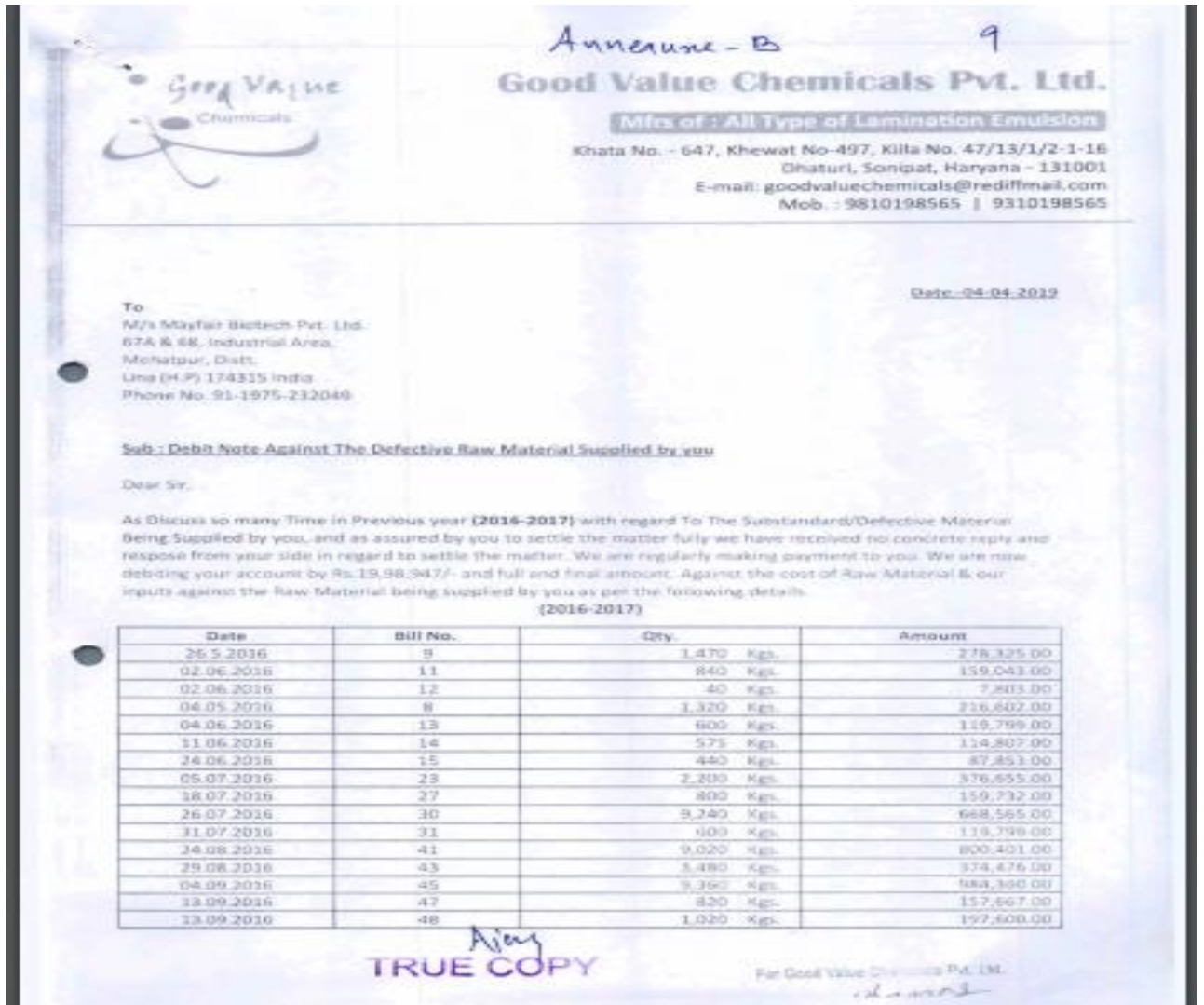
and the debit note dated 04.04.2019 was first time mentioned by the corporate debtor in their reply dated 31.12.2019 and to the demand notice dated 21.12.2019 under section Section 8 of the IBC which clearly shows that the same have been forged and fabricated for the purposes of the present application.

- 15.** Applicant submitted that the Corporate Debtor are misleading and vague as the procedure of registering the claim at the portal of MSME Act, 2006 is different and which only provides space to file only three invoices and not all the invoices, therefore operational creditor has filled only 3 invoices, instead of all the devices with MSME. The claim amount of Rs. 1,04,41,053/- was as of 31.03.2017, excluding interest after 01.04.2017
- 16.** Applicant submitted that the the claim of the operational creditor falls in the category of operational debt as the operational creditor is claiming amount upon the goods and services sold/provided to the corporate debtor. The Applicant through its rejoinder denied that there was any agreement between both the parties not to charge any interest upon the payments or that the interest was rarely charged.
- 17.** Applicant through its rejoinder further denied that the Corporate Debtor incurred any losses or expenses due to bad or substandard quality raw materials supplied by the operational creditor. It is also denied that the operational creditor was informed about any substandard materials or that Mr. Anand Ramachandran, on behalf of the operational creditor, agreed to cover any losses. Consequently, the issuance of two debit notes dated 02.04.2019 and 04.04.2019 by the corporate debtor is also denied. Applicant submitted that the Operational Creditor never supplied substandard materials, and the corporate debtor has not provided supporting documents for these allegations.

Analysis and Findings

- 18.** We have heard Ld. Counsels for the applicant as well as the Ld. Counsel for the Respondent and perused the averments made in the application, duly authorized counter affidavit and rejoinder filed by the Respondent. The relevant documents annexed with the submissions have also been examined.
- 19.** It is noted that there was a business relationship between the Applicant/Operational Creditor and the Respondent/Corporate Debtor. As per the agreed letter dated 10.04.2015 executed between the parties, the Operational Creditor has supplied various goods/chemicals to Corporate Debtor and provided the services to sold the products (i.e Chemical products) of the Corporate Debtor to various other parties/buyers. Various invoices were raised. The default amount stated by the Applicant/Operational Creditor is Rs 2,16,90,392/- for which a demand notice under section 8 of the Code was send on 21.12.2019 by the Applicant/Operational Creditor and served through speed post to the Respondent/Corporate Debtor on 24.12.2019. The proof of service is also placed on record. Against the Demand notice dated 21.12.2019, the Respondent/Corporate Debtor filed its reply on 31.12.2019 wherein the Respondent/Corporate Debtor has taken the defense that the present petition is non-maintainable on the grounds that there is a pre-existing disputes between the parties in the present application.
- 20.** Therefore, before examining the other aspects it would be appropriate to examine whether there is a Pre-existing dispute with respect to the amount claimed to be due in the present petition or not.
- 21.** The learned counsel for the Respondent, to substantiate the existence of a pre-existing dispute between the parties and a deficiency in service,

has referred the debit note dated 04.04.2019 through their reply dated 11.03.2021. The debit note point out that the quality of raw materials supplied by the operational creditor to the corporate debtor was defective and substandard. Copy of the debit note 04.04.2019 attached as below;



22. In the debit note 04.04.2019, wherein it was mentioned as below:

“Sub: Debit Note Against The Defective Raw Material Supplied by you

Dear Sir,

As Discuss so many Time in Previous year (2016-2017) with regard To The Substandard/Defective Material Being Supplied

by you, and as assured by you to settle the matter fully we have received no concrete reply and response from your side in regard to settle the matter. We are regularly making payment to you. We are now debiting your account by Rs. 19,98,947/- and full and final amount. Against the cost of Raw Material & our inputs against the Raw Material being supplied by you...”

23. Furthermore, from the perusal of Annexure A12 (page 115) of the present application, we observe that there was a pending reference under section 18 of the MSME Act (Application No. HP12B0001218/S/00006) before the Micro & Small Enterprises Facilitation Council, Himachal Pradesh. In that proceedings, the Operational Creditor has claimed a total sum of Rs. 1,04,71,053.00, which is due and payable by the Corporate Debtor to the Operational Creditor. It is further pertinent to note that the aforementioned arbitration proceedings commenced on 13.08.2019, and the Demand Notice in the present case was issued a few months thereafter, i.e., on 21.12.2019.

24. In this stage, we may refer to provisions of Sections 17 and 18(1) of the Micro, Small, and Medium Enterprises Development Act, 2006 (“MSME”), As per section 18 of MSME parties to the dispute may make a reference to the Micro and Small Enterprises Facilitation Council regarding the payment for goods or services rendered. Sections 17 and 18(1) of the MSME are referred to as follows:

Section 17: Recovery of amount due

For any goods supplied or services rendered by the supplier, the buyer shall be liable to pay the amount with interest thereon as provided under section 16.

Section 18: Reference to Micro and small Enterprises Facilitation Council.

(1) Notwithstanding anything contained in any other law for the time being in force, **any party to a dispute may**, with regard to any amount due under section 17, make a reference to the Micro and Small Enterprises Facilitation Council.

25. At this stage, it is important to refer the case of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited Civil Appeal No. 9405 of 2017** wherein the Hon'ble Supreme Court in paragraph 40 held as under:

“It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a 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. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

- 26.** In the instant case, exchanging the debit notes, and the Application of the MSME arose between the parties in respect to the agreed letter dated 10.04.2015 indicates that there is a pre-existing dispute.
- 27.** It is well-settled law that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument, it would suffice for the Adjudicating Authority to reject the application filed under Section 9 of the Code.
- 28.** Based on the attached document, it can be observed that there were agreed-upon services between the parties that remained deficient, and disputes regarding these services existed prior to the issuance of the demand notice by the Applicant to the Respondent in the instant case.
- 29.** Considering the above mentioned facts, the submissions of parties and rulings cited, it is clear that the Applicant has failed to prove the ingredients required for initiation of Corporate Insolvency Resolution Process under section 9 of IBC against the respondent.
- 30.** Accordingly, the present petition i.e, C.P (IB)/215/ND/2020 is dismissed and disposed off.

Sd/-
(DR. SANJEEV RANJAN)
MEMBER (TECHNICAL)

Sd/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)