

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH,
KOLKATA**

Before Shri Jinan, K.R., Hon'ble Member (Judicial)

C.P. (IB) No. 803/KB/2018

In the matter of:

An application u/s. 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016;

-And-

In the matter of:

M/s. Mangturam Noranglal, a proprietorship firm, bearing PAN: AACHM7438J and having its registered office at Chawni Bazar, P.O. Jhunjhunu (Rajasthan), Pin: 333001;

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... **Applicant/Operational Creditor**

-Versus-

Amrit Hatcheries Private Limited, an Unlisted Non-Government Private Company, limited by shares, registered under the provisions of the Companies Act, 1956 bearing CIN: U01409WB1998PTC088048 and having its registered office at 158, Lenin Sarani, 3rd Floor, Kolkata 700013, West Bengal.

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... **Respondent/Corporate Debtor**

Counsels appeared:

1. Mr. Rohit Sharma, Pr. CS] For the Operational Creditor

1. Mr. Joy Saha, Sr. Advocate] For the Corporate
2. Mr. Shaunak Mitra, Advocate] Debtor
3. Ms. Debdatta Chakraborty, Advocate]
4. Mr. Suryaksh Manot, Advocate]

Order pronounced on 20th August, 2019.

ORDER

1. M/s. Mangtaram Noranglal, a proprietorship firm has filed this application u/s. 9 of the Insolvency and Bankruptcy Code, 2016 (in short '**I & B Code**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (In short '**CIRP**') as against the Corporate Debtor, Amrit Hatcheries Private Limited (In short '**AHPL**') alleging that the Corporate Debtor has committed default in paying the operational debt to the tune of Rs.1,06,58,841/- inclusive of 12% interest upto 30/04/2018.

2. The Operational Creditor (OC) contends that it has supplied Rosted Gunwar Korma, a raw material for the manufacture and sale of animal and poultry feed to the Corporate Debtor (CD) as per terms and

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conditions entered into between the parties and on the basis of Purchase Orders. (**Annexure - I Exhibit - 'B'** dated 26/06/2015).

3. The OC has allegedly delivered goods referred to in "**Annexure - I - Exhibit C**" Invoices in between 22/06/2015 to 09/07/2015 and thereby an amount of Rs. 80,14,200/- is due as the price of the goods supplied and delivered to the CD and despite demand, the CD has failed to pay the amount and thereby issued demand notice by way of e-mail on 15/11/2015 and then issued Demand Notice as per Section 8 of the 'I & B Code' on 21/03/2018. Despite receipt of Demand Notice dated 21/03/2018, the CD did not pay the amount. Hence, the OC has filed this application for initiating CIRP as against the CD.

4. The OC further contends that vide confirmation letter dated 15/06/2016, the CD has confirmed the balance amount outstanding to the OC and that all the requirements u/s. 9 have been complied with by the OC. Affidavit in compliance of Section 9(3)(b) and certificate in compliance of Section 9(3)(c) of the 'I & B Code' are also produced along with the application and the applicant has not proposed any name for appointment as an Interim Resolution Professional and the application being complete and the outstanding amount due having not been paid by the CD, this application is liable to be admitted as contended by the OC.

5. Corporate Debtor entered appearance and raised three-fold contention.

6 Firstly, it contends that the application has been filed in abuse of process of law without compliance of the requirements under section 9 of the Code, and that the applicant has approached this Tribunal with unclean hands by suppressing material facts and therefore this application is not maintainable.

7. Secondly, it contends that the goods referred to as per the invoice were never supplied to the CD and therefore the OC has no *locus standi* to make any claim against the CD.

8. Thirdly, it contends that the goods referred to in the application were rejected by the CD as the goods were sub-standard, inferior and absolutely unusable. The entire goods received by them were defective and unusable. The applicant has also failed and neglected to replace the said goods despite repeated requests to do so. The applicant had never made any claim against the CD but informed that the applicant has withdrawn and cancelled the Invoices which had been prepared. It also further contends that the invoices disclosed in the application had not been submitted to the CD and denied the signature appearing on the balance confirmation allegedly issued by the CD and further contends that the purported signature appearing on the said documents does not belong to any person engaged or associated with the CD and is a forged, fabricated and manufactured one. Upon the said contentions CD prays for passing of an order of dismissal with exemplary costs.

9. The OC has filed rejoinder denying the allegations leveled against it in the reply affidavit and contended that the CD had not raised any dispute in terms of 'I & B Code' before the receipt of the Demand Notice and has raised frivolous dispute in the reply notice only after receipt of the Demand Notice as well as in the reply affidavit for the purpose of garbing money from the applicant. The goods as referred to in the Invoices were delivered to the CD and that there was no assurance that the goods supplied to the CD would be taken back by the OC or that the goods supplied were of inferior quality. So also it is contended that the documents related to confirmation are genuine documents. The OC never manufactured or fabricated any of the documents as alleged. The CD is liable to pay the amount as demanded. The denial of debt due to the CD tantamounts to ill-motive of the CD to avoid repayment of legitimate operational debt, and prays for passing an order of admission as against the CD.

10. Heard the Ld. Pr. CS. Mr. Rohit Sharma for and on behalf of the OC and the Ld. Sr. Counsel Mr. Joy Saha for and on behalf of the CD. Perused the records and citations referred to on the side of the CD.

11. This is an application filed u/s. 9 of the 'I & B Code' for initiating CIRP as against the Corporate Debtor/AHPL alleging that an amount of Rs.80,14,200/- along with 12% interest is due from the CD. This application was filed claiming that the total outstanding operational debt due as on the date of filing this application is Rs. 1,06,58,841/- inclusive

of interest. Upon hearing the arguments and considering the contentions and arguments advanced on both side, the points that arise for consideration are -

- (i) Whether the OC succeeds in proving delivery of the goods as per the invoices under dispute?
- (ii) Whether the CD succeeds in proving pre-existing dispute as per Section 5(6) of the 'I & B Code'?
- (iii) Relief and cost.

Point Nos. (i) and (ii)

12. Both these points are taken together for convenience and for avoiding repetition of facts. Ld. Sr. Counsel appearing for the CD referring to Section 8 of the 'I & B Code' and Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 attempted to prove that the OC has failed in proving delivery of Form 3 notice along with the invoices to be attached with the notice and therefore, an application of this nature is not maintainable. He refers to the invoices annexed with the application and annexed with the Demand Notice. A demand notice in the case in hand admittedly was received by the CD and the CD had sent a reply to the Demand Notice. It is contended that the demand notice was not issued as per Rule 5 of the Insolvency

and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (In Short, 'Adjudicating Authority Rules').

13. On a perusal Form 3 notice issued on 21/03/2018, I do not find any material defect. On the other hand all the requirements to be met as per Rule 5 of the Adjudicating Authority Rules are seen complied by the OC. The OC has annexed a consolidated statement of account on the strength of the documents mainly relied upon by the OC in the application. It includes, copy of **Annexure I, Exhibit A**, a consolidated details of transactions on account of which debt fell due; **Annexure I, Exhibit B**, a copy of e-mail evidently issued by the CD to the OC requesting to purchase goods referred to in the invoices. **Annexure I, Exhibit C**, includes all the invoices, transport challans and way bills. On a look at all those documents, it has come out in evidence that the OC has complied with all the requirements in order to issue a demand notice u/s. 8 of the 'I & B Code' read with Rule 5 of the Adjudicating Authority Rules. Therefore, objection that the invoices referred to in the application were not delivered to the CD along with the demand notice is found incorrect and devoid of any merit.

14. In order to show that none of the goods referred to in the invoices were delivered to the CD Ld. Sr. Counsel mainly relied upon un-stamped copies of invoices relied upon by the OC. An argument was advanced on the side of the CD that none of the invoices referred to in **Annexure I, Exhibit C** in the application contains stamp of the CD and does not bear

the signatures of any of the employees of the CD and its authenticity is disputed and therefore, these documents cannot be relied upon to prove that the debt as claimed is due. According to him, the transport challans and way bills being issued by a 3rd party cannot be used as a corroborative evidence as per provisions of the Evidence Act and that it being illegible and original of the documents being not produced by the applicant and it bears no stamp of the CD those documents, cannot be relied upon to prove the delivery of goods as alleged.

15. Ld. Pr CS for the OC submits that all the invoices corroborate with the transport challans and way bills and transport challans bear the stamp of the CD with initial, and that while the business relationship was cordial affixture of seal of the CD in the invoices are usually not insisted upon, however the transport challan contains the seal of the CD it is sufficient to prove the delivery of Invoices and goods as alleged by the OC.

16. The contention being the above said, I have carefully screened the invoices, transport challans and way bills. Truly, none of the invoices contains stamp of the CD evidencing delivery of the said invoices with the goods referred to in it. The claim in the case in hand is based on 8 invoices. The OC also produced copies of transport challans and way bills. Out of eight transport challans, only one challan (at page 42) corresponding to invoice no. 129 at page no. 41 contains stamp of Amrit Feeds. Amrit Feeds is admittedly one another unit of the CD. As per the

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purchase order **Annexure-I, Exhibit - B**, it has come out in evidence that the OC has agreed to supply the above referred raw material to the various units of the CD at Howrah, Bankura, Rajasthan and Varanasi. Admittedly, the CD has different Units as referred to above. The business transactions in between the CD and OC is also an admitted fact. As per the available documents in the case in hand the OC also supplied goods to the Amrit Feeds. All other 7 challans contain stamp of APHL with initial. Out of that 4 stamps seen belonging to **APHL Bankura** unit and remaining 3 stamps belong to **APHL, Howrah**, a unit of APHL in West Bengal. Out of 8 way bills only 2 seen containing affixture of seal of **APHL**. The above said documents demonstrate without any shadow of doubt that the goods referred to in the invoices were delivered to the CD as alleged. In the said circumstances, there is nothing further to investigate so as to test the correctness of the contentions on the side of the OC. The evidence available is sufficient to come to a conclusion that the objection that the goods were not delivered to the CD is false and unbelievable.

17. In order to strengthen the contention on the side of the Ld. Sr. Counsel for the CD the following decisions are cited.

(a) **2019 SCC OnLine NCLAT 354 (Ramco Systems Ltd. V. Spicejet Ltd. [CA (AT) (Insolvency) No. 31 of 2018]**

(b) **CP(IB) No. 254/KB/2018 (Jeco Agrovat Private Limited v. Amrit Hatcheries Private Ltd.)** of Bench No. 2 NCLT, Kolkata.

18. The facts in the case in hand are not at all similar to the facts in the above cited judgments. Therefore, the above said decision cannot be applied in the instant case. On the other hand in **Mobilox Innovations Private Ltd. Vs. Kirusa Software Private Ltd. (2017 SCC Online SC 1154)** the Hon'ble Supreme court has held that "*Once the operational creditor has filed an application, which was 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 was a record of dispute in the information utility. All that the adjudicating Authority was to see at this stage was whether there was a plausible contention which requires further investigation and that the dispute was not a patently feeble legal argument or an assertion of fact unsupported by evidence. The Court did not at this stage examine the merits of the dispute dispute*".

19. In view of the above said discussion, and bearing in mind the above said proposition held in Mobilox innovations Pvt. Ltd, I am of the considered view that the invoices referred to in **Annexure I, Exhibit C** were received by the CD along with the goods and therefore the objections that the invoices and the goods were not delivered to the CD is found devoid of any merits.

20. It is significant to note that the CD has raised a contention in the reply affidavit that the goods referred to in the application were rejected by the CD and the OC has agreed to replace the said goods but failed in doing so. The above said contention in the reply affidavit amounts to admission of receipt of the goods referred to in the invoices referred to in the application. It is one another circumstance to hold that the CD has no consistent case regarding the delivery of the goods evidently delivered to the CD, as alleged by the OC.

21. The Ld. Sr. Counsel also stressed on an argument that the goods referred to in the application were unutilised due to inferior quality therefore no amount is due to the OC. So let me see whether there is any merit in the said contention. This contention seems to have been raised first time in the reply notice after the receipt of the demand notice. There is nothing in evidence to prove that the CD demanded from the OC to replace the goods as the goods supplied were defective or substandard. In the reply notice dated 07/04/2019 alone, the CD has taken the said contention that the goods sent to the CD are defective and could not be put to use. This contention can only be taken as a contention in order to stage manage evidence so as to establish that there is a pre-existing dispute. The above said contention is, therefore, found unsustainable. The CD has failed in proving that there exists pre-existing dispute prior to the receipt of the demand notice.

22. One another contention stressed upon by the Ld. Sr. Counsel is that there was no demand prior to the demand notice issued by the OC claiming the amount allegedly due to the OC and that the confirmation of balance payable is a fabricated one. The above said submission is also not found true. The **Annexure I, Exhibit F**, is a demand notice issued by way of e-mail on 15/11/2015 to the CD demanding the amount due from the CD as well from other units belonging to the CD. The track consignment produced along with the application at page No. 61 of the application proves one another notice also was issued to the CD, AHPL, demanding outstanding amount due as Rs. 80,14,200/-. None of these demand notices are seen replied to by the CD. It is also one another circumstance to strengthen the claim of the OC.

23. **Annexure I, Exhibit E at page 55** is the copy of reconciliation of the accounts allegedly issued by the CD to the OC. According to the Ld.Pr.CS for the OC, it is a reconciliation of account submitted to it by the CD. It seems to be written in a letter head of the CD, AHPL. It contains initials of the authorised signatory of AHPL. As per the above said reconciliation of accounts dated 15/06/2016 the CD admitted an amount of Rs. 79,98,074/- as the outstanding amount due to the OC as on 31/03/2016. Ld. Sr. Counsel for the CD submits that the letter head can be printed in a computer and therefore fabrication of a letter cannot be ruled out. He also submits that the above said documents does not contain the seal of the CD and the name of the authorised signatory and

therefore fabrication of like document can easily be done by anybody and this document cannot be relied upon.

24. The attempt of the CD in the case in hand, if taken as a whole, it is understood that the CD is attempting to prove inconsistent contentions. The CD miserably failed to prove both the contentions. In the above said background if I test the correctness of the reconciliation letter allegedly issued by the CD, I find no materials to hold that it is a manufactured document as alleged. If it was manufactured in a letterhead of the CD it invites criminal prosecution against the alleged maker. No complaint so far seen filed by the CD before any authorities to book them for fastening criminal liability. Such an attempt was not taken from the side of the CD even if the copy of the said letter was received by the CD before 7th April, 2018. The overall attempt on the side of the CD is to prove its case without supporting evidence. On the other hand the claim attempted to prove on the side of the OC is found believable and supporting with reliable evidence. In the said circumstances, I am unable to uphold the contention on the side of the CD that the reconciliation account is a fabricated one. It is a circumstance proving the case of the OC that the debt as claimed by the OC is payable by the CD.

25. The above said circumstances lead me to a legitimate conclusion that the raising of dispute has been raised by the CD with an ill-motive not to pay the operational debt found due to the OC. These points are answered in favour of the OC.

Point No. (iii)

26. Answering to point Nos. (i) and (ii) I have come to a conclusion that OC has succeeded in proving delivery of goods and CD has failed in proving per-existence of a dispute as alleged. Accordingly, the next question requires for consideration is whether the OC complied all the requirements to initiate the CIRP as against the CD. The application filed being found complete and that a certificate in compliance of Section 9(3)(c) and affidavit in compliance Section 9(3)(b) being produced and since no name of an Interim Resolution Professional is proposed in compliance of requirement to be met out as per Section 9(3)(e) the application is found complete. The dispute raised by the CD is found unsustainable under law. The operational debt as claimed by the OC is found payable by the CD. The CD had not paid the same despite receipt of demand notice. Therefore this is a fit case for admission under section 9 of the Code. Accordingly, the petition is admitted upon the following orders:-

ORDERS

- (i) The petition filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process in respect of **Amrit Hatcheries Private Limited;**

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(ii) I hereby declare a Moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016;

(iii) The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The Interim Resolution Professional shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the Insolvency & Bankruptcy Code, 2016 shall be made immediately.

(iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:

- a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and

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Reconstruction of Financial Assets and Enforcement of Security
Interest Act, 2002 (54 of 2002);

- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- (v) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (vii) The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution Process.
- (viii) Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33, of Insolvency & Bankruptcy Code, 2016 the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

(ix) Necessary public announcement as per Section 15 of the Insolvency & Bankruptcy Code, 2016 may be made.

(x) **Mr. Ketan Mukhija**, having **Registration No. IBBI/IPA-003/IP-N00089/2017-18/10853** (Mobile No. 98306 39399) with e-mail id: **ketanmukhija@gmail.com** is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan. The Interim Resolution Professional is directed to produce Form 2 and written communication within **one week** from the date of the receipt of the order.


(xi) The Interim Resolution Professional / Resolution Professional to conduct CIRP of the Corporate Debtor as per time line prescribed under Regulation 40A of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. The applicant/Operational Creditor is directed to deposit a sum of Rs. 3 lakh (Rupees Three Lakh only) within one week from the date of this order, in the escrow account maintained by the registrar of Kolkata NCLT, for meeting the IRP fees and cost before the constitution of the CoC and the fees and cost can be withdrawn by the IRP/RP after the approval of CoC. Balance if any can be withdrawn by the OC.

(xii) Registry is hereby directed under Section 9(5)(i) of the I. & B. Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through e-mail.

28. List the matter on **20/09/2019**, for filing Progress Report.

29. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.


(Jinan K.R.)
Member (J)

Signed on this, the 20th day of August, 2019.

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