

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

2

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 12.02.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) No.423/HDB/2018
NAME OF THE COMPANY	Veda Biofuel Ltd
NAME OF THE PETITIONER(S)	Priya Trading Company
NAME OF THE RESPONDENT(S)	Veda Biofuel Ltd
UNDER SECTION	9 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

ORDER

Case admitted. Orders passed vide separate orders.



Member (J)

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**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

CP (IB) NO. 423/9/HDB/2018

*U/S 9 of IBC 2016 &
Rule 6 of I & B*

(Application to Adjudicating Authority Rules, 2016)

In the matter of

M/S. Priya Trading Company,
Represented by its Partner,
Sri. Shyam Sunder Agarwal,
Office situated at # 50-92-32/1,
Shankaramattam Road, Shantipuram,
Vishakhapatnam – 530 016

....Petitioner /
Operational Creditor

VERSUS

M/s Veda Biofuel Limited
Regd. Off: # 50-50-15/2
Seethammadhara,
Visakhapatnam -530 013.

...Respondent/
Corporate Debtor

Date of judgement: 12.02.2019

Coram:


Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels present:

For the Petitioner: Ms. D. Siri Preeti along with Ms A.
Sandhya Rani and Mr. G. Jagadeesh
Advocates

For the Respondent: Mr. A. Venkatesh along with Ms. N.
Sahithi, Mr. Tulasi Krishna, Advocates

Per: Shri Ratakonda Murali, Member (Judicial) – Author

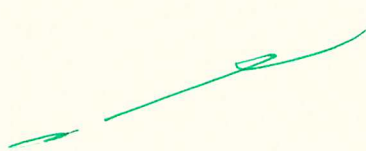


Heard on: 10.08.2018, 31.08.2018, 10.09.2018, 27.09.2018,
11.10.2018, 23.10.2018, 31.10.2018, 16.11.2018,
29.11.2018, 11.12.2018, 18.12.2018,

ORDER


1. This is a Petition filed by Operational Creditor stating that M/s Veda Biofuel Limited, Corporate Debtor herein had defaulted in repaying a sum of Rs. 4,80,65,149/-. Hence this petition is filed under Section 9 of Insolvency and Bankruptcy Code 2016 R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking admission of the Petition, initiation of Corporate Insolvency Resolution Process, granting moratorium and appointment of Interim Resolution Professional as prescribed under the Code and Rules thereon.
2. Brief averments made in the Petition are:
 - (1) It is averred that M/s. Priya Trading Company, ('Operational Creditor') and M/s. Veda Biofuel Limited ('Corporate Debtor') entered into Raw Material supply Agreement dated 09-04-2018 for supply of Broken Rice and Coal to the Corporate Debtor.
 - (2) It is the case of Operational Creditor that as per the Raw Material Supply Agreement clause No.7 ***(A Joint Account will be opened with an Authorised Signatory and all inward ENA sale revenue should be deposited in this Account. All Raw Material payment for that particular dispatches will be released from the same account immediately, any default in the***

payments against the material supplies, will terminate the agreement), the Operational Creditor raised invoices upon the Corporate Debtor against supply of said materials.

- (3) It is the case of Operational Debtor, despite the timely and qualitative supply of *Broken Rice and Coal* by the Operational Creditor, the Corporate Debtor deducted the shortages and that the Corporate Debtor promised to deposit into Joint Account but the pending invoices amount were never credited. The Corporate Debtor failed and neglected to pay the amount of pending invoices of the Operational Creditor even after several reminders.
 - (4) It is the case of Operational Creditor that the coal and broken Rice were supplied and delivered by the Operational Creditor as per specifications and no dispute was raised at the time of the delivery of goods by the Corporate Debtor and according to the shortages the amount was deducted from the invoices and shown in the ledger account of Corporate Debtor. It is the further case of Operational Creditor that Corporate Debtor has not made the payments against those invoices till date.
 - (5) It is the case of Operational Creditor that there is no dispute between the Operational Creditor and Corporate Debtor in respect of the said Invoices which are marked as Annexure – B & B1 Vol.-1&2 The ledger statements of the operational creditor marked as Annexures – K&L shown at Page Nos.
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66-74 and that there are no cases pending before any courts, forum, tribunal etc.

- (6) It is the case of Operational Creditor that an amount of Rs. 4,80,65,149/- (Principal Rs. 3,31,37,601/- and interest of Rs.6,62,752/- charged @ 24% P.A. from 08.06.2018 to 05.07.2018 for supply of Broken Rice and Principal amount Rs. 1,39,85,095/- and interest amounting to Rs. 2,79,701/- @ 24% P.A. from 02.06.2018 to 02.07.2018 towards supply of coal (as per the payment policy mentioned in Raw material Supply Agreement) is still due and payable by the Corporate Debtor towards invoices raised for broken rice and coal delivered during the 2018-2019.
- (7) It is averred that when Corporate Debtor failed to make the payments despite issuing reminders, the Operational Creditor issued FORM 3 dated 05-07-2018 by enclosing the copy of Invoices along with Statements, demanding payment of the outstanding dues and that the Corporate Debtor replied to the notice on 14.07.2018.
- (8) Further the Operational Creditor has furnished bank certificate (bank Statement) in compliance of Section 9(3) (b) of the Insolvency and Bankruptcy Code, 2016 that it did not receive any amount from Corporate Debtor.
- (9) The Operational Creditor also recommended the name of IRP and his consent in Form-2 is also filed.
- (10) The Learned Counsel for Operational Creditor relied on the Hon'ble Apex Court judgement in Mobilox



Innovations Private Ltd Vs Kirusa Software Private Limited.

3. Counter is filed by Corporate Debtor. Brief averments in the counter are:-


- (1) That the Corporate Debtor is a public limited company incorporated under the Companies Act, 1956 on 30.09.2010 bearing Company Identification No. U24100AP2010PLC070652 having its registered office at #H.No.50-50-15/2, Seethammadara behind Gurudwara Visakhapatnam Andhra Pradesh, India – 530 013. It commenced its commercial operations from 09.06.2016. The Corporate Debtor is engaged in the business of the Manufacture of ENA (Extra Neutral Alcohol) & its byproducts, DDGS (Dry cake) and DWGS(Wet cake).
- (2) It is the case of Corporate Debtor that there is no privity of contract between the Applicant and Respondent and denies all the material allegations and averments.
- (3) The Corporate Debtor contends that there are disputes existing between the parties to the Raw Material Supply Agreement, i.e., the Corporate Debtor and other party to the contract Shri. Arun Agarwal and Smt. Annapurna Agarwal, basing on which the Operational Creditor, even though having no privity of contract, has issued demand notice under the provisions of the Insolvency and Bankruptcy Code, 2016 to create hardship to the Corporate Debtor, and disrupt the smooth

functioning of the business of the Corporate Debtor.


- (4) It is also the further case of the Corporate Debtor that the parties have agreed to resolve any dispute as per the arbitration clause mentioned in the Raw Material Supply Agreement through Arbitration under the provisions of Andhra Pradesh Laws.
- (5) It is the case of Corporate Debtor in the notice sent to Shri. Arun Agarwal and Smt. Annapurna Agarwal wherein it was stated that Corporate Debtor incurred losses due to non-performance of their (Operational Creditor) part of the contract, to which they are yet to respond and make good the loss suffered by the Corporate Debtor.
- (6) It is the case of Corporate Debtor that the parties to the Raw Material Supply Agreement, i.e., the Corporate Debtor and Shri. Arun Agarwal and Smt. Annapurna Agarwal (Partners of Operational Creditor) have already exchanged notices on 15th and 16th June, 2018 and the Corporate Debtor replied to the said notices on the 2nd July, 2018. It is alleged by the Corporate Debtor that without following the terms of the Agreement, issuance of demand notice by the Operational Creditor on 05.07.2018 to Corporate Debtor demanding the alleged outstanding amount of Rs. 4,80,65,149/- is false and baseless and that the Corporate Debtor upon receiving the same had issued a reply dated 14.07.2018 which clearly establishes that there exists no privity of contract with the Applicant. Infact, a perusal of the reply would show that there



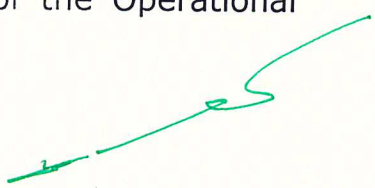
is no valid claim by the Applicant and the Respondent has brought to the notice of the Applicant about the untenability of its claim and as aforementioned a perusal of the notice and reply would show that there exists a serious dispute which is to be adjudicated only by a competent civil court.

- (7) It is the case of Corporate Debtor that it never entered into any agreement with the Operational Creditor and that the Raw Material Supply Agreement dated 09.04.2018 clearly shows that an agreement was entered between Veda Biofuel Limited and 1. Arun Agarwal 2. Annapurna Agarwal. It is also denied that Operational Creditor has delivered Broken Rice to the Corporate Debtor as per the alleged Raw Material Supply Agreement and that Corporate Debtor is not bound by any clauses of the said Agreement to which Operational Creditor is not a party.
- (8) It is the case of Corporate Debtor, no liability arose from an Agreement which was never executed by the Operational Creditor and Corporate Debtor and hence, there is no privity of contract between both the parties. Further, it is the case of Corporate Debtor that the invoices raised against the alleged supply of material as per Annexure-B of the Petition clearly shows that they have been raised in the name of "Priya Trading Company" and not by the parties as per the Raw Material Supply Agreement which was executed between Shri. Arun Agarwal and Smt. Annapurna Agarwal and the Corporate
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Debtor. It is contended that there was neither an offer nor acceptance with regard to the supply of broken rice between the Operational Creditor and Corporate Debtor and there was never any communication between the Operational Creditor and Corporate Debtor with regard to the same.


- (9) It is the case of Corporate Debtor that the Operational Creditor issued Demand Notice demanding the alleged payment, ignoring the fact that there already exists a dispute between the parties to the Raw Material Supply Agreement, with regard to the said claim and the Corporate Debtor already replied to the demand notice on 14.07.2018.
- (10) It is the case of Corporate Debtor that there is no contract that exists between the Operational Creditor and the Corporate Debtor and as such the issue of raising invoices and supply of material would not arise as the Operational Creditor and Corporate Debtor never entered into any kind of agreement with regard to the supply of broken rice and coal.
- (11) The Corporate Debtor further denies that an amount of Rs. 1,39,85,095/- is due and payable to Operational Creditor towards supply of Coal and Rs. 3,31,37,601/- towards supply of Broken Rice which was communicated by the Corporate Debtor to the parties of the Raw Material Supply Agreement, i.e., Shri. Arun Agarwal and Smt. Annapurna Agarwal, vide letter dated 16.06.2018 i.e., much before the filing of the present petition. Further it is the case
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of Corporate Debtor that it already issued reply on 14.07.2018 to the demand notice sent by the Operational Creditor stating that it is not liable to pay an amount of Rs.4,80,65,149/- .

- (12) The Corporate Debtor admits the fact that along with Form-III Demand Notice on 05.07.2018 Operational Creditor sent enclosures but those enclosures pertains to "Priya Trading Company". which has no connection with the Raw Material Supply Agreement and that the Corporate Debtor never executed any agreement with "Priya Trading Company" and thus, Corporate Debtor has no obligation towards it. The Corporate Debtor further submits reply to the Form - III Demand Notice sent by the Applicant on 14.07.2018 wherein Corporate Debtor clearly stated that there is no privity of contract that exists with the Operational Creditor, and the claim is baseless and raised to pressurize the Corporate Debtor on false allegations.
- (13) The Corporate Debtor relied on the letters dated 15.06.2018, 16.06.2018 and 02.07.2018 which show that there always existed a dispute between the parties to the Raw Material Supply Agreement and the Corporate Debtor, to which Operational Creditor is not a party. The Corporate Debtor had always stated that there was no privity of contract with the Operational Creditor and that a number of letters were exchanged between the Parties to the Raw Material Supply Agreement.
- (14) It is the case of Corporate Debtor that it is genuinely disputing the claim of the Operational
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Creditor and further avers that there are bona fide disputes between the parties to the Raw Material Supply Agreement, with regard to the claim.

- (15) Further Corporate Debtor avers that the present Petition for initiation of a Corporate Insolvency Resolution Process (CRP) is not maintainable, as the Corporate Debtor Company is a Solvent Company which is capable of paying any outstanding amounts that are due.
- (16) It is the case of Corporate Debtor, as per the provisions of the Insolvency and Bankruptcy Code, the Petitioner is not an 'Operational Creditor' vis-à-vis the Corporate Debtor so as to initiate the present Petition and that there is no claim or due which is payable by the Corporate Debtor to the Operational Creditor as there is no privity of contract between them. The contention of the Corporate Debtor that there was neither any Raw Material Supply Agreement nor any transaction taken place between the parties and therefore the Petitioner cannot be termed as an "OPERATIONAL CREDITOR". Hence, the present Petition is liable to be dismissed as there is no contract between the parties other than the Raw Material Supply Agreement on which the Operational Creditor is relying upon.
- (17) The Learned Counsel for Corporate Debtor relied on the following judgements:-
- (i) Hon'ble Supreme Court decision in the matter of Essar Oil Ltd Vs Hindustan Shipyard Limited



& Ors cited in (2015) 10 Supreme Court Cases 642.

(ii) Hon'ble Delhi High Court order in Welldone Estate projects Pvt Ltd vs Today Homes & Infrastructure Pvt. Ltd cited in 2010 SCC Online Del 4415: (2011) 178 DLT 118: (2011) 167 Comp Cas 310

(iii) Hon'ble Apex Court decision in the matter of Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited cited in (2018) 1 Supreme Court cases 353.

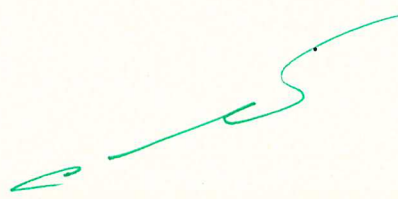
(iv) Hon'ble Apex Court decision in Innoventive Industries Limited Vs ICICI Bank & Another cited in (2018) 1 Supreme Court Cases 407.

4. I have heard the Counsel for Operational Creditor and Counsel for Corporate Debtor. It is the case of Operational Creditor it supplied raw material to the Corporate Debtor in pursuance of execution of Raw Material Supply Agreement dated 09.04.2018. It is the case of Operational creditor that Corporate Debtor having received the raw material failed to pay the amount covered by the invoices. Thus, Corporate Debtor committed default.
5. The case of Operational Creditor that it supplied broken rice and coal to the Corporate Debtor. The amount committed default in respect of supply of broken rice is Rs. 3,31,37,601/- and default committed in respect of supply of coal is Rs. 1,39,85,095/-. Interest is claimed at 24% from 08.06.2018 to 05.07.2018 for supply of broken rice

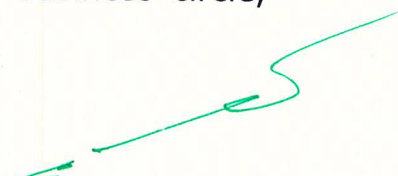


which comes to Rs. 6,62,752/- and in respect of coal, interest is claimed from 02.06.2018 to 02.07.2018 which comes to Rs. 2,79,701/-. Thus, it is the case of Operational Creditor the total amount committed default by Corporate Debtor is Rs. 4,80,65,149/-.

6. What are the documents filed by Operational Creditor to establish that it had supplied broken rice and coal to the Corporate Debtor. The Operational Creditor relied on Raw Material Supply Agreement dated 09.04.2018 (Colly) marked as Annexure-A shown at page Nos. 14-16 of the typed set. The Operational Creditor claimed that it had supplied raw material such as broken rice and coal to the Corporate Debtor by virtue of Raw Material Supply Agreement. The Operational Creditor also relied on tax invoices of broken rice along with compilation sheet of all invoices commencing from 01.04.2018 to 30.06.2018. It is shown as Annexure-B. Details of invoices are furnished in Annexure-B. Closing balance as on 10.07.2018 in respect of these invoices which is due by Corporate Debtor is Rs.3,31,37,601/-.
7. The Operational Creditor further relied on tax invoices for supply of coal along with compilation sheet of all the invoices for the period from 01.04.2017 to 11.07.2017 shown as Annexure B-1 (colly). I have seen the compilation of invoices shown at Annexure B-1. The details of invoices from 01.04.2018 to 11.07.2018 are shown at Page Nos 24-26 of Annexure-B-1 (Colly). The balance due from the Corporate Debtor is Rs.1,39,85,095/- towards coal supply. The Operational Creditor relied on demand notice dated 05.07.2018 issued in Form-3 to the Corporate Debtor. It is shown as



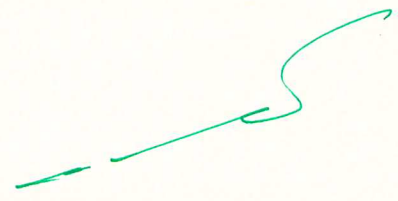
Annexure-E. I have gone through the demand notice dated 05.07.2018. The total amount due with interest is shown at Rs. 4,80,65,149/-. It is not in dispute demand notice was issued by Operational creditor to the Corporate Debtor. The Corporate Debtor issued reply dated 14.07.2018. It is shown as Annexure-F. I have gone through the reply. The reply is addressed to one Shri. Shyam Sundar Agarwal who is partner of Operational Creditor, which is a firm. In the reply Corporate Debtor stated that a legal notice was issued on behalf of Operational Creditor on 15.06.2018 and Corporate Debtor gave reply to the said notice on 02.07.2018. The Corporate Debtor stated that there existed a dispute between Operational Creditor and Corporate Debtor before the date of demand notice. The copy of reply to the lawyer's notice was also sent along with reply to Demand Notice which is marked as Annexure-F. The main contention of Corporate Debtor that there exists no contract between Operational Creditor and Corporate Debtor. So, the contention of Corporate Debtor that there is no privity of contract between the Operational creditor and it. The contention of the Corporate Debtor, it entered into contract with Shri Arun Agarwal & Smt Annapurna Agarwal on 09.04.2018 for supply of raw material and as such there is no agreement with Operational Creditor for supply of raw material.

8. The Corporate Debtor further stated in the reply that it had issued a legal notice on 16.06.2018 demanding the Operational Creditor to pay a sum of Rs. 4.91 crores and also Rs. 1 crore towards damages for tarnishing the image of Corporate Debtor's reputation in the business circle,
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public and its employees. The Corporate Debtor clearly admitted in the reply to the Lawyer's notice that Shri Shyam Sundar Agarwal who is partner in Operational Creditor's firm is no other than husband of Smt Annapurna Agarwal. It is very interesting to note the Corporate Debtor clearly admitted in the reply to lawyer's notice that it had to pay an amount of Rs. 2,96,54,219/- and the same to be paid to Shri Arun Agarwal and Smt Annapurna Agarwal and not to the Operational Creditor, subject to clearing the dispute. The Corporate Debtor stated that it had not paid full amount in respect of supply of raw material.

9. The Operational Creditor relied on the letters addressed to Corporate Debtor shown as Annexure-G (colly). The invoices were served on Corporate Debtor. The seal of Corporate Debtor is found on the letter dated 02.05.2018 and on behalf of Corporate Debtor somebody received the copies, signed the letters and seal of Corporate Debtor is also affixed on the letter. Invoices details are also filed. Thus, letters are issued by Operational Creditor.
10. It is a specific case of Operational Creditor, invoices are raised for supply of raw material to the Corporate Debtor. The Corporate Debtor had been openly accepting the delivery of raw material supplied by Operational Creditor because invoices are raised by Operational Creditor. It is not the case of Corporate Debtor that somebody other than Operational Creditor supplied the raw material. The Agreement was entered into with Shri Arun Agarwal and Smt Annapurna Agarwal but raw material was supplied to the Corporate Debtor through Operational Creditor. It goes to establish that raw material was supplied to the

Corporate Debtor though the firm. Shri Arun Agarwal and Smt Annapurna Agarwal might have entered into contract with Corporate Debtor for supply of raw material but they supplied the raw material through their firm which is the Operational Creditor. Husband of Smt Annapurna Agarwal is a partner in the firm / Operational Creditor. Similarly Smt Annapurna Agarwal is a partner. Even in the absence of Agreement for supply of raw material, the Corporate Debtor admittedly received raw material from Operational Creditor. The invoices were raised. The Corporate Debtor is accepting the consignment delivered by the Operational Creditor. Thus, even in the absence of an Agreement, the Operational creditor is entitled for the money for supply of raw material. The Corporate Debtor cannot say that it is not liable to pay to the Operational Creditor on the ground that it entered into contract with two individuals. Here the question is who supplied the raw material. The Operational creditor is a firm who supplied the raw material. Having received the raw material, it is the duty of Corporate Debtor to honour the invoices raised by Operational Creditor, dehors of the Raw Material Supply Agreement.

11. Here the question is who supplied the raw material. Undoubtedly, the Operational Creditor supplied the raw material. There is default. I have already stated the Corporate Debtor categorically admitted the amount actually payable to the Supplier is Rs. 2,96,54,219/-: Therefore, the Operational creditor is supplier and Corporate Debtor is buyer and there is default.
 12. The contention of Learned Counsel for Corporate Debtor that Operational Creditor has no locus standi to file Petition
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under Section 9 of IBC on the ground that Corporate Debtor never entered into Agreement with Operational Creditor for supply of raw material. The contention of Counsel, contract binds the parties to the contract. The Operational Creditor is not a party to the contract. Thus, there are no obligations to be discharged by the Corporate Debtor as far as Operational Creditor is concerned. I already stated dehors of agreement for supply of raw material the Operational Creditor is supplier and Corporate Debtor is the buyer. It is also interesting to note Corporate Debtor made part-payment to the Operational Creditor in respect of raw material supplied with effect from 10.04.2018. It goes to establish that Corporate Debtor is accepting the consignment sent by Operational Creditor. No doubt the principle laid down in the decision cited to the effect contract binds parties to the contract. The Corporate Debtor categorically admitted in its notice issued to Shri Shyam Sundar Agarwal who is partner of Operational Creditor firm that in pursuance of Agreement they supplied raw material to the Company (Corporate Debtor).

13. The Operational Creditor has filed the legal notice issued by Corporate Debtor through its advocate on 16.06.2018. It is shown as Annexure-I. In this notice addressed to Shri Arun Agarwal and Smt Annapura Agarwal, the Corporate Debtor in para 3 admitted in unequivocal terms that they i.e. Shri Shyam Sundar Agarwal and Ms. Annapurna Agarwal are running the business in the name and style of Priya Trading which is Operational Creditor and engaged in inter-alia supply of raw materials i.e. broken rice, coal and husk. Therefore, it goes to show that Corporate

Debtor is aware Shri Arun Agarwal and Smt Annapurna Agarwal are running the business in the name of Operational Creditor and supplying raw material. Thus, it is clear the two persons who entered into contract with Corporate Debtor dated 09.04.2018 supplied raw material through their firm. It is interesting to note Operational Creditor filed copy of partnership deed of Operational Creditor firm shown as Annexure-N (Colly). The Partnership Deed is executed between Shri Shyam Sundar Agarwal and Smt Annapurna Agarwal. Shri Shyam Sundar Agarwal is the husband of Smt Annapurna Agarwal. Thus, there is clear admission by Corporate Debtor in the notice dated 16.06.2018 that Shri Arun Agarwal and Smt Annapurna Agarwal are running business through Priya Trading Company. The raw material was supplied to the Corporate Debtor through Priya Trading Company. Then it is not open to the Corporate Debtor to contend Operational Creditor has no locus standi to file Petition under Section 9 of IBC against it. It can be safely concluded that the parties to the Agreement supplied raw material through its firm, the Operational Creditor herein. It is not as if Shri Arun Agarwal and Smt Annapurna Agarwal have nothing to do with the Operational Creditor. In terms of Agreement only the raw materials were supplied to the Corporate Debtor through the firm M/s Priya Trading Company, the Operational Creditor herein, in which Smt Annapurna Agarwal and her husband are partners.

14. The next contention of Learned Counsel for Corporate Debtor that there existed a dispute between Corporate Debtor and suppliers. It is a pre-existing dispute.



Therefore, the Petition under Section 9 of IBC is not maintainable against Corporate Debtor. The Corporate Debtor filed the copy of Raw Material Supply Agreement whereas it is Operational Creditor who has filed the invoices issued to the Corporate Debtor. It is the case of Operational Creditor, legal notice was issued to the Corporate Debtor on 15.06.2018. It is shown as Annexure-H. It is issued by Shri Arun Agarwal and Smt Annapurna Agarwal to the Corporate Debtor stating that raw material was supplied in pursuance of Raw Material Supply Agreement dated 09.04.2018 and same was supplied upto 10.05.2018. It is also stated in the notice that they had supplied broken rice worth Rs. 5,51,37,601/- and coal of value worth Rs. 1,24,86,240/- and that they have received only Rs. 2,52,16,000/- and balance due as on 10.05.2018 was Rs. 4,19,07,841/-

15. The Operational Creditor also relied upon notice issued by the Corporate Debtor dated 16.06.2018. It is shown as Annexure-I. I already referred to this notice wherein Corporate Debtor admitted that Shri Arun Agarwal and Smt Annapurna Agarwal were running the business in the name and style of Priya Trading Company. In this notice, Corporate Debtor stated that it had paid a sum of Rs. 2.88 crores for the material supplied. Further stated that cost of material supplied was Rs. 6.35 crores. However, Corporate Debtor alleged in the notice that supplier committed default and as such Corporate Debtor suffered losses which is estimated at Rs. 4.91 crores besides damages at Rs. 1 crore. Thus, contention of Learned Counsel for Corporate Debtor there was a pre-existing dispute and as such Petition cannot be admitted against.

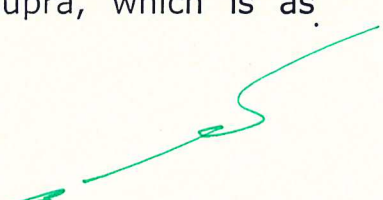
the Corporate Debtor. This notice was issued on 16.06.2018 after termination of contract. The Operational Creditor stopped supply of raw material as Corporate Debtor committed default in paying the amount covered by invoices. Now the contention of Corporate debtor after Operational Creditor issued notice on 15.06.2018 demanding payment, the Corporate Debtor started contending that Operational Creditor/Supplier failed to supply raw material as per terms of contract. Even assuming that required quantity of raw material was not supplied. The supplier will supply raw material if buyer pays the value of goods supplied. In the case on hand, the Corporate Debtor was not honouring the invoices and amounts covered by the invoices was mounting up. In a situation like this, there is no other go for the supplier except to stop supplying goods to the Corporate Debtor. Without paying to the supplier, the Corporate debtor cannot blame the supplier as if supplier has not supplied the required quantity.

16. It is interesting to note, Corporate Debtor claimed had the supplier supplied the required quantity of raw materials it would have earned profit of Rs.3.15 lakhs per day. Thus, the Corporate Debtor claimed that it had suffered loss as if on account failure to supply required quantity by supplier and as such there exist a dispute.
17. The Counsel for Corporate Debtor relied on the decision of Hon'ble Apex Court in ***Essar Oil Limited Vs Hindustan Shipyard Limited and Ors (2015) 10 Supreme Court Cases 642*** and relied on para 25 of the judgement which is as follows:-



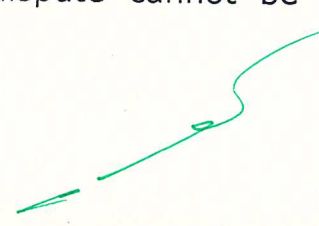
"Simply because some payments had been made by ONGC to the Appellant, it would not be established that there was a privity of contract between ONGC and the Appellant and only for that reason ONGC cannot be saddled with a liability to pay the amount payable to the Appellant by the Respondent."

Counsel contended the Operational Creditor cannot saddle the Corporate Debtor with liability to pay remaining balance simply on the ground it had paid some amount to the Operational Creditor when there is no privity of contract between the two.

18. I already discussed at length M/s Priya Trading Company is nothing but a firm belonging to the suppliers and in pursuance of Agreement only the Supplier supplied the raw material to the Corporate Debtor through M/s Priya Trading Company, the Operational Creditor herein.
 19. The Counsel for Corporate Debtor also relied on the decision of Hon'ble High Court reported in 2010 SCC Online Del 4415: (2011) 178 DLT-118: (2011) 167 Comp Cas 310. Counsel for Corporate Debtor relied on para 19 of the judgement and contended that contract cannot confer rights or impose obligations arising under it on any person or agent except the parties to it. Here the case of Operational Creditor that supplier supplied raw materials through their firm M/s Priya Trading Company which is the Operational Creditor herein. In effect the parties to the contract only supplied raw material to the Corporate debtor. The Learned Counsel also relied upon para 29 of the decision of Hon'ble Apex Court reported in (2018) 1 Supreme Court Cases 407, cited supra, which is as follows:-
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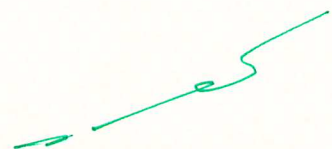
"The scheme of Section 7 stands in contrast with the scheme under Section 8 where an Operational creditor is, on the occurrence of a default, to first deliver a demand notice to the unpaid debt to the operational debtor in the manner provided in Section 8 (1) of the Code. Under Section 8 (2), the Corporate Debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the Operational Creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceeding, which is pre-existing – i.e. before such notice or invoice was received by the Corporate Debtor. The moment there is existence of such a dispute, the Operational creditor gets out of the clutches of the Code.

It is true, if there is pre-existing dispute then Petition by Operational Creditor cannot be admitted. Pre-existing dispute must not be spurious, hypothetical or illusory. The Corporate Debtor issued a reply as if it suffered loss alleging Operational Creditor had not supplied required quantity of raw material and further claimed damages. I already discussed at length that Corporate Debtor failed to pay the money covered by invoices and terms of Raw Material Agreement provides for termination in case of non-payment. The alleged dispute cannot be recognised in the light of default committed by Corporate Debtor.

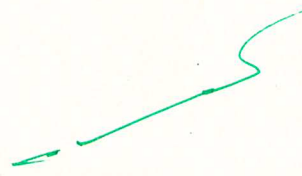
20. It is interesting to note Corporate Debtor till date had not initiated any action against the supplier / Operational Creditor for recovery of alleged loss. The alleged dispute has no merit at all. The alleged dispute cannot be
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recognised. The Corporate debtor has committed default in paying the amounts covered by the invoices. Having committed default, the Corporate debtor cannot blame the Operational Creditor. The Hon'ble Apex Court has held in *Mobilox Innovations Private Ltd Vs Kirusa Software Private Ltd* that the dispute must truly exist in fact and is not spurious, hypothetical or illusory. Absolutely there is no material filed by Corporate Debtor that there existed a dispute in fact between it and the Operational Creditor.

21. Some more Operational Creditors filed separate Petitions against this Corporate Debtor for committing default of operational debt and they are all pending. The Operational Creditor filed all invoices pertaining to the supply of broken rice and also supply of coal.. They are shown as Annexure-B & B-1. So voluminous invoices are filed which would go to show that huge quantity of raw materials were supplied to the Corporate Debtor. This is a Petition filed by Operational Creditor under Section 9 of IBC. The Operational Creditor filed bank account copy. It has issued demand notice to the Corporate debtor and there was reply. Thus, Petition filed by Operational Creditor is complete and Petition is liable to be admitted.
22. Hence, the Adjudicating Authority admits this Petition under Section 9 of IBC, 2016, declaring moratorium for the purposes referred to in Section 14 of the Code, with following directions:-
 - (a) The Adjudicating Authority hereby prohibits the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, Tribunal, arbitration panel



or other authority; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under Securitization and Reconstruction of Financial Assets and Enforcement of Security interest Act, 2002 (54 of 2002); the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate Debtor;

- (b) That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
 - (c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
 - (d) That the order of moratorium shall have effect from 12th February, 2019 till the completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under Sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, whichever is earlier.
 - (e) That the public announcement of the initiation of Corporate Insolvency Resolution Process shall be made immediately as prescribed under section 13 of Insolvency and Bankruptcy Code, 2016.
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- (f) That this Bench hereby appoints Mr. Gonugunta Murali, H.No.16-11-19/4, G-1, Sri Laxmi Nilayam, Saleem Nagar Colony, Malakpet, Hyderabad - 500036 having Registration No IBBI/IPA-001/IP—P00654/2017-2018/11139 as Interim Resolution Professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code with effect from 12.02.2019.

Accordingly, this Petition is admitted.


(RATAKONDA MURALI)
Member (Judicial)

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