

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
COURT-V, MUMBAI BENCH**

C.P. No. 3667/IBC/MB/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

Chandrashekhar Export Pvt. Ltd.

Registered office at: 559,
Vyaparipeth, Shahupuri, Kolhapur
Maharashtra, India.

... Operational Creditor

Vs

**Babanraoji Shinde Sugar & Allied
Industries Ltd.**

(CIN: U15420PN2011PLC138268)

Registered office at: Nimgaon, Tal:
Madha, Dist: Solapur, Maharashtra
413208.

.....Corporate Debtor

Date of Order :28.04.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

For the Operational Creditor: Adv. Yuvraj Narvankar

For the Corporate Debtor : Adv. Ashish Kamat a/w Adv. Prakhar
Tandon i/b Adv. Agam H Maloo

Per: Anuradha Sanjay Bhatia, Member (Technical)

ORDER

1. This Company petition is filed by Chandrashekhar Exports Pvt. Ltd. (hereinafter called "**the Petitioner**") seeking to initiate Corporate Insolvency Resolution Process (**CIRP**) against Babanraoji Shinde Sugar & Allied Industries Ltd. (hereinafter called "**Corporate Debtor**") alleging that the Corporate debtor committed default in making payment to the Petitioner. This petition has been filed by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "**Code**") read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for the resolution of an unresolved Operational Debt of Rs. 4,42,54,918/-.
2. The Operational Creditor is a private limited company having business of trade, exports of agriculture and other products like molasses, sugar, grains, fishmeal etc.
3. The Corporate Debtor, vide a sale agreement dated 10.10.2017, entered into business with the Operational Creditor, agreeing to sell 10,000 Metric Tonne of Grade "A" Molasses to the Operational Creditor, for an advance payment of Rs. 3,00,00,000/-, with the condition that if the Corporate Debtor fails to abide by the terms of the Agreement, it will be liable to repay the advance of Rs. 3,00,00,000/- along with "*compensation penalty and losses incurred by the Operational Creditor*".
4. In pursuance of the said agreement, the Operational creditor made an advance payment of Rs. 3,00,00,000/- vide RTGS UTR No. MAHBR 520171016042742528 dated 16.10.2017, to the

Corporate Debtor for supply of molasses. The Corporate Debtor had given confirmation for the receipt thereof, vide acknowledgement dated 16.10.2017, sent in writing in the letterhead of the Corporate Debtor.

5. It is further submitted that the Corporate Debtor, in spite of repeated follow ups by the Petitioner had failed to deliver the Molasses within the stipulated period. In fact, the Petitioner was made aware that the stock of Molasses was over and the Corporate Debtor is unable to supply molasses. After that there was an attempt between the parties to settle the contract with compensation & repayment of the advance money that had been paid by the Operational Creditor earlier, along with interest and penalty. Accordingly, partial payments were made by the Corporate Debtor against the dues on the following dates-
 - i) 08.03.2018 a payment of Rs. 64,00,000/-.
 - ii) 22.03.2018 a payment of Rs. 32,00,000/-.

6. On the 16.04.2018, the Operational Creditor sent an e-mail to the Corporate Debtor requesting delivery of Molasses and reiterated the same vide letter dated 20.04.2018 sent via R.P.A.D. In response to the above, the Corporate Debtor orally requested the Operational Creditor to furnish the details of the compensation, interest and penalty claimed by the Operational Creditor. The Operational creditor, vide letter dated 02.05.2018 addressed a letter to the managing director of the Corporate Debtor, stating the calculation of “dues” payable by the Corporate Debtor. The Calculation worked out was stated as under:

“Please find the calculations of the losses and dues to our company as follows:

Principal Amount *=Rs. 3,00,00,000/-*

<i>Compensation paid to our Customer</i>	=Rs. 1,70,00,000/-
<i>Interest from 16.10.17 to 30.04.18</i>	=Rs. 16,93,388/-
<i>Total</i>	=Rs. 4,86,93,388/-
<i>Payment Received from BASSAIL</i>	=Rs. 96,00,000/-
<i>Total Payment Receivable till 30.04.18</i>	=Rs. 3,90,93,388/-

7. The cheque bearing No. "008355" dated 30.04.2018, drawn on Bank of India, Branch Shelgaon(R), Solapur, Maharashtra was issued by the Corporate Debtor in favor of the Operational Creditor for an amount of Rs. 3,00,00,000/- and was deposited on 04.06.2018.
8. The said Cheque was dishonored by the bank and returned to the Operational Creditor's bank with the remark "Fund Insufficient". Following this, on the 16.07.2018, a criminal complaint u/s 138 of the Negotiable Instruments Act was filed by the Operational Creditor calling upon the Corporate Debtor to pay the due amount within the stipulated period. However the Corporate Debtor has not paid the amount and the amount due as on 31.03.2019 was Rs. 4,14,35,927/-.
9. Pursuant to the above, a demand notice dated 25.04.2019 demanding the payment under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 was issued by the Operational Creditor to the Corporate Debtor. Till date no payment been made by the Corporate Debtor. Hence this petition.

Reply of Corporate Debtor

10. The Corporate Debtor has filed their Affidavit in Reply (“**Reply**”) and has denied each and every statement, contention and averments made by the Petitioner

11. The Corporate Debtor submits that on 10.10.2017, the Corporate Debtor and the Operational Creditor entered into a sale agreement wherein the Operational Creditor is Party No. 1 and the Corporate Debtor is Party No. 2 and Shivam Indian Cuisine Pvt Ltd (as mediator) is Party No. 3. It is categorically provided in the Deed of Agreement that

“1. This Agreement is made between party No. 1, Party No. 2 and Party No. 3 and Period of agreement will be from 11.10.2017 to 30.04.2018”

“5. Party No. 1 may lift Molasses by themselves and/Or may nominate other companies to lift molasses from party No. 2, and Party No. 2 shall do accordingly.

It is provided in term no 8 that "Delivery of Molasses starts from 15.11.2017, once the new season 2017-2018 starts. The Molasses shall be made available by party No. 2 to party No. 1 as per the delivery Schedule confirmed by the party No. 1 from time to time during the agreement period. Party No. 2 will deliver product of the first production of the crushing season 2017-2018. Party No. 2 shall not deliver the product to any other party unless until they complete the delivery to party No. 1 under this agreement. Lifting of Molasses will be as per convenience of Party No. 1 and Party No. 1 shall give prior intimation of three days to begin lifting of molasses and Party No. 2 will arrange to deliver accordingly.

12. The Corporate Debtor submits that the Deed of Agreement dated 10.10.2017, in Clause E, provides for the arbitration clause therefore this Tribunal has no jurisdiction to entertain the present petition.
13. The Corporate debtor states that as per the terms of agreement dated 10.10.2017, the Corporate Debtor was ready and willing to deliver the Molasses at the agreed rate. Accordingly the Corporate Debtor, has supplied 3000 metric tonne molasses, amounting Rs. 90,00,000/-, till 15.11.2017, as per the demand and instructions of the Operational Creditor. As per the said delivery, out of an advance amount of Rs. 3,00,00,000/- an amount of Rs. 90,00,000/-, had been deducted towards the said delivery of 3000 metric tonne molasses.
14. The Corporate Debtor further submits that on 08.03.2018, the Corporate Debtor had repaid an amount of Rs. 64,00,000/- and on 22.03.2018 an amount of Rs. 32,00,000/- to the Operational Creditor out of the advance amount. The Operational Creditor had accepted the total amount of Rs. 96,00,000/- out of remaining advance amount towards the repayment. Therefore the Operational Creditor has rescinded the agreement dated 10.10.2017 by demanding and accepting the amount of repayment out of advance amount.
15. The Corporate Debtor submits that it has supplied 3000 metric tonne Molasses of Rs. 90,00,000/- and had repaid an amount of Rs. 96,00,000/- out of the advance amount of Rs. 3,00,00,000/-. Therefore Rs. 1,86,00,000/- has to be deducted from the advance amount of Rs. 3,00,00,000/-.
16. The Corporate Debtor submits that the proceedings are not maintainable as the Operation Creditor took a cheque of Rs.

3,00,00,000/- as security towards performance of the contract and that security cheque has been misused by the Operational Creditor by initiating proceedings under Section 138 of the Negotiable Instrument Act.

17. The Corporate Debtor further submits that there is no interest clause mentioned in the agreement dated 10.10.2017, therefore Operational Creditor is not entitled to claim any interest on the unpaid amount.

Findings

18. We have heard both the parties and perused the records.
19. The Operational Creditor vide this petition has made a claim of Rs.4,42,54,918/- which is bifurcated as follows:

Sr. No.	Particulars	Amount in Rs.
1.	Principal Amount	2,04,00,000
2.	Interest Component	68,45,918
3.	Compensation	1,70,00,000
Total		4,42,54,918

However, the Corporate Debtor has disputed the amount claimed and brought to our notice that the principal amount claimed by the Operational Creditor has been entirely paid. It has further brought to the notice of this Bench that the balance Principal amount of Rs. 2,04,00,000/- has been paid by the Corporate Debtor on 01.03.2023 vide National Electronic Funds Transfer (**NEFT**) instrument number "**027323**" to the Operational Creditor. The copy of NEFT transaction receipt is annexed as *Annexure A-2* of the written submission. Therefore this fact is uncontroverted that the

entire advance payment of Rs. 3 crore has been paid back by the Corporate Debtor to the Operational Creditor.

20. The total amount claimed by the Operational Creditor is Rs. 4,42,54,918/- which includes a compensation of Rs 1,70,00,000, paid by the Operational Creditor to its client. However this Bench is of the considered view that the Operational Debt claimed by the Petitioner must be crystallized, undisputed and not something which requires adjudication by a competent authority. In the present case the claim for compensation of Rs. 1,70,00,000 does not become an Operational Debt until the liability is adjudicated upon and damages are assessed by a competent authority in law. Further with respect to the interest claimed by the Operational Creditor, we are of the considered view that the Deed of Agreement dated 10.10.2017 nowhere provides for the payment of interest on advance amount. Hence the claim of interest by the Operational Creditor cannot be justified.
21. Considering the above facts and circumstances and the fact that entire advance of Rs 3 crore given by the Operation Creditor, was received back by the Operational Creditor. Therefore, we are of the view that the spirit of the legislation of the Code is for '**resolution of debt**' and not for '**recovery**'. Hence, it would be appropriate that the present petition should be **rejected**.
22. Accordingly, the Company Petition bearing **CP 3667 of 2019** is '**dismissed**'.

Sd/-

Anuradha Sanjay Bhatia
Member (Technical)

Sd/-

Kuldip Kumar Kareer
Member (Judicial)