

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP No. 1173/IBC/NCLT/MB/MAH/2017


Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

M/s. Hasmukh N. Shah and Associates
..... Operational Creditor
(Petitioner/Applicant)

v.

M/s. Eastern Ceramics Limited
..... Corporate Debtor
(Respondent)

Order delivered on : 20.07.2017 

Coram :

Hon'ble M.K. Shrawat, Member (J)
Hon'ble Bhaskara Pantula Mohan, Member (J)

For the Petitioner :

Mr. H. N. Shah, Advocate – Petitioner/Applicant in-Person.

For the Respondent :

Manish N. Jain, Advocate i/b. S. M. Jain & Associates – Advocates for the Respondent/Debtor.

Per: Bhaskara Pantula Mohan, Member (J)

ORDER

1. The Petitioner/Applicant viz. 'M/s. Hasmukh N. Shah and Associates' (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 05.07.2017 by invoking the provisions of Section 9 of the Code.
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, 'M/s. Eastern Ceramics Limited' (hereinafter as **Debtor**) having registered address at, 9th Floor, Vaibhav Chambers, Opp. Income Tax Offices, BKC, Bandra (E), Mumbai, Maharashtra – 400051.

3. Further under the Head "Particulars of Operational Debt" the total amount in default is stated as, Principal Amount of ₹ 25,00,000/- and further interest amount of ₹ 21,81,875/- at the rate of 24 % p.a. In total the Operational Creditor has claimed amount of ₹ 46,81,875/-.

4. Brief Background :

- 4.1. The Operational Creditor is a professional firm engaged in providing Legal service provider to his clients. And the Debtor is a Limited Company incorporated under the provisions of the Companies Act, 1956 and engaged in various businesses such as construction, entertainment, reality, distribution, food products etc.
- 4.2. The Operational Creditor had rendered his legal services in the past to the Debtor and for those services the Operational Creditor has rendered an invoice for a Bill amount of ₹ 46,81,875/-.
- 4.3. As per the claim of Operational Creditor the said bill amount is overdue since the year 2011 till 31.03.2016. Hence, the Operational Creditor has issued a Demand Notice as per the provisions of S. 8 of the Code and thereafter has filed this Application under provisions of the S. 9 of the Code before this Bench.

5. Submissions by the Operational Creditor :

- 5.1. The Petitioner/Applicant has submitted that, since 2011 the Operational Creditor has duly provided his Legal services to the Debtor on the request and demand made by the Debtor.
- 5.2. Further that, the Operational Creditor has duly raised an Invoice for the services provided by him and raised the bill amount of ₹ 46,81,875/- which includes the Principal amount of ₹ 25,00,000/- and further Interest amount of ₹ 21,81,875/- at the rate of 24 % p.a. for the defaulted period. The copy of Invoice is annexed with the Petition/Application.
- 5.3. It is further submitted that, the Debtor has always neglected in making the payment to the Operational Creditor and hence, the Operational Creditor has issued a Notice on 12.04.2016 demanding his outstanding amount. Copy of the said notice is annexed with the Petition/Application.
- 5.4. It is further submitted that, inspite of the above-said legal notice the Debtor has again neglected in making the payment hence, feeling aggrieved, the Operational Creditor has issued a Demand Notice on 31.05.2017 as per the provisions of the S. 8 of the Code. Copy of the same is annexed with the Petition/Application.

- 5.5. It is further submitted that, the Debtor has received the said Demand Notice on 01.06.2017 but thereafter the Debtor had not replied to the said Notice. Hence, after lapse of time prescribed by the Code the Operational Creditor has filed this Petition/Application as per the provisions of the Code. However, the Debtor has filed a Reply to the Petition/Application and contested the Amount claimed on the ground that the Debt itself does not exist.
- 5.6. It is further submitted that, the averments made by the Debtor in his Reply is denied by the Operational Creditor in his Rejoinder. Further that, the averments without any sufficient evidences.
- 5.7. It is finally submitted that, the raised Invoice clearly establishes that there is Debt and the non-payment by the Debtor clearly establishes that there is a Default on the part of the Debtor, hence, this Petition/Application may be Admitted for commencement of CIRP.

6. Submissions by the Debtor :

- 6.1. The Learned Advocate for the Debtor has submitted that, the Operational Creditor moved this Application/Petition on false, frivolous grounds.
- 6.2. It is further submitted that, the Operational Creditor had initially provided his Legal services from Aug. 2005 to Jan. 2011 on fix professional amount.
- 6.3. Further that, accordingly the Operational Creditor had drawn the said amount and the said amount was also deposited in the Bank account of the Operational Creditor by the Debtor.
- 6.4. It is also submitted that, in the Ledger Account of the Debtor it is reflected that the said amount is deposited with the Bank of Operational Creditor. The copy of the Ledger Account is annexed with the Reply of the Debtor.
- 6.5. Further that, after Jan. 2011 the Debtor had discontinued the services of the Operational Creditor.
- 6.6. It is further submitted that, around Jan. 2012 the Operational Creditor had again approached to the Debtor and thereafter he had again provided his services to the Debtor upto month of Feb. 2014.
- 6.7. It is further submitted that, in Feb. 2014, when the Operational Creditor had left the office, Chairman of the Debtor itself gave the Cheque, to the Operational Creditor,

amounting to ₹ 3,60,000/- after deduction of ₹ 40,000 as TDS which comes to amount of ₹ 4,00,000/- as full and final settlement of the professional fee of the Operational Creditor.

- 6.8. It is further stated that, the Operational Creditor had accepted the said cheque and had also furnished the receipt dated 20.06.2014, stating therein that, "*Dear Sirs, RECEIVED WITH THANKS TODAY THE FULL PAYMENT TILL DATE OF PROFESSIONAL FEES/Dues OF RS. 4,00,000/- (Rupees Four Lacs Only) vide your cheque payment of Rs. 3,60,000/- after deducting TDS of Rs. 40,000/- vide your account payee cheque No. 104887 dated 20.06.2014 drawn on PNB, Juhu Branch, Mumbai, in favour of Hasmukh N. Shah.*" Copies of the said Cheque and the receipt is annexed along with the Reply by the Debtor.
- 6.9. It is further stated that, in light of above submissions it is clear that the Debtor is now owing any amount to the Operational Creditor hence, this Petition/Application does not survive therefore may be Dismissed with Costs.

7. Findings :

- 7.1. We have considered the submissions made by both sides. We have also perused the Petition/Application filed before this Bench. We have also gone through the reply filed by the Debtor alongwith Rejoinder of the Operational Creditor.
- 7.2. On careful perusal of the documents it is noticed that, the Invoice raised by the Operational Creditor has never been acknowledged by the Debtor.
- 7.3. That, there is nothing on record which can prove that the Operational Creditor was engaged by the Debtor for providing Legal services, except the averment made by the Operational Creditor. The Operational Creditor has not produced any Vakalatnama/Memo of Appearance, by which the Operational Creditor has appeared before Court of Law on behalf of Debtor.
- 7.4. That, the Operational Creditor has neither proven that the Cheque issued by the Chairman of Debtor is not encashed by the Operational Creditor nor has proven that the said receipt is not signed by the Operational Creditor. The Operational Creditor has merely denied the said fact in his Rejoinder.
- 7.5. That, we have also carefully perused the copy of Ledger Account provided by the Debtor and noticed that the fixed Professional Fee had been deposited with the Bank Account of the Operational Creditor on monthly basis from Aug. 2005 to Jan. 2011.

But herein also the Operational Creditor has failed to prove that the said professional fee had not been drawn by him as reflected in the Ledger Account of the Debtor.

- 7.6. That, though it is accepted position that the Operational Creditor was engaged by the Debtor for his Legal services, it is crystal clear that for the services provided from Aug. 2005 to Jan. 2011 the Operational Creditor has duly received the fixed Professional Fees by the Debtor. And further, for the period of 2012-2014 he has received the amount of ₹ 3,60,000/- after deduction of ₹ 40,000 as TDS as full and final payment for his Services.
- 7.7. Therefore, in our considered opinion, the Debt claimed in this Petition/Application does not in existence and in our conscientious view this Petition/Application does not survive in the eyes of Law and deserves **Rejection**.
- 7.8. The Operational Creditor has failed to prove that the amount of Debt as claimed is in existence as defined U/s. 3 (11) of the Code and therefore, as the claimed amount is not in existence this Petition/Application is to be **Rejected**.
- 7.9. For the reasons cited above this Petition/Application is **Dismissed** as misconceived. However, considering the facts and circumstances no order as to Cost.

8. Ordered Accordingly. To be consigned to Records.

SD/-

BHASKARA PANTULA MOHAN
MEMBER (JUDICIAL)

SD/-

M. K. SHRAWAT
MEMBER (JUDICIAL)

Dated : 20.07.2018

Avinash