



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH COURT VI

Item No. P2.

C.P. (IB)/292(MB)2025

CORAM:

SHRI SAMEER KAKAR
HON'BLE MEMBER (TECHNICAL)

SHRI NILESH SHARMA
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **07.08.2025**

NAME OF THE PARTIES: **Rashtriya Polymers & Solvent**

Vs

Pushpak Auxichem Private Limited

Under Section 9 of the IBC.

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate order. Detailed order is being uploaded on the NCLT portal today.

Sd/-
SAMEER KAKAR
MEMBER (TECHNICAL)

FRK

Sd/-
NILESH SHARMA
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI - BENCH-VI

CP (IB) No. 292/MB/2025

*[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:

Mr. Anil Kumar Gupta

**Sole Proprietor of Rashtriya Polymers
& Solvent**

Registered Office: 2282/15, 1st Floor, Gali
Hing Beg, Tilak Bazaar, Delhi- 110006.

...Operational Creditor/(OC)

Vs.

Pushpak Auxichem Private Limited

[CIN: U99999MH1992PTC067011]

Registered Office: 241/B-2, Kasturi Plaza,
2nd Floor, Manpada Road, Thane,
Dombivli East, Maharashtra- 421201.

...Corporate Debtor/(CD)

Pronounced On: 07.08.2025.

CORAM:

SHRI NILESH SHARMA, MEMBER (JUDICIAL).

SHRI SAMEER KAKAR, MEMBER (TECHNICAL).

Hearing: Hybrid.

Appearances:

Operational Creditor: Adv. Mr. Nikhil Verma

Corporate Debtor: Adv. Mr. Varun Jain



ORDER
[PER: CORAM]

1. BACKGROUND

1.1 This Company Petition No. C.P. (IB) 292/MB/2025 (Application) was filed on 13.12.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('AA Rules') by Mr. Anil Kumar Gupta, Sole Proprietor of M/s Rashtriya Polymers & Solvent, the Operational Creditor (OC), for initiating Corporate Insolvency Resolution Process (CIRP) of Pushpak Auxichem Private Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs. 1,45,01,717/- (Rupees One Crore Forty-Five Lakh One Thousand Seven Hundred and Seventeen Only) including Principal amount of Rs. 1,30,28,852/- (Rupees One Crore Thirty Lakh Twenty-Eight Thousand Eight Hundred and Fifty-Two Only) and interest amount of Rs. 14,72,865/- (Rupees Fourteen Lakh Seventy-Two Thousand Eight Hundred and Sixty-Five Only) @ 24% per annum as mentioned in the invoices.

1.3 As stated in Part IV of the application, the default occurred on **08.06.2024**.

2. CONTENTIONS OF OPERATIONAL CREDITOR:

2.1 It is submitted that the Operational Creditor is engaged in the business of supplying the various chemicals products while the Corporate Debtor is a private limited company incorporated under the provisions of the Companies



Act, 1956 and involved in the business of manufacturing specialty chemicals and industrial solvents.

2.2 The Operational Creditor supplied industrial and heavy chemicals namely, Bulk Solvent- Acetone and Iso Propyl Alcohol to the Corporate Debtor and raised the following three invoices dated 26.11.2023, 09.01.2024 and 08.06.2024, the details are given in the tabular form below:

Sr. No.	Invoice No.	Chemical Name and weight	Date	Invoice Value (in Rupees)
1.	No. GST/23- 24/001	Bulk Solvent- Acetone of 29,865 kgs	26.11.2023	43,34,606/-
2.	No. GST/23- 24/002	Bulk Solvent- Acetone of 29,535 kgs	09.11.2024	42,86,710/-
3.	No. GST/24- 25/001	Iso Propyl Alcohol of 33,350 kgs	08.06.2024	44,07,536/-
Total				1,30,28,852/-

2.3 As per the terms and conditions stipulated in the Tax Invoices dated 26.11.2023 and 09.01.2024, the amounts due were to be paid within 7 days, and under the Tax invoice dated 08.06.2024, the payment was to be made immediately upon receipt of the invoice. However, despite several reminders issued by the Operational Creditor via email, the Corporate Debtor has failed to discharge its payment obligations. This non-compliance with the terms and conditions of the above-mentioned Tax Invoices resulted in financial prejudice



to the Operational Creditor. Copy of the invoices are annexed as Annexure 'A-2' with the Application.

2.4 Thereafter, the Operational Creditor issued emails dated 09.05.2024 and 06.08.2024 to the Corporate Debtor demanding the outstanding amount. However, the Corporate Debtor failed to remit any payment.

2.5 Consequently, the Operational Creditor invoked Section 8 of the Code and issued a Demand Notice in Form 3 on 16.08.2024 which was duly served on the Corporate Debt via email on 17.08.2024. A copy of the demand notice is annexed as Annexure 'A-4'. The Corporate Debtor on 23.09.2024 via email responded to the said demand notice stating that due to unexpected financial difficulties they are unable to settle the debt in full. A copy of the reply to the demand notice is annexed as Annexure 'A-5' with the Application.

2.6 As the operational debt remains in default despite issuance of the demand notice, the Operational Creditor is constrained to file the above-captioned application against the Corporate Debtor.

2.7 Applicant has attached the following documents with the Application:

- I. Copy of outstanding invoices raised by the Operational Creditor.
- II. Copy of e-way bills evidencing the supply of industrial and heavy chemicals.
- III. Copy of demand notice.
- IV. Copy of the reply of the demand notice dated 23.09.2024.
- V. Copy of the ledger account of the Corporate Debtor.
- VI. Mail communications between the parties.

3. CONTENTIONS OF CORPORATE DEBTOR:



- 3.1 Reply was filed by the Corporate Debtor through affidavit dated 16.05.2025, which is affirmed by Mr. Balu Namdev Ubale, Director duly authorized by a resolution dated 07.04.2025.
- 3.2 The reply states that the present Petition is not maintainable and deserves to be dismissed as there is a pre-existing dispute between the parties regarding the quality, quantity and defective nature of the goods supplied by the Operational Creditor. It is submitted that the scope of Section 9 of IBC is limited to genuine and undisputed operational debts.
- 3.3 The Corporate Debtor admits that it had placed orders with the Operational Creditor for the supply of industrial solvents, including Acetone and Iso Propyl Alcohol. However, the supplies were not in accordance with the agreed quality specifications and delivery timelines and repeated complaints were made to the Operational Creditor regarding the defective and contaminated nature of the supplied goods, which resulted in substantial operational loss and reputational damage to the Corporate Debtor.
- 3.4 It is submitted that the products supplied by the Operational Creditor were substandard, impure and unfit for industrial application. Consequently, the Corporate Debtor did not make the payment and objected to the quality of the goods.
- 3.5 It is submitted that the Operational Creditor failed to rectify the defects despite repeated follow-ups and continued to raise inflated invoices, charging an arbitrary and exorbitant interest rate of 24% per annum, which is unreasonable, unilateral and not supported by any contractual agreement.



3.6 Pre-existing dispute- the Operational Creditor was aware of the pre-existing disputes regarding the quality of goods and performance under the respective invoices.

3.7 Abuse of Process and Malafide Intent-

- i. the Operational Creditor filed the petition with the sole intent to coerce the Corporate Debtor into making payment of a disputed and inflated claim by misusing the provisions of the Insolvency and Bankruptcy Code, 2016.
- ii. It is further submitted that the Operational Creditor has neither instituted any suit for recovery nor availed any other appropriate civil remedy available under law, and is instead seeking to invoke the insolvency process as a coercive measure for the recovery of a disputed debt.

3.8 Quantum of Claim and Interest- The Principal amount claimed by the Operational Creditor is not admitted and subject to set-offs and counterclaims due to damages suffered by the Corporate Debtor on account of the alleged defective supply of goods.

3.9 Without prejudice to the above, the interest claimed at 24% p.a. is arbitrary, penal in nature, and unenforceable, as there is no contractual agreement or consensus ad idem between the parties regarding such penal interest.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings of both the parties and heard both the Ld. Counsels for the Operational Creditor and the Corporate Debtor.



4.2 The major objections set up by the Corporate Debtor revolve around (i) about the quality of the goods (ii) pre-existing dispute and; (iii) Quantum of Claim and Interest, whether the rate of interest at 24% p.a. is unreasonable as there is no contractual agreement between the parties in respect of such penal interest.

4.3 Regarding the Corporate Debtor's contention of pre-existing dispute and the quality of the goods, we find that the Corporate Debtor has made bald allegations regarding the defective supply and quality issues, there is no material on record to demonstrate that any such dispute was raised prior to the issuance of the demand notice under Section 8. There is no correspondence between the parties regarding the supply of goods to support the plea of a genuine pre-existing dispute.

4.4 It is seen that reply to the demand notice was given by the Corporate Debtor through email dated 23.09.2024. In reply no contention/material was placed regarding any pre-existing dispute rather the Corporate Debtor has written as under

"Due to unexpected financial difficulties, we are currently unable to settle the debt in full.

We kindly request that you pause any proceedings for a period of one month, allowing us the time to arrange repayment.

We appreciate your understanding and consideration of our request.

We look forward to your positive response."

This shows that the defence of pre-existing dispute contended by the Corporate is nothing but moonshine in nature and, therefore, the issue is decided against the Corporate Debtor.



4.5 As regards excessive interest, it is seen that the principal amount in default is Rs. 1,30,28,852/- which is more than Rs. 1 crore, the threshold prescribed under Section 4 of IBC, 2016. The interest rate of 24% per annum has been stated in all the three invoices. In any case, the quantum of interest and its admissibility are of little consequence at this stage and are left open for the IRP/RP to decide.

4.6 The Operational Creditor issued the demand notice in Form 3 on 16.08.2024, which was duly served on the Corporate Debtor via email on 17.08.2024. The Corporate Debtor responded to the said notice via email dated 23.09.2024, admitting its financial difficulties and inability to make full payment. Such response constitutes an acknowledgement of debt and default to a certain extent.

4.7 Based on the invoices, e-way bills for all the supplies made, demand notice, and the absence of a genuine pre-existing dispute, the Operational Creditor has successfully established the existence of an operational debt exceeding 1 crore and a continuing default.

4.8 As per part IV of the Application, the date of default is 08.06.2024. This Application was filed on 13.12.2024 and is within 3 years of the date of default and hence within limitation.

4.9 Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 9 of the Code. In view of the above, we find that the matter is fit for admission under Section 9(5)(i) of the Code.

4.10 Further, we hereby appoint **Mr. Sabbani Maruthi** as Interim Resolution Professional of the Corporate Debtor from the available list of panel of



Resolution Professional as maintained by IBBI to conduct Insolvency Resolution Process as mentioned under Insolvency and Bankruptcy Code, 2016. The email address of the Interim Resolution Professional is maruthisabbani18@gmail.com.

ORDER

- i. The Respondent/Corporate Debtor- **Pushpak Auxichem Private Limited** [CIN: U99999NH1992PTC067011], is admitted into the Corporate Insolvency Resolution Process under Section 9(5) of the Code.
- ii. As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code:
 - a. 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;
 - 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 Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
 - d. the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor;



- e. The provisions of sub-section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to the Corporate Debtor.
- iii. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this 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 the IBC, 2016, as the case may be.
- iv. It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-sections (2) and (2A) of Section 14 of IBC, 2016.
- v. We hereby appoint **Mr. Sabbani Maruthi**, a registered Insolvency Professional having (Email:) maruthisabbani18@gmail.com registration no. **IBBI/IPA-001/IP-P02752/2022-2023/14202**, as the IRP of the Corporate Debtor.
- vi. The IRP shall perform all his functions as contemplated, inter-alia, under Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoters or any other person associated with the management of the Corporate Debtor are under legal obligation under section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not



- assist or co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- vii. This Adjudicating Authority directs the IRP to make a public announcement for the initiation of CIRP and call for the submission of claims under Section 15, as required by section 13(1)(b) of the IBC, 2016.
 - viii. The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever.
 - ix. The IRP or the RP, as the case may be, shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
 - x. The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern, to the extent possible, as a part of obligation imposed by Section 20 of the IBC, 2016.
 - xi. The Operational Creditor is directed to pay an advance of **Rs. 2,00,000/-** (Rupees Two Lakhs Only) to the IRP within a period of 7 days from the date of this order **to meet the cost of CIRP** arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
 - xii. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement



of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specifically mentioning regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

- xiii. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.
- xiv. **Accordingly, CP (IB)/292(MB)2025 stands admitted.** A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

Sameer Kakar
Member (Technical)

// Sarkar. C, LRA//

Sd/-

Nilesh Sharma
Member (Judicial)