

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB)1837/MB/C-IV/2019

Under section 9 of the I&B Code,
2016

In the matter of

Grow Max India Private Limited

...Operational Creditor

v/s.

Agrimas Chemicals Limited

[U99999MH1973PLC016649]

...Corporate Debtor

Order Delivered on:15.11.2021

Coram:

Shri Rajesh Sharma

Smt. Suchitra Kanuparthi

Hon'ble Member (Technical)

Hon'ble Member (Judicial)

For the Petitioner: Mr. Praveen Kumar Aggarwal, Advocate

For the Respondent: Mr. Darryl Pereira a/w Ms. Leandra Silveira,
Advocates

ORDER

Per: Rajesh Sharma, Member (Technical)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) by **Grow Max India Private Limited** ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Agrimas Chemicals**

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Limited ("the Corporate Debtor"). The Operational Creditor claiming a sum of Rs.26,50,927/- inclusive of interest @18% p.a. which is said to amount in default as on 08.01.2018 which is said to be the date of default.

2. The Corporate Debtor is a limited Company incorporated on 03.07.1973 under the Companies Act, 1956, with the Registrar of Companies (RoC), Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U99999MH1973PLC016649. Its registered office is at H-2, MIDC, Industrial Estate, Taloja, District Raigadh, Maharashtra. Therefore, this Bench has jurisdiction to deal with this petition.

BRIEF FACTS OF THE CASE

3. The Petitioner is engaged in the business of dealing in plastic pails and pet bottles etc. and the Corporate Debtor is engaged in the business of manufacturer, trader and exporter of wide range of agro products such as Herbicides, Acaricides, Weedicides, Fungicides, Insecticides and organic fertilizers.
4. The Petitioner submits that during the period between January, 2018 to February, 2018, the Corporate Debtor purchased materials worth Rs. 22,40,820/- and Petitioner issued various invoices dated 08.01.2018, 11.01.2018, 06.02.2018, 08.02.2018 and 23.02.2018

(annexed with the Petition at Annexure-1). The Petitioner further submits that the Corporate Debtor purchased/used the goods but failed to repay the outstanding dues.

5. The Petitioner issued Demand Notice under Section 8 read with Rule 5 of the Code on 15.02.2019 thereby demanding for repayment of outstanding dues within period of 10 days from the date of notice. Upon receipt of said Demand Notice, the Corporate Debtor vide its reply dated 01.03.2019 and 13.03.2019, attempted to deny the liability on completely vague and unfounded ground.
6. The Petitioner vide email dated 17.04.2019 demanding for repayment of outstanding dues. The Corporate Debtor replied to the aforesaid email vide email dated 18.04.2019 thereby stating that the amount due to the Operational Creditor was set off against the liability of one M/s. Info Gulf Crop Science Limited. Hence this Petition.

REPLY BY THE CORPORATE DEBTOR

7. The Corporate Debtor through its representative Mr. Rakesh Kumar, filed affidavit in reply thereby denying the contentions levelled in the Petition.

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- a. No cause of action had ever accrued in favour of the Petitioner against the Corporate Debtor to invoke the provisions under the Code.
 - b. The present petition is abuse of process of law and devoid of any substance and liable to be dismissed.
 - c. The Petitioner instead of invoking arbitration clause and taking recourse to arbitral proceedings for adjudicating the disputed claims had approached the Hon'ble Tribunal with oblique motive of pressuring the Corporate Debtor.
8. The Corporate Debtor submits that sometime in December, 2017, January & February 2018 placed order for supply of Pet Bottles & Hope Bucket vide purchase order No. POACL/17-18/0480 dated 28.12.2017, POACL/17-18/0538 dated 25.01.2018 and POACL/17-18/0691 dated 21.02.2018 clearly stating specification of the quality and standard of the products. However, the Petitioner supplied more products instead of demanded quantity without any reason and information and raised five invoices of excess amount under number 001561/2017-18 dated 08.01.2016 of Rs. 4,24,800.00, 001569/2017-18 dated 11.01.2018 of Rs. 4,46,040.00, 001811/2017-18 dated 06.02.2018 of Rs. 2,14,489.00, 001833/2017-18 dated 08.02.2018 of Rs. 4,79,546.00 and 002000/2017-18 dated 23.02.2018 of Rs. 6,75,946.00. The Corporate Debtor objected to the supply of

the excessive quantities against the order but the operational creditor repeatedly requested to accept the excess quantities and assured to provide some concessional rate in terms of credit notes which was never provided. The purchase order issued by the Corporate Debtor in favour of the Petitioner and Transport slips are annexed with the reply.

9. The Petitioner supplied defective and inferior quality of the Pet Bottles and Hope Bucket which resulted in damages of the products and goodwill of the Corporate Debtor. Furthermore, the Corporate Debtor suffered financial losses of more than Rs. 30,00,000/- as well as market reputation and goodwill, which is entirely irreparable. Further, the Petitioner also refused to take back the excess quantity of Pet Bottles & Hope Bucket as well as to replace defective Pet Bottles & Hope Bucket and also denied compensating losses occur due to supply of defective products. The Corporate Debtor continuously followed with the Petitioner and again and again recalled their promises to resupply the superior quality as well as to provide the credit notes but the Petitioner never supplied the products and left the Corporate Debtor with the burden of huge financial loss.

10. The Corporate Debtor also contended that in the month of April, 2019, the Corporate Debtor on the request of the Petitioner supplied goods amounting to Rs. 8,85,295/- vide Bill dated 13.04.2019 to the Group Associate Company of the Petitioner namely M/s Max Indo Private Limited and the same was acknowledged upon receipt of goods and entry was also made to this effect in the ledger account/statement on 26.04.2019 under the head of “**BEING AMT PAYABLE TO AGRIMAS TRF TO MAX INDO PVT. LTD. & GROWMAX INDIA PVT. LTD.**” and the said ledger/account statement through email dated 13.05.2019 by email ashishgoel@groupindogulf.com under signature of Mr. Ashish Goel GM-Procurement HO as well as through various other emails. The Corporate Debtor submits that it is surprising that the Petitioner even after receipt of the amount blankly refused to acknowledge through email dated 18.04.2019.
11. The Corporate Debtor states that there is no agreement/sale term or written communication between them i.e. between Petitioner and the Corporate Debtor with regard to interest claim of 18%. Therefore, the Corporate Debtor is not liable to pay the interest as claimed.

REJOINDER FILED BY THE PETITIONER

12. The Petitioner filed rejoinder to the reply thereby submits that all the averments, claims and contentions made by the Corporate Debtor in the reply are false, frivolous and unsubstantiated and the Petition deserves to be admitted.

13. The Corporate Debtor itself has admitted the whole liability vide an email dated 19.12.2018 much prior to the issuance of Demand Notice. This itself shows that no preexisting dispute prior to the Demand Notice. The Corporate Debtor made feeble attempts to evade and discharging legally enforceable liabilities towards the Petitioner. With regard to contention of supply of excess quantities of goods, the Petitioner stated that the Corporate Debtor has not filed any valid/substantial evidence to show that the material supplied was against its wishes or requirement and the same is baseless.

14. The Petitioner neither caused any financial loss to the Corporate Debtor nor supplied products of inferior quality to the Corporate Debtor and there was no dispute in existence prior to the date of the issuance of Demand Notice u/s 8 and also the Corporate Debtor has admitted the liability vide email dated 19.12.2018 i.e. much prior to the Demand Notice dated 15.02.2019. It is submitted that

that the claim interest @18% p.a. is generally accepted norm and practice of the line of trade and it not contrary any of the legal provisions.

FINDINGS

15. We have prudently gone through the pleadings available on record. The Petitioner has supplied Pet Bottles & Hope Bucket as requested by the Corporate Debtor and raised several invoices to the tune of Rs.22,40,820/- and the same remain unpaid. Thus the petitioner claimed an interest @18% till 07.02.2019 amounting to Rs.4,10,107/- and as such total liability as claimed by the Petitioner is Rs.26,50,927/-. The Petitioner issued Demand Notice on 15.02.2019 u/s 8 demanding for repayment of the outstanding dues. The Corporate Debtor replied on 13.03.2019 and denied the liability on completely vague and unfounded grounds.

16. This bench notes that the Corporate has filed the reply claiming that the Petitioner has supplied excess quantities as against the purchase orders issued by the Corporate Debtor. The Corporate Debtor also pointed out that the Petitioner supplied defective and inferior quality of Pet Bottles and Hope Buckets which damaged the product and thus the Corporate Debtor suffered financial loss of more than Rs.30 lakhs. The Corporate Debtor claimed the

Petitioner have refused to take back the excess quantities of Pet Bottles and Hope Buckets. The Corporate Debtor pointed out that in the month of April 2019 at the request of the Petitioner, they supplied goods amounting to Rs.8,85,295/- to an associate company of the Petitioner namely Max Indo Private Limited and claimed that an entry to that effect to the ledger account statement on 26.04.2019 which establishes that the amount were paid to Max Indo Private Limited and Grow Max India Private Limited.

17. The Corporate Debtor has not filed any proof of objection raised with regard to excess supply of quantities of Pet Bottles and Hope Buckets prior to the initiation of section 8 Demand Notice. The ledger account furnished with relation to payment of Rs.8,85,295/- was in fact a ledger account of Indo Gulf Crop Sciences Limited which refers that **BEING AMT PAYABLE TO AGRIMAS TRF TO MAX INDO PVT. LTD. & GROWMAX INDIA PVT. LTD.** No inference can be drawn from this ledger account whether monies were paid to Max Indo or Grow India Private Limited.
18. It is undisputed fact that the Pet Bottles and Hope Buckets were delivered to the Corporate Debtor and the invoices raised remain unpaid. The Corporate Debtor has not demonstrated that any dispute with regard to excess supply of goods/inferior quality was

raised prior to the issuance of demand notice. Hence, there is a clear liability of payment of amount due under the invoices and default of non-payment of such dues by the Corporate Debtor, Petition is admitted.

19. This Bench having been satisfied with the Application filed by the Operational Creditor which is in compliance of provisions of section 9 of the Insolvency and Bankruptcy Code admits this Application declaring Moratorium with the directions as mentioned below:

- I. That this Bench 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 the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- II. 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.

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- III. 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.
- IV. That the order of moratorium shall have effect from **15.11.2021** 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, as the case may be.
- V. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- VI. That this Bench hereby appoints Mr. Anurag Nirbhaya, No.204, Sagar Plaza, Plot No. 19, District Centre, Laxmi Nagar, New Delhi-110092, having registration No. Reg. IBBI/IPA-001/IP-P00870/2017-18/11468 [email: anurag@canirbhaya.com, Mobile No.9810382513 as interim resolution professional to carry the functions as mentioned under the Insolvency & Bankruptcy Code.
20. The Registry is hereby directed to communicate this order to both the parties as well as IRP immediately.

Sd/-
RAJESH SHARMA
Member (Technical)

15.11.2021

/Rohit/

Sd/-
SUCHITRA KANUPARTHI
Member (Judicial)