

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-2923/(ND)/2019

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

In the matter of:

M/s Prayag Polytech Private Limited

Registered office at:
C- 587, Industrial Area,
Phase- I, Bhiwandi- 301019
Rajasthan

...Applicant/Operational Creditor

Versus

M/s Prayag Tubes Pvt. Ltd.

Registered Office at:
2483-84 Prayag House, Nalwa Street,
Paharganj, New Delhi- 110055

...Respondent/Corporate Debtor

Coram:

SHRI. P.S.N. PRASAD, Hon'ble Member (Judicial)

DR. V.K. SUBBURAJ, Hon'ble Member (Technical)

Counsel for Applicant: Mr. Vipul Ganda, Advocate.

Counsel for Respondent: Mr. Robin Singh Sirohi, Mr. Ajay Gaggar and Mr. Uttiyo Mallick, Advocates.

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IB-2923/ND/2019

Prayag Polytech Private Limited vs Prayag Tubes Private Limited



ORDER

Per SH. P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 04.03.2021

1. This is an application filed by the Applicant "Prayag Polytech Private Limited" through its Director Mr. Milan Aggarwal seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Respondent "Prayag Tubes Pvt. Ltd." for the alleged default on the part of the Respondent in clearing the debt of Rs. 9,10,155/- (Rupees Nine Lakh Ten Thousand One Hundred and Fifty-Five Only), plus interest @ 24% per annum as on 05.10.2019 as alleged by the applicant, towards the material supplied by the Applicant. The details of transactions leading to the filing of this application as averred by the Applicant are as follows:

- i. The applicant submits that the applicant used to supply the material viz master batches to the Respondent, that till the year 2018, the applicant supplied master batches to the Respondent and raised various invoices totaling to sum of Rs. 13,78,404/-.



- ii. That out of the total amount of Rs. 13,78,404/-, the applicant submits that he had received the sum of Rs. 6,62,944/- from the applicant towards the invoices whereas, the balance amount of Rs. 7,15,460/- still stands due and payable towards the Respondent.
- iii. The applicant further submitted that the last payment of Rs. 1,62,895/- was received vide dated 31.03.2018 from the Respondent. Afterwards, the Respondent has failed to make any payment towards the raised invoices. The details of uncleared invoices as provided by the applicant is as under:

Invoice No.	Invoice Date	Amount (Rs)
SAL08/1718/5671	20.01.2018	90,860.00
SAL08/1718/7501	22.03.2019	45,725.00
SAL08/1819/100	04.04.2018	1,41,305.00
SAL08/1819/2551	25.06.2018	1,26,479.00
SAL08/1819/2798	05.07.2018	1,11,376.00
SAL08/1819/3891	22.08.2018	95,580.00
SAL08/1819/4320	12.09.2018	1,16,230.00

SAL08/1819/4446	19.09.2018	75,225.00
		8,02,780.00
Less: Partly received amount for invoice dated 20.01.2018		(87,320.00)
Total		7,15,460.00

- iv. The applicant submits that a statutory Demand notice under section 8 of IBC, 2016 vide dated 09.08.2019 was delivered to the Respondent, whereby the applicant demanded a payment of Rs. 8,78,930/- being the aggregate of the total amount of debt i.e., Rs. 7,15,460/- and interest @24% per annum as on 31.07.2019. It was further submitted by the applicant that in pursuance to the demand notice the Respondent replied vide letter dated 27.08.2019, stating that the amount claimed by the applicant has been adjusted against the loan availed by the applicant from M/s Prayag Polymers Private Limited.
- v. The applicant stated that no loan was availed from the Respondent and also submits that Mr. Devender



Kumar Aggarwal has not been authorized by the Board of Directors of the applicant to negotiate with the Respondent regarding outstanding payment whereas, the Respondent in its reply has stated that Mr. Devender Kumar Aggarwal had settled all the pending claims on behalf of the applicant.

2. Consequent to the notice issued by this Tribunal, the Counsel for the Respondent filed its reply Affidavit on behalf of the Respondent stating that:

- i. That the Applicant has failed to submit a proper affidavit with respect to an adjustment Rs. 7,15,460/- that the Respondent alleges has already been paid to the applicant in full and final settlement of the claim against the admitted liability of Rs. 1,00,00,000/- due to Prayag Polymers Pvt Ltd, which is a sister concern of the Respondent.
- ii. The Respondent submits that the present application is an attempt by the applicant to absolve themselves from paying their dues to Prayag Polymers Pvt. Ltd. the Respondent further submits



that vide Letter dated 29.11.2018 issued by Anil Kumar Aggarwal on behalf of the Respondent and letter dated 30.11.2018 issued by Devender Kumar Aggarwal on behalf of the applicant which acknowledges the receipt of amount by the applicant in adjustment to the dues payable by the applicant to the Respondent.

- iii. The Respondent states in his reply that vide letter dated 30.11.2018 issued by Anil Kumar Aggarwal on behalf of Respondent to Prayag Polymers Pvt. Ltd. was issued in respect to the aforesaid adjustment.
- iv. The Respondent submits that the applicant obtained a loan of Rs. 1,00,00,000/- payable with interest @18% p.a. from the sister concern of the Respondent i.e., Prayag Polymers Pvt. Ltd during the financial year 2016-17. That the applicant paid interest on the said loan but has defaulted in making the payments of the loan.
- v. That the Respondent vide e-mail dated 21/11/2018 informed the applicant about the outstanding balance including the interest till March 2018 viz.

Rs. 1,08,07,781/- and interest for the quarter ending on June, 2018 viz. Rs. 4,50,000/- and for Quarter ending On September 2018 viz. 5,04,575/- and requested to pay the total outstanding amount being Rs. 1,20,10,290/- (Rupees One Crore Twenty Laid) Ten Thousand Two Hundred and Ninety only) by Prayag Polymers Pvt. Ltd.

- vi. The Respondent stated that there is a dispute between the applicant and the Respondent much prior to the issuance of the Demand Notice under section 8 of the IBC, 2016 and further stated that no valid demand notice was served to the Respondent.

3. The Counsel for the Applicant has filed its Rejoinder in pursuant to the submissions and contentions raised by the Respondent in its reply. The applicant in its rejoinder stated that:

- a) The Respondent in its reply has mixed up two independent Transactions between two different companies.



b) That the Devender Kumar Aggarwal has been in dispute with other shareholders of the Applicant company for last few years. That in a settlement agreement dated December 30, 2019 ("Settlement Agreement") with other shareholders of the Applicant, whereby he had represented that "as on the Execution Date, there are no agreements, deeds, memoranda, papers, promissory notes or documents, executed by the DK Group Persons, purportedly on behalf of Prayag, without the approval of the board of directors of Prayag". The applicant further submits that since no board resolution was passed for authorizing him for entering into any such adjustment with the Respondent.

4. The counsel for the Respondent has filed its written submissions relying upon the following averments in respect to the submissions made in the reply:

- That the alleged dues have already been settled/ adjusted against the amount due and payable by the

applicant to Prayag Polymer Pvt. Ltd. a group company of the Respondent in full and final.

- That there is no bar under the Indian Accounting standards and/or principles to appropriate and/or adjust the dues of the applicant against the dues recoverable by any of the Group Companies of the Respondent so long as all parties concerned are aggregable to the same. That the applicant had agreed to adjust the amounts recoverable from the Respondent against the loan amount due and payable to Prayag Polymers Pvt. Ltd., a group company of the Corporate Debtor. This adjustment and/appropriation have also been accepted by Prayag Polymers Pvt. Ltd., vide letter dated 30.11.2018 as well as the Respondent.
- That the Clause 7. 8 of the purported Settlement Agreement annexed to the Rejoinder affidavit by the applicant states that with effect from the Execution Date, (a) the DK Group Persons agree and undertake that they will not sign, execute and/or deliver any agreement, deed, memorandum, negotiable

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instrument or document, on behalf of Prayag and / or the RK Group and (b) the RK Group Persons agree and undertake that they will not sign, execute and /or deliver any agreement, deed, memorandum, papa, negotiable instrument or document, on behalf of Agroha and/or the DK Group. The Respondent further submitted that Mr. Devender Kumar Aggarwal as the Managing Director had powers to take the decisions regarding settlement of accounts on behalf of the Applicant prior to the date of execution of settlement agreement i.e., 30.12.2019.

5. The counsel for the Applicant has also filed its written submissions reiterating the facts and submission made in the application and Rejoinder.
6. We have heard the Ld. Counsels for the Operational Creditor and Corporate debtor and perused the averments made in the application as well as the documents enclosed with the application.
7. On perusal of Application and reply as well as the documents enclosed, the operational creditor vide its letter dated 30.11.2018 has replied to the Corporate Debtor's



letter dated 29.11.2018 “for adjustment of outstanding dues against supplies” wherein, the operational creditor has stated that “we hereby adjusted your outstanding dues (against supplies made) with loan amount payable by us to M/s Prayag Polymers Private Limited. and further stated that Now, after the above adjustment your account has become nil and nothing is payable by your company, the aforesaid letter contained the signatures of Devender Kumar Aggarwal as Managing Director along with the seal and stamp of the operational creditor.

8. The learned counsel for the operational creditor has raised the contention that Mr. Devender Kumar Aggarwal was never authorized to settle any amount payable to operational creditor and has also relied upon the settlement agreement dated 30.12.2019 entered between the two factions i.e., DK Group and RK Group of the operational creditor, wherein, it was held that Mr. Devendra Kumar Aggarwal belonging to the DK Group is not authorized to enter into any such adjustments.



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9. It is pertinent to mention that the corporate debtor vide dated 27.08.2019 has replied to the statutory demand notice dated 09.08.2019 sent under section 8 of IBC, 2016 by the operational creditor submitting that the amount has been adjusted from the Loan amount payable by operational creditor to Prayag Polymers Private Limited, which is a sister concern of the Corporate Debtor and vide letter dated 30.11.2018 the Operational creditor duly acknowledged the same.


10. It is pertinent to mention that the settlement agreement dated 30.12.2019 entered between the two factions i.e., DK Group and RK Group of the operational creditor was executed after the issuance of letter dated 30.11.2018, wherein the operational Creditor dues were adjusted with the Loan amount payable.

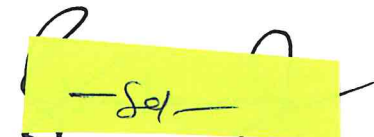
11. Mere plain reading of the provision and decision shows that to trigger section 9 of IBC, 2016 the applicant is required to establish that there is an Operational debt and there is a default. In the light of aforesaid facts, when we shall

consider the case in hand, then we find that the debt has been adjusted by the corporate debtor as can be ascertained vide letter dated 30.11.2018, which was duly acknowledged by the operational creditor as it got signed by its Managing Director and also contains the official seal and stamp of the operational creditor. Hence, no debt or default could be established against the Corporate Debtor.

12. For the reasons discussed above, since the operational creditor could not establish debt and default against the Corporate Debtor therefore, we have no option but to reject the prayer of the Operational Creditor to initiate proceedings under Section 9 of IBC, 2016.

13. Accordingly, we hereby **dismiss** the present application.


(DR. V.K. SUBBURAJ)
MEMBER (TECHNICAL)


(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

RDS