



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No. 194/2021
And
CP (IB) No. 429/Chd/Pb/2019**

**Under Section 9 & 60(5) of the
Insolvency and Bankruptcy Code,
2016.**

In the matter of IA No. 194/2021 & CP (IB) No. 429/Chd/Pb/2019 :

M/s Acme Cleantech Solutions Private Limited

having its registered office at
Plot No. 152, Sector-44,
Gurgaon, Haryana-122 002
through its Authorized Representative
CIN No. U64202HR2003PTC035026

...Petitioner-Operational Creditor

Vs.

M/s Mark One Impex Private Limited

having its registered office at
House No. C-3/21,
Block No. C-3(5), Aravali Heights,
75 Mtr Wide Dharuhera-Bhiwani Rd,
Garhi Alawalpur Rewari,
Rewari, Haryana-123 106
CIN No. U51909HR2009PTC039345

...Respondent-Corporate Debtor

IA No. 194/2021

M/s Acme Cleantech Solutions Private LimitedApplicant

Vs.

M/s Mark One Impex Private LimitedRespondent

Judgement delivered on 15.09.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**



For the Petitioner- 1). Mr. Dhanesh Relan, Advocate
Operational Creditor/ : 2). Mr. Vipul Joshi, Advocate
Applicant in 3). Mr. Prahsant Kapila, Advocate
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For the Respondent- : 1). Mr. Geetesh Meena, Advocate
Corporate Debtor/ 2). Mr. Kranti Meena, Advocate
Respondent in 3). Mr. Satish Bhardwaj, Advocate
IA No. 194/2022

Per: Harnam Singh Thakur, Member (Judicial)

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The present application has been filed by petitioner-Operational Creditor against the respondent-corporate debtor under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Section 5 of the Limitation Act, 1963, (hereinafter referred to as the Limitation Act) and Rule 11 of the NCLT Rules, 2016 for condoning the delay of 42 days i.e. from 28.05.2019 till 09.07.2019 i.e. the date of filing the present petition.

2. The brief facts of the application are that on 10.05.2019, the Petitioner issued the Statutory Notice to the Corporate Debtor under Section 8 of the IBC read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 demanding payment of the outstanding amount of INR 3,11,31,837/- (Indian Rupees Three Crore Eleven Lakh Thirty-One Thousand Eight Hundred and Thirty- Seven) from the Corporate Debtor which was dispatched by speed post at the registered office and the corporate office of the Corporate Debtor, however, the said notice was not delivered to the Corporate Debtor as it was intentionally avoided by the Corporate Debtor as its email address mentioned in the company master data does not accept emails and also letters are not received at its registered



office mentioned in master data, hence the Statutory Notice may be treated as delivered as on 10.05.2019 itself. The Applicant also delivered the same by hand to the Corporate Debtor on 31.05.2019. Despite the service of the Statutory Notice under Section 8 of the IBC, the Corporate Debtor did not make any payment. The reason for the delay in filing the petition under Section 9 has been detailed in Para 19 of Page No.9. The petition under Section 9 was filed ultimately on 09.07.2019. The Corporate Debtor has raised a legally untenable and factually incorrect averment that the Company Application is time-barred since it has been filed *after the period of more than 3 years*. the Statutory Notice under Section 8 of the IBC was issued within the limitation period and the present proceedings, being a continuation of the Statutory Notice under Section 8 of the IBC, are well within the limitation period prescribed under law.

3. The corporate debtor has filed a reply vide diary No. 00482/01 dated 13.07.2022, wherein it is stated that there is no cause of action and documents produced by the operational creditor neither discloses applicants and rights. The petition is beyond the period of limitation. The Corporate Debtor requested the Operational Creditor to confirm the delivery of materials and issued a relevant C-Form and remaining PO against material supplied as assured by the operational creditor and to return blank security cheques. The corporate debtor never issued 8 cheques between 21.05.2016 to 27.05.2016 in lieu of the alleged 18 invoices. No service of demand notice is made upon the corporate debtor.

4. The corporate debtor has filed a rejoinder vide diary No. 00482/02 dated 20.09.2022, wherein it is stated that the cause of action arose when

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the corporate debtor issued the last cheque dated 27.05.2016 towards the payment of the said invoices. The invoices were raised by the operational creditor in lieu of the equipment. The operational creditor has already submitted a copy of invoices and cheques. Reliance has been placed by the petitioner upon the judgment of the Hon'ble Supreme Court of India, ***B.K. Educational Services Private Limited v. Parag Gupta and Associates, (2019) 11 SC 633*** has held that such condonation can be sought by an Applicant who has filed a Petition under Section 7 or Section 9 of the IBC, 2016. The said ratio, i.e., that the provisions of the Limitation Act, 1963 can be invoked to seek condonation of delay in filing of Petitions under the IBC, 2016 has also been reaffirmed by the ***Hon'ble Supreme Court of India in the case of Babulal Vardharjt Gurjar v. Veer Gurjar Aluminium Industries Put. Ltd. & Anr., (2020) 15 SCC 1.***

5. We have heard the learned counsel for the applicant and have pursued the record carefully. Both the judgments (supra) are related to the proposition that provisions of the Limitation Act, for condonation of delay to file an application are applicable to the provisions of Sections 7 and 9 of the IBC. However, that is subject to provisions of Section 5 of the Limitation Act, in which the applicant is required to prove that there is sufficient cause for delay. However, in the case in hand, there is no sufficient cause to explain the delay of 42 days except for four days on account of service of demand notice. Therefore, we hold that in this application, delay of 42 days i.e. from 28.05.2019 till 09.07.2019 i.e. the date of filing the present petition in absence of any sufficient cause cannot be condoned. Thus, the present application is dismissed and stands disposed of accordingly.

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JUDGMENT in CP (IB) No. 429/Chd/Hry/2019

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **M/s Acme Cleantech Solutions Pvt. Ltd.** through its authorised representative Mr. Tushar Goyal (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **M/s Mark One Impex Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, **M/s Mark One Impex Private Limited**, is a Company incorporated on 04.09.2009 under the provisions of the Companies Act, 1956 with CIN No. U51909HR2009PTC039345 with its registered office at House No. C-3/21, Block No. C-3(5), Aravali Heights, 75 Mtr Wide Dharuhera-Bhiwani Rd, Garhi Alawalpur Rewari, Rewari, Haryana-123 106. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-II/B.

3. The facts of the case, briefly, as stated in the petition are that the Corporate debtor and the petitioner had a business arrangement wherein the petitioner supplied various electrical equipment such as LT fuses, string combiner boxes, GI pipes, corrugated GI sheets, LED lights, armored cable, support structure steel etc. to the Corporate debtor and in furtherance of the same, the petitioner raised 18 invoices on the Corporate debtor at the price which was mutually agreed upon between the petitioner and the corporate



debtor and the dues will be cleared at the ends of each financial year. Between 21.05.2016 and 27.05.2016, the corporate debtor issued 08 cheques in lieu of 18 invoices thereby acknowledging and admitting their liability to pay the said invoices. The corporate debtor is also liable for dues arising out of a separate business arrangements between the parties and the petitioner made an advance payment of Rs.3 crore assuring that the said amount would be adjusted against future invoices of the petitioner. The due of Rs.10,62,000 is payable by the corporate debtor to the petitioner as lease rental for industrial premises vide lease deed dated 01.12.2016 executed between the parties. As per the books of account of the petitioner Rs.49,32,489/- as rental arrears is due and payable by the operational creditor towards corporate debtor. On 16.05.2019 petitioner issued a legal notice/demand notice, demanding payment of Rs.2,52,81,260/- and an amount of Rs.49,32,489/- payable by the petitioner to the corporate debtor was duly deducted from the dues of corporate debtor with respect to the advance payment made by the petitioner and lease rental due by the corporate debtor.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 3,11,31,837/- (Rupees Three Crore Eleven Lakhs Thirty One Thousand Eight Hundred and Thirty Seven Only). The default occurred on 30.03.2016 i.e. date on which the last invoice no. ACSPL/PNT/3727/15-16 for Rs. 19,04,532 against cheque no. 000969 was raised. Copy of the Invoices (Annexure-II/C), Cheques (Annexure-II/D), and Statement of bank account (Annexure-III) are attached with the main petition.

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5. A demand notice is stated to be issued by the operational creditor on 10.05.2019 in Form-4 by speed post and through e-mail (Anneuxure-I). However, the notice was not delivered as the e-mail address mentioned in the master data did not accept e-mails and letters were not received at its registered office. Further, the petitioner delivered the notice by hand to the corporate debtor on 31.05.2019. On 16.05.2019 the demand notice was again issued to the corporate debtor and the same has been delivered as the postal receipt and tracking report are attached at Annexure (Annexure-II/E) of the petition. The corporate debtor gave a reply dated 07.07.2019 to demand notice filed vide IA No.667/2019 wherein it is stated that the entire claim raised by the petitioner on behalf of his client is disputed on being the entire material, goods etc. mentioned and attached with the invoices had already been returned a long time ago. The invoices are without any acknowledgment may be self-created, fabricated and even after the period of limitation and further the invoices are nowhere genuine.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The corporate debtor has filed a reply vide diary No. 7093 dated 13.12.2019, wherein it is stated that no demand notice was served by the operational creditor. The demand notice dated 10.05.2019 is issued through an Advocate neither signed by the petitioner nor by an Authorized Representative. The Vakalatnama authorizing Advocate on behalf of the Operational Creditor is on dated 08.07.2019 much after the date of notice. The tracking report of the demand notice dated 10.05.2019 does not provide that it has been delivered.

There is no debt due and payable as there is a pre-existing dispute between

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the parties. The respondent had already returned back entire material vide separate invoices of different dates under the due acknowledgement of the operational creditor. The operational creditor breached the terms of the mutual agreement between L&T, the Corporate debtor and the operational creditor by reversing the defective material. The corporate debtor requested the operational creditor to confirm the delivery of the material. This petition is time-barred. The operational creditor did not submit an affidavit under Section 9(3)(b). Forged and fabricated documents are filed in the present petition. No cheques were issued in the month of May 2016 as the Serial Nos. on the cheques are much prior to the stated period and can be verified from cheque book of the Corporate Debtor. The cheques may be given for the security of other transactions. The Ledger Account reflects that there is no outstanding liability. The operational creditor itself admitted in a civil recovery notice regarding outstanding liability towards the corporate debtor of Rs. 55,89,965.54 on 31.03.2018. The operational creditor lodged a criminal complaint at PS Sushant Lok, Gurugram against the corporate debtor and directors in the month of June 2019. The complaint was much prior to the said petition. The present petition is incomplete on account of legal status and locus standi, without proper and correct details, and non-compliance of mandatory provisions. The corporate debtor neither received any invoices nor any outstanding payment toward the operational creditor. The corporate debtor never issued 8 cheques between the period of 21.05.2016 to 27.05.2016 in lieu of the alleged 18 invoices. There were no delivery challans admitted/accepted by the corporate debtor. The goods were returned back.

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7. The rejoinder was filed vide Diary No.913 dated 03.02.2020, wherein it is stated that the demand notice clearly mentions that the advocate has been authorized by the petitioner and is acting on his behalf. The delivery of notice dated 10.05.2019 was intentionally avoided by the corporate debtor. The petitioner delivered notice by hand to the corporate debtor on 31.05.2019. The corporate debtor issued 8 cheques to the petitioner between 21.05.2016 and 27.05.2016 unequivocally acknowledging and admitting the liability to pay. In view of this, the limitation period stands extended. Regarding the cheques issued by the corporate debtor, the corporate debtor has stated that the cheques may be given for security for other transactions. The corporate debtor has admitted that a criminal complaint was filed in June 2019 which does not amount to a pre-existing dispute. The corporate debtor has failed to annex the Debit Note No. ACME/Mark One/10-11/09. The petitioner admitted an amount of Rs. 49,32,489/- which the petitioner is offering to reduce from outstanding dues of Rs. 3,02,13,749/-. The said amount pertains to separate business arrangements. There are no civil recovery proceedings initiated against the corporate debtor and its directors.

8. The short written submissions have been filed by the petitioner vide Diary No.00668/3 dated 24.03.2023 and by the respondent corporate debtor vide diary No. 00668/01 dated 20.12.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice dated 16.05.2019 was duly served. The demand notice dated 16.05.2019



was delivered to the corporate debtor as the postal receipt and tracking report is attached at Annexure-II/E of the petition. The corporate debtor gave a reply dated 07.07.2019 to demand notice. Therefore, the demand notice was duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by the operational creditor that the corporate debtor has failed to make any payment or issue a notice of any existing dispute to the petitioner.

It is submitted by the respondent-corporate debtor that there are pre-existing disputes between the parties on various issues relating to current business and other transactions-

- (a) That the alleged material under all 18 invoices are completely returned back against separate PO to the operational creditor from the period between August, 2016 to May, 2017 under an acknowledgement.
- (b) That there is an outstanding amount of Rs. 55,89,965.54 /-due upon the operational creditor after all the transactions viz. Manesar, Pantnagar and Telangana and still pending till date upon operational creditor.
- (c) The operational creditor initiated the civil recovery proceedings against the corporate debtor relating to the alleged transaction amount and issued legal notice on dated 16/05/2019.
- (d) The operational creditor initiated the criminal case and lodged the police,complaint in June 2019 at Police Station Sushant Lok and same is contested by the corporate debtor.



- (e) The operational creditor did not issue the relevant Form-C for Financial year 2016-17 and the Form-XI for Financial year 2015-16 despite of the requests by the corporate debtor on various occasions.
- (f) The alleged 8 cheques filed by the operational creditor were security cheques only and misutilised by the operational creditor in this case.
- (g) The dispute relating to lease rental of the premises still subsisting and the operational creditor illegally removed the corporate debtor from the premises without allowing to take the material, equipments documents etc. from the premises.

The police complaint was filed in the month of June, 2019 at PS Sushant Lok, Gurugram, Haryana which is much prior to the filing of the present petition i.e. in the year 2019. Reliance can be placed upon the judgment of- ***Mobilox Innovations Pvt. Ltd. vs. Kirusa Software (P) Limited (Hon'ble Supreme Court) AIR 2017 SC 4532*** -Held that Section 9 petition is liable to be dismissed when pre-existing dispute prior to demand notice and case of ***Inqnest Marketing Solution Pvt. Ltd. Vs. Koovs Marketing Consultants Pvt. Ltd. Company Appeal (AT) (Insolvency) No.317 of 2019- Hon'ble NCLAT*** held that Adjudicating Authority does not need to investigate into the merits of dispute extensively mere existence of dispute prior to demand notice is enough ground for rejection of the application. Therefore, the above instances show that there is a pre-existing dispute between the parties.

The present petition is based on documents in support of which there is no cogent evidence available on the record.



The definition of a 'dispute' as provided in the Insolvency and Bankruptcy Code, 2016 is as follows-

*"5. Definitions. – In this Part, unless the context otherwise requires, –
(6) "dispute" includes a suit or arbitration proceedings relating to–
(a) the existence of the amount of debt;
(b) the quality of goods or service; or
(c) the breach of a representation or warranty;"*

In the above mentioned circumstances it is held in the case in hand that there is a pre-existing dispute between the parties.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 16.05.2019 attached as Annexure-II/E was duly served on the corporate debtor. However, the period of limitation would begin from the date of default 30.03.2016 i.e. date on which the last invoice no. ACSPL/PNT/3727/15-16 for Rs. 19,04,532 against cheque no. 000969 was raised. This application was filed vide Diary No. 3288 on 09.07.2019 and was refiled on 06.08.2019 vide Diary No.3918. The judgments relied upon by the petitioner- ***Jagdish Prasad Sarada vs. Allahabad Bank 2020 SCC Online NCLAT 621, Sabarmati Gas Limited vs. Shah Alloys Limited (2023) 3 SCC 229, B.K. Educational Services Private Limited Vs. Parag Gupta and Associates (2019) 11 SCC 63*** are distinguishable as the facts of those cases are different and distinct from the facts of the present case. As already discussed while deciding application i.e. CA No.194/2021. It can be safely concluded that the present application is not filed within the period of three years of limitation. Thus, it is badly time barred.

13. As a sequel to the above discussion and the facts as well as circumstances since there is a pre-existing dispute between the parties and



petition being time barred is not maintainable under Section 9 of IBC, 2016.
The petition consequently stands dismissed, however, with no order as to costs.

sd/-
(Subrata Kumar Dash)
Member (Technical)

sd/-
(Harnam Singh Thakur)
Member (Judicial)

September 15, 2023
VN/TBG