



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY,**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 495/ND/2018**

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

**IN THE MATTER OF:**

**M/s MI Mullan Bone Mills**

**...Applicant/Operational Creditor**

**Versus**

**M/s Bharat Potteries Ltd.**

**...Respondent/Corporate Debtor**

**MEMO OF PARTIES**

**M/s MI Mullan Bone Mills**  
Office: 131, A1 – Amna Plaza,  
MA Jinnah Road,  
Karachi – 16, Pakistan

**...Applicant/ Operational Creditor**

**VERSUS**

**M/s Bharat Potteries Ltd**  
CIN: U26913RJ1990PLC005290  
Office: F/555 – 559, Road No. 6,  
Vishwakarma Industrial Area,  
Jaipur, Rajasthan, 302013 India

**... Respondent / Corporate Debtor**

For the Operational Creditor : Udit Purohit, Adv.  
For the Corporate Debtor : Prabhansh Sharma, Adv.

**Order Pronounced On: - 29.07.2022**

**ORDER****Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code' / 'IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by M/s MI Mullan Bone Mills ('Applicant'), claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s Bharat Potteries Ltd. ('Corporate Debtor').
2. The registered office of the Applicant is situated at 131, AI – Amna Plaza, MA Jinnah Road, Karachi -16, Pakistan; and the applicant is involved in the business of selling of Calcium Phosphate. The Application has been filed in Form 5 as prescribed in Rule 6(1) of (Application to Adjudicating Authority) Rules, 2016.
3. The Corporate Debtor is a company incorporated under the laws of India, having its registered office at F/555 – 559, Road No. 6, Vishwakarma Industrial Area, Jaipur, Rajasthan, 302013, bearing CIN: U18101RJ1981PLC002345. The company's nominal share capital is Rs. 2,50,00,000/- (Rupees Two Crores Fifty Lakhs Only), and paid-up share capital is Rs. 1,93,84,000/- (Rupees One Crore Ninety-Three Lakhs and Eighty-Four Thousand Only).
4. The brief facts of the case which led to the filing of the present application are as follows:
  - a. The Applicant has been conducting business of selling Calcium



Phosphate. The Corporate Debtor approached the Applicant, on 23.01.2017, for a supply of total 50 Metric Tonnes of Calcium Phosphate the billing amount of which was USD 26,000 (USD Twenty-Six Thousand). As per the terms of the purchase order, the amount was to be paid within 30 days from the date of the Bill of Lading. In turn, the Applicant supplied the 50 M.T. Calcium Phosphate and issued two bills of lading dated 15.02.2017 in favour of the Corporate Debtor against the aforementioned order. Despite having received the goods, the Corporate Debtor did not make the payment as agreed, under the grounds of financial duress.

- b. Thereafter, Corporate Debtor vide email dated 23.03.2017 placed two more purchased orders, each of 25 metric tonnes of calcium phosphate amounting to a total of USD 26,000 (USD Twenty-Six Thousand). The Applicant, pursuant to the order placed by the Corporate Debtor, sent two shipments vide bill of lading dated 10.04.2017 and 16.04.2017. The amount in this case was also agreed to be paid within 30 days from the date of bill of leading. However, the same was not honoured by the Corporate Debtor.
- c. The Applicant repeatedly requested the Corporate Debtor to honour the payment of the consignment, which was ignored by the Corporate Debtor. Moreover, around four months later on 21.06.2017, the Corporate Debtor stated a concern regarding quality issue with goods and offered to provide a lab report for the same. However, no such lab



report was produced before the Applicant.

- d. As the Applicant, did not receive payment for over a period of 10 months, a demand notice was issued on 02.11.2017 under Section 8 of the IBC, which was duly received by the Corporate Debtor on 08.11.2017. The Corporate Debtor, in reply of the demand notice, on 17.11.2017 reiterated the issue regarding quality of goods and offered for full settlement of dues by providing 50% of the entire payment. However, the Corporate Debtor has failed to produce any lab report supporting its contention of quality issue with goods till date.
- e. The details prescribed under PART IV of the application is as below:

#### **PART IV**

<b>Particulars of Operational Debt</b>	
<b>The total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due</b>	Total debt due is: USD 52,000 (United States Dollars Fifty-Two Thousand Only) or INR 33,81,170/- (65.02*52,000) (Indian National Rupees Thirty-Three Lakhs Eighty-One Thousand One Hundred Seventy Only). The Operational Creditor is also entitled to interest at the rate of 1.5% per month, on delayed payment from the date of default till the date of realisation.



<b>Amount claimed to be in default and the date on which the default occurred (attached the workings for computation of amount and dates of default in tabular form)</b>	Total debt due is USD 52,000 (United States Dollars Fifty-Two Thousand Only) or INR 33,81,170/- (65.02*52,000) (Indian National Rupees Thirty-Three Lakhs Eighty-One Thousand One Hundred Seventy Only). In addition to the same, the Operational Creditor is also entitled to interest at the rate of 1.5% per month, on delayed payment from the date of default till the date of realisation.			
	<b><i>Purchase Order No.</i></b>	<b><i>Date of B/L</i></b>	<b><i>Due date of payment</i></b>	<b><i>Invoice amount in USD)</i></b>
	25 M.T/BPL-0061-2016-17	15.02.2017	17.03.2017	13,000
	25 M.T/BPL-0062-2016-17	15.02.2017	17.03.2017	13,000
	25 M.T. BPL-68-17	10.04.2017	10.05.2017	13,000
	25 M.T. BPL-68-17	16.04.2017	16.05.2017	13,000
<b>TOTAL</b>				<b>52,000</b>

5. Notices were issued in the aforesaid Application, and the Corporate Debtor filed a reply *vide* Diary No. 54/2019 dated 09.01.2020. The Corporate Debtor has based his reply on the following objections:
- a. It has been contended that this Application has been filed by Managing Partner of the Partnership Firm although no documentary evidence in support of the signatory holding office/ authority has been produced. Hence, this petition has been preferred without establishing the relationship of the signatory in the partnership firm of the Operational creditor. In view of this lacuna, the petition is not maintainable.



- b. The Corporate Debtor submitted that the Applicant has suppressed the original facts of this case. The demand notice dated 02.11.2017 was sent by the Applicant and received by the Corporate Debtor on 08.11.2017. To the said notice, the Corporate Debtor replied vide mail dated 17.11.2019 and again apprised the Applicant about the bad quality of the goods received amounting to heavy loss in production as well as its good will in the market. It is imperative to note that the Corporate Debtor informed the Operational Creditor about the bad quality of material delivered on 24.06.2017. Hence there was an existing dispute regarding the quality of material which was already conveyed to the Operational Creditor but the same was ignored.
- c. Even after receiving bad quality of products, the Corporate Debtor was ready to settle with the Operational Creditor. It is submitted that the Applicant had agreed for the Corporate Debtor to pay 50% of the invoice amount in order to amicably settle the dispute. As a consequence, the Corporate Debtor has already paid the agreed settle amount to the Operational Creditor.
- d. The Corporate Debtor has relied on the email dated 03.05.2019 wherein it was stated that the agreed USD 36400 will be paid by the Corporate Debtor in lieu of the disputed unpaid debt. Further, it was also stated in the said email by the Corporate Debtor that USD 2400 has already been remitted in the account of the Operational creditor and the remaining USD 34000 of the settlement amount i.e. 36400 USD will be paid. In



lieu of the aforesaid the Corporate Debtor made complete payment of the agreed settlement amount i.e. USD 36400 and a swift message pertaining to settlement amount was also received on 04.05.2019.

- e. The Corporate Debtor has submitted that the Operational Creditor vide email dated 02.05.2019 assured the Corporate Debtor that on receiving the swift message copy with respect to complete payment; the application will be withdrawn. Hence, no cause of action survives as complete payment has been made by the Corporate Debtor as per the agreed settlement terms and there remains no surviving claim/ dispute.
6. The Applicant thereby filed written submissions vide Diary No. 1099/2022 dated 12.04.2022 and denying the abovesaid allegations submitted the following:
- a. It is submitted that as per the terms of the Purchase order, the amount due is to be paid within 30 days from the date of Bill of Lading. However, despite having received separate goods as per the following tabulation, the Corporate Debtor failed to make the total outstanding payment of USD 52000 as agreed.

<i>Purchase Order No.</i>	<i>Date of B/L</i>	<i>Quantity</i>	<i>Invoice No. and Date</i>	<i>Invoice Amount</i>	<i>Due Date of Payment</i>
25 M.T/BPL- 0061- 2016-17	15.02.2017	25 MT	04/MIM/2 017 dated 16.02.2017	USD 13000	17.03.2017
25 M.T/BPL- 0062- 2016-17	15.02.2017	25 MT	05/MIM/2 017 dated 16.02.2017	USD 13000	17.03.2017



25 M.T/BPL- 0068-17	10.04.2017	25 MT	07/MIM/2 017 dated 13.04.2017	USD 13000	10.05.2017
25 M.T/BPL- 0068-17	16.04.2017	25 MT	08/MIM/2 017 dated 18.04.2017	USD 13000	16.05.2017

- b. The applicant has submitted that there was no pre-existing dispute between the parties qua the quality of goods supplied. The Corporate Debtor never raised any issues regarding the quality of the goods for almost 10 months from the date of the first purchase order. On the contrary the Corporate Debtor persuaded the applicant through WhatsApp messages to supply more calcium phosphate while frequently promising to make the entire outstanding payment. It is only after the Operational Creditor sent the demand notice on 02.11.2017, the Corporate Debtor in its response email raised a debit note alleging that the quality issued with the goods supplied was not good and offered to make 50 % of the entire payment as full and final settlement. The Corporate Debtor never produced any lab testing report, photographs or qualitative analysis of goods in support of his claims backing bad quality of goods. Moreover, the Corporate Debtor used/ utilized/ consumed the entire material sent by the Applicant and to avoid making the payment took a frivolous and uncorroborated defense of a pre-existing dispute. The applicant has referred to the judgment of the Supreme Court in *Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. AIR 2017 SC 4532*, Judgment of NCLAT in *Rajpal Singh Solanki Vs. Quazar Infrastructure Pvt. Ltd. & Ors. Company Appeal*



(AT) (*Insolvency*) No. 354/2020 and the Judgment of NCLT in *T& D Hospitality India LLP Vs. Explo Media Private Limited & Ors. CP No. (IB)- 689/ND/2020*.

- c. The Applicant has submitted that the Corporate Debtor was required to make the payment within 30 days from the Bill of Lading. The time given was a reasonable period provided merely to ascertain the quality of goods and reject them if they were of sub-standard quality by informing the Applicant about the same. The Corporate Debtor neither rejected the goods consignment nor cleared the payment of USD 52000 which is contrary to the provisions of law. The Applicant has placed reliance on Section 42 of the Sale of Goods Act which deals with acceptance wherein the buyer is deemed to have accepted the goods when after lapse of reasonable time he retains the goods without intimating to the seller that he rejected them. In the present case the Corporate Debtor has retained and used/ consumed the goods which clearly show that the goods have been accepted. The Applicant has relied on the judgment of the Orissa High court in *Jain Mills and Electrical store Vs. State of Orissa & ORs. AIR 1991 Ori 117*, Madhya Pradesh High Court in *Vishal Export Overseas Ltd. Vs. Ind Agro Synergy Ltd. & Ors. 2007 (3) MPLJ 127* and Delhi High Court in *SN Bansal Vs. Govt. of NCT of Delhi (2010) ILR 3 Delhi 505*.
- d. The applicant has submitted that there was no full and final settlement of disputes between the parties as alleged by the Corporate Debtor.



Subsequent to the filing of this application the Corporate Debtor started making part payments of the Operational Debt and requested the Applicant not to press the proceedings before this Tribunal. The Applicant has received a total of USD 36400 from the Corporate Debtor as on 16.09.2021 being 70 % of the total claim amount. Thereafter, the Applicant was willing to give the Corporate Debtor more time to make the remaining 30 % payment but the Corporate Debtor failed to do so. The Corporate Debtor is cleverly trying to assert that there was a settlement between the parties for payment of 70% of the total amount which is baseless. Since, there is no agreement placed on record showcasing the terms of the settlement, this contention of the Corporate Debtor cannot be relied upon.

7. The Corporate Debtor thereby filed written submissions vide Diary No. 1783/2022 dated 14.06.2022 and denying the abovesaid allegations submitted the following:
  - a. The Corporate Debtor has repeatedly said that there exists a prior dispute which has been admitted by the Operational Creditor. It was informed to the Operational Creditor at a prior stage that the material so ordered was not of a quality which the Corporate Debtor had ordered. Therefore, in this application there was an existing bonafide dispute and the Corporate Debtor had no intention to defraud the Operational Creditor. The Corporate Debtor also relied on the judgment of Mobilox Innovations (*Supra*).



- b. It is submitted that definition of operational debt in Section 5(21) shows that operational debt means a claim in respect of provision of goods of services among other; whenever any defect is found in the goods or deficiencies found in the services the same will directly impact the quality of goods or services. Accordingly, when the debtor informed the creditor about the purpose of buying the goods of said quality i.e. A type of goods, the goods supplied by the creditor were found to be of quality B. The said information about mixing in the goods provided by the Operational Creditor took place on 28.06.2017.
- c. The Corporate Debtor submitted that a settlement was arrived at between the parties where an email dated 03.05.2019 was exchanged between the parties whereby it has been clearly stated and agreed that the dispute will be settled at USD 36400 which will be paid by the Debtor in lieu of the disputed amount and moreover it was also stated that USD 2400 has already been remitted in the account of the Operational Creditor and the remaining USD 34000 will be paid. The Corporate Debtor completed the full payment as per the agreed settlement amount i.e. 36400 against the disputed amount of USD 52000. The swift message pertaining to the settlement amount was also received on 04.05.2019 which is sufficient to prove that the Corporate Debtor has made full and final complete payment of the agreed settlement amount. Since, no cause of action survives as per the agreed settlement terms the present application is not maintainable.



8. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply, written submissions and the documents enclosed with the application.
9. This Adjudicating Authority having perused all the relevant papers and finding them in order notes that the Registered Office of the Respondent is situated in Jaipur, and therefore Adjudicating Authority has jurisdiction to entertain and try this Application. Further this matter is within the purview of Laws of Limitation, as the time period of default is in the year 2017 and the Application has been filed before this Adjudicating Authority on 01.05.2018, hence the period of three years after the default occurred had not been exhausted at the time of filing of this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
10. The first question before us is whether this application has been filed by the duly authorized representative. It is seen from the Annexure- I at page 29 of the Application that Mr. Sheikh Nadeem Ahmed Mullan is the Managing Partner of the Operational Creditor and has been duly authorized to appoint any solicitor/advocate and to sign, institute, file any documents, petitions, affidavits etc. before any Court of India in the matter relating to the outstanding payment from the Corporate Debtor. The said authorization is properly dated 15.01.2018. Therefore, this application has been filed by the Operational Creditor through its authorized representative in full capacity.
11. The next issue before us is whether there was a dispute in the quality of goods due to which a settlement has been arrived at between the parties. It has been



admitted by both the parties that four consignments of 25 Metric Tonnes of Calcium Phosphate were delivered to the Corporate Debtor by the Operational Creditor amounting to a billing amount of USD 52000. The copy of the purchase order along with bill of lading has been annexed as Annexure-III of the petition. When the Operational Creditor demanded the aforesaid amount, the Corporate Debtor raised a concern regarding the issue with quality of goods on 21.06.2017; which has been admitted by the parties.

12. Before we delve in the issue before us, it is important to refer to the email dated 02.05.2019 which was preferred by the Operational Creditor to the Corporate Debtor whereby it has been stated that from the moment the Corporate Debtor confirms that the complete payment has been made, the Operational Creditor will immediately direct his lawyer to submit an application for preponement of date and thereby submit an application to withdraw the case as the Operational Creditor requires the payment and not the closure of Corporate Debtor. In response the Corporate Debtor preferred an email dated 03.05.2019 whereby the following has been stated:

*“Dear Nadeemji!*

*As per your below mail confirmation and our last agreement of 36400 US dollar to be paid. We have paid around 2400 dollars and remaining 34000 US dollar we need to pay today. Please confirm this figure.*

*So that we will be able to send you swift copy.”*

13. As a consequence, the Operational Creditor referred an email to the Corporate Debtor. In the said email the Operational Creditor has stated the following *“Please note you sent 2100 USD and balance amount you are*



*supposed to send Rs. 34300. Please remitt and sent swift copy ASAP”.*

14. From the aforesaid correspondence it is clear that the Operational Creditor and the Corporate Debtor in lieu of the quality of goods had agreed for 36400 USD to be remitted in whereas the full amount of invoice was USD 52000. Hence, it is clear that the Operational Creditor is now coming before this court to claim the remaining amount of USD 15600. Once a certain amount is paid by the Corporate Debtor as settlement against full payment and the same is corroborated with the help of email, the Operational Creditor cannot be allowed to go back and undo the same as it pleases and when it pleases.
15. The contention of the Operational Creditor that the dispute regarding the quality of goods was raised after 10 months of delivery of same is not tenable as the Operational Creditor himself has stated that 4 months later on 21.06.2017, the Corporate Debtor raised a concern regarding quality issue the goods and offered to provide a lab report of the same. The contention of the Operational Creditor is nullified after it has admitted that the Corporate Debtor after 4 months raised quality issue. The Operational Creditor herein is trying to blow hot and cold at the same time.
16. It is also seen from the facts of the case that even though demand notice was issued by the Operational Creditor on 02.11.2018, the Corporate Debtor again reiterated the issue regarding quality of goods vide email dated 17.11.2017. It is seen from Annexure A7 that the Corporate Debtor had vide email dated 23.09.2017 send a reminder to the Operational Creditor that the material received was of bad quality due to which they incurred a heavy loss.



It was also requested in the email dated 23.09.2017 that the Operational Creditor provide compensation for the goods returned and the losses incurred by the Corporate Debtor due to such bad quality of products.

17. It is also clear from the letter dated 17.11.2017 annexed at page 167 of the application that the debit note of 50% of the total bill of USD 26000 was already raised in the month of June 2017 as has been admitted by the Petitioner. Further, it is seen from Annexure R2 at page 10 of the reply that a settlement was arrived at between the parties and in pursuance it is recorded in the swift message the Corporate Debtor made full payment as per the settlement between the parties; which reads as under-

*“THEREFORE, PLS URGENTLY REMIT THE PROCEEDS OF OUR ABOVE BILLS I.E USD: 34,150/- AS PER OUR SETTLEMENT INSTRUCTIONS MENTIONED ON OUR COVERING LETTERS UNDER ADVISE TO US COATING OUR ABOVE PREFERENCE”.*

18. Therefore, it is clear from the documents produced before us that the Corporate Debtor has already paid the amount as agreed between the parties. We need not go into the ingredients of Section 9 in the present matter as it is clear from the documents presented before us that a settlement was arrived at between the parties for payment of 70% of the amount as full and final payment.
19. Hence, the Application is dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016 and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court,



Tribunal or any judicial or other authority.

20. Let the copy of the Order be served to the parties and IBBI.

DEEP  
CHANDRA  
JOSHI

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DEEP CHANDRA  
JOSHI  
Date: 2022.07.29  
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**DEEP CHANDRA JOSHI,  
JUDICIAL MEMBER**

PRASANTA  
KUMAR  
MOHANTY

Digitally signed by  
PRASANTA KUMAR  
MOHANTY  
Date: 2022.07.29  
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**PRASANTA KUMAR MOHANTY,  
TECHNICAL MEMBER**