

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH - II
IB-499/ND/2019

IN THE MATTER OF:

**J. J. Plastalloy Pvt. Ltd.,
A-2, Badshah Bagh Colony,
Maldahiya, Varanasi,
Uttar Pradesh – 110025.**

...Applicant

VERSUS

**Mag Filters and Equipments Private Limited,
53B/78, Punjabi Bagh (West),
New Delhi – 110026.**

...Respondent

Order Delivered on:23.08.2019

CORAM:

INA MALHOTRA, MEMBER(JUDICIAL)

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

PRESENT – Shreya Munoth, Advocate for the Applicant

ORDER

Per Dr. V. K. Subburaj (Member Technical)

1. This is an application filed by J. J. Plastalloy Pvt. Ltd. ("Applicant") invoking Section 9 of Insolvency and Bankruptcy Code, 2016 ("the Code") against Mag Filters and Equipments Pvt. Ltd. ("Respondent") for initiating



Corporate Insolvency Resolution Process ("CIRP") of the Respondent for a claim of Rs.62,43,592/-.

2. The Applicant has averred as follows:

- a. The Applicant has been supplying masterbatches of polypropylene compound to the Respondent since December 2012 from time to time against orders placed by the Respondent for which the Respondent has duly been making payments, until its recent default.
- b. As agreed between the parties, through an oral agreement, and as shown by the transactions spanning a time period of 6 years, the price of goods supplied by the Applicant to the Respondent is determined by SMIPPL, as the Respondent is an authorized supplier of SMIPL. Pursuant to the contractual arrangement between the parties, the price of goods is revised every three months by SMIPL. Pending the revision of prices, the Applicant supplied the goods to the Respondent at the agreed upon price for the pending three-month period. Subsequently, debit/credit notes are raised by the Applicant to the Respondent for the price difference between the rates for the preceding three-month period and the succeeding three-month period. The Respondent, until recently, made payments for the goods supplied by the Applicant against the



invoices raised as well as the debit notes corresponding to each invoice.

- c. The Respondent has defaulted in making payments to the Applicant against 16 invoices issued by the Applicant for goods supplied from 01.06.2018 to 29.09.2018 and their corresponding debit notes and for 1 debit note corresponding to an invoice raised on 06.04.2018. Pertinently, the contractually agreed rate of interest to be levied on all accounts remaining unpaid after delivery was fixed at 24% per annum, as reflected in the invoices issued by the Applicant and accepted by the Respondent.
- d. Despite consistent requests from the Applicant to clear forthwith the total outstanding dues payable, the Respondent's last payment to the Applicant was on 28.12.2018 for a sum of Rs.2,80,000/-.
- e. Accordingly, the Respondent owes the Applicant a principal sum of Rs.56,45,206/-. The contractually agreed interest of 24% on the amounts remaining unpaid, as on 24.01.2019 sums up to Rs. 5,90,386/-. Therefore, the operational debt owed by the Respondent to the Applicant cumulatively amounts to Rs.62,43,592/- as on 24.01.2019. As the Respondent has not made good the payment due, the interest continues to accrue as on the date of filing the instant application, and will continue to accrue till the date of payment of the operational debt.



- f. The Applicant has made consistent and repeated efforts to contact the Respondent, through telephonic calls and e-mail, calling upon the Respondent to make good the operational debt owed to the Applicant. By an e-mail dated 11.01.2019, the Applicant set out the details of the outstanding invoices and debit notes and called upon the Respondent to make the payment forthwith. Despite the Applicant's persistent and time-consuming efforts, no response or payment was forthcoming from the Respondent, causing grave hardship and inconvenience to the Applicant.
- g. Since the Respondent failed to make the payment to the Applicant, the Applicant issued the demand notice in terms of Section 8 of the Code on 24.01.2019 both by registered post to the registered office of the Respondent as well as by electronic mail service to the e-mail address registered with the Registrar of Companies. The registered post of the demand notice was duly served on the Respondent on 28.01.2019.
- h. On 06.02.2019, the Respondent through its counsel issued a reply to the demand notice purportedly in terms of Section 8 (2) of the Code, alleging inter alia that the goods supplied by the Applicant were of inferior quality and that the accounts of the Applicant have not been reconciled with those of the Respondent. The Respondent has raised patently feeble disputes merely to avoid



the initiation of the CIRP and there is no pre-existing dispute between the parties.

3. The Respondent had been proceeded ex-parte vide order dated 03.04.2019. However, the ex-parte order was set aside on 01.05.2019 and the Respondent was allowed to place its reply on record, which states as follows:

- a. The Respondent company is a solvent and profit-making concern and had transactions with the Applicant since December 2012 without any cause or complaints.
- b. The Respondent had procured polypropylene compound batches from 01.06.2018 till 29.09.2018. However, the quality of compound in the said batches became a concern for the Respondent and the payments qua the said batches and corresponding invoices were withheld awaiting further clearances.
- c. Subsequently, the issue was settled and the customers of the Respondent accepted the goods and payments were released. Accordingly, the Respondent released a partial payment of Rs.20,00,000/- to the Applicant on 26.04.2019 vide NEFT bearing no. KKBKH19116619866 and has proposed to pay another Rs.20,00,000/- by 13.05.2019 and another Rs.16,45,206/- along with a further amount of Rs.2,00,000/- as delay charges by 27.05.2019.



- d. There has been no default on part of the Respondent, rather there were quality concerns regarding the compound which have now been cleared.
- e. The Applicant has been insisting on payment of the entire principal amount along with interest at the rate of 24% p.a. in one go which was not commercially feasible nor tenable and accordingly, after detailed discussions the Respondent circulated the proposal of payment of entire principal amount along with delay charges of Rs.2,00,000/-
- f. Given the readiness of the Respondent to clear the dues of the Applicant its hall not be in the interest of justice and equity if CIRP were to be initiated.
4. The Applicant confirmed before this Tribunal on 04.07.2019 that the entire principal amount has been settled by the Respondent. However, the interest accrued due to the delay in payment has not been paid and the Applicant is presently pressing the application on the basis of the unpaid interest. The Respondent submitted that it is willing to pay some compensation to the Applicant for the delayed payment but the interest component itself cannot be construed an operational debt.
5. The cases referred to by both parties on the issue whether interest component forms operational debt are as follows:



- a. Wanbury Ltd. vs. Panacea Biotech Ltd.
 - b. Krishna Enterprises vs. Gammon India Ltd.
 - c. Gulf Oil Lubricants India Ltd. vs. Eastern Coalfields Ltd.
 - d. Vijay Industries vs. NATL Technologies Ltd.
 - e. DF Deutsche Forfait AG and Anr. vs. Uttam Galva Steel Ltd.
6. A perusal of the order passed by the Hon'ble NCLAT in *Krishna Enterprises vs. Gammon India Ltd.* shows that according to the Hon'ble Appellate Tribunal interest can be treated as a part of the debt if in terms of the agreement between the concerned parties the interest was payable to the creditor.
7. In the present case the tax invoices issued by the Applicant contain the clause making interest applicable in case of delayed payment by the Respondent. Further, the Respondent has never disputed or objected to the application of such interest in any previous communication. It is only now that the Respondent has claimed that the interest is unjustified or unfeasible. However, since the rate of interest is a part of the agreement between the parties and has not been disputed by the Respondent before the initiation of these proceedings, this Tribunal has no hesitation in holding that it forms a part of the debt due from the Respondent to the Applicant, in light of the observation of the Hon'ble NCLAT in *Krishna Enterprises*. Thus, since the Respondent has defaulted on payment of the debt, the present application is admitted.



8. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(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.

(2) *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

(3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

(4) *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”*

9. The interim resolution professional (“IRP”) named in the list provided by the Insolvency and Bankruptcy Board of India is Mr. Hans Raj Chugh (email id: hansrajchugh@ashm.in, ph. no.: 9811207924) and is being confirmed by this Bench. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

9. Renotify this case for report of the IRP on 24.09.2019.



Dr. V.K. SUBBURAJ

Member (TECHNICAL)



INA MALHOTRA

Member (JUDICIAL)

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