

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition CP (IB) No. 56/KB/2023

*A Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with  
other provisions.*

**IN THE MATTER OF:**

**Vijay Kumar Attri,**

Sole Proprietor of M/s Chemicals India

... **Petitioner/ Operational Creditor**

**Verses**

**Bamandanga Tea Estates Private Limited**

[CIN: U01132WB1998PTC089959]

.... **Respondent/ Corporate Debtor**

**Date of Hearing: September 21, 2023**

**Date of Pronouncement: September 25, 2023**

**CORAM:**

**SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)**

**SHRI D. ARVIND, MEMBER (TECHNICAL)**

**Appearance:**

**For Petitioner/ Operational Creditor:**

**1. Mr. Sujit Banerjee, Adv.**

**2. Mr. Nilay Sengupta, Adv.**

**For Respondent/ Corporate Debtor:**

**1. Mr. Avik Chaudhury, Adv.**

**2. Mr. Amardeep Singh, Adv.**

**ORDER**

**Per D. Arvind, Member (Technical):**

- 1. This Court is congregated through hybrid mode.**
- 2. This instant Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity “I&B, Code” by Vijay Kumar Attri, Sole Proprietor of M/s Chemicals India, hereinafter referred to as the “Petitioner”/ “Operational**

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**Creditor”** (in short **“OC”**) against **Bamandanga Tea Estates Private Limited**, (bearing CIN: U01132WB1998PTC089959), hereinafter referred to as **“Respondent”/ “Corporate Debtor”** (in short **“CD”**) seeking to initiate Corporate Insolvency Resolution Process (for brevity **“CIRP”**) against the Corporate Debtor.

3. The amount claimed to be in default is **Rs. 1,12,99,733/-** (Rupees One Crore Twelve Lakh Ninety-Nine Thousand Seven Hundred Thirty-Three Only), of which **Rs. 1,02,26,032/-** (Rupees One Crore Two Lakh Twenty-Six Thousand and Thirty-Two Only) is the **Principal** and **Rs. 10,73,733/-** (Ten Lakh Seventy-Three Thousand Seven Hundred and Thirty-Three Only) is **Interest**. The Date of Default is claimed as on **06.07.2022**.
4. The Corporate Debtor is incorporated on 16.06.1998, having the Authorized Share Capital of Rs. 11,50,00,000/- and Paid-up Share Capital of Rs. 11,00,00,000/- and the registered office address at 4A, Pollock Street, 410, Swaika Centre, 4<sup>th</sup> Floor, Kolkata – 700001.
5. **Brief Fact of the Case:**

This Petitioner has supplied various kinds of agrochemical products at the Tea Estates of the Corporate Debtor since March 18, 2015, at an agreed rate and quantities, by maintaining a running and current ledger accounts thereof. From March 18, 2015, to July 05, 2022, the Corporate Debtor has an outstanding due to the Operational Creditor of Rs. **Rs. 1,02,26,032/-**. On 18.10.2022, the Petitioner served a statutory demand notice under Section 8(1) of the I&B, Code, **annexed at Pages 422-450 as Letter “K”**, demanding **Rs. 1,12,99,733/-** only (including interest) and the same was received by the Corporate Debtor on 19.10.2022, but no reply has been issued to the said demand notice.
6. **Submission made by the Ld. Counsel for the Operational Creditor:**
  - 6.1. That, by maintaining the mercantile books of accounts from April 01, 2016, the Petitioner brought forwarded the outstanding dues of Rs. 5,06,975/- in

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- the Financial Year 2016-17. The **Ledger Statement and Invoices for the F.Y. 2015-16 are annexed as Letter “C” at Pages 27-38** to the Petition.
- 6.2.** That, on April 01, 2017, the Petitioner again brought forward the outstanding dues of Rs. 3,96,150/- in the Financial Year 2017-18. The **F.Y. 2016-17 Ledger Statement and Invoices are annexed at Pages 39-61 as Letter “D”** to the Petition.
- 6.3.** That, on April 01, 2018, the Petitioner further brought forward the outstanding dues of Rs. 4,78,898/- in the Financial Year 2018-19. The **F.Y. 2017-18 Ledger Statement and Invoices are annexed at Pages 62-93 as Letter “E”** to the Petition.
- 6.4.** That, on April 01, 2019, the Petitioner again brought forward the outstanding dues of Rs. 15,96,778/- in the Financial Year 2019-20. The **F.Y. 2018-19 Ledger Statement and Invoices are annexed at Pages 94-121 as Letter “F”** to the Petition.
- 6.5.** That, on April 01, 2020, the Petitioner further brought forward the outstanding dues of Rs. 18,92,833/- in the Financial Year 2020-21. The **F.Y. 2019-20 Ledger Statement and Invoices are annexed at Pages 122-217 as Letter “G”** to the Petition.
- 6.6.** That, on April 01, 2021, the Petitioner again brought forward the outstanding dues of Rs. 37,28,183/- in the Financial Year 2021-22. The **F.Y. 2020-21 Ledger Statement and Invoices are annexed at Pages 218-338 as Letter “H”** to the Petition.
- 6.7.** That, on April 01, 2022, the Petitioner further brought forward the outstanding dues of Rs. 93,75,361/- in the Financial Year 2022-23. The **F.Y. 2021-22 Ledger Statement and Invoices are annexed at Pages 339-401 as Letter “I”** to the Petition.
- 6.8.** That, in the said F.Y. 2022-23, the Petitioner again as per the request of the Corporate Debtor supplied the products for an aggregate sum of Rs. 24,70,219/- and thus the actual dues in the F.Y. 2022-23 became Rs.

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1,18,45,580/-, out of that, the CD has paid of Rs. 16,19,548/-, leaving an outstanding sum of **Rs. 1,02,26,032/-** as on July 05, 2022. **The F.Y. 2022-23 Ledger Statement and Invoices are annexed at Pages 402-421 as Letter "J"** to the Petition.

- 6.9. The Ld. Counsel for the OC, has relied upon the working sheet showing the calculation of the amount claimed to be in default, **annexed at Page 455 as Letter "N"** as:

*Letter - 'N' 455*

WORKING SHEET

1.	Principal Amount	1,02,26,032=00
2.	Interest @ 18% p.a from 06.07.2022 to 31.01.2023  Interest Period (06.07.2022 – 31.01.2023)  $\frac{18 \times 1,02,26,032 \times 7 \text{ (months)}}{12 \times 100} = 10,73,733/-$	10,73,733=00
	Total	1,12,99,733=00

I Certify that this is  
a true copy of the original  
*Vijay Kumar*

7. **Ld. Counsel for the CD submits, per contra:**

- 7.1. It is claimed that this instant Petition is not maintainable as the Petitioner has failed to furnish any evidence to substantiate the alleged default and also failed to comply with Section 9(3)(c) of I&B, Code.
- 7.2. Further, it is claimed that the alleged default amount has been made up of stale and time-barred claims pertaining to the Financial Year 2015-16 to 2019-20. The Petition has been registered on 09.03.2023 and thus, any

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claim pertaining to a period of three years prior thereto would be barred by limitation. Thus, the purported opening balance as on April 01, 2020, is shown as **Rs. 18,92,833/-** and this purported claim cannot be maintained being barred by limitation. Further, the products supplied by the OC were substandard and of inferior quality and thus, OC was not entitled to receive the balance claim dues, which was mutually agreed upon by both parties. Thus, there are pre-existing disputes between the OC and CD.

**7.3.** Further, it is alleged that the entire dues claimed for the Financial Year 2020-21 aggregating to **Rs. 37,28,183/-** is *ex facie* barred by law being covered by the period of prohibition under Section 10A of the I&B, Code. Thus, the principal amount claimed by the OC does not under any circumstances satisfy the minimum threshold limit of Rs. One Crore under Section 4 of I&B, Code.

**7.4.** It is further alleged that the instant petition is filed with fraudulent and malicious intent and as a substitute for a debt recovery mechanism which is not permissible in law and hit by the provision of Section 65 of the I&B Code with the maximum penalty to be imposed on the Petitioner.

**8. Analysis and Findings:**

**8.1.** Heard the rival contentions and perused the records placed before us. After bare perusal, we would discern the following:

**8.2.** It is evident that the OC and CD have had a business relationship since 2015 and OC supplies various agrochemical products to the Tea Estate of the CD under a mutual agreement.

**8.3.** It has come to the fore that the outstanding dues of **Rs. 18,92,833/-** in the Financial Year 2020-21 are barred by limitation as the Petition has been filed on 05.03.2023, refiled after clearing defects with the Registry on 08.03.2023 and registered on 09.03.2023, thus, any claim pertaining to a period of three years prior thereto would *ex facie* be barred by limitation.

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8.4. Further, it is evident that the outstanding dues claimed for the Financial Year 2020-21 aggregating to **Rs. 37,28,183/-** is *ex facie* barred by law being covered by the period of prohibition under Section 10A of the I&B, Code. We would refer to Section 10A (inserted by the **Insolvency and Bankruptcy Code (Second Amendment) Act, 2020**) which is reproduced in verbatim as below: -

*“Suspension of initiation of corporate insolvency resolution process.*

*Notwithstanding anything contained in sections 7, 9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:*

*Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.”*

8.5. We would rely upon the decision passed by the **Hon’ble National Company Law Appellate Tribunal** in the case of *Hyline Mediconz Private Limited v. Anandaloke Medical Centre Private Limited* reported in MANU/NL/1163/2022: (2022) ibclaw.in 763 NCLAT, that:

*“27. Section 10A was inserted in the Code to give protection to the Corporate Debtor from initiation of CIRP process with regard to default committed by the Corporate Debtor after 25.03.2020. The object and purpose of insertion of Section 10A was clearly to save the Corporate Debtor on account of ill-consequences which ensued after spread of COVID-19. 25.03.2020 is the date when lockdown was imposed in the entire country. Normal working of all factories as well as establishments were adversely affected by COVID-19, hence, Section 10A was inserted to give protection to the Corporate Debtor to save from initiation of any CIRP against them since the default committed by the Corporate Debtor was mostly due to ill-consequences of COVID-19. The explanation clearly indicates that the provisions of this section shall not apply to any default committed under the sections 7, 9 or 10 after 25th March, 2020. The idea was to give protection to the Corporate Debtor from default which was committed from 25.03.2020 for*

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**period of one year thereafter. We fail to see how explanation to Section 10A comes to any aid in Appellant's case. Section 10A was introduced for entirely different object and purpose and could not be read to give any support to the submissions which have been made by the Appellant in the present case."**

*"28. Another judgment of three member Bench in "Company Appeal (AT) (Ins.) No. 129 of 2022, Saru International Pvt. Ltd. vs. Arumani Traders" is also a case where default was of Rs. 39 Lakhs and application was filed on 10.08.2020. In the above case, the Adjudicating Authority passed an interim order which was challenged in the Appeal before this Tribunal. This Tribunal considered the Notification dated 24.03.2020 and held that application filed on 10.08.2020 under Section 9 for a default of Rs. 39 Lakhs was not maintainable and thus liable to be dismissed. In Para 8 and 9 following has been held':-*

**"8. By Notification dated 24.03.2020, the threshold for entertaining an Application under Section 9 has been raised from Rs. 1 Lakh to Rs. 1 Crore.** *The Notification and the provisions for increasing threshold, shall operate prospectively i.e. after 24.03.2020. In the present case, the Application was filed by the Operational Creditor on 10.08.2020 i.e. subsequent to above Notification raising the threshold. The amount claimed in Section 9 Application only Rs. 39 Lakh hence, it was less than the threshold and Application ought to have been thrown out on this ground. The Adjudicating Authority on 16.02.2021 has noticed the question and has granted time to Petitioner to explain.'*

XXX

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XXX

*"29. Learned counsel for the Appellant has also relied on judgment of Hon'ble Supreme Court in "MANU/SC/0676/2001 : AIR 2001 SC 2984, Anwar Hasan Khan vs. Mohammad Shafi & Ors." where the Hon'ble Supreme Court laid down that "for interpreting a particular provision of an Act, the import and effect of meaning of the words and phrases used in the statute has to be gathered from the text". There can be no dispute to the preposition regarding statutory interpretation laid down in the above case. When we apply principle of statutory interpretation to Section 4, it is clear that Part II is not applicable after 24.03.2020 where default is less than Rupees One Crore. No application for initiation of CIRP can be entertained after 24.03.2020. The judgment of Hon'ble Supreme Court in "Innoventive Industries Limited vs. ICICI Bank and Another,*

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*MANU/SC/1063/2017 : (2018) 1 SCC 407* as well as judgment of Hon'ble Supreme Court in *"Sesh Nath Singh & Anr. vs. Baidyabati Sheoraphuli Cooperative Bank Ltd. & Anr."*, *MANU/SC/0205/2021* has neither any applicability in the facts of the present case nor can give any assistance to the Appellant.'

*"30. Learned counsel for the Appellant relied on the judgment of Hon'ble Supreme Court in "B.K. Educational Services Pvt. Ltd. vs. Parag Gupta & Associates, MANU/SC/1160/2018 : AIR 2018 SC 5601" for preposition that right to sue accrues when a default occurs. There cannot be any dispute to the preposition laid down by the Hon'ble Supreme Court but in the present case question which is to be considered is as to what is the threshold to be fulfilled by an Operational Creditor when an application for initiation of CIRP has been filed. When Section 4 is applied to initiation of CIRP process, threshold should not be looked into when a right to sue accrues rather threshold be looked into on the date of initiation. Default by Corporate Debtor is a condition precedent which gives right to the Operational Creditor to file application under Section 9 but for initiating CIRP process threshold, as prescribed under Section 4, is to be fulfilled by the Operational Creditor on the date of initiation of CIRP process.*

*"31. In view of the foregoing discussion, we are satisfied that no error has been committed by the Adjudicating Authority in rejecting Section 9 application filed by the Appellant on 18.01.2021 which did not fulfil the threshold of Rupees One Crore. We do not find any merit in the Appeal. Appeal is dismissed."*

**(Emphasis Added)**

- 8.6. We would also rely upon the judgment passed by the Hon'ble Apex Court in the case of *Ramesh Kymal v. Siemens Gamesa Renewable Power Pvt. Ltd.*, reported in (2021) 3 SCC 224: MANU/SC/0061/2021 that:

*"26. ... NCLAT has explained the difference between the initiation of the CIRP and its commencement succinctly, when it observed:"*

XXX            XXX            XXX            XXX

*The bar created is retrospective as the cut-off date has been fixed as 25th March, 2020 while the newly inserted Section 10A introduced through the Ordinance has come into effect on 5th June, 2020. The object of the legislation has been to suspend operation of Sections 7, 9 & 10 in respect of defaults arising on or after 25th March, 2020 i.e. the date on which Nationwide lockdown was enforced disrupting normal business operations and impacting the economy globally.*

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**Indeed, the explanation removes the doubt by clarifying that such bar shall not operate in respect of any default committed prior to 25th March, 2020.”**

**(Emphasis Added)**

- 8.7.** In the instant case, it is evident that after deducting all the outstanding dues barred by limitation and Section 10A of the I&B, Code, from the principal amount, even adding the interest thereon, is well below the threshold value of **Rs. One Crore** as per the provision of Section 4 of the I&B, Code to maintain an application under Section 7, 9, 10 of the I&B, Code.
- 9.** Hence, in terms of the view above, this Petition is not maintainable. Thus, we **reject** the prayer and accordingly **dismiss** this Company Petition. Liberty is however granted to the Petitioner to seek other remedies as may be available to it under any other law with regard to recovery of dues, which the CD claims as not payable without adducing any supporting to prove that substandard quality of the materials was supplied by the petitioner.
- 10.** Urgent Certified copy of the Order, if applied for, be supplied to the parties, subject to compliance with all requisite formalities.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

**This order is signed on the 25th Day of September, 2023.**

Bose, R. K. [LRA]