

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**BENGALURU BENCH, BENGALURU**  
**(Exercising powers of Adjudicating Authority under**  
**the Insolvency and Bankruptcy Code, 2016)**  
**(Through Web-based Video Conferencing Platform)**

C.P. (IB) No.205/BB/2020  
U/s 9 of IBC, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**BETWEEN:**

**M/s. Sicagen India Limited**

*(Formerly Industrial Packaging Divn.,  
Beta Industries)*

(CIN: L74900TN2004PLC053467)

*Regd. Office:* 4<sup>th</sup> Floor, SPIC House,  
No.88, Mount Road, Guindy,  
Chennai – 600 032.

*Factory at:*

No.650, Ponneri High Road,  
Gounderpalayam Village,  
S.R. Palayam (Post), Minjur (via),  
Chennai – 600 120.

... Applicant/Operational Creditor

**AND**

**M/s. Tasa Foods Private Limited**

(CIN: U15499KA1999PTC024953)

Rep. by its Managing Director

*Regd. Office & Factory at:*

No.127, 2<sup>nd</sup> Floor, Anchorage Court,  
Brigade Road,  
Bangalore – 560 025.

... Respondent/Corporate Debtor

**Order delivered on: 01<sup>st</sup> February, 2022**

**CORAM:** 1. Hon'ble Shri Ajay Kumar Vatsavayi, Member (Judicial)  
2. Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Applicant : Shri S. Ravi, Adv.

For the Respondent : Shri Gaurav Mandappa, Adv.

**ORDER**

**Per: Ajay Kumar Vatsavayi, Member (J)**

1. The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Sicagen India Limited (hereinafter referred to as 'Operational Creditor/Applicant/Petitioner') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against M/s. Tasa Foods Private Limited (hereinafter referred to as 'Corporate Debtor / Respondent').
2. The Corporate Debtor namely, Tasa Foods Private Limited, is a Company incorporated on 24.03.1999 with CIN: U15499KA1999PTC024953 with its registered office and factory situated at No.127, 2<sup>nd</sup> Floor, Anchorage Court, Brigade Road, Bengaluru-560025. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorised Share Capital of the Respondent Company is Rs.4,00,00,000/- (Rupees Four Crores Only) and its Paid-up Share Capital is Rs.1,66,24,400/- (Rupees One Crore Sixty-Six Lakhs Twenty-Four Thousand Four Hundred Only).
3. The Operational Creditor is represented by its Legal Executive Mr. N. Aravindhraj. The Operational Creditor is registered with the Registrar of Companies vide CIN: L74900TN2004PLC053467 with its registered office at 4<sup>th</sup> Floor, SPIC House, No.88, Mount Road, Guindy, Chennai-600032. The Operational Creditor states that they have established a Manufacturing Unit (Industrial Packaging Division) (formerly Beta Industries a division of Silage India Ltd., factory at No.650, Ponneri High Road, Chennai-600120, with an installed capacity of manufacturing 167000 drums per annum.
4. During the course of business, the Corporate Debtor approached to purchase up to 20,000 Nos. of open Top Type MS Drums with GI Lever Type Lock Ring Top and Bottom made out of 1.00mm thickness CRCA coil and shell (body) made out of 0.8mm thickness CRCA Coil Colour – Oxford

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blue / internal White Lock Ring from the Operational Creditor as per the requirement and specifications given by Corporate Debtor vide verbal orders.

5. The Operational Creditor promptly supplied the materials as per the requirement and specifications given by Corporate Debtor and raised the Tax Invoices along with Lorry Receipts, after receipt of materials issued by Goods Receipts Notes with duly signed. As per the terms of invoices, the credit period for making the payment is after 90 days from the date of delivery. As per the invoices mentioned payment period was 100 days and subsequently the 90 days credit period was agreed by Corporate Debtor to pay the invoice amount to the Operational Creditor within the due date. If the Corporate Debtor fails to make the payment within the due date, then interest @ 25% per annum shall be charged on the amount due computed from the due date till the date of payments.
6. Despite the said terms, the Corporate Debtor was in a habit of paying the invoice amounts with huge delay. The Operational Creditor raised a total of 82 invoices against the Corporate Debtor during the course of business for the value of material supplied and the same have been promptly served on the Corporate Debtor. The total value of Invoices is for Rs.1,20,76,611/- out of which, the Corporate Debtor paid an amount of Rs.73,93,203/- on various dates from August 2012 to June 2017 and the balance amount of Rs.46,83,408/- is still pending. It is stated that the last payment was made on 08.06.2017. When the Operational Creditor demanded for payment of balance amount, the Corporate Debtor requested for some more time to pay the same, but had never paid a single rupee to the Operational Creditor, and thus stated that all its efforts to recover the admitted debt amount had gone in vain.
7. The Operational Creditor vide its letter dated 14.12.2017 had accepted a proposal for one time full and final settlement of Rs.20,00,000/- towards the total outstanding and overdue amount of Rs.46,83,408/- after mutual discussion with the Corporate Debtor, subject to the condition that this

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amount should be paid by the Corporate Debtor on or before 26.12.2017. But the Corporate Debtor did not make any payment. Therefore, the Operational Creditor sent the statutory Demand Notices dated 04.11.2019 under Rule 5 to the Corporate Debtor. Upon receipt of the said notices, the Corporate Debtor sent a mail dated 26.12.2019 referring the earlier proposal for one time settlement and agreed to execute a settlement deed. When the draft settlement deed was sent to the Corporate Debtor, it was confirmed by them for execution, however it was neither executed nor settled the dues. Even after the expiry of 10 days from the date of receipt of statutory Demand Notice, the Corporate Debtor failed to make payment and no notice of dispute has been received by Operational Creditor. As per the Demand Notice issued u/s 8 of the Code, the Corporate Debtor is liable to pay a Principal amount of Rs.46,83,408/- (90 days credit period was granted to the Debtor) and an interest amount of Rs.91,35,656/- (from original due date as on 09.10.2011), totalling to Rs.1,38,19,064/-. Hence, this Application.

8. The Respondent, while opposing the Company Petition, has filed its statement of objections dated 03.02.2021, by *inter alia* contending as under:

(a) There are two separate entities which were doing business transactions with M/s. Beta Industries, viz., M/s. Tasa Foods Private Limited, the Respondent herein, and the other being RMM Food Products. Both the said entities used to place separate purchase orders on Beta Industries for the supply of barrels. M/s. Beta Industries used to raise separate invoices on these two entities. While the Respondent herein is a Company registered under the Companies Act, 1956, M/s. RMM Food Products is a Partnership Firm, and both share the same address.

(b) In Part-IV of the Application, the Applicant stated that he had raised 82 invoices on the Respondent and thus liable to pay a sum of Rs.1,20,76,611/-. It is stated that the said invoices were raised by M/s. Beta Industries on the Respondent and the Respondent has

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cleared the entire amount due to Beta Industries by making payments during the period from 24.03.2011 to 25.08.2014. Certificate of Payments from Canara Bank, which are placed on record as Annexure III, IV, V respectively, demonstrate that the entire sale consideration has been paid by the Respondent to M/s. Beta Industries and there is no amount due from the Respondent to M/s. Beta Industries and that the transactions in question were between M/s. Beta Industries and the Respondent. It is claimed that M/s. Beta Industries is a Division of the Applicant.

- (c) The Respondent is a Company engaged in the business of exporting processed food products such as mango pulp, guava pulp, etc. These items are placed in 215 Kg aseptic bags which are in turn placed inside MS barrels / drums for the purpose of export. In order to procure the said drums, the Respondent approached M/s. Beta Industries. In this regard, an order was placed and the Applicant supplied 10,401 MS Drums for a total sale consideration of Rs.1,20,76,611/- for the period 04.05.2011 to 18.08.2011.
- (d) It is contended that the Respondent has consistently faced issues of poor quality in relation to the said MS Barrels and when the same were raised by the Respondent, the representatives of Beta Industries assured that it won't be repeated in future and that any such goods that were not up to the quality required and which resulted in damage to the products of the Respondent would be adjusted as against future supplies over the business relationship between the parties.
- (e) Further, the business arrangement between M/s. Beta Industries and the Respondent was one wherein payment for the supply of goods were made on account, as opposed to payments being made against any specific or individual invoice. The complete payment for the supply of said 10,401 drums was completed way back in 2014 itself and thus the transaction as between the parties has come to an end, with all outstanding payments having been made and

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accepted by both the parties. Thus, there exists no operational debt, as the last payment which settled the account for the transaction under dispute was completed on 25.08.2014.

9. The Petitioner vide its rejoinder dated 28.02.2021 has *inter alia* stated that the Applicant supplied goods to RMM Food Products & Respondent during the year 2010-11 and 2011-12 with separate invoices and payments were made by both RMM Food Products and Respondent. The Respondent did not issue any invoice number details of their payments made to the Applicant and hence it adopted First-in First-out Method and accounted the receipt of payment from the Respondent and its Group. Payments were made by RMM Food Products and Respondent to the Applicant interchangeably for their dues. Even in the bank statement filed by the Respondent, payment of Rs.9,00,000/- dated 24.03.2011 are dues of RMM Food Products and on the day of payment, no materials were supplied to the Respondent. Similarly, payment of Rs.5,00,000/- dated 07.06.2011 also not the dues of the Respondent as their due started in the month of August 2011. The Applicant issued all the invoices in the name of Beta Industries (A division of Sicagen India Ltd.) to the Respondent. The Applicant received last payment from Respondent on 08.06.2017 and thus not barred by limitation.
10. The Petitioner vide its written arguments dated 17.12.2021 has further stated that the Petitioner delivered the materials as per the schedule period of 04.05.2011 to 11.07.2011 and issued tax invoices from Beta Industries to the Respondent with a total value of Rs.1,20,76,611/-. The Respondent never raised any delay supplies and quality issues. The Petitioner has given acceptance letter on 14.12.2017 to the Respondent willing to accept one time settlement of Rs.20 lakhs against the total due. However, the Respondent did not take steps to settle the amount, and there was no commitment from Respondent side from December 2017 to October 2019. Upon its failure, the Petitioner issued demand notice on 04.11.2019. If there are no outstanding dues payable to the Petitioner, the Respondent should have objected within 10 days after receipt of the demand notice

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under Section 8 of IBC, 2016. The Respondent never sent any objection, but came forward for one time settlement. After filing the Petition, the Respondent is now trying to prove that there are no outstanding dues payable to the Petitioner and avoiding to pay the legitimate claim of the Petitioner by submitting a bank certificate with selective payment details matching nearly the total amount payable to the Petitioner.

**11.** The Respondent vide its written arguments dated 22.12.2021 has *inter alia* submitted that in order to further substantiate the payment of total sale consideration, the Respondent vide Memo dated 24.02.2021 *inter alia* placed on record the consolidated ledger account for Beta Industries as maintained by the Respondent for the period 01.03.2011 to 31.03.2015. The said ledger account captures the entire record of the sale transactions between the parties, including all 82 invoices raised, with reference to the specific invoice numbers along with details of the on-account payments made by the Respondent. The first payment being an advance of Rs.90,00,000/- was made on 24.03.2011 and the last payment was made on 25.08.2014. Therefore, the Respondent has cleared all its dues towards the Applicant and that the Applicant has manipulatively merged / combined the transactions between itself and two separate entities i.e., Tasa Foods Pvt. Ltd. (Respondent herein) and RMM Food Products. It was only *vide* its Rejoinder, that the Applicant revealed the fact that it had business transactions with two separate entities. The Respondent submits that these two entities are separate legal entities and are in no way related to one another.

**12.** The Respondent further contended that both Tasa Foods and RMM Food Products purchased products from the Applicant via separate purchase orders, separate invoices and also made payments to the Applicant from their respective bank accounts, standing in their respective names. The Applicant has failed to demonstrate the interconnectedness of the two entities in any way. Whenever a payment was made by Tasa Foods, from its bank accounts and under its name, in the absence of any explicit and specific instructions to the contrary, the Applicant could not have made

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any such appropriation of payments, as claimed. In the instant case, the Applicant has randomly and arbitrarily adjusted the payments made by Tasa Foods towards the debt due from RMM Food Products. Further, during settlement talks in the year 2017, the representative of the Respondent, Mr. Raja Reddy, who is also a representative of M/s. RMM Food Products was under the bona fide impression that the negotiation was in respect of the amount allegedly due from RMM Food Products and not from the Respondent. It was because of this fact that the Respondent did not raise any dispute at an earlier stage. The conduct of the Applicant proves that the Applicant's intention is to use these proceedings as recovery proceedings and also it failed to show that the Respondent is insolvent and thus the petition is liable to be dismissed.

13. Heard Shri S. Ravi, learned Counsel for the Applicant and Shri Gaurav Mandappa, learned Counsel for the Respondent and carefully perused the pleadings on record.
14. It is the specific case of the Petitioner that it has supplied materials to the Respondent for a total value of Rs.1,20,76,611/- and out of which the Respondent paid only Rs.73,93,203/- till 08.06.2017 and since the Respondent failed to repay the balance amount, the Corporate Insolvency Resolution Process proceedings are liable to be initiated against the Respondent. On the other hand, it is the specific case of the Respondent that it has paid the entire value of Rs.1,20,76,611/- to the Petitioner and hence there is nothing to pay further.
15. It is seen from the record that the Respondent has paid the entire cost of the supplies made by the Petitioner. The Petitioner while not denying the same, however submits that, out of the total amount of Rs.1,20,76,611/-, it has adjusted only Rs.73,93,203/- towards the liability of the Respondent and whereas the balance amount was adjusted against the liabilities of a Partnership Firm by name, M/s. RMM Food Products, in which Mr. R.M. Shadab Hussain who is the Director of the Respondent / Corporate Debtor is also a Partner and it was done as per the understanding between the

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parties at the appropriate time. Once the Respondent is able to prove with the support of the Bank Statements and other record that the value of the supplies made by the Petitioner were paid back, we find no merit in the contention of the Petitioner. The Petitioner failed to substantiate its contention with regard to any understanding between the parties that it can adjust certain amount out of the payments made by the Respondent towards the payments required to be made by another legal entity which is a Firm by the name, M/s. RMM Food Products. This Adjudicating Authority, in a summary procedure like the CIRP under the IBC, 2016 cannot conduct a trial into these disputed issues.

- 16.** In the circumstances and for the aforesaid reasons, we do not find any merit in the instant Company Petition and accordingly, the same is dismissed.

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**(MANOJ KUMAR DUBEY)  
MEMBER (TECHNICAL)**

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**(AJAY KUMAR VATSAVAYI)  
MEMBER (JUDICIAL)**

Krishna