



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

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

**SHRI RAGHU NAYYAR,**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 302/9/JPR/2019**

(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:**

**BAKELITE HYLAM LTD.**

...Operational Creditor

**Versus**

**POLAR MARMO AGGLOMERATES LTD.**

...Corporate Debtor

**MEMO OF PARTIES**

**Bakelite Hylam Ltd.**

CIN: U74999TG2007PLC056062

“Surya Towers”, 3<sup>rd</sup> Floor,

C-104, S.P. Road, Secunderabad- 500003 (Telangana)

...Applicant/ Operational Creditor

**VERSUS**

**Polar Marmo Agglomerates Ltd.**

CIN: L14102RJ1987PLC007839

SP 1-3, Industrial Area, Pratap Nagar,

Udaipur- 313001 (Rajasthan)

... Respondent / Corporate Debtor



**For the Operational Creditor :** Sandeep Kumar Jain, PCS  
**For the Corporate Debtor :** Prateek Kedawat, Adv.

**Order Pronounced On:23.06.2022**

**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') of M/s Bakelite Hylam Limited ('Applicant'/ 'Operational Creditor'), claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s Polar Marmo Agglomerates Limited ('Respondent' / 'Corporate Debtor').

2. The Applicant has its registered office at Surya Towers, 3<sup>rd</sup> Floor, C Block, 104, S P Road, Secunderabad – 500003 (Telangana); and is involved in the trading of resins and related materials. The application has been filed in Form 5 as prescribed in Rule 6(1) of (Application to Adjudicating Authority) Rules, 2016.

3. The Respondent is a public limited Company incorporated under the Companies Act, 1956 on 1960, duly registered with the Registrar of Companies, Jaipur, bearing CIN: L14102RJ1987PLC007839. The Registered Office of the Respondent is at SP 1-3, Industrial Area, Pratap Nagar, Udaipur – 313001 (Rajasthan). The company's authorised share capital is Rs. 15,00,00,000/- (Rupees Fifteen Crore Only), and the paid-up share capital is Rs. 11,76,18,012/- (Rupees Eleven Crore Seventy-Six Lakhs Eighteen Thousand Twelve Only).



4. The facts of the case, briefly, as stated in the application, show that the Applicant has been conducting business with the Respondent from time to time, wherein the Respondent approached the Applicant for the supply of resins worth Rs. 6,36,678/- (Rupees Six Lakhs Thirty-Six Thousand Six Hundred Seventy-Eight Only). In turn, the Applicant raised and issued invoices dated 14.07.1994 to 01.09.1994 (a total of four invoices) in favour of the Respondent against the orders placed.

5. The Applicant submitted a sum of Rs. 6,07,459/- (Rupees Six Lakhs Seven Thousand Four Hundred Fifty-Nine Only) from the Respondent out of the aforementioned invoices remains unpaid. The last payment received from the Respondent was of amount Rs. 29,249/- (Rupees Twenty-Nine Thousand Two Hundred Forty-Nine Only). Thereafter, the Respondent has failed to make the balance payment for the other invoices amounting to total debt (including the interest till 31.10.2019) of Rs. 32,45,816/-. The Applicant further submitted that for recovery of the amount, a suit was filed against the Corporate Debtor in the Court of the Additional Judge, City Civil Court, Hyderabad, as O.S. No. 260 of 1996.

6. However, the Corporate Debtor suspended all its operations in August 1995 and made a reference to the Board of Industrial and Financial Reconstruction ('BIFR') under the provisions of the Sick Industrial Companies Act, 1985 ('SICA') based on its Balance Sheet for the Financial Year 1993-94 and the same was registered as Case No. 119/98. Under the provisions of SICA, all legal proceedings were barred. Hence, the civil suit filed against the Corporate Debtor CP No. (IB)-302/9/JPR/2019



could not be continued.

7. During the proceedings before BIFR claim of the Operational Creditor of Rs. 6.80 Lakhs, including interest up to that time, was duly acknowledged. The same is reproduced below for ease of reference:

*'2.4 The representative of Bakelite Hylam Ltd stated that they are unsecured creditor of the company and the total outstanding due against the company amounts to Rs. 6.80 Lakhs. The ld consultant representing the company stated that the dues of Bakelite Hylam Ltd are already provided in the DRS.'*

8. The Applicant further submits that excluding the aforesaid part-payments made by the Respondent, a sum of Rs. 32,45,816 /- including interest @ 17.25% per annum is charged on outstanding invoices. The Corporate Debtor *vide* its Letter dated 03.06.1994 has agreed to pay interest at 17.25% p.a. Copy of the Letter is annexed at Annexure C of the Application.

9. The Applicant issued and served a Demand Notice dated 02.11.2019 to the Respondent under Section 8 of the Code as per Form 3 as prescribed under Rule 5 of the Rules at its registered office, demanding a sum of Rs. 32,45,816/- along with interest @ 17.25% per annum on the invoices. The Respondent neither paid the outstanding debt nor raised a dispute regarding the outstanding debt till the filing of the present petition. The demand notice was accompanied by computation of interest, details of invoices, and relevant dates of default. Copy of Demand Notice dated 02.11.2019 and postal receipt sent to the Respondent are annexed at Annexures D and F of the Application, respectively.



10. The Applicant has filed a Statement of Bank Account maintained with State Bank of India from 02.11.2019 to 14.11.2019 at Annexure G of the Application. It is stated that there is no repayment of the unpaid operational debt by the Respondent.

11. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs.32,45,816/- (Rupees Thirty-Two Lakhs Forty-Five Thousand Eight Hundred and Sixteen Only), as an outstanding amount, as reflected in Part IV of the Form - 5 filed with the application.

#### 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 Rs.32,45,816/- (Rupees Thirty-Two Lakhs Forty-Five Thousand Eight Hundred and Sixteen Only), as of 31.10.2019, along with interest @17.25% per annum (Rs. 26,38,357/-) on the Invoices.
<b>Amount claimed to be in default and the date on which the default occurred</b>	Total debt due is Rs.32,45,816/- (Rupees Six Lakhs Forty-Five Thousand Eight Hundred and Eighty-Six Only).

12. Notices were issued in the aforesaid application, and the Respondent filed a reply *vide* Diary No. 1734/2021 dated 01.09.2021. It has been submitted that the application is barred by limitations and laches. The invoices relied on by the Applicant are not legible and are in dilapidated condition. The amount and CP No. (IB)-302/9/JPR/2019



quantity of such raised invoices create doubt regarding their truthfulness.

13. It has been further submitted that the petition is not maintainable as the alleged transactions are disputed. There is a serious dispute between Applicant and Non-Applicant regarding the quality of goods/fabrics. The Respondent *vide* Letter dated 24.08.2017 ('Response Letter') has replied to the Letter of the Operational Creditor dated 19.05.2017 for settlement of dues. In the Response Letter, the Respondent denied any pending payable dues or any agreement to pay Rs. 26,83,878/- in the BIFR hearing dated 22.11.2012.

14. Consequently, the interest was calculated at 17.25% p.a., amounting to Rs. 19,97,240/- does not arise as there exists no liability of the Respondent. The Copy of the Response Letter dated 24.08.2017 is annexed as Annexure – R1. Therefore, the Applicant does not fall within the ambit of the definition of Operational Creditor under Section 5(21) of the Code, as it only enables a person who has provided goods or rendered services under a transaction to another person and upon such completion, the corporate debtor has defaulted in relation to the payment arising under such transaction.

15. Further, in the application itself, the Operational Creditor has mentioned a pending civil suit between the parties, and the Applicant did not pursue the civil case in which it could be established that the goods had been supplied. Additionally, the goods for which the application has been filed were not delivered to the premises of the Respondent. Moreover, the Applicant has placed a record summary record of 'BIFR' proceeding in Case No. 199/98 of the hearing held on 22.11.2012. In the 'BIFR' proceeding, it was stated *'that the dues of the* CP No. (IB)-302/9/JPR/2019



*Bakelite Hylam are already provided in the DRS*'. Thus, it has neither placed the final conclusion of the said proceeding nor has placed the complete record or any submission made of the Corporate Debtor.

16. The Applicant thereby filed a rejoinder *vide* Diary No. 2057/2021 dated 07.10.2021 and denied the abovesaid allegations. It has been stated that the inability of the Corporate Debtor to pay the acknowledged dues with agreed interests amounts to default. Further, a reference to audited financial statements indicates that the Corporate Debtor is unable to its liability. Extracts of the Financial statement are annexed as Annexure 1 of the rejoinder. The Balance Sheet as of 31.03.2020 shows a total liability of Rs. 34.56 Crores against total assets of Rs. 2.08 Crores; Profit & Loss Statement has no 'revenue from operations' from April 2016 to March 2020.

17. In addition, the promoter's shareholding is only 33.9%, and the balance of 66.1% shareholding is public funds, namely individual shareholders (46.5%), Body Corporates (9.4%), Mutual funds/ UTI (8.4%) and Financial Institutions/ Banks (1.6%). Therefore, the above financials and the state of the company warrant necessary appropriate actions to prevent further damage to the company and the resultant loss to the creditors and public shareholders, including mutual funds, banks and others.

18. The Applicant, on the matter of limitation, has further submitted that the Corporate Debtor was before BIFR under SICA, 1985 from 18.09.1998 till the repeal of the Act of 1985. As per Section 22(1) of SICA, the Corporate Debtor enjoyed protection/bar on legal proceedings from the time of reference till CP No. (IB)-302/9/JPR/2019



01.12.2016, *i.e.* the date of abatement of the BIFR reference. A scheme which was sanctioned on 24.11.1999 was not approved and thereafter, no viable scheme could be approved. It is observed that only after the removal of the bar on the legal proceedings from December 01<sup>st</sup>, 2016 would the limitation commence, based on the acknowledgement of the debt before the BIFR as recorded in the hearing on 22.11.2012. The application was filed on 13.11.2019 within the period of limitation from 01.12.2016; therefore, the present application is not barred by limitation as per Article 137 of the Limitation Act, 1963. The Applicant has submitted an affidavit under Section 9(3)(b) of the Code in the application.

19. The Hon'ble NCLAT in *Gauri Prasad Goenka, Ex-Chairman of NCR Limited Vs. Punjab National Bank and Anr (2019 SCC Online NCLAT 1137)* have observed that as per Section 22(5) of SICA, the legal proceedings attracted to the case of a Sick Industrial Unit are suspended. Section 22(5) states that *in computing the period of limitation for the enforcement of any right, privilege, obligation or liability, the period during which it or the remedy for the enforcement thereof remains suspended under this section shall be excluded*. Therefore, the remedy for the enforcement of the right by the Creditor to recover the outstanding debt from the Debtor through the medium of a suit for recovery of money remains suspended for the period during the pendency of inquiry under Section 16,17 or appeal under Section 25 of SICA.

20. Admittedly, in the instant case, the Corporate Debtor was referred to SICA on 18.09.1998. While SICA came to be repealed, Section 7 of the Code was enforced w.e.f. from 01.12.2016. It is, therefore, clear that on account of the CP No. (IB)-302/9/JPR/2019



statutory bar, the period commencing from 18.09.1998 to 01.12.2016 stands excluded under the aforesaid provisions rendering the Financial Creditors ineligible to file for recovery of outstanding debt or take any other appropriate remedy in law through the ordinary mode, *i.e.* by way of filing of the suit. Therefore, for the purpose of limitation, such period has to be excluded, and the petition has been filed well within limitation.

21. The provision of interest at 17.25% was confirmed by Fax dated 03.06.1994 by the Corporate Debtor, and in the absence of a sanctioned scheme, no waivers of principal or interest applicable on the acknowledged dues. Further, the civil suit not be pursued given the declaration of the Corporate Debtor as a sick industrial company under SICA, as recorded in the SOP of 22.11.2012 read with the provisions during Section 22 of SICA, 1985.

22. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this application. The matter is within the purview of the Law of Limitation as the period of limitation, which was suspended, resumed on 01.12.2016, and the application was filed on 13.11.2019.

23. The first issue for consideration is whether the demand notice in Form No.3 dated 02.11.2019 was served upon the Respondent. The demand notice was sent via a registered post on 07.11.2019 to the corporate debtor and its directors. The postal receipt is attached to Annexure F of the Application.

24. The next issue for consideration is whether the Respondent disputed the CP No. (IB)-302/9/JPR/2019



operational debt. The Respondent Corporate Debtor has filed a reply and argued that they never received the supply of the goods. However, they have not submitted any authentic communication to substantiate the same. Thus, as per documents placed on record with the adjudicating authority, there is no dispute as to the outstanding liability of the Respondent Corporate Debtor towards the Applicant Operational Creditor.

25. We have gone through the contents of the application filed in Form No.5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs.32,45,816/- (Rupees Thirty-Two Lakhs Forty-Five Thousand Eight Hundred and Sixteen Only), including the interest @ 17.25% per annum. It is observed that the Operational Creditor has issued various invoices (Annexure E) for goods supplied to the Respondent Corporate Debtor. Applicant Operational Creditor has given demand notice in Form-3 dated 02.11.2019, duly served on the Respondent Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the demand notice in Form No.3, and no pre-existing dispute is proved.

26. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.

27. Under sub-section (4) of Section 9 of the Code, the Operational Creditor proposed that Mr. Hari Babu Sharma name be appointed Interim Resolution CP No. (IB)-302/9/JPR/2019



Professional ('IRP'), bearing Registration No. IBBI/IPA-002/IP-N00767/2019-20/12477 addressed C-131, Kardhani Scheme, Kalwad Road, Jaipur – 302012 as the RP in the present matter. The Operational Creditor is directed to provide RP's email address along with his phone number to the Registry within ten days from the date of this order, and the Operational Creditor shall ensure that the same complied within the prescribed time.

28. In this matter, the Resolution Professional appointed herein, Mr. Hari Babu Sharma, shall exercise all the powers enumerated under the Code read with Rules made thereunder. He is directed to make recommendations with reasons in writing for acceptance or rejection of this application within the stipulated time as envisaged under the Code. The Resolution Professional shall provide a copy of the report to the Corporate Debtor as soon as filed before this Adjudicating Authority. The Applicant shall provide a copy of the application, if not provided already, along with this order to IBBI for its records.

29. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

30. Consequences of commencement of CIRP shall be inter-alia as follows:

- (i) The IRP appointed by the Adjudicating Authority, Mr. Hari Babu Sharma, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including the issue of a publication in widely circulated



Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

- (ii) Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
- (iii) The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within five days from the date of this order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- (iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant,



Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

31. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the application and documents on the Resolution Professional by all modes for information.
32. The Registry is directed immediately to send a soft copy of the instant application along with this order to the RP nominated herein on his e- mail id.
33. Accordingly, CP No. (IB)- 302/9/JPR/2019 is admitted.

**DEEP  
CHANDRA  
JOSHI** Digitally signed  
by DEEP  
CHANDRA JOSHI  
Date: 2022.06.23  
18:16:57 +05'30'

**Deep Chandra Joshi**  
**Judicial Member**

**RAGHU  
NAYYAR** Digitally signed by  
RAGHU NAYYAR  
Date: 2022.06.23  
18:25:17 +05'30'

**Raghu Nayyar**  
**Technical Member**