



IN THE NATIONAL COMPANY LAW TRIBUNAL, AHMEDABAD
COURT - 2

ITEM No.5
CP(IB)/14(AHM)2022

Proceedings under Section 9 IBC

IN THE MATTER OF:

Cima Paper S P A
V/s
Palak Paper Mill LLP

.....Applicant

.....Respondent

Order delivered on 17/05/2023

Coram:

Mr. Deep Chandra Joshi, Hon'ble Member(J)
Mr. Ajai Das Mehrotra, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-SD-

-SD-

**AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

**DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)**



**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
(COURT NO. II)**

CP(IB)/14/2022

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

In the matter of:

Cima Paper S.P.A

**...Applicant/
Operational Creditor**

Versus

Palak Paper Mill LLP

**...Respondent/
Corporate Debtor**

Order Pronounced on: 17/05/2023

Coram:

**DEEP CHANDRA JOSHI,
HON'BLE MEMBER (JUDICIAL)
AJAI DAS MEHROTRA,
HON'BLE MEMBER (TECHNICAL)**



MEMO OF PARTIES

Cima Paper S.P.A

Registered Office at:
VIA ROMA 6, LECCO,
ITALY 23900.

**...Applicant/
Operational Creditor**

Versus

Palak Paper Mill LLP

Registered Office at:
LLPIN: AAK-8437
Survey No. 11P2/P1 & 11P2/P2,
Gorkhijadiya, Near Navlakhi Railway Crossing,
Taluka, Morbi,
Gujarat- 363641, India.

**...Respondent/
Corporate Debtor**

Present:

For the Applicant: Mr. Yuvraj Thakore, Adv.
For the Respondent: Mr. Sunil Bhavsar, Adv.

ORDER

1. The instant company application is filed by M/s. Cima Paper S.P.A (for brevity 'Applicant') through Mr. Giacomo Cima authorized through Board resolution dated 14.12.2020 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,



2016 against Palak Paper Mill LLP (for brevity 'Corporate Debtor').

2. The Applicant is a company incorporated under the laws of Italy and is having registration number: LC-304224, registered office located at VIA ROMA 6, LECCO, Italy 23900. The applicant is engaged in the business to supply wastepaper to the respondent on the order placed by the respondent from time to time.
3. The Corporate Debtor is an LLP, incorporated under the provisions of the Limited Liability Partnership Act, 2008 on 12.10.2017, duly registered with Registrar of Companies, Gujarat with LLPIN: AAK-8437, and its registered office is located at Survey No. 11P2/P1, Opp. Amreli Village Road, Near Navlakhi Railway Crossing, Gorkhijadiya, Taluka, Morbi, Gujarat- 363641, India. The total obligation of Contribution is Rs. 6,00,00,000.
4. The applicant submitted that the Corporate Debtor through their agent approached the Operational Creditor in the year 2019 and placed various purchase orders for the supply of waste papers from the applicant. As per the Contract terms the applicant was to supply the said goods till the Mundra port and the liability of the applicant would get discharged once the goods reached the port.
5. It is submitted by the applicant that the applicant supplied the quantities demanded by the corporate debtor and raised various invoices in respect of the same. The following is the list of invoices issued by the applicant:



Invoice	B/L No.	Invoice
190000060/E	8015106860	\$40323.08
190000051/E	8015106350	\$13479.18
	8015106300	\$34850.00
190000054/E	8015106450	\$26500.50
190000050/E	764900001845	\$13546.65
		\$1,28,699.41
	Which is equivalent (USD to INR Rs. 69.50)	Rs. 89,44,608.99.

6. The applicant further submits that as per the terms of payment, as agreed upon between the parties, the interest of 12% per annum would be levied every week for accounts unpaid after delivery.
7. It is submitted by the applicant that the corporate debtor has not raised any dispute or demur with respect to the quality of goods supplied to them by the applicant and that the applicant performed its part of the contract and supplied the goods to the agreed destination i.e., Mundra Port.
8. The applicant submitted that the corporate debtor has assured and agreed to make payments and clear the invoices as per the terms and conditions contained in the respective purchase orders, from time to time. It was assured that all the payments will be made in a timely manner. However, the corporate debtor has miserably failed to clear these admitted and undisputed amounts.
9. The applicant annexed the copy of the e-mail correspondence between the applicant and the corporate debtor with the Application.
10. It is submitted by the applicant that as the corporate debtor had not made



payment to the applicant, the applicant intimated to the corporate debtor about the outstanding due amount of Rs. 1,05,54,638.61/-(including interest) and also called upon them to make the payment.

11. The applicant submitted that on failure of payment by the corporate debtor, the applicant issued the demand notice on 31.12.2020, 02.01.2021, and 31.08.2021 as per section 8 of the IB Code, 2016 against the corporate debtor for the amount of Rs. 1,05,54,638.61/-(One Crore Five Lakhs Fifty-Four Thousand Six Hundred and Thirty-Eight Rupees and Sixty-One Paisa)[Principal Amount of Rs. 89,44,608.99 + Interest Amount of Rs. 16,10,029.62/-] and the corporate debtor has till date not replied to the said demand notice. A copy of the demand notice dated 31.12.2020, 02.01.2021, e-mailed dated 31.08.2021 and a copy of the postal receipt are annexed with the application.

12. The applicant further submitted that no notice has been served upon them by the corporate debtor indicating existence of any dispute with respect to the amount outstanding to the applicant.

13. The Respondent corporate debtor filed its reply on 03.06.2022, through Mr. Sandip Kanjibhai Jagodara, authorized by the Board of Directors in the meeting held on 01.04.2022 and stated as follows-

- a. The corporate debtor denied all the allegations, averments, and statements made in the application by the applicant.



- b. That various pre-existing issues are involved and the same are still pending and on the ground of threshold limit the present Application is required to be dismissed.
- c. That the applicant has issued three demand notices at various times without withdrawing the earlier notices and initiated the present application, which is illegal, and arbitrary and no demand notice was served to the corporate debtor by the applicant.
- d. That the demand notices dated 31.12.2020 and 01.01.2021 are concerned, the said alleged notices were never served to the corporate debtor. The applicant miserably failed in placing the original postal receipts and respective track records before the court. As such no proof of dispatch and service evidence has been placed by the applicant for these various demand notices. A demand notice was issued on 31.08.2021, which was sent by way of an e-mail through the advocate of the applicant. Further, track reports are annexed on page no. 97 and 99 of the application, these track reports do not contain the emblem of India and do not contain the logo of India Post or date and time, etc.

The reason to doubt the service of the Demand Notice is that the consignment number on page no. 98 of the application is given as EG116051277IN and its relevant track report is placed on page no. 99



of the application, which does not indicate whether the consignment is delivered or not, however, if this Hon'ble Tribunal may kindly peruse the enclosed track report for the same consignment, which is downloaded by the Respondent, from the official website of the India Post, i.e., www.indiapost.gov.in, as Annexure-R1 indicates the consignment booked from Fateganj, Vadodara, Gujarat on 10.12.2021 and delivered to Vizianagaram, somewhere near the Visakhapatnam in South India. Hence, there is a huge contradiction between the Track Report placed on record on Page No. 99 by the Applicant and the Track Report placed by the Respondent along with the present affidavit in reply at Annexure-R1.

- e. That the application is required to be accompanied by a valid and enforceable affidavit, not enclosed, and appropriate court stamp and fees are also not enclosed with the application. The affidavit enclosed on page no. 109 and the apostille on page no. 110 is in some other language, other than English language. The applicant miserably failed in placing the translated version of these documents which is vital. The affidavit of the application is without any identification of the deponent, meaning thereby, there is no endorsement by the notary or no signature and stamp of “Witnessed by”.
- f. The applicant miserably failed in producing an extract of the Directors Resolution in the entire application. the extract of the resolution was



not even before the notary public who had executed and affirmed the alleged affidavit, the said alleged affidavit does not bear a company seal. The said affidavit also does not bear any endorsement of the Consular Section of the High Commission of India, Italy nor does it bear any endorsement of the Ministry of Foreign Affairs, Italy. the said alleged affidavit also does not bear any endorsement of the Italy Academy of Law authenticating the deponent or to the said alleged affidavit. Mr. Giacomo Cima, the Deponent has not been identified by the Notary Public, Olgiate Molgora, Italy. Without the executor of this alleged Affidavit being identified by the Notary public, the Notary Public has authenticated the alleged affidavit, which is not permissible under the law. A purported affidavit was affirmed and executed on 15.10.2021 at Olgiate Molgora, Italy by the Notary Public, Italy, however, it does not appear from this purported affidavit that the Notary Public, Olgiate Molgora, Italy, has identified Mr. Giacomo Cima, the Deponent. The present application is without any authentication and an affidavit.

- g. That the present application filed by the applicant is without any authority.
- h. That the application is not in the format as required as per rule 20(1) and, rule 23(1) of the NCLT Rules, 2016. No authorized representative certified document is annexed with the application



which is required as per rule 23(2) of NCLT Rules, 2016.

- i. That no resolution has been passed nor any such resolution placed on record accompanying the section 9 application passed under the seal of the applicant company or its directors.
- j. That the application is barred by the limitation.
- k. That the claim of Rs. 1,05,54,638.61/- is absurd and fabricated. Claim of Rs. 89,44,608.99/- is below the threshold limit u/s 4 of IBC. Regarding the interest amount calculated by the applicant, of Rs. 16,10,029.62/-, no such alleged invoice or the alleged indent having any such interest clause is placed on record. The applicant failed in placing evidence of the computation about such alleged interest charged and failed to place on record calculations to show how an amount of Rs. 16,10,029.62/- is derived and at what rate of interest.
- l. That the applicant failed to place a single piece of evidence that proves that the corporate debtor has received the delivery of the alleged good i.e., water paper from the applicant.
- m. No purchase order was ever placed on the applicant by the corporate debtor. No contract was signed by and between the applicant and corporate debtor, and no question arises for any terms and conditions to be abided by the corporate debtor.
- n. That the applicant has played a huge fraud upon the corporate debtor,



the reason being if the alleged Indent at Page No. 0019 of the Application of the Applicant, the said indent was addressed to Mr. Akash Patel of Respondent bearing the date of Indent of OCC as 01/FEBRUARY/2019, PO NO. 596 and the same were signed by one Mr. Sanjay under the seal of Spona International Pvt. Ltd. in a capacity of a Director. Further, submit that the corporate debtor has never signed and acknowledged the said Indent dated 01.02.2019. The fact is that the corporate debtor has signed the actual Indent of OCC bearing date 09/JANUARY/2019, PO. No. 596 and the same were duly acknowledged by Mr. Akash Patel, the then-designated partner of the corporate debtor LLP. Meaning thereby, the Indent dated 01.02.2019, which is placed on Page No. 0019 is either fake or illegal on which the Applicant is strongly relying. A copy of the real Indent of OCC dated 09.01.2019 bearing PO No. 596, duly signed under the seal of Mr. Akash Patel, is annexed with the reply.

- o. That the distinguishing features between the fake Indent dated 01.02.2019 and the real Indent dated 01.01.2019 are hereunder:

FAKE INDENT DATED 01.02.2019 PO. NO. 596, copy placed on page No. 0019 of the application of the applicant	REAL INDENT DATED 01.01.2019 PO NO. 596, placed as Annexure-R2 of the Affidavit in reply to the Respondent
The same is without any	The same is with an



endorsement of the respondent	endorsement duly signed by Mr. Akash Patel, the then Designated Partner of the corporate debtor under the seal of the corporate debtor.
The same is having date of 01.02.2019, however, the PO No. remained the same i.e. 596	The same is having the real date as 01.01.2019, however, the PO No. remained the same, i.e., 596, and it reveals that the Applicant has falsely forged the Indent having the same PO No. and fabricated the claim over the Respondent illegally. PO number can not be same for two different dated indents.
The same is duly signed by the Advocate of the Applicant under the seal of a true Copy.	As the alleged Indent dated 01.02.2022 is duly signed by the Advocate of the Applicant under the seal of a True Copy, the Respondent herein calls upon the applicant to produce the Original before this Hon'ble Tribunal.
At Sr. No. 3 Quantity only three items are reflected. NCC, DSOCC, and DLK are available	At No. 3 total of Six Apart from NCC, DSOCC, DSOCC SACK CRAFT, Items are available. SW, NDLKC, and are TOBACCO BOX available.



	DLK does not reflect in this Indent. Even the quantities are also different varies on the Indent dated 01.02.2019.
At Sr. No. 7, Shipment, it is stated as 10 Container Each BL	At No. 7, Shipment, it is stated as on February onward.
At Sr. No. 10, Payment stated as 100% cash against the document	At Sr. 10, payment was stated as LC at 90% days from the date of BL
At Sr. No. 12, stated as the bill of lading,	At Sr. No. 12, stated as Bill of Lading because at Sr. No. 10 the payment term has been stated as LC At 90% Days from the Date of BL, HENCE, when in the FAKE Indent dated 01.02.2022, in the very column, the payment term is stated as 100% Cash against Documents, the question does not arise to put Bill of Lading as stated at Sr. No. 12- Document. Such contradiction, itself clarifies that the subsequent Indent dated 01.02.2019 is fake and forged on which the applicant is basing its claim.

From the facts narrated above, it is crystal clear that the applicant has falsely fabricated the subsequent indent bearing date 01.02.2019 for



the same PO No. 596, which is false, frivolous, bogus, fake, vague, and illegal in the eyes of the law.

- p. That in the LLP Agreement, which was executed on 06.08.2018, Shri Akash Chandubhai Ughareja, alias Shri Akash Patel had the authority to sign under the Seal of Palak Paper Mills and his signatures are made on the alleged Indent dated 01.02.2019. Thereafter, the Partners who have signed and executed the LLP Agreement dated 06.08.2018, resigned and a new LLP Agreement was executed on 04.06.2020, wherein it has been clearly stated that all the statutory liabilities taken for running the business of paper and cases before the Government till the agreed date of the mutual agreement will be clear liabilities of erstwhile partners & all the liabilities occurred after the agreed date of the mutual agreement will be the liabilities of newly appointed designated partners. Hence, it can be safely construed that since the alleged indent dated 01.02.2019 was executed before the new LLP Agreement (executed on 04.06.2020), the newly entered partners do not have any liability for the alleged claim of the Applicant. The copies of the erstwhile LLP Agreement executed on 06.08.2018 by the erstwhile partners and the new LLP Agreement executed by the present Partners on 04.06.2020 are annexed with this reply.
- q. That the corporate debtor has never received the alleged supplied goods, so the question does not arise for raising any invoices. So far



the interest rate of 12% is concerned, there is no mention in alleged invoices. If the interest as alleged is deducted, the application itself becomes infructuous as principal amount is below the threshold limit of Rs. 1.00 Crore.

- r. That it is a false statement that the Corporate Debtor has not raised any dispute of demure with respect to the quality of goods supplied to them by the applicant, the reason being, there were certain issues raised by the then Designated Partner Mr. Akash Patel and considering those disputes, whatsoever it may, the Applicant, vide its email dated 14.06.2019 asked the then Designated Partner Mr. Akash Patel to issue the NOCs printed on the letterheads of the Palak Paper Mill LLP duly signed under the stamp of the LLP from the legal representative of Palak Paper Mill LLP, as requested by the shipping lines and CFS. Thereafter, on the request of the applicant the corporate debtor issued various No Objection Certificates dated 14.06.2019 (1 No.), 16.06.2019 (5 Nos.) confirming that they do not have any right to various shipments and authorizing the shipper to re-assign the goods to another consignee. Hence, it is in good knowledge of the Applicant that there were disputes and shipments have to be assigned to others. A copy of the email dated 14.06.2019 along with the copies of the various NOCs dated 16.06.2019 is enclosed with the reply.
- s. That the corporate debtor has never received any such materials/goods



as alleged and hence question does not arise for any outstanding amount as claimed by the Applicant. In fact, despite all the procedures followed as per the instructions of the Applicant, the Applicant remained so negligent, and hence the Office of the Commissioner Customs, Mundra having had no alternative, auctioned the shipments. Copies of the various directions issued by the Assistant Commissioner (Disposal), Customer House, Mundra, dated 07.01.2021 are annexed with the reply.

- t. That the corporate debtor had also sent back the original documents to the banker Banca Popolare Di Sondrio, Italy through its banker HDFC bank ltd. A confirmation copy obtained from the HDFC bank is annexed with the reply.
- u. That the email correspondence annexed with application pages no. 113 to 118, not a single email correspondence has been made by the corporate debtor.

14.As per the order dated 25.07.2022, last chance was granted to the applicant to file a rejoinder within two weeks. Right to file rejoinder was closed vide order dated 22.09.2022.

15.The registered office of the corporate debtor is situated in Morbi, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.



16. Heard submissions and perused the documents on record. It is clear that there is a dispute between the corporate debtor and the applicant regarding supply of goods. It is on record that on the request of the applicant, the corporate debtor issued various No Objection Certificates confirming that they do not have any right to various shipments and authorizing the shipper to re-assign the goods to another consignee. It is also a matter of fact that the consignments were not received by the corporate debtor and were ultimately auctioned by Commissioner of Customs, Mundra. In view of the facts and circumstances of this case, it is clear that there was a pre-existing dispute and, therefore, the application is not admissible.

17. We are supported by the judgement by the Hon'ble Supreme Court in the matter of "Mobilox Innovative Private Limited vz. Kirusa Software Private Limited" (Civil Appeal No. 9405 of 2017), relevant portion of which is reproduced below:

"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the Adjudicating Authority must reject the application under Section 9 (5) (2) (d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the 'existence' of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the Adjudicating Authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the 'dispute' is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which



is mere bluster.”

18.A copy of the order be communicated to the applicant and the corporate debtor. In addition, a copy of the order also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal to forward the compliance report to the Registrar, NCLT.

19.Under the facts and circumstances discussed above, we are of the considered view that the instant application deserves to be rejected. Accordingly, CP(IB)14/AHM/2022 is dismissed and disposed of.

20.A copy of the order be communicated to the applicant and the corporate debtor. In addition, a copy of the order also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal to forward the compliance report to the Registrar, NCLT.

**-Sd-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**

**-Sd-
DEEP CHANDRA JOSHI
MEMBER (JUDICIAL)**

Abhishek Singh/LRA
Nair