



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No.502
IB/734/ND/2021

IN THE MATTER OF:

Chemical Suppliers India Pvt Ltd	...	Applicant
Versus		
Kanodia Technoplast Ltd	...	Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 16.10.2023

Coram:

Mr. P.S.N. PRASAD,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

ORDER

Order pronounced in open Court vide separate sheets.

C.P. (IB)/734/ND/2021 stands dismissed.

Sd/-

DR. BINOD KUMAR SINHA,
MEMBER (TECHNICAL)

Sd/-

P.S.N. PRASAD,
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH-IV**

Company Petition No. (IB)-734(ND)/2021

**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:

M/s. Chemical Suppliers India Private Limited
.... **Operational Creditor/Applicant**
Vs.

M/s. Kanodia Technoplast Limited
.... **Corporate Debtor**

CORAM:

SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Order Delivered on:16.10.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant application is filed by M/s. Chemical Suppliers India Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') incorporated under the provisions of the erstwhile Companies Act, 1956 and having CIN: U24299DL1997PTC090695 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Kanodia Technoplast Limited (hereinafter referred as 'Respondent Company' or



‘Corporate Debtor’) for defaulting the payment of Rs.7,84,94,085/- (Rupees Seven Crore Eighty-Four Lakh, Ninety Four Thousand and Eighty Five only) which includes Principal amount being Rs.6,13,26,586/- (Rupees Six Crore Thirteen Lakhs Twenty Six Thousand Five Hundred Eighty Six Only) and interest at the rate of 24% per annum amounting Rs.1.71,67,229/- (Indian Rupees One Crore Seventy One Lakh Sixty Seven Thousand Two Hundred and Twenty Nine only)..

2. The Corporate Debtor M/s. Kanodia Technoplast Limited having CIN: U74899DL1995PLC067544 incorporated under the provisions of the Companies Act, 2013 is having its registered office situated at A-54, Wazirpur Industrial Area, New Delhi - 110052. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Briefly stated the facts of the present case as averred by the applicant are that the Corporate Debtor in the usual course of business had placed orders with Applicant for supply of chemicals and the Applicant had duly supplied the specified chemical to the Corporate Debtor and the same were duly accepted by the Corporate Debtor. The Applicant had raised the invoices for the chemicals supplied from time to time, however, the Corporate Debtor has not paid a sum of Rs.7,84,94,94,085/- to the Applicant which includes principal amount of Rs.6,13,26,856/- and interest amounting Rs.1,71,67,229/- against supplies made and invoices issued from 01.07.2020 till 03.06.2021 along with the amount of advance of Rs.31,96,066/- paid by the Applicant to the Corporate Debtor for purchase of resin and solvents but are not supplied by the Corporate Debtor.



4. The Applicant submitted that even after continued follow ups, the Applicant had received no favourable response from the Corporate Debtor, and consequently, the Applicant had served Demand Notice under Section 8 of the IBC, 2016. The Applicant had received the reply on behalf of the Corporate Debtor in response to the said Demand Notice on 08.10.2021 wherein the Corporate Debtor had alleged that a meeting for settlement was conducted between the parties, whereas, no such meeting was ever held between the parties. Accordingly, the applicant prayed for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
5. In the reply filed by the Corporate Debtor, it is submitted that that the instant application is liable to be dismissed as the same is in contravention of Section 10A of the Code, 2016. It was submitted that the amount claimed in Part-IV of the present application falls due during the period 25.03.2020 - 24.03.2021 i.e., Section 10A period. To support the submission, the Corporate Debtor placed reliance on Hon'ble Supreme Court's judgement in **Ramesh Kymal v Siemens Gamesa Renewable Power Pvt. Ltd. Civil Appeal No. 4050 of 2020.**
6. Further, the Corporate Debtor submitted that the Applicant had failed to disclose that the parties had entered into an amicable resolution with respect to the payment of the alleged outstanding amount and resolved to accept an amount of Rs.5,06,06,404/- as per the revised schedule of payment from 01.04.2021 till 29.04.2023. The Corporate Debtor had issued a total of 239 cheques in favour of Applicant which shall fall due on various dates starting from 04.12.2021 to 29.04.2023. Also, the Corporate Debtor submitted that there is a pre-existing dispute between the parties in respect of the alleged outstanding debt as claimed by the Applicant.



7. The Applicant had filed its rejoinder for rebutted the submission of the Corporate Debtor and submitted that the Corporate Debtor had defaulted in making the payment of (i) Fifty-One (51) invoices amounting to Rs. 3,54,49,636/- starting from 01.07.2020 till 13.03.2021 and also (ii) Nine (9) invoices amounting Rs.2,26,81,154/- starting from 15.03.2021 till 03.06.2021 and advance balance of Rs.31,96,066/- given to the Corporate Debtor. The Applicant submitted that the amount of default after excluding the invoices which fall under Section 10 A period is more than the pecuniary threshold limit of Rs. 1 crore.
8. The Applicant further submitted that the Corporate Debtor during the pendency of the present Application, had paid an amount of Rs.1,25,00,000/- towards the debt and had adjusted the payment of Rs.1,25,00,000/- against the invoices which have fallen due during the period from 25.03.2020 to 25.03.2021. Also, it was submitted that the Corporate Debtor had sent an e-mail dated 28.04.2022 to the Applicant admitting the liability of Rs.3,81,09,624/-.
9. We have heard the Learned Counsels for both the parties. The application, reply, rejoinder and written submissions relied upon by the parties are meticulously perused.

SECTION 9 BASED ON DEFAULT OCCURRING DURING 10A PERIOD

10. On a perusal of Part-IV of Form 5 giving particulars of the operational debt claimed by the applicant in the instant application and the submissions of the parties and, after minutely perusing the Demand Notice dated 30.09.2021, we notice that the applicants had claimed aggregate outstanding amount of Rs.6,13,26,856/-, which includes (i) Principal amount of Rs. 5,81,30,790/- outstanding against 60 invoices issued from 01.07.2020 till 03.06.2021 and (ii) advance receivable of Rs.31,96,066/-.



11. The details of the invoices from 01.07.2020 to 03.06.2021, on account of which principal amount of Rs.5,81,70,790/- as claimed by the Applicant in the present application are extracted below:-

S.No.	Date of Invoice	Invoice No.	Amount	Balance Amount
1.	01.07.2020	1303	16,46,855/-	16,46,855/-
2.	09.07.2020	1326	1,63,288/-	1,63,288/-
3.	18.07.2020	1384	3,96,480/-	3,96,480/-
4.	20.07.2020	1390	2,53,747/-	2,53,747/-
5.	21.07.2020	1393	16,65,853/-	16,65,853/-
6.	26.07.2020	1408	7,57,159/-	7,57,159/-
7.	27.07.2020	1414	14,39,600/-	14,39,600/-
8.	01.08.2020	1435	2,33,640/-	2,33,640/-
9.	04.08.2020	1438	5,49,585/-	5,49,585/-
10.	06.08.2020	1452	14,39,600/-	14,39,600/-
11.	09.08.2020	1463	3,27,096/-	3,27,096/-
12.	15.08.2020	1499	14,39,600/-	14,39,600/-
13.	19.08.2020	1513	3,27,096/-	3,27,096/-
14.	21.08.2020	1549	1,36,998/-	1,36,998/-
15.	21.08.2020	1550	1,36,998/-	1,36,998/-
16.	21.08.2020	1551	5,47,992/-	5,47,992/-
17.	26.08.2020	1586	6,54,192/-	6,54,192/-
18.	16.09.2020	1703	3,60,301/-	3,60,301/-
19.	18.09.2020	1708	3,84,987/-	3,84,987/-
20.	18.09.2020	1708	3,84,987/-	3,84,987/-
21.	21.09.2020	1722	3,84,987/-	3,84,987/-
22.	22.09.2020	1724	2,37,534/-	2,37,534/-
23.	23.09.2020	1728	3,88,881/-	3,88,881/-
24.	25.09.2020	1740	4,43,137/-	4,43,137/-
25.	30.09.2020	1772	4,47,291/-	4,47,291/-
26.	06.10.2020	1793	3,75,911/-	3,75,911/-
27.	08.10.2020	1808	3,56,075/-	3,56,075/-
28.	11.10.2020	1820	2,31,867/-	2,31,867/-
29.	15.10.2020	1828	4,48,146/-	4,48,146/-
30.	22.10.2020	1840	3,16,448/-	3,16,448/-
31.	07.11.2020	1873	5,80,942/-	5,80,942/-
32.	12.11.2020	1883	4,87,735/-	4,87,735/-
33.	18.11.2020	1890	2,69,419/-	2,69,419/-
34.	20.11.2020	1893	17,94,001/-	17,94,001/-
35.	22.11.2020	1896	1,98,743/-	1,98,743/-
36.	01.12.2020	1903	3,78,237/-	3,78,237/-
37.	04.12.2020	1905	5,68,940/-	5,68,940/-
38.	07.12.2020	1908	5,68,950/-	5,68,950/-



39.	10.12.2020	1911	5,68,950/-	5,68,950/-
40.	14.12.2020	1913	5,33,683/-	5,33,683/-
41.	17.12.2020	1919	22,19,119/-	22,19,119/-
42.	19.12.2020	1922	7,65,107/-	7,65,107/-
43.	28.12.2020	1940	5,11,471/-	5,11,471/-
44.	29.12.2020	1944	24,75,607/-	24,75,607/-
45.	03.01.2021	1949	4,77,373/-	4,77,373/-
46.	09.01.2021	1957	4,43,275/-	4,43,275/-
47.	15.01.2021	1963	5,25,671/-	5,25,671/-
48.	15.01.2021	1962	5,25,671/-	5,25,671/-
49.	19.01.2021	1970	4,32,558/-	4,32,558/-
50.	23.01.2021	1973	24,31,501/-	24,31,501/-
51.	13.03.2021	2124	22,01,329/-	22,01,329/-
52.	15.03.2021	2131	30,45,160/-	30,45,160/-
53.	23.03.2021	2160	30,46,683/-	30,46,683/-
		A	4,15,41,479/-	4,15,41,479/-
54.	31.03.2021	2182	38,08,354/-	38,08,354/-
55.	26.04.2021	GST/21-22/071	33,52,189/-	33,52,189/-
56.	15.05.2021	GST/21-22/105	4,58,888/-	4,58,888/-
57.	16.05.2021	GST/21-22/106	12,15,434/-	12,15,434/-
58.	16.05.2021	GST/21-22/107	5,20,900/-	5,20,900/-
59.	17.05.2021	GST/21-22/109	33,52,189/-	33,52,189/-
60.	03.06.2021	GST/21-22-222	38,81,357/-	38,81,357/-
		B	1,65,89,311/-	1,65,89,311/-
		TOTAL (A+B)	5,81,30,790/-	5,81,30,790/-

12. This Adjudicating Authority after considering the various facts and figures as submitted by both the parties, observe that the amount of default as claimed by the applicants in the Statutory Demand Notice and Section 9 application falls into three categories i.e., (i) a sum of Rs.4,15,41,479/- in respect of amounts due between 01.07.2020 to 23.03.2021 which fell during the Section 10A period, (ii) a sum of Rs.1,65,89,311/- due between 31.03.2021- 03.06.2021 and (ii) balance amount of Rs.31,96,066/- due from 25.09.2020. Accordingly, invoices aggregating to Rs.4,15,41,479/-



and the balance advance amount of Rs.31,96,066/- have squarely fallen due in the shadow period of Section 10A of the Code, 2016. Therefore, in the light of mandate of Section 10A of the Code, 2016, no application could ever be filed in respect of the said default. Therefore, the present case entails the situation whereby the debt amount contains default, part of which has occurred during the period excluded under Section 10A from the purview of insolvency regime altogether.

13. For adjudicating on the contention raised by the Applicant that the instant application shall still be maintainable in view of the remaining amount due and payable between 31.03.2021 to 03.06.2021 as included in the Demand Notice issued under Section 8 of the Code, 2016, it is relevant to examine the issue of maintainability of the present application in the light of the provisions of section 10A of the Code, 2016. The provisions of Section 10 are reproduced herein verbatim:-

“10A. 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 notified² 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.

Explanation. – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

14. Further going into the legislative intent and the proviso to Section 10A of the code, which stipulates that “no application shall ever be filed” for the initiation of the CIRP “for the said default occurring during the said period, it is noticed that the expression “shall ever be filed” is a clear indicator that the intent of the legislature is to bar the institution of any application for



the commencement of the CIRP in respect of a default which has occurred on or after 25 March 2020 for a period of six months, extendable up to one year as notified.

15. In the case of **Ramesh Kymal v. M/s Siemens Gamesa Renewable Power Pvt. Ltd., Civil Appeal No. 4050 of 2020**, the Hon'ble Supreme Court considered the applicability of the provisions of Section 10A in respect of defaults occurring after 25 March, 2020 wherein, an application u/s 9 was filed prior to the date on which the provision came into force i.e., 5 June, 2020. It was held by the Hon'ble Apex Court that it was in view of the object of the Code (revival of the corporate debtor) that the provisions of Section 10A were introduced in the Insolvency regime and therefore, irrespective of the date of filing of an application, no application shall be accepted for the defaults occurring from 25th March, 2020 to 24th March, 2021. At the same time, it was also made clear that for the benefit to be claimed under Section 10A, there must be a clear default occurring during the prohibited period.
16. After analyzing the relevant provisions of the Code, the Hon'ble Apex Court held that the expression **“no application shall ever be filed”** occurring within the proviso of section 10A indicates a bar on the institution of any application for the commencement of CIRP in respect of any default committed during the said prohibited period and that the substantive part of the provision is to be harmoniously construed with its proviso and the explanation. This has also been reiterated by the Hon'ble NCLAT in its decision in **B Sreekala v. M/s. Al Sadiq Sweets & Anr., Company Appeal (AT) (Ins.) No. 55 of 2021**, wherein it was held that a blanket ban was imposed against initiation of CIRP under Section 10A.



17. Once the basic principle as judicially clarified by the Hon'ble Supreme Court in Ramesh Kymal (supra), i.e., that on the basis of a harmonious construction of the substantive provisions along with the proviso as well as the explanation included in Section 10A, no application can ever be filed in respect of any default occurring during the prohibited period is accepted, the instant application filed u/s 9 cannot be held to be maintainable due to the following reasons:

- i) **Invalidity of Section 8 notice:** First and foremost, the total claim made in the statutory demand notice served on the Corporate Debtor u/s 8 is intrinsically linked to and is based on defaults which, without a doubt, occurred during the period excluded u/s 10A. It is trite, that service of a valid notice u/s 8 is a sine qua non for filing application u/s 9. Further, in view of the judgment of Hon'ble Supreme Court in Ramesh Kymal (supra), it is also well settled now that provisions of section 10A create a complete bar on initiation of CIRP, in respect of any default that has occurred during the period of suspension of the provisions of the Code by virtue of insertion of section 10A. Since, the defaults occurring during the period of suspension of the Code make a creditor/applicant ineligible to initiate CIRP in respect of such default, any notice issued u/s 8 communicating a claim which is intrinsically linked to and based on such default occurring during the excluded/suspended/prohibited period cannot be deemed to be valid. Consequently, any application filed u/s 9 of the Code based on such a notice served upon the Corporate Debtor which is intrinsically linked to and based on defaults occurring during the period of suspension of Sections 7, 9



and 10 by virtue of insertion of Section 10A cannot be considered to be maintainable and is, therefore, liable to be dismissed.

ii) Segregation of claim not possible after filing of Application u/s

9: Secondly, the scheme of the Code in respect of initiation of CIRP u/s 9 of the Code has 3 distinct but interlinked phases:

- a)** Delivery of notice in prescribed Form 3 or 4 by the operational creditor of its total claim based on the debts and default occurring on various dates as narrated in the notice u/s 8(1),
- b)** Reply by the Corporate Debtor within a period of 10 days stating its case with reference to the claim, whether no amount as claimed is payable or the claimed amount has already been paid or alternatively stating pre-existence of a dispute as to the claim made in the statutory notice; and
- c)** Filing of application u/s 9 in Form 5 initiating the CIRP of the Corporate Debtor after taking into account, the reply received/not received.

It is clear from the above scheme of the Code that the operational creditor gets a chance to revise its claim based on the reply received from the Corporate Debtor before filing Form 5, but once a claim has been made by submitting the Form 5 with this Adjudicating Authority, there is no provision in the Code, which enables the operational creditor to segregate the claims into valid and invalid claims during the proceedings before the Adjudicating Authority and to plead that only valid claims may be considered for calculation of pecuniary threshold. This is so, because the proceedings under the IB Code, 2016 are not recovery proceedings which require determination of individual claims by the Adjudicating Authority. In fact, the Adjudicating Authority under the Code is only having a summary jurisdiction to decide the maintainability or non-maintainability of the Application filed and if the application is found maintainable and gets admitted, it is the duty of the Resolution Professional to collate the individual claims based on the record



of the Corporate Debtor and/or relevant evidence furnished by the claimant/operational creditor. Therefore, the Adjudicating Authority cannot be burdened with segregation of valid and invalid invoices to calculate the pecuniary threshold.

In the case of **Yatra Online Ltd. Vs. Ezeego One Travel and Tours Ltd. Through Resolution Professional, Company Appeal (AT) (Ins.) No. 387 of 2023**, the Hon'ble NCLAT have also laid down the principle that the amount claimed under default in the Section 8 notice and in the application u/s 9 cannot be revised during the proceedings before the Adjudicating Authority to avoid the effects of S.10 A.

iii. Duty of applicant to file an application based on valid claims only: From the discussion above, it follows that it is the duty of the applicant to be alert and vigilant both at the time of issuing the statutory notice u/s 8 as well as at the time of filing the Application u/s 9 that only valid claims are included. Otherwise, even if only one of the invoices is claimed to have been due and payable and defaulted within the prohibited period u/s 10A, it shall invalidate the statutory notice u/s 8 as well as the Application filed u/s 9 in view of the judicial interpretation and guidance available in Ramesh Kymal (supra) that on the basis of a harmonious construction of the substantive provisions along with the proviso as well as the explanation included in Section 10A, no application can ever be filed in respect of any default occurring during the prohibited period. Since the applicant herein, has failed in its duty and has based both the statutory notice as well as application on defaults occurring during the prohibited period, and no segregation is possible under the provisions of the Code after filing the application as discussed above, the entire claim is liable to be discarded for the purposes of initiation of CIRP. Suffice it to say that Section 10A does not bar any other action that may be available to the applicant under law, except initiation of CIRP under the IB Code, 2016.



Accordingly, in our considered view the instant application filed u/s 9 which is based on default occurring within the prohibited period u/s 10A is not maintainable and is liable to be dismissed.

18. In the light of the abovementioned principle, we are of the considered view that since the Demand notice issued in terms of Section 8(1) of I&B Code as well as the present Application filed under Section 9 of I&B Code is based on the invoice pertaining to the suspended period for initiation of CIRP, in other words, which was raised during the period excluded under Section 10A, the present petition is liable to be dismissed.

19. It is, accordingly, hereby ordered that the application bearing CP (IB) No. 734/ND/2021 filed by, the applicant under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s Kanodia Technoplast Limited** (Corporate Debtor), is not maintainable and therefore stands **dismissed without costs**. The petitioner can prosecute his claims before the appropriate courts/other legal forums, as per the law in force.

A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-
(DR. BINOD KUMAR SINHA)
MEMBER (T)

Sd/-
(SH. P.S.N. PRASAD)
MEMBER (J)