

NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.7
CP(IB)/45(MP)2023

Proceedings under Section 9 IBC

IN THE MATTER OF:

RB Assets & Developers Pvt Ltd
V/s
B.P. Food Products Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 04/04/2024

Coram:

P. Mohan Raj, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

A. Bhadauria

Sd/-

P. MOHAN RAJ
MEMBER (JUDICIAL)

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

CP(IB) 45 OF 2023

(An application under section 9 of the Insolvency and Bankruptcy Code, 2016)

In the matter of:

RB Assets & Developers Private Limited

8/3, Manorama Ganj, Anand Apartment
Indore MP - 452001

**Applicant/
Operational Creditor**

Versus

B.P. Food Products Private Limited

In front of IITM College
Near Hazira Police Station
Morena Link Road, Gwalior MP - 474015

**Respondent/
Corporate Debtor**

Order Pronounced on: 04.04.2024

**Coram: P. Mohan Raj, Member (J)
Kaushalendra Kumar Singh, Member (T)**

Appearance:

For Applicant : Ld. PCA Mr. Vivek Zalavadiya
For Respondent : Ld. Adv. Mr. Sanjeev Chaudhary (CA)

ORDER

1. The present application is filed on 31.05.2023 by RB Assets & Developers Private Limited (**Applicant/Operational Creditor**) through its director Mr. Sanjay Bansal, under section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an operational creditor for initiating Corporate Insolvency Resolution Process (**CIRP**) against B.P. Food Products Private Limited (**Respondent/Corporate Debtor**). The amount of claimed debt in default is Rs. 2,45,57,330/- (Principal amount Rs.1,87,59,203/- and Interest amount Rs. 57,98,127/-). The date of default is 23.10.2021. [Invoice-wise date of default starting from 23.10.2021 onwards is given in a tabular form as Annexure 'A' to the application.]

2. The applicant is a Private Limited Company registered under the provisions of Companies Act, 2013 whereas the respondent is a Private Limited Company under the provisions of the Companies Act, 1956. The companies are engaged in the business of oil, oilseeds, wheat and similar food products.

3. The averments made by the applicant/operational creditor in its application and presented/argued by the learned counsel are summarized hereunder:

(i) The Respondent acting through its Director approached and requested the applicant to supply food grain materials and thereafter, the Applicant has been supplying food grain materials such as wheat to the respondent since many years. Transactions between the parties were continuous wherein the respondent has made few partial payments with respect to the invoices raised.

(ii) Subsequently, the invoices amounting to Rs. 1,87,59,203/- were raised for the period of 08.10.2021 to 04.04.2022. The details of said invoices running from Serial No. 1 to 40 have been listed as Annexure-A of the application.

(iii) The Applicant had repeatedly reminded the respondent about the outstanding payments but despite repeated reminders and continuous follow ups, the respondent failed to pay the outstanding amount.

(iv) Thereafter, the Applicant and the Respondent entered into a Settlement Agreement on 14.09.2022 wherein the Respondent agreed to make immediate payment of Rs. 51,88,086/- by way of cheque dated 09.10.2022 and the Applicant agreed to forgo the claim of Rs. 84,66,282/- on account of rate difference and quality standards. However, the Respondent did not fulfill its part of the contract i.e. neither gave the cheque as mentioned in the agreement nor issued any other cheque of the same amount nor made payment through any other mode. Henceforth, as per section 39 of the Indian Contract Act, 1872, the settlement agreement stands discharged owing to non-fulfillment by the Respondent. For ready reference, section 39 is reproduced hereunder:

39. Effect of refusal of party to perform promise wholly. —
When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

(v) The applicant sent a demand notice dated 02.05.2023 to the respondent under section 8 of the Code. The Respondent through its reply dated 08.05.2023 denied any

such liability and rather stated that there were various quality issues/ rate differences in food grain supplied by the Applicant. Following that the Applicant has preferred the present petition under Section 9 of the IBC, 2016.

4. In this context, the defense placed by the respondent/corporate debtor in its reply and as presented/argued by its learned counsel are summarized as under:

(i) The respondent is engaged in the business of oil, oilseeds and food grain materials. The applicant and respondent had good relations and were doing business with mutual consent since many years. The present application filed by the applicant for Rs. 1,87,59,203/- is not maintainable due to misrepresentation of facts and wrongful claims made by the applicant which is disputed due to quantity differences, rate differences and poor quality supply of wheat to the respondent. The respondent had sent several reminders to the applicant to reconcile the account transactions related to the discrepancies in their respective accounts.

(ii) The Applicant and the Respondent entered into a Settlement Agreement dated 14.09.2022 wherein the Applicant has during accounting reduced the outstanding amount of Rs. 84,66,282/- due to fixed rates and settlement of quality claim. Therefore, only Rs. 51,88,086/- was agreed to be paid by respondent to the applicant. Further, a payment of Rs. 2,00,000/- has been made by the respondent on 19.04.2023 which makes the actual amount payable at Rs. 49,88,086/-.

(iii) Further, the interest claimed by the applicant on the principal amount is also not applicable to the account/ transactions. The applicant sent the demand notice against

which the respondent has through its reply dated 08.05.2023 clearly mentioned the discrepancies in the applicant's account, the particulars of the settlement agreement and the absence of the interest clause on invoices. Further the non-payment in the present case is only due to pending dispute settlement and not the willful delay.

(iv) Furthermore, the present application is in violation of section 4 of the Code. As per section 4, the minimum amount of default is Rs. 1,00,00,000/-; however, the amount of claim under dispute as per the Settlement Agreement dated 14.09.2022, is Rs. 51,88,086/-.

(v) The present application should be dismissed as there exists a pre-existing dispute between the parties on the amount of claim and the settlement agreement dated 14.09.2022 was a result of such dispute. Therefore, the appropriate jurisdiction to resolve the dispute is a court of law.

5. We have heard the learned counsels appearing from both sides and have perused the relevant documents available on record. It is noted that the respondent is engaged in the business of oil, oilseeds and food grain materials. The applicant was supplying food grain materials such as wheat to the respondent since many years, against which the applicant issued invoices from time to time. However, the respondent did not make payment with respect to 40 invoices amounting to Rs. 1,87,59,203/- for the period 08.10.2021 to 04.04.2022.

6. It is further noted that the applicant and the respondent entered into a settlement agreement dated 14.09.2022 wherein the Applicant agreed to forgo the claim of Rs. 84,66,282/- on account of

rate difference and quality standards and the Respondent agreed to make payment of Rs. 51,88,086/- and provided a cheque dated 09.10.2022 for the same (Cheque number 000079). However, the respondent made payment of only Rs. 2,00,000/- on 19.04.2023 and failed to make the payment of the balance amount of Rs. 49,88,086/-.

7. Thereafter, the applicant sent a demand notice dated 02.05.2023 to the respondent under section 8 of the Code for the outstanding amount of Rs. 2,45,57,330/- (Principal amount Rs.1,87,59,203/- and Interest amount Rs. 57,98,127/-). Further, the Respondent has through its reply dated 08.05.2023 to the said demand notice objected the claimed amount of Rs. 1,87,59,203/- and admitted that post settlement agreement only Rs. 49,88,086/- remains to be paid to the applicant.

8. Considering all the above, we find that neither there is any interest clause in the invoices as issued by the applicant nor any other document on record to show that the interest would be attracted on delayed payment from the respondent. Further, the applicant entered into the settlement agreement dated 14.09.2022 with the respondent and agreed to Rs. 51,88,086/- as the total outstanding amount to be received from the respondent, thus the applicant now cannot revise and claim for more than what was agreed in the settlement agreement on the grounds of quality, quantity and rate differences. Therefore, Rs. 51,88,086/- is an undisputed admitted amount. However, the respondent has paid only Rs. 2,00,000/- out of the said amount as agreed in the settlement agreement.

9. Accordingly, the outstanding amount as agreed in the settlement agreement i.e. Rs. 51,88,086/- is below the threshold

limit of Rs. 1,00,00,000/- as required under section 4 of the Code. Further, the said settlement agreement itself is a document on record that indicates a pre-existing dispute. Thus, the present application is not maintainable for want of threshold limit as per section 4 of the Code and therefore, deserves to be rejected.

10. As a result, the application i.e. CP(IB) 45 of 2023 is rejected and disposed of with no cost. The Registry is directed to serve a copy of this order to the applicant and the respondent.

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KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-sd-

P. MOHAN RAJ
MEMBER (JUDICIAL)

Ritika/Swati