



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

ITEM No.503
IB/77/ND/2023

IN THE MATTER OF:

M/s Avon Containers Pvt. Ltd.	...	Applicant
Versus		
M/s Noble Moulds Pvt. 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)/77/ND/2023 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
COURT-IV**

Company Petition No.(IB)-77(ND)/2023

**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. Avon Containers Private Limited

**.... Applicant/
Operational Creditor**

Vs.

M/s. Noble Moulds Private 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: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

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

The instant application is filed by M/s. Avon Containers Private Limited (hereinafter referred as 'Applicant'/ 'Operational Creditor') 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. Noble Moulds



Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for defaulting the payment of Rs.1,00,25,591/- (Rupees One Crores Twenty Five Thousands Five Hundred Ninety One Only) including Principal Amount of Rs. 83,01,000/- (Rupees Eighty Three Lakhs One Thousand Only) and interest of Rs.17,24,591/- (Rupees Seventeen Lakh Twenty Four Thousand Five Hundred Ninety One Only) at the interest rate of 24% p.a.

2. The Respondent Company M/s. Noble Moulds Private Limited having CIN: U25207DL1992PTC051263, incorporated on 07.12.1992 under the provisions of the Companies Act, 1956, is having its registered office situated at B-245, Shivaji Vihar, New Delhi – 110027. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having 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. Stated briefly, facts of the present case as averred by the applicant are that the applicant is in the business of manufacturing various types of Corrugated Boxes, Sheets, Ply etc. The Corporate Debtor had placed orders to the applicant from time to time since the Financial Year 2019-2020 for purchasing the Corrugated Boxes, Ply and other items. The Applicant as per the direction and purchase order(s) sent by the Corporate Debtor, had supplied the goods to the Corporate Debtor and the same had been received and acknowledged by the Corporate Debtor. On the default being committed by the Corporate Debtor in the payment of relevant invoices, the Applicant had served Statutory Demand Notice dated 22.11.2022 under Section 8(1) of the Code, 2016 to the Corporate Debtor through registered post as well as through E- mail regarding the



outstanding Operational Debt of Rs.1,10,42,967/- which includes Rs.83,01,000/- as outstanding principal amount and Rs.27,41,967/- towards interest.

4. The Applicant further submitted that the Corporate Debtor on receipt of the Demand Notice had paid Rs.11,60,951/-(Rupees Eleven Lac Sixty Thousand Nine Hundred Fifty One Only) as interest charges and the same is adjusted against the liability of interest accrued and therefore, at present the total operational debt due to the Applicant is of Rs.1,00,25,591/- (Rupees One Crore Twenty Five Thousand Five Hundred Ninety One Only) inclusive of a sum of Rs.83,01,000/- as principal amount and Rs.17,24,591/- as interest charges.
5. This Adjudicating Authority vide order dated 23.02.2023 had directed that notice be served to the Corporate Debtor for their appearance as well as for filing reply within two weeks. The Applicant had placed on record the affidavit of service dated 25.03.2023 evidencing the service of notice of petition to the Corporate Debtor through e-mail dated 18..03.2023 as well as through registered post with tracking report showing the status 'delivered' on 22.03.2023. Further, this Adjudicating Authority vide order dated 31.03.2023 directed the Applicant as well as the Court Officer to serve e-notice to the Corporate Debtor clearly stating that if Counsel for the Corporate Debtor/Corporate Debtor fails to appear before this Tribunal on the next date of hearing, they will be set ex parte and the matter will be proceeded further.
6. This Adjudicating Authority vide its order dated 01.05.2023, after noticing that despite service of notice to the Corporate Debtor, none appeared on behalf of the Corporate Debtor, had set, the Corporate Debtor as ex-parte. However, on the date of Final Hearing of the matter, the Learned Counsel for Corporate Debtor has appeared and submitted that since all the dues



have already been paid by the Corporate Debtor, this application may not be proceeded further. This Adjudicating Authority vide its order dated 31.05.2023, had directed the Corporate Debtor to submit the proof of payment to the Applicant before the next date of hearing. However, on the next date of hearing i.e., 12.07.2023, the Corporate Debtor failed to appear and the matter was reserved for orders.

7. We have heard the Learned Counsel for the Applicant. The application, necessary documents and judgments relied upon are meticulously perused.
8. From the record and the submissions, this Adjudicating Authority observe that the Corporate Debtor in compliance of this Adjudicating Authority's order dated 31.05.2023, had furnished the Affidavit dated 18.07.2023 evidencing the proof of payment towards the Principal Amount paid to the Applicant. This Adjudicating Authority is conscious of the fact that the Corporate Debtor had submitted the said affidavit after the final hearing of the matter, however, in the interest of justice and better appreciation of facts, the said Affidavit dated 18.07.2023 was considered necessary for adjudication and taken on record.
9. On a perusal of the Bank Statements of the Corporate Debtor and the ledger account of the Applicant maintained in the books of the Corporate Debtor as submitted by the Corporate Debtor, this Adjudicating Authority observe that towards the outstanding debt of Rs. 82,97,912.31/- after excluding the TDS paid by the Corporate Debtor under Section 194Q of the Income Tax Act, 1961, the Corporate Debtor after the issuance of Statutory Demand Notice dated 22.11.2022 had made Four (4) payments (i) amounting Rs.11,60,950.96/- on 29.11.2022, (ii) amounting Rs.25,20,708.00/- on 22.03.2023,(iii) amounting Rs.25,00,000 /- on 30.05.2023 and (iv) amounting Rs.21,16,253.35 /- on 30.05.2023



resulting into full and final payment towards the outstanding Principal debt of Rs.83,01,000/- as claimed by the applicant in the present Section 9 Application.

10. In order to afford the applicant an adequate opportunity under principles of natural justice, this Adjudicating Authority suo-moto re-opened the proceedings and vide its order dated 12.09.2023, had sought clarification from the applicant with regard to the receipt of the complete outstanding Principal Amount of Rs.83,01,000/- as claimed in the instant application. During the hearing dated 27.09.2023, the Learned Counsel for the Applicant has acknowledged receipt of the principal debt amount of Rs. 83,01,000/-. However, the Learned Counsel for the Applicant further submitted that the said amount was received after filing of the case and placed reliance in the Hon'ble NCLAT's judgement in **Prashant Agarwal v. Vikash Parasrampuria, [Company Appeal (AT) (Ins) No. 690 of 2022, judgement dated 15.07.2022]**, to support the contention that the total amount for maintainability of claim in light of pecuniary threshold limit as envisaged in Section 4 of the Code, 2016 will include both principal debt amount as well as interest on delayed payment.

11. At this juncture, it is pertinent to refer to the order of **Hon'ble NCLAT Principal Bench, New Delhi in the case of "Rohit Motawat v. Madhu Sharma", Comp. App.(AT) (Ins) No. 1152 of 2022, dated 03.02.2023,** wherein it is held that

“the Adjudicating Authority has erred in not looking into the facts that **the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable** as the spirit of the legislation of the Code is for ‘resolution of debt’ and not for recovery.”



12. This Adjudicating Authority observe that the Purchase Orders as placed by the Applicant as Annexure -6 of the application has all the relevant details regarding the description of goods, quantity required, price agreed, payment terms but nowhere it mentions about the interest on delayed payment. No doubt the invoices have the covenant of levy of 24% interest on the bills unpaid after the due date, the applicant has not shown any evidence that charging such interest was a regular business practice.
13. In fact, for claiming interest on delayed payment, for the first time, the Applicant had raised two debit notes dated 17.10.2022 and 20.12.2022 against the Corporate Debtor towards the interest charged for delayed period of the payment, amounting to Rs.28,85,542/-. The said debit notes are annexed as Annexure-8 to the Application. However, no evidence has been placed on record by the Applicant to show that the Applicant is in the practice of charging interest on delayed payment in the normal course of business.
14. Another interesting fact noted by this Adjudicating Authority is that the Applicant had charged interest on delayed payment from the very first invoice dated 24.01.2020 to the last invoice dated 07.05.2022. However, on the perusal of the Interest Charge Statement as prepared by the Applicant and annexed as Annexure-9 to the Application, it is observed that invoices from 24.01.2020 to 28.06.2021 had been paid by the Corporate Debtor and the invoices outstanding at the time of issue of Demand Notice pertain to the period starting from 28.06.2021 up to 07.05.2022 only whereas, the Applicant had charged interest of Rs.553/- for delayed payment on the invoice dated 24.01.2020 for which payment was due on 24.03.2020 and was received on 15.09.2020. Therefore, such unilateral levy of interest on delayed payment on the invoices already paid cannot be accepted in the threshold limit of Section 4 of the Code, 2016.



15.The Learned Counsel for the applicant has placed reliance on Hon'ble NCLAT's judgement in **Prashant Agarwal v. Vikash Parasrampuria[& others [judgement dated 15.07.2022; Company Appeal(AT)(INS) No. 690/2022]** which lays down that if the invoices clearly stipulate a provision for interest on delayed payment, the interest and principal both can be taken into account to compute or reach minimum threshold limit of Rupees One Crore. This Adjudicating Authority cannot subscribe to the applicant's submission as facts of the present case are different from the facts of the judgement relied upon. In the present case, the Applicant is claiming the interest on the delayed payment not only on the outstanding invoices but also by booking the interest retrospectively on the invoices already paid by the Corporate Debtor.

16.In the instant case, the operational creditor has acknowledged that the entire principal debt amounting to Rs.83,01,000/- has been paid by the Corporate Debtor. Therefore, this Adjudicating Authority is of the considered view that since the corporate debtor has paid the entire Principal amount of Operational Debt in terms of Section 5(21), which does not include interest, and as on date what has remained outstanding is just the interest amount alone as claimed by the operational creditor, which does not qualify to be an Operational Debt, for the default of which alone, CIRP cannot be ordered.

17.Accordingly, **CP (IB) No.77/ND/2023 stands dismissed.** No order as to costs.

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

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

CP (IB) No.77/ND/2023
Date of Order: 16.10.2023