



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

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

**SHRI PRASANTA KUMAR MOHANTY  
HON'BLE TECHNICAL MEMBER**

**In CP No. (IB) 47/9/JPR/2018**

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

**IN THE MATTER OF:**

**M/s Tack Innovations**

Through its Proprietor  
Regd. Office at: 34, Poorvi Marg,  
Vasant Vihar, New Delhi

**...Applicant / Operational Creditor**

**VERSUS**

**Autopal Industries Limited**

E-195(A),RIICO Industrial Area  
Sanganer, Jaipur,  
Rajasthan- 3038902

**...Respondent/Corporate Debtor**

For the Applicant : Mr. Naveen Goel, Adv.  
Mr. Rishi Bhatnagar, Adv.

For the Respondent : Ms. Naresh Kumar Sejvani, Adv.

**Order Pronounced on: 16.08.2022**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application is filed by M/s Tack Innovations through its proprietor Mr Gurpreet Bedi ('Operational Creditor' / 'Applicant') seeking to initiate



- Corporate Insolvency Resolution Process ('CIRP') in the matter of Autopal Industries Limited ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, M/s Tack Innovations, is engaged in the business of supplying 3M Adhesive Tapes, Adhesives and Sealants. Their registered office is located at: - 34 Poorvi Marg, Vasant Vihar, New Delhi and the address for correspondence is: - No. 206, Pratap Complex, 92 G, Munrika, New Delhi-11067. The alleged Default on the part of the Respondent for the non-payment of operational dues amounting to Rs. 3,53,109/- (Rupees Three Lakhs Fifty-Three Thousand One Hundred and Nine Only) along with interest payable @ 18% per annum after the expiry of 30 days from the date of respective invoices.
  3. The Corporate Debtor, Autopal Industries Limited, is a listed public limited company incorporated under the Companies Act, 1956 on 15.10.1985 having CIN: L31501RJ1985PLC003427. The Respondent has its office situated at - E-195(A), RIICO Industrial Area, Sanganer, Jaipur Rajasthan-303902. However, from records available on the website of the Ministry of Corporate Affairs, the registered office of the Respondent is at - Plot No.1, Naraniya Compound Wall, Phase III, RIICO Industrial Area, Sitapura, Jaipur, Rajasthan-302022. The Corporate Debtor has an Authorised Share Capital of



Rs. 25,00,00,000/- (Rupees Twenty-Five Crores Only) and Paid-Up Share Capital of Rs. 4,99,63,680/- (Rupees Four Crores Ninety-Nine Lakhs Sixty-Three Thousand Six Hundred and Eighty Only).

4. The details of the transactions leading to the filing of this Application are averred by the Applicant *vide* Diary No. – 310/2018 dated 11.09.2018 are as follows:

- a. The Respondent approached the Applicant to supply 3M Adhesive Tapes, Adhesives & Sealants. The Applicant supplied goods to the Respondent via Purchase Orders dated 29.06.2016 and 28.07.2016 and allowed a credit line of 30 days. Copy of the Purchase Orders are annexed at Annexure- A of the Application.
- b. As per the terms of the Purchase Orders and mutual agreement between the parties it was agreed that payment is to be made within 30 days from the date of the invoice issued to the Respondent failing which an interest @18% per annum would be charged.
- c. In pursuance of the aforesaid, the goods (Double Sided Tissue Tape) were supplied by the Applicant to the Respondent *via* three invoices, details of which are tabulated below:

<i>S. No.</i>	<i>Date of Issuance of Invoice</i>	<i>Invoice No.</i>	<i>Invoice Amount (Rs.)</i>
1.	05.07.2016	T1/01142/16-17	2,96,025/-
2.	10.10.2016	T1/02371/16-17	9,437/-
3.	13.10.2016	T1/02394/16-17	1,48,012/-
<b><i>Total Amount</i></b>			<b>4,53,474/-</b>



- d. Against the above-mentioned invoices, the Respondent issued five Post-dated cheques ('PDC') totalling Rs. 4,53,474/- (Rupees Four Lakhs Fifty-Three Thousand Four Hundred and Seventy-Four Only). Out of the aforementioned five cheques, two cheques of Rs. 9437/- (Rupees Nine Thousand Four-Hundred Thirty-Seven Only) and Rs. 1,48,012/- (Rupees One Lakh Forty-Eight Thousand and Twelve Only) were returned by the Applicant's bank (Punjab National Bank) *vide* Cheque Return Memo dated 05.12.2016 and 02.12.2016 with a remark "Funds Insufficiency" against invoices no. T1/02371/16-17 and T1/02394/16-17, respectively. *It is seen that the Respondent made a payment of Rs. 1,00,365/- (Rupees One lakhs Three Hundred and Sixty-Five Only) to the Applicant through N.E.F.T dated 05.10.2016 against the third invoice, i.e., TI/01142/16-17 for the Purchase Orders. The same is being acknowledged by the Applicant.*
- e. The Applicant made several reminders and requests for payment of its operational dues, which the Respondent failed to fulfil. The Applicant, in pursuance of the above cause of action, issued a Legal Notice dated 31.03.2017 to the Respondent through speed post on the registered office address of the company and previous office addresses, including Directors of Respondent. This Legal Notice was not responded/acknowledged by the Respondent. Copy of Legal Notice dated



31.03.2017 and postal receipt dated 03.04.2017 sent to the Respondent are annexed at Annexure-F of the Application.

- f. Applicant issued two Demand Notices under Section 8 of the IBC dated 13.09.2017 and 28.02.2018 for unpaid Operational Debt amounting to Rs. 3,53,109/- (Rupees Three lakhs Fifty-Three Thousand One Hundred and Nine Only) along with interest @18% per annum after the expiry of 30 days from the date of respective invoices. The Notices called for the immediate payment of the operational due within 10 days from receipt of the Notices failing which proceedings to initiate CIRP against the Respondent's company were stated to occur. These Demand Notices were not responded/acknowledged by the Respondent. Copy of the Demand Notices dated 28.02.2018 and the postal receipts dated 01.03.2018 sent to the Respondent annexed on Page No. 68 and 77 of the Application, respectively.
- g. The aforementioned details as reflected in Part IV of the Application are as follows:

**Part – IV**

**Particulars Of Operational Debt**

1.	Total Amount of Debt	Rs. 3,53,109/-(Rupees Three Lakhs Fifty-Three Thousand One Hundred and Nine Only) along with interest @18% per annum after the expiry of 30 days from the date of respective invoices.
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2.	Details of Transactions on Account of which Debt fell due, And the Date from which such Debt fell due	Date of issuance of invoice	Invoice No.	Invoice Amount (In Rs.)	Pending Amount (In Rs.)
		05.07.2016	TI/01142/16-17	2,96,025/-	1,95,660/-
		10.10.2016	TI/02371/16-17	9,437/-	9,437/-
		13.10.2016	TI/02394/16-17	1,48,012/-	1,48,012/-
		Total Principal Amount due		Rs.3,53,109/- along with interest @18% per annum after the expiry of 30 days from the date of respective invoices.	
3.	Amount claimed to be in Default	The total Principal Amount claimed as Default is Rs. 3,53,109/- (Rupees Three Lakhs Fifty-Three Thousand One Hundred and Nine Only) along with interest @18% per annum after the expiry of 30 days from the date of respective invoices.			
		The date on which the Default occurred			
	Date of Default is 30 days after the expiry from the date of respective invoices issues. Date of Invoices are tabulated below: -				
	<i>Date of issuance of invoice</i>	<i>Invoice No.</i>	<i>Invoice Amount (In Rs.)</i>	<i>Pending Amount (In Rs.)</i>	
	05.07.2016	TI/01142/16-17	2,96,025/-	1,95,660/-	
10.10.2016	TI/02371/16-17	9,437/-	9,437/-		
13.10.2016	TI/02394/16-17	1,48,012/-	1,48,012/-		

5. Notices were issued in the aforesaid Application, and the Respondent filed a

Reply *vide* Diary No.- 421/2019 dated 08.03.2019 stating that: -

- a. The Applicant has not approached the Tribunal with clean hands and concealed material information in order to place itself as Operational



Creditor as it has submitted incomplete and selective Ledger Account entries for its own benefit. Thus, the inadequate filing of the Application in the prescribed manner and non-disclosure of a pre-existing dispute between the parties by the Operational Creditor deserves to be dismissed. Copy of Ledger Account of Applicant maintained by the Respondent in the course of its business is annexed in Annexure-1 of the Reply.

- b. Respondent has further raised grounds for Non-Maintainability of the Application because the Application is barred by limitation and failure to provide proof with regard to service of the Demand Notice. It is stated that the Demand Notice pertains to 13.09.2017, whereas the postal receipts show the delivery of the Demand Notice on 03.04.2017.
- c. A perusal of the Ledger filed by the Respondent shows, an amount of Rs. 11,632/- (Rupees Eleven Thousand Six Hundred and Thirty-Two Only) has been paid in excess to the Operational Creditor by the Respondent. This fact has been conveniently concealed by the Applicant from this Adjudicating Authority to further their mischievous cause and waste the invaluable time and resources of the Tribunal.
- d. The rest of the part payment for Invoice No. TI/01142/16-17 dated 05.07.2016 was not made on account of inferior quality goods that were supplied by the Applicant, which was duly communicated to the Operational Creditor.



- e. Both the parties have had extended communications about the purchase of goods in the past, but the same cannot be traceable from the Respondent's end as it had started its own in-house web-based server called '*autopal.net*' ('new server') for business communications. The new server was in the nascent stage of existence and did not implement successfully, whereby data from 2013-2015 is imperceptible.
- f. The Respondent has been in the business for more than three decades as a Listed Entity, with an annual turnover of Rs. 35,00,00,000/- (Rupees Thirty-Five Crores Only) and as such defaulting on the meagre operational Debt of Rs. 3.5 Lakhs claimed by the Applicant is against their goodwill and stature.
- g. The Applicant's action in not filing the Debit Note dated 13.07.2016 issued by the Respondent reveals *mala-fide* intention and is a fit case to invoke Section 65 of the IBC for suppression of the Debit Note and hiding significant facts before this Adjudicating Authority.
- h. The written consent given by the proposed Interim Resolution Professional in Form-2 is incomplete as the mandatory disclosure of the Code of Conduct is missing from the written communication, signifying past relations with the Applicant.
- i. For the reasons mentioned above, while submitting the Reply, the Respondent relied upon these cases:
- i. Ravi Mahajan v. Sunrise 14 A/S, Denmark, Civil Appeal No. 21794-21795 of 2017.*



The Hon'ble NCLAT held that '*... Section 7 is not complete in absence of 'records of default', as required in terms of sub-section (3)(a) of Section 7 of the 'I&B Code'. In such case, it was not open to the Adjudicating Authority to entrain the Application preferred by Respondent.*'

- ii. *Mobilox Innovations Private Limited v. Kirusa Software Pvt. Ltd., 2018 1 SCC 353.*

The Hon'ble Supreme Court held that regarding pre-existence of dispute, the IBC defines 'dispute' as:

*Section 5(6) – "dispute" includes a suit or arbitration proceedings relating to-*

- a. The existence of the amount of Debt;*
- b. The quality of goods and services; or*
- c. The breach of a representation or warranty;*

- iii. *K. Kishan v. Vijay Nirman Company Pvt. Ltd., Civil Appeal No.s 21824 & 21825-2017.*

The Hon'ble Supreme Court stated that '*Operational Creditors cannot use the Insolvency Code either prematurely or for extraneous considerations or as a substitute for debt enforcement procedures.*'... '*We repeat that the object of the Code, at least in so far as operational creditors are concerned, is to put the insolvency process against a corporate debtor only in clear cases where a real dispute between the parties as to the debt owed does not exist.*'

- iv. *Explo Media Pvt. Ltd. v. Ambience Pvt. Ltd., C.P. No. I.B.-220/ND/2017.*

The Hon'ble NCLT, New Delhi Bench, held that '*... it is enough that a plausible dispute is shown to exist as between the parties to stave of the insolvency process by the Corporate Debtor.*'



6. The Applicant filed its rejoinder *vide* Diary No. 569/2019 dated 04.04.2019, submitting the following:

a. As per the terms mentioned in the sales invoice and the mutual understanding between the parties, the objections regarding the quality of the goods have to be raised within a reasonable time. The conduct of the Corporate Debtor shows that the dispute concerning the quality has been raised only after the Applicant demanded payment of the pending dues. Moreover, the Respondent neither raised this issue at the time of the next successive Purchase Orders nor have they raised any objection in their Demand Notice. The Applicant in this regard has referred to the judgement given by the Hon'ble NCLAT in *Rajeev K Aggarwal v. Panipat Texo Fabs (P) Ltd. Company Appeal (AT)(Insolvency) No. 715 of 2018* and *Innoventive Industries Ltd. v. ICICI Bank & Ors. (2018) 1 SCC 407*.

b. Further, the Applicant relies on *Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.*, wherein it was held that '*dispute if any, prior to the issuance of the Demand Notice, must be brought to the notice within 10 days under Section 8(2) of IBC.*' The Respondent never communicated to the Demand Notice done either by email, phone call or in-person for their grievance concerning the dues.

c. The existence and validity of the Debit Note dated 13.07.2016 has been denied because the Debit Note has been raised by the Respondent for the



first time and is attached as an afterthought given the Respondent's inability to pay the operational dues.

- d. No claim for Rs. 11,632/- (Rupees Eleven Thousand Six Hundred and Thirty-Two Only) was ever raised regarding the issue of excess payment. There was no deduction of the said surplus amount by the Respondent against the issued PDC. Further, Respondent has not fulfilled his obligations of paying statutory dues in Form-C to the Sales Tax Department for the Purchase Orders made by the Applicant. The failure to clear issued cheques also exhibits the feeble financial state of the firm.
- e. The Application is filed in accordance with law and within the prescribed period of limitation of three years from the cause of action. In the case of *Surendra Trading Co. v. M/s Juggilal Kamalpat Jute Mills & Ors. Civil Appeal No. 8400 of 2017*, the Adjudicating Authority held that '*the period of 7 days to rectify defects under Proviso of Section 9 (5) (ii) IBC are directory and not mandatory in nature and Application should not be dismissed merely due to such defect.*'

7. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder and the Documents enclosed with the Application.

8. 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. Further, this matter is within the purview of Laws of Limitation, as the cause of action arose in 2016, and the Application was filed before this Adjudicating Authority in 2018. Hence, the period of three years after the Default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.

9. It is abundantly clear from the documents produced before us that the Respondent has defaulted in making full payments against the services rendered by the Operational Creditor.
10. In the instant case, the Operational Creditor has annexed a Computation Sheet whereby he mentioned the invoice amount and further stated the payment received against those amounts. In support of the same, the Respondent has annexed the Ledger of the Corporate Debtor, whereby it is made clear that the Corporate Debtor has not made full payment against the invoices raised by the Operational Creditor from June 2017 to April 2018.
11. The Respondent, in its submissions, has stated that corresponding to invoice no. TI/01142/16-17 dated 05.07.2016, the goods supplied were of sub-standard quality and intimation regarding the same was conveyed to the Applicant *vide* Debit Note dated 13.07.2016. The Respondent has also annexed its Ledger Account from 01.04.2011 to 30.11.2018 in Annexure- I of the Reply. A surplus amount of Rs. 11,632/- (Rupees Eleven Thousand Six-



Hundred and Thirty-Two Only) is shown at the Respondent's end, which the Respondent states to have never claimed, thereby showing no due.

12. It is also observed that the goods were supplied to the Corporate Debtor on a credit of 30 days against which the Respondent issued PDC. The mutual agreement between the parties settled the payment to be made within 30 days, failing which interest @18%per annum from the invoices would be charged by the Applicant. This agreement has not been disputed / objected to by the Respondent in his Reply.
13. That the Corporate Debtor had conveniently disregarded the multiple Notices (1 Legal Notice and 2 Demand Notices) issued by the Operational Creditor in a span of 2 years wherein the said Debt was asked to be realised.
14. It is also evident from the above that the Corporate Debtor has defaulted in payment of the Debt to the Operational Creditor. Further, he has raised the contention of the dispute flouts the principle of law, which states that if there is a pre-existing dispute between the parties, an Application filed under Section 9 is not maintainable.
15. The first issue for consideration is whether the Demand Notice in Form-3 dated 28.02.2018 was served upon the Respondent. The Demand Notice was sent via a registered post on 01.03.2018 to the Respondent and its Directors. The postal receipt is attached on Page No. 77 of the Application.
16. The next issue for consideration is whether the Respondent disputed the operational Debt. The Respondent / Corporate Debtor has filed a Reply and



argued that they had been dissatisfied with the goods' quality. However, they have not submitted any authentic communication to substantiate the same. Thus, as per the documents placed on record with the Adjudicating Authority, there is no dispute as to the outstanding liability of the Corporate Debtor towards the Operational Creditor.

17. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as follows: -

*“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

However, the defence has to be plausible, and while not examining it on merits, it must not appear as a moonshine defence. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted



by the Corporate Debtor, and there appears to be no pre-existing dispute between the parties. Any allusion to such a dispute seems to be confirmed.

17. 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. 3,53,109/- (Rupees Three Lakhs Fifty-Three Thousand One Hundred and Nine Only), including the interest @18% per annum. It is observed that the Operational Creditor has issued various invoices (Annexure-C) for goods supplied to the Respondent Corporate Debtor. Applicant Operational Creditor has given Demand Notice in Form No. 3 dated 13.07.2017 and 28.02.2018, 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.
18. 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 IBC stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC.
19. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'). In the instant case, the Operational Creditor has proposed the name of Mr. Ajay Gupta, having registration no. –



IBBI/IPA-001/IP-P00140/2017-18/10304. 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 in accordance with the provisions of the Code, and Rules and Regulations thereunder.

18. Consequences of initiation of CIRP shall be inter-alia as follows: -

- (i) The IRP appointed by the Adjudicating Authority, Mr. Ajay Gupta, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of the 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 in relation to 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 in relation to the Corporate Debtor.
- (iii) The said IRP shall act strictly in accordance with the provisions of the Code, and with a view to defraying his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs.



1,00,000/- (Rupees One Lakh Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. 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.

19. Accordingly, CP No. (IB)-47/9/JPR/2018 is admitted.

DEEP  
CHANDRA  
JOSHI

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**DEEP CHANDRA JOSHI  
(JUDICIAL MEMBER)**

PRASANTA  
KUMAR  
MOHANTY

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PRASANTA KUMAR  
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**PRASANTA KUMAR MOHANTY  
(TECHNICAL MEMBER)**