



**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) 123/9/JPR/2019**

*(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:**

**Shree Maru Tradelink Limited,**  
215, Ganpati Plaza,  
M.I. Road, Jaipur-302001  
Rajasthan

**...Applicant / Operational Creditor**

**VERSUS**

**Agarwal Polysacks Limited**  
E-649, MIA IInd Phase,  
Basni, Jodhpur-342005  
Rajasthan

**...Respondent/Corporate Debtor**

For the Applicant : Mr. Rishabh Khandelwal, Adv.

For the Respondent : Mr. Sarvesh Jain, Adv.

**Order Pronounced on:16.09.2022**

**ORDER**

**Per: Shri Prasanta Kumar Mohanty, Technical Member**



1. This Application is filed by Shree Maru Tradelink Limited ('Operational Creditor' / 'Applicant') seeking to initiate the Corporate Insolvency Resolution Process ('CIRP') in the matter of Agarwal Polysacks 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 Company is a Delcredre Agent and Consignment Stockist of Haldia Petro Chemicals Limited. They are engaged in the marketing of Poly Ethylene and Poly Propylene (Plastic Granules) for the state of Rajasthan. Their registered office is located at: 215, Ganpati Plaza, M.I. Road, Jaipur- 302001, Rajasthan. The alleged default on the part of the Respondent for the non-payment of operational dues is Rs. 16,11,882.33/- (Rupees Sixteen Lakhs Eleven Thousand Eight Hundred Eighty-Two and Thirty-Three Paise Only) inclusive of interest amounting to Rs. 5,91,118.49/- (Rupees Five Lakhs Ninety-One Thousand One Hundred Eighteen and Forty-Nine Paise Only) up to 15.04.2019.
3. The Corporate Debtor, Agarwal Polysacks Limited, is a public limited company incorporated under the Companies Act, 1956 on 23.01.1992 having CIN: U25202RJ1992PLC006474 and engaged in manufacturing bubble film rolls, woven sack bags, foam sheets, etc. The Respondent has its registered office situated at: E-649, MIA IInd Phase, Basni, Jodhpur-342005, Rajasthan. The Corporate Debtor has an Authorised Share Capital of Rs. 5,00,00,000/-



(Rupees Five Crores Only) and Paid-Up Share Capital of Rs. 4,60,30,000/- (Rupees Four Crores Sixty Lakhs Thirty Thousand Only) as per latest records available on the website of Ministry of Corporate Affairs.

4. The details of the transactions leading to the filing of this application averred by the Applicant *vide* Diary No. – 923/2019 dated 22.05.2019 are as follows:

a. The Applicant and Respondent were involved in business transactions since 2013. The Respondent in the ordinary course of business had procured goods from the Applicant in accordance with the Sales Policy/Price Circular of Haldia Petrochemicals Limited. Copy of the sales policy and price list is filed as Annexure-4 and Annexure-5 of the Application respectively.

b. The Applicant sold goods to the Respondent on cash sales basis and raised various invoices for the same. The Respondent made payment on running account basis and not as per the invoices raised. Copy of the invoices issued is annexed as Annexure- 6 of the Application.

c. The delayed payment of Rs. 10,20,763.84/- (Rupees Ten Lakhs Twenty Thousand Seven Hundred Sixty-Three and Eighty-Four Paisa Only) accrued interest amounting to Rs. 5,91,118.49/- (Rupees Five Lakhs Ninety-One Thousand One Hundred Eighteen and Forty-Nine Paisa Only) up to 15.04.2019. Hence, the total amount of operational due is Rs. 16,11,882.33/- (Rupees Sixteen Lakhs Eleven Thousand Eight Hundred Eighty-Two and Thirty-Three Paisa Only).



- d. The Respondent acknowledged the aforesaid debt via message dated 09.02.2017 but failed to make payment for the same. Copy of the acknowledgment is filed as Annexure-8 of the Application.
- e. The Applicant in pursuance of the above cause of action issued a Demand Notice dated 18.04.2019 through registered post to the Respondent. The Demand Notice called for the immediate payment of the operational due and raise dispute, if any, within 10 days from receipt of the Notice, failing which proceedings to initiate CIRP against the Respondent's company were stated to occur. Copy of the Demand Notice along with Post Receipt has been annexed as Annexure-10 of the Application.

#### **Part IV**

##### **Particulars of Operational Debt**

1.	Total amount of debt.  Details of transactions on account of which debt fell due, and the date from which such debt fell due.	Total amount of Debt is Rs. 10,20,763.84/- (Rupees Ten Lakhs Twenty Thousand Seven Hundred Sixty-Three and Eighty-Four Paise Only) + Interest up to 15.04.2019 is Rs. 5,91,118.49/- (Rupees Five Lakhs Ninety-One Thousand One Hundred Eighteen and Forty-Nine Paise Only) totaling to Rs. 16,11,882.33/- (Rupees Sixteen Lakhs Eleven Thousand Eight Hundred Eighty-Two and Thirty-Three Paise Only).
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2.	Amount claimed to be in default and the date on which the default occurred	Total Amount – Rs. 16,11,882.33/- (Rupees Sixteen Lakhs Eleven Thousand Eight Hundred Eighty-Two and Thirty-Three Paise Only)  Principal Amount – Rs. 10,20,763.84/- (Rupees Ten Lakhs Twenty Thousand Seven Hundred Sixty-Three and Eighty-Four Paise Only)  Interest Charged - Rs. 5,91,118.49/- (Rupees Five Lakhs Ninety-One Thousand One Hundred Eighteen and Forty-Nine Paise Only) up to 15.04.2019.  Date from which debt fell due: - 15.04.2019
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5. In its reply to the Demand Notice dated 01.05.2019, sent to the Applicant through registered post on 03.05.2019, the Corporate Debtor categorically denies the existence of any debt. Further, the Respondent submits the following:

- a. The amount claimed by the Applicant as default is disputed. This is due to the fact that the said amount has been charged as interest over interest, which is not permitted under law. Also, the interest is charged @18% per annum on the principal amount. This has not been mentioned either in the invoices or the agreement between the two parties.
- b. The quality of products supplied by the Applicant deteriorated constantly with each transaction after the purchase of goods via invoice no. SMTL/JD/538, dated 03.01.2014. As a result, the Respondent started paying the dues in lumpsum amount and not as per each invoice.
- c. The Applicant was orally intimated of the sub-standard quality of goods supplied. After the purchase of goods dated 10.03.2016 via invoice no.



SMPL/JDR/614, the Applicant offered a discount of Rs. 2,76,413.85/- (Rupees Two Lakhs Seventy-Six Thousand Four Hundred Thirteen and Eighty-Five Paise Only) in the next transaction dated 31.03.2016 to resolve any existing dispute pertaining to the quality of goods.

- d. The same issue of sub-standard quality of goods was encountered again vide goods received against invoice no. SMPL/JDR/129 dated 02.06.2016 amounting to Rs. 4,21,633/- (Rupees Four Lakhs Twenty-One Thousand Six Hundred and Thirty-Three Only). The Applicant requested the retrieval of the said product in piecemeal as it would affect its market image.
- e. The E-mails sent by the Applicant dated 03.06.2016 and 06.04.2018 demanding payment of operational due, were done with a malicious intent to keep the issue pending in the eyes of law. The financial account had been settled between both parties in July 2016 itself as per oral agreement and Memorandum of Understanding ('MOU') between the two.
6. The Applicant filed its rejoinder *vide* Diary No. 2654/2019 dated 13.11.2019 submitting the following: -
- a. The Sales Policy / Price Circular duly circulated by the Applicant contained the detailed provision of interest rate charged in case of delayed payment. Also, a bare perusal of the ledger account of the Respondent exhibits the exact computation of the principal amount due i.e., Rs. 10,20,763.84/- (Rupees Ten Lakhs Twenty Thousand Seven Hundred Sixty-Three and Eighty-Four Paise



Only) on the date of default i.e., 19.07.2016. Hence the said contention of disputed operational due by the Respondent is false and misconceived.

- b. The Respondent has raised the issue of quality of goods for the first time in its Reply to the Demand Notice. This makes it a superfluous contention, raised as an afterthought to escape the liability of payment. Further, no discount in lieu of quality of goods was ever provided by the Applicant. The rebate referred by the Respondent in its Reply, is a quantity discount by way of credit notice. This is a part of sales promotion policy of the company to attract more customers and is in no way linked to the quality of goods supplied.
  - c. The Respondent continued to purchase goods from the Applicant till 02.06.2016, Whereas the issue of quality of goods raised by the Respondent here dates back to 03.01.2014. This in itself is an indicator that no such issue existed regarding goods' quality prior to the service of the Demand Notice dated 18.04.2019.
  - d. No oral agreement settling the financial account had been done by the Applicant. Further, the MOU being referred by the Respondent merely shows a statement of purchase for the said goods, which is a quantity-based incentive done as part of Sales Promotion Policy. This is grossly being misrepresented as MOU for inferior quality of goods to mislead the Hon'ble Tribunal.
7. The Respondent vide Diary No. 2415/2022 dated 12.08.2022 filed its written submission and has relied on the following judgments:



- a. *Rolastar Pvt. Ltd. v. Infragreen Airconditioning Pvt. Ltd.*, CP(IB) No. 92/BB/2020.
  - b. *M/s Agarwal Veneers v. Fundtonic Service Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 968 of 2020.
  - c. *Mobilox Innovative Pvt. Ltd. v. Kirusa Software Pvt. Ltd.*, 2018(1) SCC 353.
  - d. *Explo Media Pvt. Ltd. v. Ambience Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 220/ND/2017.
  - e. *Jotun India Pvt. Ltd. v. Extreme Coatings Pvt. Ltd.*, Company Petition No. IB-442 (ND)/2018.
  - f. *Wanbury Ltd. v. Panacea Biotech Ltd.*, Company Petition No. 8/2016 in RT No. 9/Chd/PB/2017.
  - g. *SBF Pharma v. Gujarat Liqui Pharmacaps Pvt. Ltd.*, Company Appeal (AT) (Insolvency) No. 883 of 2019.
  - h. *Arjun Panditrao Khotkar v. Kailash Khushanrao Gorantyal*, 2020 SCC OnLine SC 571.
  - i. *Noida Software Technology Park Ltd. v. Ingram Micro India Pvt. Ltd.*, IA No. 47(PB)/2017.
8. In *Rolastar Pvt. Ltd. v. Infragreen Airconditioning Pvt. Ltd.* the National Company Law Tribunal, Bengaluru, in Para 5 to 8 held that the object of the IBC is not pushing the ongoing company into the rigours of CIRP and bringing on halt the entire management of the company on the basis of a frivolous claim.



9. The Hon'ble NCLAT upheld the dismissal of Section 9 Petition of IBC on the grounds of Corporate Debtor being a solvent company, operating as a 'going concern' and providing employment as a MSME enterprise in *M/s Agarwal Veneers v. Fundtonic Service Pvt. Ltd.* (Paras 16 and 17).
10. In the cases of *Jotun India Pvt. Ltd. v. Extreme Coatings Pvt. Ltd.* and *Wanbury Ltd. v. Panacea Biotech Ltd.*, it was held that by the Hon'ble NCLT Benches of Delhi and Chandigarh that charging of interest over interest is not eligible in absence of any written and agreed terms/agreement.
11. The Hon'ble Supreme Court in the case of *Arjun Panditrao Khotkar v. Kailash Khushanrao Gorantyal* held that a certificate under Section 65B(4) of Indian Evidence Act is mandatory and a condition precedent to the admissibility of evidence by way of electronic records. No such certificate was filed by the Applicant.
12. Taking cue from the precedence set by the Hon'ble NCLAT in *SBF Pharma v. Gujarat Liqui Pharmacaps Pvt. Ltd.* regarding pursuance of insolvency for resolution and not recovery of interest, the Respondent wishes to place on record that the Applicant refused to receive payment even in the mediation process held. This shows the malicious intent of the Applicant and is liable to be dismissed under Section 65 of IBC.
13. In the case of *Noida Software Technology Park Ltd. v. Ingram Micro India Pvt. Ltd.*, the Special Bench of NCLT, Delhi held that it is pertinent to file the bank statement for the entire duration commencing from the originating point of



transaction between the parties till the date of filing the application. The Applicant has failed to do the same which further invites the ground for dismissal of Application under Section 9(5) of IBC.

14. The Applicant vide Diary No. 2526/2022 dated 24.08.2022 filed its written submissions and has relied on the following judgments:

a. *Rajiv K. Agarwal v. Panipath Texo Fabs Pvt. Ltd. And Ors., Company Appeal (AT) (Insolvency) No. 715 of 2018.*

b. *Rajratan Babulal Agarwal v. Solartex India Pvt. Ltd. And Ors., Company Appeal (AT) (Insolvency) No. 546 of 2020.*

15. In the case of *Rajiv K. Agarwal v. Panipath Texo Fabs Pvt. Ltd. And Ors*, it was held by the Hon'ble NCLAT that:

*“...It is contended that the factum of quality of goods supplied being defective and substandard was communicated to the Operational Creditor. However, the Appellant could not lay hands upon any communication to substantiate its contention that the Operational Creditor was apprised of the goods supplied being substandard and defective. Even during the course of arguments learned counsel for the Appellant, when asked to refer to any relevant documents on record to demonstrate that the Operational Creditor was served with any communication in regard to the quality of goods supplied allegedly being substandard or defective, expressed his inability to point out any such communication...”*



16. The Hon'ble NCLAT in the matter of *Rajratan Babulal Agarwal v. Solartex India Pvt. Ltd. And Ors.* held that failure to prove any pre-existing dispute in regard to transaction in question before the receipt of Demand Notice under Section 8(2) of IBC holds no ground to attest that a dispute existed.
17. We have heard the Learned Counsels for the parties and perused the averments made in the Application, Reply, Rejoinder, Written Submissions and the Documents enclosed with the Application.
18. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Rajasthan, and 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 on 02.06.2016 and the Application has been filed before this Adjudicating Authority dated 22.05.2019. 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.
19. It is abundantly clear from the documents produced before us that the Respondent has defaulted in making full payments against the goods supplied and the services rendered by the Operational Creditor.
20. In the instant case, the Operational Creditor has annexed a Computation Sheet whereby he has mentioned the invoice amounts and further stated the payment received against those invoice amounts. In support of the same, the Applicant



has also annexed its bank statement and ledger account 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 March, 2016 to April, 2019.

21. The Respondent in its submissions has stated that the quality of goods began deteriorating after the supply of material vide invoice no. SMTL/JD/538 dated 03.01.2014. Oral intimation regarding the same was conveyed to the Applicant. No record of such intimation is placed on record.
22. It is also observed that as per the terms of the Sales Policy/Price Circular of Haldia Petro Chemicals Limited through which invoices were raised that overdue payments would attract penal interest. This Sales Policy was duly circulated at the beginning of each Financial Year. In the past, the Respondent had made payment as per the said terms without any objections.
23. Concerning the pre-existence of dispute with respect to quality of goods, it is observed that the Respondent has raised this issue for the first time via its Reply to the Demand Notice dated 03.05.2019. This makes it a superfluous contention, raised as an afterthought to escape the liability of payment.
24. Further, the Respondent in its Reply to the Demand Notice had claimed that a settlement of account had been done between both the parties in July, 2016 and October, 2016. However, no document to substantiate the same has been placed on record by the Corporate Debtor.



25. 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 just to flout 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.
26. The first issue for consideration is whether the Demand Notice in Form-3 dated 18.04.2019 was served upon the Respondent. The Demand Notice was sent via a registered post on 18.04.2019 to the Respondent. The postal receipt is attached on Page No. 45 of the Application.
27. The next issue for consideration is whether the Respondent disputed the operational debt. The Respondent / Corporate Debtor, in its Reply to the Demand Notice dated 03.05.2019 had 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.
28. 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 the 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 about 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 appears to be confirmed.

29. 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. 16,11,882.33/- (Rupees Sixteen Lakhs Eleven Thousand Eight Hundred Eighty-Two and Thirty-Three Paisa Only) inclusive of interest up to 15.04.2019, amounting to Rs. 5,91,118.49/- (Rupees Five Lakhs Ninety-One Thousand One Hundred Eighteen and Forty-Nine Paisa Only) from the date of default i.e., 15.04.2019. It is observed that the Operational Creditor has issued various invoices (Annexure-6) for goods supplied to the Respondent Corporate Debtor. Applicant Operational Creditor has given Demand Notice in Form No. 3 dated 18.04.2019, 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.

30. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid due as mentioned in the statutory notice till 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.

31. 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'). The Operational Creditor has proposed the name of Mr. Ramakishan Agarwal, having registration no. IBBI/IPA-003/IP-N00212/2018-2019/12364. He 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 by the provisions of the Code, and Rules and Regulations thereunder.

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

- (i) The IRP appointed by the Adjudicating Authority, Mr. Ramakishan Agarwal, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of 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. 2,00,000/- (Rupees Two Lakhs 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 Operational Creditor, 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.

33. Accordingly, CP No. (IB)-123/9/JPR/2019 is admitted.

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**DEEP CHANDRA JOSHI  
(JUDICIAL MEMBER)**

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**PRASANTA KUMAR MOHANTY  
(TECHNICAL MEMBER)**