

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-IV**

CP (IB) No.635/MB-IV/2020

Under Section 9 of the IBC, 2016

In the matter of

AYPOLS POLYMERS PRIVATE
LIMITED

[CIN: U24304TZ2017PTC029011]

[GSTN:33AAPCA6502P1ZC]

...Operational Creditor

v/s.

SUVARNA FIBROTECH PVT LTD

[CIN: U28999PN1988PTC048333]

...Corporate Debtor

Order Delivered on: 03.03.2023

Coram:

Mr. Prabhat Kumar

Hon'ble Member (Technical)

Mr. Kishore Vemulapalli

Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner:

Mr. S. Palanikumar, Company
Secretary, Learned Authorised
Representative.

For the Corporate Debtor:

Mr. Viraj Parikh i/b Adv. Agam H
Maloo Adv, Ld. Counsel.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (IBC) AYPOLS POLYMERS PRIVATE LIMITED,

("the Operational Creditor"), seeking initiation of Corporate Insolvency Resolution Process (CIRP) against SUVARNA FIBROTECH PVT LTD, ("the Corporate Debtor").

2. The petition is filed on 19.02.2020 claiming an outstanding amount of Rs.17,72,258 as on 09.11.2019. The Corporate Debtor failed to repay the same.
3. The Operational Creditor has submitted that it supplied material i.e. unsaturated polyester resins to the Corporate Debtor and raised Invoice(s) upon the Corporate Debtor for the goods supplied to it.
4. The Operational Creditor has sent a mail dated 27.06.2018 and 09.7.2018 inviting the attention of Corporate Debtor to the fact that the payment outstanding pertains to 2015-2016 and requested to pay it in monthly small amount of at least 1 lakh per month another mail was sent on 15.10.2019. The Operational Creditor has enclosed copy of ledger account of the Corporate Debtor in his books. On perusal of this it is noticed that the Corporate debtor have been making regular payments and the outstanding mainly pertains period prior to 01.4.2017. The operational Creditor has sent the demand notice dated 18.02.2020 to the Corporate Debtor however, proof of service of the demand notice is not annexed hence it is not clear. How the demand notice was served upon the Corporate Debtor.
5. The Corporate Debtor in its reply has raised allegations stating that, the Operational Creditor has not mentioned the date of default in Part IV of the petition and same is referred to as Annexure II, whereas index of the petition does not specify any document as Annexure II has not mentioned in the

petition; the Operational Creditor has not submitted the complete set of documents.

6. We have heard both the Counsel and perused the material on record.
7. We noticed that the Operational Creditor served a demand notice in Form 3 on 18.02.2020 and has not filed any proof of service and petition was filed on 19.02.2020 vide Reference No 2709138010602020. It is pertinent to note that Section 8(1) of the Code provides delivery of Demand Notice on unpaid Operational Debt and Section 8(2) provides 10 days' time to the Corporate Debtor to responds to such notice. Section 9 of Code permits the Operational Creditor after expiry of 10 days provided in sec 8(2) to file an application before the adjudicating authority for initiating Corporate Insolvency Resolution Process. In the present case, the operational creditor has filed the application on the very next day of the date of demand notice in Form 3. In view of provisions of Sec 9 enabling the Operational creditor to file an application against the Corporate Debtor after expiry of 10 days from the date receipt of such demand notice by the Corporate Debtor, we are of the view that present application is not in accordance with the mandate of Section 9(1) of the Code as the same has been filed on the next day of the date of demand notice.
8. In view of the above, the present petition is dismissed as not maintainable in terms of provision contained in Sec 9(1) of IBC.

ORDER

9. The petition bearing CP(IB) 635/MB-IV/2020 filed by AYPOLS POLYMERS PRIVATE LIMITED ("the Operational Creditor"), seeking to

initiate Corporate Insolvency Resolution Process (CIRP) against SUVARNA FIBROTECH PVT LTD (“the Corporate Debtor”), is **Dismissed**.

10. We make it clear that any observations made in this order should not be construed as expressing opinion on merits. The right of the petitioner before any other judicial forum shall not be prejudiced on the grounds of dismissal of the present petition as it barred by the law.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)
03.03.2023.

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)