



**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH**

**IA No.115/2020  
In  
CP (IB) No.128/Chd/Hry/2017  
(admitted matter)**

**Under Section 60(5) of the  
Insolvency and Bankruptcy Code,  
2016**

**In the matter of :**

Bank of India ...Petitioner/Financial Creditor  
Versus  
M/s. OSIL Exports Ltd. ...Corporate Debtor

And in the matter of: -

**IA No.115/2020**

Polygon Industries  
with its registered address at  
Village Faridpur Road  
Near Toll Plaza, Panipat,  
Haryana-132103

...Applicant

Vs.

Mr. Kanwal Goyal,  
Liquidator of M/s. Osil Exports Ltd.  
having its registered office at  
E10A Kailash Colony, New Delhi,  
National Capital Territory of Delhi-110048

...Liquidator

**Judgment delivered on: 31.03.2023**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**



**Present : -**

For the Applicant : Mr. Manish Jain, Advocate  
For the Respondent : Mr. Balwinder Singh Kalsi, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The instant Application has been filed by the applicant under Section 60(5) of the Insolvency & Bankruptcy Code, 2016, seeking the setting aside of an order dated 17.12.2019 passed by the Liquidator rejecting the claim of the applicant. Further, direction against the respondent-liquidator to release the payments of dues during the CIRP period to the tune of Rs. 3,31,74,769.60/- along with interest @10% p.a. w.e.f. 27.07.2018 and compensatory costs in favour of the applicant.

2. The main Company Petition bearing CP (IB) No.128/Chd/Hry/2017 was admitted by this Adjudicating Authority vide order dated 31.01.2018. Further, the liquidation application was allowed vide order dated 17.10.2019. It is submitted that after the initiation of CIRP, the applicant supplied various goods to the corporate debtor in terms of purchase orders placed by the Resolution Professional from time to time. A copy of various purchase orders placed by the Resolution Professional (Annexure A-3). A copy of the invoices along with e-way bills issued by the applicant against each supply of goods evidencing the dispatch of materials (Annexure A-4). A copy of the ledger account statement for the period from 01.04.2018 to 31.08.2018 is attached as Annexure-5. It is submitted that the total payment made by the Resolution



Professional to the applicant till date is Rs. 1,84,37,625.00/- made up as follows:

04.5.2018	: Rs. 51,93,213.00	} For supplies made
11.5.2018	: Rs. 90,22,377.00	} from 01.03.2018
25.5.2018	: Rs. 40,08,171.00	} to 31.03.2018
25.7.2018	: <u>Rs. 2,13,864.00</u>	
	<u>Rs. 1,84,37,625.00</u>	

Balance payment due: Rs. 3,31,74,769.60

3. It is submitted that the applicant filed its claim with the liquidator vide email dated 16.11.2019. However, the liquidator rejected the claim of the applicant on 17.12.2019 on the following grounds:

- i. The agreement for the supply of goods during the CIRP period has not been signed by the RP;
- ii. Purchase orders not signed by the RP;
- iii. E-way bills have not been authenticated by the RP.

4. It is submitted that the purchases made by the RP for the period 1.3.2018 to 31.3.2018 aggregated to Rs. 1,42,15,590/-, which was paid by the RP in two tranches in May 2018. At that stage, the RP did not raise any objection to the mode of placing the orders, seeking a copy of any contract and did not even demand authentication of the E-way bills. The same process was continued by the Applicant for the subsequent purchases made by the RP on behalf of the Corporate Debtor for the period 01.04.2018 to 27.07.2018. In



fact, the RP made further payments of Rs. 40,08,171/- on 25.05.2018 & Rs. 2,13,864/- on 25.07.2018 to the Applicant.

5. It is averred by the applicant that the liquidator has failed to notice that the invoices bear the stamp of the corporate debtor with an entry, date and time of receipt duly signed by the personnel deputed for this purpose.

6. The respondent-Resolution Professional has filed its reply vide diary No. 02112/2 dated 04.03.2021, stating that the claim was lodged under section 38 of IBC, read with rule 17 of IBBI (Liquidation process regulations) and was thoroughly examined and rejected on 17.12.2019. The claim was rejected under Section 40 of the IBC, and an appeal could have been filed within 14 days, but no appeal was filed, and this fact has been suppressed, and the application needs to be dismissed.

7. The respondent has further submitted that the authenticity of the purchase orders placed on record by the Applicant and marked as Annexure A-3 (Colly.) in the application cannot be ascertained in the light of the fact that there is no identification of the person who allegedly signed the said purchase orders, nor has the Company seal been marked on the said orders. Furthermore, no underlying agreement or contract on the basis of which the purchase orders have been issued has been placed on record by the Applicant. Therefore, it is submitted that the purchase orders being relied on by the Applicant are prima facie purported to be false, fraudulent and issued without authority in order to defraud the creditors and the Respondent. The authenticity of the alleged entry at the gates of the Corporate Debtor cannot be ascertained since the same is unsupported, and the identity of the persons



making the alleged supply of goods to the site of the Corporate Debtor cannot be verified from the same.

8. The respondent has submitted that the payment amounting to INR 1,84,37,625/- (Rupees One Crore Eighty Four Lakhs Thirty-Seven Thousand Six Hundred and Twenty-Five only) has been made by the respondent to the Applicant. It is, however, reiterated that the said payments were made in pursuance of the undertaking received by the Respondent from Mr. Krishan Kumar Gupta. It is denied, however, that an amount of INR 3,31,74,769.60/- (Rupees three crores thirty-one lakhs seventy-four thousand seven hundred and forty-nine and sixty paise only) is due from the Respondent to the Applicant. Further, in the first CoC, it is clarified that disbursements will only be made once the agreement is signed by suppliers. Pursuant to the second CoC dated 07.04.2018 and the third CoC meeting dated 22.05.2018, a procedure of maintaining records of purchase and stock was made so that the functioning of the corporate debtor run smoothly. In the fifth CoC meeting dated 13.08.2018, the respondent informed that most of the staff has resigned and is making all possible efforts to appoint new employees. Further, two emails dated 18.10.2018 were sent to the applicant, which were never replied to by the applicant. The respondent tried to run the corporate debtor as a going concern, but the same was not possible due to the non-cooperation of the ex-management. Further, the applicant has failed to place on record any agreement with regard to the averments made in the application.

9. The applicant has filed a rejoinder vide diary No. 02112/4 dated 09.03.2021, wherein the applicant has denied the submissions made by the respondent in its reply.



10. In pursuance of our Administrative order dated 16.11.2022, the respondent has filed a compliance affidavit vide diary No. 02112/7 dated 07.12.2022, wherein the respondent has furnished a copy of the inward register from the period 01.04.2018 to 15.05.2018. Further, the copies of invoices along with e-way bills for the period, i.e. 01.03.2018 to 31.03.2018, could not be traceable as the corporate debtor has stopped production since November 2018, and the record for the last ten years has been lying in an unarranged manner in the factory building of the corporate debtor. Further, in response to the query with regard to the respondents' agreement with the applicant, if any, from the inception of the supply of goods by the applicant, it is stated that there is no agreement as required under Regulation 17(2) (i) of the IBBI (Liquidation) Regulations is available in the record of the corporate debtor. Further, applications under Sections 43 & 66 of the Code are pending before this Adjudicating Authority, and the collusion between the applicant and Mr. Krishan Kumar Gupta (the then Managing Director of the corporate debtor managing purchases from the suppliers of the corporate through the authority of the Resolution Professional) for the raising of the invoices has been alleged. This Adjudicating Authority further asked the respondent whether the input tax credit for the supplies made by the applicant from 01.04.2017 to 27.07.2018 has been claimed or not by the corporate debtor. The respondent, vide their compliance affidavit, has stated that the corporate debtor had not claimed GST input credit for the alleged supplies made by the applicant from 01.04.2018 to 27.07.2018.

11. The applicant has filed its objection to the compliance affidavit filed by the respondent in terms of the administrative order dated 16.11.2022, stating



that this Adjudicating Authority had inadvertently mentioned the period for copies of invoices from 01.03.2018 to 31.03.2018 as the payment for such period is already received by the applicant. Further, with regard to the inward register, the respondent has not provided any independent inference of the same and has left the same open for this Adjudicating Authority to interpret. The RP, on behalf of the corporate debtor, made purchases aggregating to Rs. 1,42,15,590 between the period of 01.03.2018 to 31.03.2018. The corporate debtor made a payment against the supplied goods in the month of March 2018 vide two remittances on 04.05.2018 for Rs. 51,93,213/- & on 11.05.2018 for Rs. 90,22,377/-. It is further submitted that the invoices issued by the Applicant bear the stamp of "Inward entry" of the Corporate Debtor along with entry no, date and time of receipt duly signed by the personnel deputed for this purpose. At no point of time the respondent ever denied the supply of goods. It is alleged by the applicant that the objections are raised with a clear view to deprive the Applicant of its legitimate dues.

12. The applicant, in its objection, has submitted that the Liquidator was under obligation to seek a refund of the amount deposited by the supplier it is an export order/sales, where no GST was applied for outward supply. The sale was done on the basis of a Letter of Undertaking (LUT) where the Corporate Debtor was entitled to seek a refund of the amount in lieu of the input tax credit (ITC) as per the enquiries made by the staff of the Corporate Debtor. Therefore, the Liquidator should have clarified that there is no occasion for a claim of ITC and the goods so received from the supplier have been exported successfully, and funds have already been realized.



13. The respondent-Liquidator has filed a compliance affidavit vide diary No. 02112/ 9 dated 07.02.2023 in response to short replies/objections raised by the applicant. It is submitted by the liquidator that the objections raised by the applicant are false, frivolous, and baseless. Further, as per the forensic auditor report, there is a fraudulent write-off of inventory, cash settlement of creditors and squaring of the debtors.

14. We have heard the learned counsel for the applicant and respondents and carefully perused the written submission and record available.

15. The applicants' statement that this Adjudicating Authority had inadvertently mentioned the period from copies of invoices 01.03.2018 to 31.03.2018 in its administrative order dated 16.11.2022 is not correct as these invoices were requisitioned by this Bench to verify the claim of the respondent-corporate debtor that payments for all invoices entered into the ledger account statement of the corporate debtor have been made. We note the fact that there is no agreement as required under Regulation 17(2) (i) of the IBBI (Liquidation) Regulations, 2016, between the corporate debtor and the applicant is undisputed. Further, the respondent, through a compliance affidavit filed vide diary No. 02112/7 dated 07.12.2022, has stated that the corporate debtor had not claimed GST input credit for the alleged supplies made by the applicant from 01.04.2018 to 27.07.2018.

16. For proper Adjudication, a reference is made to the email dated 18.10.2019 sent by the respondent to the applicant:

*"The party may be asked to provide specification for the materials supplied to Osil Exports Ltd. from the competent authority to enable us the matter to be considered further. This has to taken up expeditiously.  
Kanwal Goel  
Resolution Professional in the matter of Osil Exports Ltd."*



17. The email was exchanged with Mr. Mohan Arora, a former Assistant General Manager of a PSU appointed by the respondent to streamline the functioning of the corporate debtor and Mr. Harsimrat Grover, a similarly placed employee engaged by the respondent for the smooth functioning of the corporate debtor evidencing the fact that proper records were not maintained due to lack of professional staff.

*“further to my email dated 21 June, 2018 wherein I have offered my resignations to your good self, I would like to clarify the points raised by you.*

- 1. The bill passed and cleared by you are as per the current purchases made against export order. As we have stopped production in the factory and purchasing packed goods from supplier from 1st of June 2018, the stock of fabric kept at the premises is for contingency. Any delay of packed goods by the supplier will affect our dispatch to WALMART. So we have to keep buffer stock at bare minimum level in order to cover the risk of late shipment. Moreover, we have to satisfy the Walmart inspection agency that the manufacturing has been taken place at the Osil premises.*
- 2. It was verbally informed to your good self and Mr. Gaurav that we are going to do Job Work as machines are kept idle and the said job work will cover some operational cost. It was started on 5 June 2018. I agree that the proper records were not maintained as the contract has also been signed with the party which clarifies the rate and quantity to be manufactured. I also hereby undertake that no illegal activity is being carried on in the factory premises. Export sales and their correspondent purchases are looked after by Mr. Krishan Kumar Gupta only as I do not have the technical knowledge of the textile product. Also we do not have competent staff to handle marketing and purchase in the company as already appraised in various meetings.”*

18. Admittedly no proper record was maintained by the corporate debtor, and the claim of any supplies made to the corporate debtor, that too, without any agreement, can not be held to be genuine. It may be noted that the



applicant has not availed the remedy available under Section 42 of the Code, i.e., to file an appeal before Adjudicating Authority against the decision of the Liquidator accepting or rejecting the claims within 14 days of receipt of such decision dated 17.12.2019. Further, the applicant is filing the present application under Section 60(5) of the Code vide diary no. 02112/2 dated 08.03.2021, i.e., more than fifteen months after the decision liquidator rejecting the claim of the applicant. Thus, we are of the considered view that the application in hand is neither maintainable nor there is any reliable evidence on record in support of the supplies/claim made by the applicant.

19. In the result, the present application fails and is dismissed accordingly.

Sd/-  
**(Subrata Kumar Dash)**  
**Member (Technical)**

Sd/-  
**(Harnam Singh Thakur)**  
**Member (Judicial)**

March 31, 2023  
PB/ASH