

IN THE NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH
COURT NO. 1

ITEM No.202
TP 26 of 2019 [CP(IB) 668 of 2019]

Proceedings under Section 9 IBC

IN THE MATTER OF:

Permali Wallace Pvt Ltd
V/s
Narbada Forest Industries Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 03/11/2022

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

Sd/-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

Abhishek

Sd/-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH**

**TP (MP) 26 of 2019
CP (IB) 668 of 2019**

[An operation under Section 9 of the Insolvency & Bankruptcy Code, 2016 (Application to Adjudicating Authority) Rules, 2016]

In the matter of:

**PERMALI WALLACE PRIVATE LIMITED
CIN NO: U02001MP1961PTC000927
Hoshangabad Road, Opposite RBI
Bhopal (MP) - 462 011**

...Applicant/Operational Creditor

Versus

**NARBADA FOREST INDUSTRIES PRIVATE LIMITED
CIN NO: U36101MP1984PTC002466
A-109, Shastri Nagar,
Bhadbhada Road
Bhopal (MP) – 462003**

...Respondent/Corporate Debtor

**Order Reserved on: 22.09.2022
Order Pronounced On: 03.11.2022**

CORAM:

**DR. MADAN B. GOSAVI, MEMBER (JUDICIAL)
KAUSHALENDERA KUMAR SINGH, MEMBER (TECHNICAL)**

Advocates Who appeared in this case:

For the Applicant – Ld. Adv. Mr. Rajesh Giri

For the Respondent – Ld. Sr. Adv. Mr. Navin Phawa

ORDER

1. The present application is filed by M/s Permal Wallace Pvt Ltd (**Applicant/Operational Creditor**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**“the code”**) read with Rule 6 of the

Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against M/s Narbada Forest Industries Pvt Ltd (Respondent/Corporate Debtor) to initiate the Corporate Insolvency Resolution Process (**CIRP**) of the Corporate Debtor on the ground of the Corporate Debtor committed default in paying amount of Rs 1,28,82,040/- (Rupees One Crore Twenty-Eight Lakhs Eighty-Two Thousand Forty only) towards interest at the rate of 18% per annum on original operational debt of Rs 1,74,16,527/-.

2. It is not in dispute that earlier the Operational Creditor had filed an application against the Corporate Debtor under Section 9 of the IBC, 2016 for default of operational debt of Rs 1,74,16,527/- (principal amount) and the interest Rs 1,44,82,040/- thereon. It was numbered as CP(IB)126/9/NCLT/AHM/2017. Pending that application for hearing, the parties entered into a settlement and the Operational Creditor withdrew that application by withdrawal memo dated 08.11.2017. This Adjudicating Authority by order dated 08.11.2017 disposed of this application on a ground of that settlement arrived in between the parties.

3. This new application is filed by the Operational Creditor against the Corporate Debtor again under Section 9 of the IBC, 2016 for default of payment of interest amount by the Corporate Debtor. As per the terms of settlement agreement, the Respondent/Corporate Debtor had agreed to pay the full amount of outstanding against the invoices Rs 1,74,16,527/- and the interest of Rs 48,00,000/-.

4. It is not in dispute that, in pursuance of the settlement agreement, the Corporate Debtor has already paid the Operational Creditor the operational debt of Rs 1,74,16,527/- and the interest amount to the extent of Rs 16 Lakhs. According to the Operational Creditor, in view of the breach of terms of the settlement agreement, the Corporate Debtor

has now to pay a sum of Rs 1,28,82,040/- (Rs 1,44,82,040 – Rs 16,00,000) towards the interest. A demand notice under Section 8 of the IBC, 2016 has been served upon the Corporate Debtor.

5. A notice of this application has also been served upon the Corporate Debtor. The Corporate Debtor appeared through one of its Directors, Mr. Raghunandan Singh Chauhan and filed an affidavit-in-reply.

6. Mr. Raghunandan Singh Chauhan (Director of the Corporate Debtor) contended that entire debt amount is paid to the Operational Creditor. This application is filed as a hand twisting method for recovery of extra some of money which is not at all due and payable by the Corporate Debtor. The Operational Creditor has been misusing the Provisions of the IBC, 2016 to recover the disputed amount. This application is not maintainable.

7. We heard the learned counsel, Mr. Rajesh Giri appearing for the Operational Creditor and the learned senior counsel, Mr. Naveen Pahwa appearing for the Corporate Debtor at length.

8. At the outset, we note that this application is filed by the Operational Creditor for execution of terms of settlement agreement dated 07.11.2017. In our considered opinion, the amount arising out of some settlement agreement cannot be termed as operational debt within the meaning of Section 5(21) of the IBC, 2016.

9. Apart from above, it is not in dispute that the Corporate Debtor paid the Operational Creditor the entire operational debt (principal). The Corporate Debtor has also paid a sum of Rs 16 Lakhs towards the interest on principal sum. It is a case of the Operational Creditor that the Corporate Debtor has to pay additional sum of Rs 1,28,00,000/- towards the interest which amount is disputed by the Corporate Debtor.

Earlier an application was disposed of on the ground of settlement. In pursuance to the settlement arrived at, the operational debt of Rs 1,74,16,527/- (principal amount) and the interest to the extent of Rs 16,00,000/- has already been paid. The balance amount of Rs 32,00,000/- remained unpaid against Rs 48,00,000/- towards interest as per settlement agreement. However, now the Operational Creditor is before us to claim a sum of Rs 1,28,00,000/- (Rs 1,44,82,040 – Rs 16,00,000) towards the interest. We sincerely feel that the Operational Creditor has been using the IBC proceeding for recovery of disputed amount and which is not object of the Insolvency and Bankruptcy Code, 2016. On this ground alone, this application is not maintainable.

10. Moreover, there appears to be a dispute about the term of settlement agreement as far as calculation of interest amount is concerned. It cannot be resolved before this Adjudicating Authority.

11. We also peruse the invoices laid on by the Operational Creditor. Most of the invoices do not mention the condition that the Corporate Debtor has to pay the interest at the rate of 18% per annum on delayed payment. So there is also a dispute about this fact.

12. For all above reasons, we hold that this application under Section 9 of the IBC, 2016 appears to be filed for recovery of disputed interest amount and not for Resolution of any Insolvency of the Corporate Debtor and, therefore, not maintainable before this Adjudicating Authority.

13. Accordingly, CP(IB) 668/IND/2019 is disposed of as rejected.

Sd/-

Kaushalendra Kumar Singh
Member (Technical)

Sd/-

Dr. Madan B Gosavi
Member (Judicial)