

**NATIONAL COMPANY LAW TRIBUNAL**  
**INDORE BENCH**  
**COURT NO. 1**

ITEM No.5  
CP(IB) 319 of 2018

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Agrawal Poly Plast Pvt Ltd  
V/s  
Star Lamipacks Pvt Ltd

.....Applicant

.....Respondent

**Order delivered on 04/04/2024**

**Coram:**

P. Mohan Raj, 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 the order.

The order is pronounced in open Court *vide* separate sheet.

Sd/-

**KAUSHALENDRA KUMAR SINGH  
MEMBER (TECHNICAL)**

A. Bhadauria

Sd/-

**P. MOHAN RAJ  
MEMBER (JUDICIAL)**

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

**CP(IB) 319 of 2018**

**In the Matter of:**

*(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**Agrawal Poly Plast Private Limited**

E-72 & 73, Site-A Industrial Area  
Mathura, Uttar Pradesh- 281001

**Operational Creditor/  
Applicant**

**Versus**

**Star Lamipacks Private Limited**

05, Ashiana Building  
1<sup>st</sup> Floor, Moti Palace  
Gurudwara, Gwalior- 474009

**Corporate Debtor  
/Respondent**

**Order pronounced on: 04.04.2024**

**Coram: Hon'ble P. Mohan Raj, Member (J)  
Hon'ble Kaushalendra Kumar Singh, Member (T)**

**Present:**

For the Applicant: Ld. Adv. Mr. Abhishek Chauhan

For the Respondent: Ex-parte

**ORDER**

1. The Company Petition- CP(IB) 319 of 2018 has been preferred under Section 9 of IBC, 2016. The same was filed on 07.06.2018 by Agrawal Poly Plast Private Limited (**Applicant/Operational Creditor**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an Operational Creditor for initiation of Corporate Insolvency Resolution Process (**CIRP**) against Star Lamipacks Private Limited (**Respondent/Corporate Debtor**). The amount of claimed debt in default is Rs.81,59,742/-

(principal amount Rs.30,27,622/-, interest- Rs.49,84,229/- from 16.02.2011 to 15.02.2018 and sales tax – Rs.1,47,890/-).

2. The present application was dismissed by this Adjudicating Authority vide its order dated 20.03.2020 on the ground of being time-barred/ limitation. Subsequently, the applicant filed an appeal before the Hon'ble NCLAT bearing No. Company Appeal (AT) (Insolvency) No.530 of 2021, wherein, Hon'ble NCLAT has vide its order dated 09.03.2022 set aside the order dated 20.03.2020 of this Adjudicating Authority and directed to revive the present matter before this Adjudicating Authority. Thus, in pursuance of the said order of the Hon'ble NCLAT the matter is revived and has been re-heard.

3. Succinctly, the facts of the case as mentioned in the Company Petition are such that the applicant is engaged in the manufacture and supply of superior quality flexible plain plastic film for milk liquor, lamination and polyethylene packing film. The respondent is involved in the manufacture of metals and chemical products. The respondent approached the applicant in the year 2009 to purchase polyethylene packing film and accepted the quotation of the applicant along with its terms and conditions as mentioned therein such as the term of payment of invoice within 30 days and imposition of monthly interest @ 2% on non-payment of invoice within 30 days.

4. The conclusive plea adopted by the applicant is that the respondent placed various purchase orders against which the applicant supplied the products and the same were received and acknowledged by the respondent. The applicant raised invoices time to time, however, the respondent failed to pay the amount within 30 days from the date of the invoices, and after several reminders from the applicant, the respondent paid only Rs.2,00,000/- on 09.07.2014.

The applicant also paid sales tax amounting to Rs.1,47,890/- @ 2% to the Deputy Commissioner of Sales Tax due to non-issuance of Form C by the respondent on the said invoices amounting to Rs.73,94,546/-.

The date of default against the invoices and the amount defaulted are as under:

Date of default	Details of Invoice			Amount paid by the respondent	Default amount
	Invoice No.	Date of Invoice	Amount		
16.02.2011	1562	16.01.2011	4,03,536	2,15,917	1,87,619
23.02.2011	1600	23.01.2011	5,88,451	-	5,88,451
09.03.2011	1668	06.02.2011	5,83,880	-	5,83,880
30.03.2011	1818	27.02.2011	4,49,205	-	4,49,205
27.04.2011	1965	27.03.2011	2,69,051	-	2,69,051
20.05.2011	113	19.04.2011	2,68,871	-	2,68,871
04.06.2011	216	04.05.2011	2,66,189	-	2,66,189
11.08.2011	658	11.07.2011	4,14,536	-	4,14,536
<b>Total</b>					<b>30,27,622</b>

5. As has been submitted by the applicant a demand notice dated 03.03.2018 was served upon the respondent under section 8 of the Code. It is the case of the applicant that the said demand notice was delivered to the respondent on 05.03.2018, however, the corporate debtor did not reply to the same and that there is no pre-existing dispute. Furthermore, the present application was filed on 07.06.2018 and the respondent has acknowledged the debt as at the end of each year from the year 2010 till 2016 by confirming the statement of accounts sent by the applicant. The last confirmation of account was on 31.05.2016 for the period 01.04.2016 to 30.05.2016 reflecting the outstanding debt of Rs.30,27,622/-. However, the said application was rejected by this Adjudicating Authority vide its order dated 20.03.2020 on the grounds of being barred by limitation against which the applicant filed an appeal before the Hon'ble NCLAT (Company Appeal (AT) (Insolvency) No.530 of 2021). The Hon'ble NCLAT has vide its order dated 09.03.2022 set aside the order of the Adjudicating Authority stating that the Adjudicating Authority committed error in rejecting the

application as barred by time and directed the Adjudicating Authority to revive the matter.

6. Moreover, the respondent has neither replied to the demand notice nor has appeared in any of the hearings even after serving the notice. Therefore, the respondent was set ex-parte vide order dated 06.01.2023 of this Adjudicating Authority.

7. After perusing the material available on record and hearing Ld. Counsel for the applicant, it is noted that the applicant supplied polyethylene packing film to the respondent from the year 2010 till 2011 against which the applicant raised invoices timely, which also contained a clause of interest @ 2% on non-payment of invoice amount within 30 days from the date of invoice. However, the respondent made certain payments against the outstanding amounts on various dates and the last payment was made on 09.07.2014 for Rs.2,00,000/-. The outstanding amount at the end of each year for 2010 to 2016 has been confirmed by the respondent by signing the statement of accounts sent by the applicant. Further, the last confirmation of account by the respondent was on 31.05.2016 for the period 01.04.2016 to 30.05.2016 confirming the debt of Rs.30,27,622/-. The applicant filed the present application on 07.06.2018 and as such the same is within limitation.

8. It is further noted that the said application filed by the applicant was once rejected by the order dated 20.03.2020 by this Adjudicating Authority on the ground that the same is barred by limitation. However, on an appeal filed by the applicant before the Hon'ble NCLAT (Company Appeal (AT) (Insolvency) No.530 of 2021) the said order of the Adjudicating Authority was set aside by the Hon'ble NCLAT vide its order dated 09.03.2022. For ready reference the relevant part of the

order dated 09.03.2022 passed by Hon'ble NCLAT is reproduced as under:

*6. It is well settled that on acknowledgement by Corporate Debtor of the debt limitation is extended as per Section 18 of the Limitation Act, 1963. Learned counsel for the Appellant submits that confirmation of account sent by the Corporate Debtor from 01.04.2010 to 31.05.2016 were on the record of the Adjudicating Authority where the debt of Rs.30,27,622/- was mentioned while confirming the account by the Corporate Debtor. The last confirmation of account being issued on 31.05.2016 for the period 01.04.2016 to 30.05.2016, we are of the view that the Appellant can clearly claim the benefit of Section 18 of the Limitation Act and application having being filed within three years from the last letter of acknowledgment on 31.05.2016 the application was well within time. The Adjudicating Authority has not referred to the acknowledgment i.e. confirmation of accounts, which letters were issued by the Corporate Debtor and which were on the record of the Adjudicating Authority. The confirmation of account letters issued by the Corporate Debtor to the Operational Creditor clearly extend the period of limitation for the Appellant to file application under Section 9. We, thus, are of the view that the Adjudicating Authority committed error in rejecting the application as barred by time. The order impugned dated 20.03.2020 is set aside. Application under section 9 being C.P.(IB) No. 319/9/NCLT/AHM/2018 is revived before the Adjudicating Authority. The Adjudicating Authority after issuing notice to the Appellant may pass an order for admission of the application within a period of six weeks from the date copy of this order is produced before the Adjudicating Authority. Parties shall be at liberty to enter into settlement before the aforesaid date. Appeal is allowed accordingly.*

9. The claim of the applicant stands established and prima facie there is default in payment of the amount due to the applicant without any dispute in existence. Moreover, the claim of applicant is not contested by the respondent in spite of various opportunities given, which amounts to admission of debt.

10. The default amount meets the threshold limit as per Section 4 of the IB Code, 2016 (prior to the amendment under section 4 of the IB code) and the application is well within the limitation.

11. In the view of facts, it is clear that respondent has defaulted in the payment of its debts. On the basis of the facts the application is otherwise defect free & on record. Accordingly, we admit this application and order as under:

(i) Corporate Debtor M/s Star Lamipacks Private Limited is admitted in the Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016.

(ii) The moratorium under section 14 of the Insolvency & Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(a) *the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*

(b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

(c) *any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

(iii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iv) The Operational Creditor has not proposed the name of the IRP, therefore, this Adjudicating Authority hereby appoints from its panel the IRP Mr.Nishant Agrawal having registration No.IBBI/IPA-001/IP-P02100/2020-2021/13283 to act as an IRP under Section 13(1) (c) of the IBC, 2016.

(v) The IRP so appointed shall make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern

as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(ix) The Operational Creditor is directed to pay an advance of Rs. 1,00,000/- (Rupees one lakh only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, the IRP may raise further demands for Interim funds, which shall be provided as per Rules.

(x) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

12. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST, State Trade Tax and Provident Fund etc. who are likely to have their claim against Corporate Debtor as well as to the trade unions/ employee's associations so that they are timely informed about the initiation of CIRP against the corporate debtor.

13. Accordingly, CP(IB) 319 of 2018 is allowed.

**-sd-**

**Kaushalendra Kumar Singh**  
**Member (Technical)**

**-sd-**

**P. Mohan Raj**  
**Member (Judicial)**