



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

(IB)-603(ND)2020

**IN THE MATTER OF:**

**M/s. Flourish Paper & Chemicals Limited**

Registered Office at :

Village Bhagwanpur, Barwal Road,

Derrabasssi, District, SAS Nagar,

(Mohali) Punjab-140507

...Applicant/Operational Creditor

**VERSUS**

**M/s. Suchi Paper Mills Limited**

Registered Office at :

C-235, Ground Floor, Anand Vihar,

MCD School, Delhi East, Delhi-110092

...Respondent/Corporate Debtor

**Section: 9 of the IBC, 2016**

**Order Delivered on: 12.09.2022**

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

**SH. L. N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant** : Mr. Vinod Chaurasia, Advocate.

**For the Respondent** : Mr. Sanjeev Panda, Advocate.

(IB)-603/(ND)/2020

M/s. Flourish Paper & Chemicals Limited. V/s. M/s. Suchi Paper Mills Limited



## ORDER

### PER SHRI L. N. GUPTA, MEMBER (T)

The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s. Flourish Paper & Chemicals Limited, through its Authorised Representatives Mr. Manesh Kumar (for brevity '**Applicant/Operational Creditor**') with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Suchi Paper Mills Limited (for brevity, '**Respondent/Corporate Debtor**').

2. That the Corporate Debtor namely, M/s. Suchi Paper Mills Limited is a Company incorporated on 02.06.2003 with CIN U21022DL2003PLC120666 under the provisions of the erstwhile Companies Act, 1956 presently having its registered Office at C-235 Ground Floor, Anand Vihar, Opposite MCD School, East Delhi- 110092, which is within the territorial jurisdiction of this Tribunal.

3. That the Authorized Share Capital of the Corporate Debtor is Rs. 12,00,00,000/- and Paid-up Share Capital is Rs. 10,21,15,000/- as per the Master Data of the Corporate Debtor.



4. It is submitted by the Applicant that Corporate Debtor had supplied PAC (Powder) and Sizing Agent (Flopap SS-5840) and raised invoices against the Corporate Debtor as annexed with the application.

5. The detailed particulars of the Operational Debt including the total amount of default and the date of default are mentioned in the Part IV of the application, which is reproduced below for the sake of convenience.

**Part-IV**

<b>PARTICULARS OF OPERATIONAL DEBT</b>	
1. <b>TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE</b>	<p>The total amount of Debt is: <b>Principal Amount Rs. 13,42,230/-</b> Plus <b>Interest @18% Rs. 7,49,460/-</b> (calculated upto 31/12/2019) since dates of various bills raised &amp; outstanding for payment.</p> <p>Thus total amount in default is <b>Rs.20,91,690/-</b> (Twenty Lakhs, Ninety One Thousand Six Hundred ninety only)</p> <p>The list of various outstanding bills showing due dates of payments &amp; interest calculation sheet is attached at <b>Annexure 5, page no 37</b></p> <p>The Copies of outstanding bills are</p>



		<p>attached at <b>Annexure 5, page no 32-36.</b></p> <p>As per the terms of the business the payment has to be made within a period of 45 days from the date of Invoice.</p> <p>The debt is due in lieu of supply of goods i.e. PAC(Powder), Sizing Agent (Flopap SS-5840) and related material provided by the Operational Creditor to the Corporate Debtor on its request.</p> <p>A copy of running account ledger as maintained by Operational Creditor is attached at <b>Annexure-7 at page no. 42-46.</b></p> <p><b>Various dates of Default:</b></p> <ol style="list-style-type: none"> <li>1. Date of Last payment received : <b>07/07/2017;</b></li> <li>2. Date of Last Invoice for material received/purchased by Operational Creditor from corporate debtor under cross trading with each other : <b>02/08/2017 (Kindly refer page 44)</b></li> </ol> <p>Thus the present application is well within limitation law as per section 19 of the Limitation Act, 1963. It is submitted that section 19 of the Limitation Act, 1963 specifically provides that once the payment is made towards the part of the total debt due, a fresh period of limitation starts on such payment.</p>
2.	<p><b>AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (THE WORKINGS FOR</b></p>	<p>The total amount of Debt is:  <b>Principal Amount Rs. 13,42,230/-</b>  Plus  <b>Interest @18% Rs. 7,49,460/-</b> (calculated upto 31/12/2019) since dates of various bills raised &amp; outstanding for payment.</p> <p>Thus total amount in default is</p>

**COMPUTATION  
OF AMOUNT  
AND DATES OF  
DEFAULT IN  
TABULAR FORM  
IS ATTACHED)**

**Rs.20,91,690/-** (Twenty Lakhs, Ninety One Thousand Six Hundred ninety only)

The list of various outstanding bills showing due dates of payments & interest calculation sheet is attached at **Annexure 5, page no 37**

The Copies of outstanding bills are attached at **Annexure 5, page no 32-36.**

As per the terms of the business the payment has to be made within a period of 45 days from the date of Invoice.

The debt is due in lieu of supply of goods i.e. PAC(Powder), Sizing Agent (Flopap SS-5840) and related material provided by the Operational Creditor to the Corporate Debtor on its request.

A copy of running account ledger as maintained by Operational Creditor is attached at **Annexure-7 at page no. 42-46.**

**Various dates of Default:**

1. Date of Last payment received : **07/07/2017;**
2. Date of Last Invoice for material received/purchased by Operational Creditor from corporate debtor under cross trading with each other : **02/08/2017 (Kindly refer page 44)**

Thus the present application is well within limitation law as per section 19 of the Limitation Act, 1963. It is submitted that section 19 of the Limitation Act, 1963 specifically provides that once the payment is made towards the part of the total debt due, a fresh period of limitation starts on such payment.



6. That from perusal of the Part IV of the Application, it is observed that the Applicant has claimed the total outstanding amount of Rs. 13,42,230/-plus interest @18%, as an unpaid operational debt. The Applicant has annexed invoices from 08.10.2016 to 17.12.2016 against the goods supplied. The due date of payment of the last invoice placed at Annexure A-5 of the application was 01.12.2016.

7. It is stated by the Applicant that respondent had made the part payment towards the supply of the goods on 07.07.2017 and thereafter, it did not receive any payment towards the invoices raised.

8. Thereafter, the Applicant left with no other remedy had sent a Demand Notice for the unpaid operational debt under Section 8 of IBC, 2016 on 02.01.2020, which was delivered by registered post to respondent on 06.01.2020, as per the speed-post tracking report annexed with the application. The Applicant has filed the affidavit under Section 9(3)(b) of IBC, 2016 stating that no notice of dispute has been received. However, from perusal of records, it is seen that the Applicant/operational creditor has annexed the reply/notice of dispute dated 13.01.2020 sent by the respondent to it in response to the demand notice. Hence, no prejudice is caused to anyone. Basing on the aforesaid facts, the Applicant has prayed for initiation of CIRP against the Respondent.



9. On issuance of notice, the respondent has filed its reply dated 27.01.2021 stating that the Application is time barred, which is clear from the invoices annexed. It is added that the due date of last invoice payment was 01.12.2016. Hence, it is stated by the respondent the present application deserves to be dismissed on this ground alone.

10. It is further stated by the Respondent that there is a pre-existing dispute between the parties which requires trial. It has further stated that the Applicant, before issuing of statutory demand notice, had issued a legal notice dated 05.12.2019, which was duly replied by the respondent on 16.12.2019.

11. It is averred by the Corporate Debtor in its reply that :

*“8. That without prejudice to the above averments, it is submitted that conflicting figures with respect to the amount of claim and debt has been provided in the application which is reflected from the statement annexed with the email dated 30/05/2017 sent by Sh. Atul Mehra on behalf of the operational creditor which shows the figure of Rs. 343845, the amount due as on 29.05.2017 which was communicated by the answering respondent to the operational creditor which corresponds with the books of the answering respondent. Further said statement attached with the email shows the figure due as on 29.05.2017 as Rs. 2130221.71 However, the ledger account relied on by the operational creditor with the application at page no. 44 of the application shows the figure of Rs. 32,94,391/- as on 29.05.2017 which clearly reflects that the books relied on by the operational*



*creditor in his application are fabricated and false and clearly shows the dispute. The averments made by the Applicant in the Petition are against the amount reflected in the statement which is at variance with the amount as claimed in the petition. The email dated 30/05/2017 along with the statement which is annexed as Annexure-2 colly. The respondent did not respond the said email and the said document is placed to show the contradictory stand taken by the operational creditor which shows the variance in figures in the books maintained by operational creditor and the statement annexed with the aforesaid email.*

12. It is further submitted by the respondent that most of the material supplied by the Applicant during 2015-16 and 2016-17 was of poor quality and unusable, for which it had suffered losses of Rs.25 lakhs. It is further submitted by the respondent that it was due to supply of poor quality material, the answering respondent did not purchase any material from the operational creditor since October 2016. It is added that the answering Respondent had also supplied the craft paper to the operational creditor in regular course of business, which is duly reflected in the books of the operational creditor. Further, as per the ledger of the operational creditor in the books of respondent, the operational creditor owes an amount of Rs. 16,08,316 to the respondent.

13. The Applicant has filed its rejoinder and contended that it has received last payments from the respondent on 07.07.2017 & 08.08.2017 and further material purchased from the CD on 08.08.2017



under cross trading to each other, a fact that is also admitted by the respondent in its reply at page no. 23. Hence, the present application filed with NCLT on 25.02.2020 is within limitation.

14. It is further contended by the Applicant that there is no pre-existing dispute as per section 8(2)(a) of IBC, 2016 prior to issuance of the demand notice. It is submitted that a pseudo/sham notice cum reply was given by the CD vide letters dated 16.12.2019 and 13.01.2020, which is only a moonshine defense and a false assertion of facts by CD without support of evidence.

15. It is further contended that the respondent in point no. 6 of its reply has claimed that the most of the material supplied by the operational creditor in financial years 2015-16 & 2016-17 was of poor quality and not usable, for which the respondent has claimed a compensation of Rs. 25,00,000/-. However, the respondent's account was already credited with Rs.35,91,500/- as per the details given below and the respondent is wrongly claiming compensation of Rs. 25,00,000/- towards loss for the goods supplied in 2015-16 & 2016-17.

<b>Date</b>	<b>Credit Note No.</b>	<b>Amount in (Rs.)</b>
30-09-2015	OB/CRN/62	17,41,500
31-03-2016	DB/CRN/208	18,50,000
<b>Total</b>		<b>35,91,500</b>



16. The Applicant has attached credit notes and ledger account of respondent for the year 2015-16, 2016-17 & 2017-18 as Annexure – 1 (Colly) and 2 (Colly) respectively with the rejoinder.

17. We have heard the Counsels for both the parties and perused the pleadings placed on record. In our view, the issue raised by the respondent with respect to the limitation needs to be addressed first.

18. It is contended by the Respondent that the petition is time barred since the last invoice became due and payable on 01.12.2016 whereas the present application has been filed on 24.02.2020. Per contra, it is stated by the Applicant that the Respondent had made a part-payment against invoices on 07.07.2017.

19. We would, therefore, like to examine the contentions of both the parties. At this juncture, we refer to the ledger account of the Respondent maintained by the Operational Creditor and reproduced overleaf :



CIN: U74899PB1995PLC038440



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**Flourish Paper & Chemicals Ltd.**

Regd. Office: Vill. Bhagwanpur, Barwala Road  
Derabassi, Dist. SAS Nagar (Mohall)-140507  
Mobile: +918264492892, +917814045333  
Email: atulmehra@hotmail.com

**FLOURISH PAPER & CHEMICALS LIMITED**

Village Bhagwanpur, Barwala Road, Derrabassi, Dist. SAS Nagar (Mohall), Punjab - 140507

CIN : U74899PB1995PLC038440 ; GSTIN : 03AAACF4041P1ZR

**LEDGER**

( From 1-4-2017 to 31-3-2018 )

Account : Suchi Paper Mills Ltd.

Date	Type	Vch No.	Particulars	Narration	Debit (₹)	Credit (₹)	Balance (₹)
01-04-2017			Opening Balance				
07-07-2017	Rcpt	MS-BNKS8-2017-1	RTGS RECEIVED FROM AP ENTP PVT LTD BEHALF OF SUCHI PAPER	RTGS RECEIVED	32,94,391.03	6,00,000.00	32,94,391.03 Dr 26,94,391.03 Dr
07-07-2017	Rcpt	MS-BNKS9-2017-1	RTGS RECEIVED FROM AP ENTP PVT LTD BEHALF OF SUCHI PAPER	RTGS RECEIVED		4,00,000.00	22,94,391.03 Dr
08-07-2017	Supl	DB-TRD-EX-9-201	INV. NO. 78 DT. 08.07.17. GR/RR No. : 62 Transport : GAGAN ROADLINES Vehicle No. : PB55K-2941			4,49,100.00	18,45,291.03 Dr
02-08-2017	Supl	GST-D80098	INV. NO. 390 DT. 02.08.17 GR/RR No. : 391 Transport : GAGAN ROADLINES Vehicle No. : HP12D-7837 Station : Gautambudh Nagar (UP.)			2,48,776.00	15,96,515.03 Dr
02-08-2017	Supl	GST-D80099	INV. NO. 391 DT. 02.08.17 GR/RR No. : 392 Transport : GAGAN ROADLINES Vehicle No. : HP12D-4428 Station : Gautambudh Nagar (UP.)			2,54,285.00	13,42,230.03 Dr
Total					32,94,391.03	19,52,161.00	
Debit Balance						13,42,230.03	
Grand Total					32,94,391.03	32,94,391.03	

For Flourish Paper and Chemicals Limited

From perusal of the above ledger, it is observed that the Respondent had made a payment of Rs.4,00,000/- (four lakhs) only via RTGS to the Operational Creditor on 07.07.2017.

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M/s. Flourish Paper & Chemicals Limited. V/s. M/s. Suchi Paper Mills Limited



20. Since the last invoice was due and payable on 01.12.2016 and the part-payment by the respondent was made on 07.07.2017 i.e., within three years from the date of default. Therefore, in our considered view the application being filed on 24.02.2020 is well within the limitation period of three years from 07.07.2017. **Hence, the present application is within the limitation period.**

21. Now, we would like to examine the issue of pre-existing dispute. It is contented by the Corporate Debtor that prior to the demand notice dated 02.01.2020 issued under Section 8 of IBC, 2016, the Applicant has issued one legal notice on 05.12.2019, which was duly replied by the Corporate Debtor on 16.12.2019, which is reproduced overleaf, for the sake of convenience:



## SUCHI PAPER MILLS LTD.

Regd. Office : D-148, Ground Floor, Anand Vihar, Delhi-110092  
Works : 589/2, Bisrakh Road Industrial Area, Chhapraula,  
Gautam Budh Nagar (U.P.) Tel. : 0120-2674629  
E-mail : spml\_gbnagar@yahoo.com

16-12-2019

To,  
Shri Labh Singh Advocate  
House no 223, Sector-51-A  
Chandigarh-160043  
Mobile 9878360497

Subject - Our demand notice for Rs 25,00,000 cum reply of your Notice

Sir,

This is in reference to your notice dated 05-12-2019 sent by you on behalf of M/s Flourish Paper and chemicals (herein after called the supplier). We are to submit in this regard that most of the material sent by the supplier in the financial year 2015-16 and 2016-17 was of very poor quality. Most of the material was not usable for us. It was repeatedly informed to him. After his assurance that the complaints will be settled shortly and the settled amount will be adjusted in next supplies, and rely upon his commitment we continued to purchase the material from him.

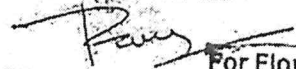
We are to inform you that the supplier neither visited our site for attending our complaints nor resolved the same. Lastly when he did not settle our complaints, we denied to purchase the material from him and asked him to settle our complaints. Last supply was received from the supplier in the month of October 2016.

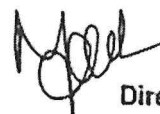
Due to poor quality of the material, the quality of our product kraft paper also affected and we had to face the complaints of our customers and we suffered a loss of Rs 25 lakh approximate. It also was intimated to the supplier. We had asked many times to the supplier to pay Rs 25 lakh as compensation of this loss. But the supplier paid not even a single rupee out of this amount.

I am surprised that after passing of 3 years the supplier is sending legal notice for his payment. But he is silent for our amount of Rs 25 lakh. Now I am feeling that I should have taken the legal action against the supplier for our payment of Rs 25 lakh.

You are requested to ask the supplier to pay our amount of Rs 25 lakh immediately otherwise we will have to take the legal action against the supplier.

For Suchi Paper Mills Ltd

  
Managing Director

  
For Flourish Paper & Chemicals Ltd.  
Director



22. The Respondent has raised the issue of poor quality of goods and claimed compensation of Rs. 25,00,000/- for the loss stated to have been suffered by it. Even in the notice of dispute, the Respondent has reiterated the same defense, which was taken in Reply to the applicant's legal notice dated 16.12.2019. The copy of the notice of dispute dated 13.01.2020 is reproduced below :



## **SUCHI PAPER MILLS LTD.**

Regd. Office : C-235, Ground Floor, Anand Vihar, Delhi-110092  
Works : 589/2, Biskakh Road Industrial Area, Chhapraula,  
Gautam Budh Nagar (U.P.) Tel. : 0120-2674629  
GSTIN : 09AAICS0487N1ZO  
CIN No. : U21022DL2003PLC120666  
E-mail : spml\_gbnagar@yahoo.com

13/1/2020

To,

1. M/s Flourish Paper & Chemicals Limited  
Regd. Office: Village Bhagwanpur, Barwala Road,  
Derrabassi, Distt, SAS Nagar (Mohali) Punjab – 140507  
Email id: flourishpaper@hotmail.com
2. Manesh Kumar  
(Director)  
M/s Flourish Paper and Chemicals Limited  
ADD:- Village Bhagwanpur, Barwala Road,  
Derrabassi, Distt. SAS Nagar (Mohali)  
Punjab – 140507

Sub:- Reply on behalf of M/s Suchi Paper Mills Ltd. through its director Rajender Kumar Aggarwal against demand notice dated 02.01.2020 sent by M/s Flourish Paper & Chemicals Limited through its director Manesh Kumar

That, at the very outset or perusal of the aforesaid demand notice dated 02.01.2020 sent to M/s Suchi Paper Mills Ltd. by M/s Flourish Paper & Chemicals Limited through its director Manesh Kumar, it appears that an illegal demand notice dated 02.01.2020 has been issued by M/s Flourish Paper & Chemicals Limited as the demand notice dated 02.01.2020 contains false and wrong averments and does not take into account true and factual position. Hence, all the contents of demand notice dated 02.01.2020 are vehemently denied due to being false and frivolous. It would not be out of context to mention herein that, it seems as if the instant demand notice dated 02.01.2020 has been got issued with sole purpose to hide the faults committed on behalf of M/s Flourish Paper & Chemicals Limited and also to drag M/s Suchi Paper Mills Ltd. into false and frivolous litigations.

**The actual facts are as such:-**

That M/s Suchi Paper Mills Ltd. is not at all liable to pay an amount of Rs 1342230/- as mentioned in your demand notice dated 02.01.2010 because M/s Flourish Paper and Chemicals Limited is liable to pay the legally due liability of Rs 2500000 to M/s Suchi Paper Mills Ltd. since date 1.10.2016. In reference of the same a notice dated 16.12.2019 was sent by M/s Suchi Paper Mills Ltd. to M/s Flourish Paper and Chemicals Limited for demanding an amount of Rs 2500000/-.

It is also pertinent to mention herein that most of the material supplied by M/s Flourish Paper & Chemicals Limited to M/s Suchi Paper Mills Ltd. during the period of 2015-16 and 2016-17 was of very poor quality due to which the same was not usable for any purpose. Hence, repeatedly complaints for informing about the poor quality of material were made by M/s Suchi Paper Mills Ltd. to M/s Flourish Paper & Chemicals Limited. Later, it was assured by M/s Flourish Paper & Chemicals Limited that all the complaints in reference of poor quality material supplied to M/s Suchi Paper Mills Ltd will be settled soon and the amount to be deducted for supplying poor quality material will be deducted and adjusted in the next round of supply. Only after relying on the averments of M/s Flourish Paper and Chemicals Limited, it was conditionally agreed by M/s Flourish Paper & Chemicals Limited to accept supply of material from M/s Flourish Paper & Chemicals Limited.

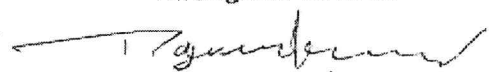
But, despite several reminders, none on behalf of M/s Flourish Paper & Chemicals Limited visited at the site of M/s Suchi Paper Mills Ltd. for resolving the complaints in reference of poor quality material supplied to M/s Suchi Paper Mills Ltd and even the accounts were also not settled. Due to which, M/s Suchi Paper Mills Ltd. during October 2016 had given clear instructions to M/s Flourish Paper & Chemicals Limited to immediately stop supplying any material to M/s Suchi Paper Mills Ltd as the same will not be accepted before settlement of previous accounts. Moreover, a demand of Rs 2500000/- was made by M/s Suchi Paper Mills Ltd. as compensation from M/s Flourish Paper & Chemicals Limited for loss and damages caused to M/s Suchi Paper Mills Ltd due to poor quality of material supplied by M/s Flourish Paper & Chemicals Limited between the period of 1.4.2015 to 18.10.2016.

Thus, the demand notice dated 02.01.2020 issued by M/s Flourish Paper & Chemicals Limited to M/s Suchi Paper Mills Ltd. is illegal and all its contents are vehemently denied due to being false and frivolous. M/s Suchi Paper Mills

Ltd is not legally responsible and liable to pay any amount to M/s Flourish Paper & Chemicals Limited.

**Therefore, in view of the above, I Rajender Kumar Aggarwal on behalf of M/s Suchi Paper Mills Pvt. Ltd. call upon M/s Flourish Paper and Chemicals Limited through its director Manesh Kumar, to unconditionally withdraw the demand notice dated 02.01.2020 with immediate effect and further directs M/s Flourish Paper and Chemicals Limited to settle the accounts by paying the legally due liability of Rs 2500000/-.**

M/s Suchi Paper Mills Ltd.  
Through its Director



(Rajender Kumar Aggarwal)



23. While going through the replies of the respondent to both the notices together, we observe that the Respondent has raised the same issue of poor quality of goods and claimed compensation of Rs. 25,00,000/- on account of loss claimed to have been suffered by it. It is further observed that the Respondent has stated that it had raised various complaints with the Operational Creditor but the Operational Creditor failed to address the same. When we re-visit the notice of dispute and reply to the application, we observe that at no occasion, the Respondent has placed or produced any proof on record like e-mail or letter or any other communication in support of its contention or which could depict that it had raised complaints in regard to poor quality of goods in the past with the Applicant/Operational Creditor.

24. At this juncture, it is worthwhile referring to the Judgment of Hon'ble Supreme Court passed in the matter of **Mobilox Innovations Private Limited Versus Kirusa Software Private Limited, Civil Appeal No. 9405 of 2017 dated 21.09.2017.**

*"40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and*



*that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

*(Emphases Supplied)*

25. In absence of any real/actual communication between the parties with respect to or in support of poor-quality of goods, we are of the considered view that the dispute raised by the Corporate Debtor is a patently feeble argument and is moonshine. Hence, we do not find the alleged dispute to be genuine.

26. It is further contended by the Respondent that it has to recover Rs.16,08,316/- from the Operational Creditor. That on perusal of reply, we find that ledger account of Operatioanl Creditor maintained by Corporate Debtor is annexed. However, no invoices in support are annexed by the Respondent, which could depict any amount due and payable by the Operational Creditor.

27. Even for a moment, we assume that there is a counter-claim of the Respondent against the Applicant/Operational Creditor, then the same cannot be adjudicated under an application filed under Section 9 of IBC, 2016. Here, it is worthwhile referring to the Judgment of the



Hon'ble NCLAT passed in the matter of **Deepak Gupta Vs. Ved Contracts Pvt. Ltd. & Ors. in Company Appeal (AT) (Insolvency) Nos. 1262 of 2019, dated 19.11.2019.**

*“3. Learned Counsel for the Appellant submits that in the accounts of three consecutive years, it is shown that the amount is payable to the ‘Corporate Debtor’ and there are claims and counter claims, which has not been adjudicated by the Adjudicating Authority. However, such ground cannot be accepted as the disputed question relating to claims and counter claims cannot be determined by Adjudicating Authority in an application under Section 9 of the I&B Code....”*

28. Accordingly, in light of the debt being more than the threshold limit and amounting to Rs. 13,42,230/- as on 31.12.2019 plus interest at the rate of 18% due and payable by the Corporate Debtor, we are of the considered view that the Operational Creditor has established the default on the part of Corporate Debtor in payments of the operational debt. The present petition filed under Section 9 fulfills all the requirements of law. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d), the following prohibitions are imposed, which must be followed by all and sundry:



- “(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.”


29. A proposed by the Operational Creditor, this Bench appoints Mr. Poorit Goyal, IP (Mobile No.9815970776) having registration no. IBBI/IPA-001/IP-P01608/2018-19/12445 (Email: ip.poorit@gmail.com) IRP of the Corporate Debtor with immediate effect, subject to the condition that no disciplinary proceedings are pending against the IRP so named and disclosures as required under IBBI Regulations, 2016 are made by him within a period of one week from this Order. This Adjudicating Authority orders that :


*“Mr. Poorit Goyal is directed to take charge of the CIRP of the Corporate Debtor with immediate effect. The Court Officer will inform the IRP so appointed immediately by all modes.”*



30. The Operational Creditor is directed to deposit an amount of Rs.1,00,000/- (one Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

31. A copy of this Order shall be communicated immediately to the Operational Creditor, the Corporate Debtor and the IRP named above, by the Registry/Court Officer. In addition, a copy of the Order shall also be forwarded by the Registry to IBBI for their record.

  
✓ 12.03.22  
**(L. N. GUPTA)**  
**MEMBER (T)**

  
**(DHARMINDER SINGH)**  
**MEMBER (J)**