

**THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH-I**

C.P.(IB) No. 2890/MB/2019

In the matter of

Under Section 9 of Insolvency &  
Bankruptcy Code, 2016

Mould- Tip Injection Technology  
Limited

**...Operational Creditor**

Vs.

Stack Engineering Pvt Ltd

**...Corporate Debtor**

***Order delivered on: 22.11.2023***

***Coram:***

**Shri Prabhat Kumar**  
Hon'ble Member (Technical)

**Justice Shri V.G. Bisht**  
Hon'ble Member (Judicial)

***Appearances:***

For the Operational Creditor : Mr. Pradeep Samant, Advocate  
For the Corporate Debtor : Mr. Rohit Gupta, Advocate.

**ORDER**

***Per: V.G. Bisht, Member (Judicial)***

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1. This Company Petition is filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) by **Mould- Tip Injection Technology Limited ("the Operational Creditor hereafter referred to as Applicant")**, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against **Stiack Engineering Pvt Limited ("the Corporate Debtor hereafter referred to as Respondent")**.
2. Stiack Engineering Pvt Ltd was incorporated on 19.10.1992 under the Companies Act, 1956. Its Corporate Identity Number (CIN) is U65990MH1992PTC069111. Its registered office is on the 3<sup>rd</sup> Floor, Titanic Building, Chandivali Farm Road, Near Andheri (East), Mumbai 400072, Maharashtra, India. Therefore, this Bench has jurisdiction to entertain and decide the Petition.
3. The Applicant therefore issued Demand Notice dated **2nd March 2019** by Speed Post A/d under Rule 5 of IBC Regulation 2016, demanding payment in respect of an unpaid operational debt of **USD 19,395/-** from the Respondent. The said notice was duly received by the Corporate Debtor in the first week of **March 2019** (as the Respondent acknowledged receiving the demand notice dated **2<sup>nd</sup> March 2019** in its reply dated **14th March 2019**). The Respondent responded to the Demand Notice on 14th march, 2019 through its lawyer denying the contents of the demand notice issued by the Applicant but failed to make any payment or to give any proof about the payment made towards the outstanding invoices or pointing out pending of any disputes between the parties before any forum within the statutory payment of 10 days. **Exhibit AA on pages 64 to 69** of the application is a demand notice dated **02 March 2019**.

### **Submissions made by the Petitioner:**

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4. Mould- Tip Injection Technology Limited is a company incorporated in China having its registered office in Shenzhen. The Applicant is a supplier/manufacturer of Hot Runner Solutions, P & C thin-wall Mould, cosmetic packaging mould and medical packaging moulds. Mr. Luvai Gittham, Sales Manager of the Applicant in India is an authorized signatory of the Applicant duly authorized vide Resolution dated **1<sup>st</sup> June 2019**. (hereinafter referred to as the "Applicant" or the "Operational Creditor").
5. The Respondent has placed various purchase orders since 2016 with the Applicant for products like Drops Nozzle HRS, 24 Pin Connector, 24 Pin Cable, 5 Pin Cable, Spruce Nozzle Temperature Controller, Temperature Controller, Hot Runner System, etc. from time to time. The Applicant delivered the products and issued the Invoices and the Delivery Notes to the Corporate Debtor as per the purchase orders.
6. The Respondent made the defaults in payment of the amount due against the invoices issued since March 2016. The Applicant was communicating with the Corporate Debtor for the payment of the outstanding amount but didn't receive the payment. The Applicant has not received any payment towards the number of invoices claimed in the present application (**Exhibit- 'A'**). The Applicant does not have any bank account in India and therefore a certificate from the Bank / financial institution is not annexed and an affidavit in this regard has been already filed on **pages 79 to 81** to the application filed before this Tribunal.
7. The Applicant states that the Respondent in its reply to the demand notice alleged about counterclaim amounting to USD 14328/- however same was changed in the reply to the present application as USD 8,317.66/ against the Applicant regarding the alleged joint venture between the parties which has nothing to do with the claim of the Applicant in the present application. Surprisingly the Respondent has not filed any proceedings before any forum regarding his alleged claim.

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8. The Applicant did not give any rejoinder to the Respondent's reply to the demand letter because the counterclaim alleged in the said reply has no connection with the Applicant's claim in the present application. The Respondent has also alleged in its reply in the present application that payment of USD 7000/- was made long back. However, the document relied upon the Respondent at annexure-16 on page 64 to the reply shows that the alleged payment was made against some different invoice dated 25<sup>th</sup> Sep 2014 (which is not a part of the Applicant's claim amount) as mentioned in the said document. The Applicant states that this allegation is made by the Respondent to mislead this Tribunal because invoices relied upon by the Applicant are from March 2016 onwards.
9. The Respondent has also objected that the invoices of the Applicant are time-barred given provisions of the Limitation Act 1960. The Applicant states that the objection is not maintainable because every invoice has a clause of 60 days credit from the date of invoice. The first such invoice is dated 17/03/2016 at **Exhibit-H** on **page 16** of the application and also mentioned in **Exhibit -A** on **page 25**. *The demand notice of the Applicant under IBC is dated 2<sup>nd</sup> March 2019 and as such demand notice is sent when all invoices are within three years.* The Applicant is a foreign company and therefore some time was required for getting a resolution and other information for filing the Application under IBC. The Application was filed in July 2019 after receiving all the required documents. The Applicant relies on the Judgment of B. K. Education Services in which the Hon'ble Supreme Court has ruled that;

*“the right to sue”, therefore, accrues when a default occurs. If the default has occurred over three years before the date of filing of the application, the application would be barred under Article 137 of the Limitation Act, save and except in those cases where, in the facts of the case, Section 5 of the Limitation Act may be applied to condone the delay in filing such application”.* The Applicant relies upon

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*BK Educational Services Private Limited v. Parag Gupta and Associates.*

10. The Applicant states that without prejudice to the rights of the Applicant in this application even for the sake of argument it is considered that some of the invoices are time-barred even the last four invoices from 28/05/2016 (considering 60 days credit period) amounting to Indian Rs.2,57,000/- (present rate of USD is Rs.75.77) are within three years and the claim amount is within the monetary jurisdiction (Rs.1,00,000/- which was before the amendment) of this Hon'ble Tribunal. It is a well-settled law that IBC is not for the recovery of outstanding dues.

**Submissions made by the Respondent:**

11. The Respondent submit that all the invoices which form basis of the Petitioner's claim as narrated in Exhibit A of their Petition except for invoice dated 06.08.2018 for USD 1071 are raised on or before 14.06.2016.
12. The Petitioner has affirmed the section 9 petition 21.06.2019, therefore, as of the date of the present petition, any claim under 10 out of 11 invoices aggregating to USD 18,325 were clearly barred by limitation
13. The remaining invoice dated 06.08.2018 is for USD 1071. The Respondent submits that the exchange rate (USD to INR) as of the date of affirmation of this petition as per the Reserve Bank of India website is USD 1 = INR 74.15, which would translate the monies due under the said invoice dated 06.08.2018 to INR 79,415. Therefore, even assuming (whilst denying) that monies under the said invoice dated 06.08.2019 is Due and Payable, the same is below the threshold limit as prescribed for maintaining a section 9 petition under the IBC. The Relevant invoices claimed to be due under the Petition is set out below for ease of reference:

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| Sr.<br>No. | Invoice No.  | Shipping<br>Date | Invoice<br>Date | Amount<br>(I-ISD) |
|------------|--------------|------------------|-----------------|-------------------|
| 1          | ZNE1603001 1 | 10-03-2016       | 08-03-<br>2016  | 1 ,102/-          |
| 2          | ZNE16030027  | 17-03-2016       | 17-03-<br>2016  | 451.61/-          |
| 3          | ZNE16030029  | 24-03-2016       | 26-03-<br>2016  | 432.26/-          |
| 4          | ZNE16040031  | 01-04-2016       | 07-04-<br>2016  | 7,125.44/-        |
| 5          | ZNE16040048  | 29-04-2016       | 29-04-<br>2016  | 248/-             |
| 6          | ZNE16040046  | 03-05-2016       | 03-05-<br>2016  | 6,080.64/-        |
| 7          | ZNE16050047  | 05-05-2016       | 04-05-<br>2016  | 550/-             |
| 8          | ZNE16050072  | 28-05-2016       | 28-05-<br>2016  | 992/-             |
| 9          | ZNE16060081  | 06-06-2016       | 06-06-<br>2016  | 490/-             |
| 10         | ZNE16060082  | 14-06-2016       | 14-06-<br>2016  | 851.61/-          |
| 1 1        | ZNE16080099  | 06-08-2016       | 06-08-<br>2016  |                   |

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14. From the above, the dates of first 10 invoices are prior to 14.06.2016. Therefore, the claim under the invoices are clearly barred by limitation and not maintainable before this Tribunal as of date of affirmation of the petition i.e., 21.06.2019. Further, the purported invoice dated 06.08 9018 at sr.no. 11 above is for an amount equivalent to INR 79,415. Thus, even if it is assumed that the claim under the invoice is payable, the same would not meet the threshold criteria prescribed under Section 4 of the IBC for maintaining this petition.
15. The Respondent has made a payment of **USD 7,000** towards the outstanding invoices mentioned in the petition on 10.06.2016. This is evidenced by the remittance slip dated 10.06.2016 annexed as Annexure — 16
16. The receipt of the above amount is admitted and acknowledged by the Petitioner by its email dated 18.06.2016 annexed as Annexure-8 (Page 40) The relevant extract of the said email is reproduced below:

*“Standing balance for your information, besides latest payment with USD 7,000 and USD 440 there still have balance USD 11,436.31 should be settled by stiack in coming future”*

17. Therefore, the petitioner has confirmed that as of 18.06.2016 only USD 11,436 is outstanding. Hence it is clear that the petitioner's claim for USD 19,395 in the section 9 petition is admittedly erroneous and is contrary to records and Petitioner's email dated 18.06.2016. The Petition is liable to be dismissed on this ground alone.
18. The Petitioner submits that the act of making part payments towards the outstanding dues, is tantamount to an admission of liability.
19. The Corporate Debtor replied to the said Demand Notice on 23<sup>rd</sup> August 2019 raising the issue of maintainability of the Demand Notice as the claim made by the operational creditor was hopelessly time barred.

### **Findings**

20. We have heard the submissions of both sides and perused the records.

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21. From the record, it is observed that the Corporate creditor raised a demand notice towards the debt owed to the Petitioner. However, for the outstanding unpaid sum the Corporate Debtor had denied its liability by stating that the Petition filed is barred by the limitation. The Respondents submit that all the invoices which form the basis of the Petitioner's claim as narrated in Exhibit A of their Petition except for invoice dated 06.08.2018 for USD 1071 are raised on or before 14.06.2016.
22. The date of default is indicated by the Petitioner in the Petition. In order to establish a default, the date of such default is the decisive point which comes into play. It is on the said date that the cause of action arises because the right to sue occurs only when the default occurs.
23. It is clear that the dates of first 10 invoices are prior to 14.06.2016. Therefore, the claim under the invoices are clearly barred by limitation and not maintainable before this Tribunal as of the date of affirmation of the petition i.e., 21.06.2019. Further, the purported invoice dated 06.08.2018 at sr.no. 11 above is for an amount equivalent to INR 79,415. Thus, even if it is assumed that the claim under the invoice is payable, the same would not meet the threshold criteria prescribed under IBC for maintaining this petition. Therefore, the limitation period to file the Petition as per Schedule 137 of the Limitation Act, would end in 2016. Thereafter, the Operational Creditor issued a Demand Notice, to the Corporate Debtor for an amount of USD 19395 under the provision of the Insolvency and Bankruptcy Code, 2016, which is evident that the date of the transaction and actually the date of filing the petition before this tribunal is time barred.
24. *M/s. Next Education India Pvt. Ltd. Vs. M/s. K12 Techno Services Pvt. Ltd (Civil Appeal No. 1775 of 2021)*, vide Order dated 27.03.2023 held that when a Company Petition is filed under Section 9 of the [Insolvency and Bankruptcy Code](#) (“IBC”) on the basis of several invoices wherein some of the invoices are time barred, then the Adjudicating Authority must

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consider Invoices raised at least three years prior to the date of filing of the Company Petition under section 9 of the IBC to determine limitation. The Hon'ble Supreme Court while setting aside impugned Orders passed by the Hon'ble NCLT and NCLAT dismissing the Application filed u/s 9 of the IBC on the ground of the claim being time-barred and expiry of Limitation period categorically stated that the Hon'ble NCLT should have considered invoices raised subsequently at least 3 years prior to the date of Application u/s 9 for determining limitation period. The Relevant extract from Order dated 27.03.2023 is produced hereunder for easy reference:

*“.....The NCLT considering the starting point of limitation as 12.03.2011 held that the claim is barred by limitation. However, the NCLT did not take into consideration the subsequent invoices at least preceding three years from the date of filing of Section 9 application, which ought to have been considered. Under the circumstances, the NCLT ought to have considered the invoices at least for the period preceding three years from the date of application under Section 9, rather than considering the starting point of limitation as 12.03.2011. Under the circumstances, the order(s) passed by the NCLT and affirmed by the NCLAT are unsustainable.*”

25. Therefore, we are of the view that the Operational Creditor issued 10 invoices which are prior to 14.06.2016, to the Corporate Debtor for Total Claim Amount of USD19395 The Respondent has made a payment of USD 7,000 towards the outstanding invoices mentioned in the petition on 10.06.2016. This is evidenced by the remittance slip dated 10.06.2016
- Annexure — 16.** In given circumstances, the petition under the provision of the Insolvency and Bankruptcy Code, 2016 does not lie owing to the fact that the debt was already time barred

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26. In the above circumstances the petition bearing **CP (IB) 2890/MB/2019** filed by **Mould- Tip Injection Technology Limited**, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against **M/s Stiack Engineering Pvt Ltd [CIN: U65990MH1992PTC069111]** the Corporate Debtor, is **Dismissed**.

**S/d-**

**Prabhat Kumar**  
Member (Technical)

**S/d-**

**Justice V.G. Bisht**  
Member (Judicial)