



**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No. 527/Chd/HP/2019
Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

Indo Pack Limited

having its registered office at 9/110,
Anand Parbat Industrial Area
New Delhi- 110005

...Petitioner-Operational Creditor

Vs.

M SEA Pharmaceuticals Private Limited

having its registered office at
Surajpur, Paonta Sahib,
Sirmour- 173025, Himachal Pradesh

...Respondent-Corporate Debtor

Judgement delivered on: 12.04.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- 1). Ms. Yashika Bhalla, Advocate
Operational Creditor : 2). Mr. Dhruvjeet Sakiya, Advocate

For the Respondent-
Corporate Debtor : Mr. G.S. Sarin, PCS

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Indo Pack Limited** through its Authorized Representative Mr. Ajay Sarraf (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **M SEA Pharmaceuticals Private Limited** (for brevity 'Corporate Debtor' / 'Respondent').



2. The Corporate Debtor, namely, M SEA Pharmaceuticals Private Limited is a Company incorporated on 01.04.2015 under the provisions of the Companies Act, 2013 with CIN No. U74900HP2015PTC000911 with its registered office at Surajpur, Paonta Sahib, Sirmour- 173025, Himachal Pradesh. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure A-II.

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor, a small category manufacturing enterprise registered with the Ministry of Micro, Small and Medium Enterprise is a public limited company by shares. The Corporate Debtor approached Operational Creditor in the year 2012 and placed purchased orders from time to time for the period 07.01.2017 to 28.02.2018 for the supply of printed packaging materials for various products of the Corporate Debtor. The Operational Creditor supplied the goods and raised invoices. The Corporate Debtor made part payments to Operational Creditor but failed to release the unpaid operational debt amounting to Rs. 15,42,292/- (Rupees Fifteen Lakhs Forty Two Thousand Two Hundred and Ninety Two Only) from October 2018 onwards. Further, the Corporate Debtor failed to make payments for Form-C as well. The Operational Creditor received the last payment as part payment of Rs. 50,000/- on 31.10.2018.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 15,42,292/- (Rupees Fifteen Lakhs Forty Two Thousand Two Hundred and Ninety-Two Only) including the interest component upto 30.06.2019. The default occurred on 30.06.2019. Copy of



purchase order (Annexure- A V), Invoices (Annexure- A VI), Ledger Account (Annexure- A VII), Communication between parties (Annexure- AVIII), Calculation Sheet as on 30.06.2019(Annexure-A XI), Bank Account Statement of Operational Creditor and request letter for issue of a certificate of bank maintaining accounts of Operational Creditor confirming that there is no payment of an unpaid operational debt (Annexure-A XII) is attached with the main petition.

5. A demand notice dated 04.07.2019 in Form 3 is stated to be issued by the operational creditor on 06.07.2019 and the same has been delivered to the corporate debtor vide registered post as delivery and tracking reports are annexed at Annexure A-IX of the petition. The corporate debtor gave a reply dated 15.7.2019 to demand notice, wherein it is stated that companies is maintaining sound financial health and have not made any default in payments. This is a case under Civil Law and not a case of Insolvency. The demand notice is an attempt to abuse the process of law. The Operational Creditor has suppressed the material fact regarding the dispute. The respondent has been requesting since the beginning to return the print cylinders made for printing packing strips of drugs and medicines manufactured by the respondent, but the same was avoided by the Operational Creditor. The respondent did not make the payment of said invoices as talks for settlement between the parties were underway and the representative of the respondent assured to return all the cylinders by June, 2019. The total amount of invoices were not revealed, however, as per the respondent the total amount of invoices is approx Rs. 6 lakhs. The respondent sent all C Forms demanded by Operational Creditor



6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The compliance affidavit of service was filed vide Diary No. 00130/5 dated 09.05.2022. The corporate debtor has filed reply vide diary No. 00130/2 dated 03.06.2021, wherein it is stated that no power has been delegated to any director for authorization of the demand notice. The debt due, default and calculation sheet are incorrect as Form C is already provided to the applicant and has been taken in calculation sheet. Further, interest is charged at an exorbitant rate. There is a pre-existing dispute between the parties as the Operational Creditor had to return the print cylinders but the same was not done.

7. The rejoinder was filed vide Diary No.00130/3 dated 06.12.2021 wherein it is stated that the Board resolution dated 12.06.2019 authorizes Mr. Ajay Sarraf or any other director of the operational creditor to issue notices under Section 8 of the Insolvency and Bankruptcy Code, 2016. The said Board Resolution has also authorized Mr. Ajay Sarraf to engage or appoint advisors, consultants, lawyers, advocates and solicitors etc. on behalf of the operational creditor for the above-mentioned purposes. The rate of interest calculated on the outstanding principal amount claimed by the Operational Creditor is just, lawful and legally tenable as per the provisions of Section 16 of the Micro Small and Medium Enterprises Development Act, 2006. The general practice followed in the industry is to keep those cylinders with the printer. The arrangement is primarily on the basis of mutual trust and understanding between both the parties and also because it is not feasible for the pharmaceutical manufacturer to send cylinders back and forth, to a printer every time a packaging material/design has to be reprinted to fulfil



further orders by the pharmaceutical manufacturer. The Corporate Debtor had never brought the requirement of returning the cylinders to the notice of the Operational Creditor. The Operational Creditor further submits that the Operational Creditor was totally unaware regarding the requirement of returning the cylinder to the Corporate Debtor. Operational Creditor states that the contents are partly true to the extent that cylinders under the name of the Corporate Debtor are lying with the Operational Creditor, albeit number may differ. Corporate Debtor has turn its ear deaf and is not taking any action to take the cylinders back, they are of no use and the cylinders are a liability for the Operational Creditor. The operational Creditor and Corporate Debtor were undergoing a settlement talk cum process wherein it was assured that the Operational Creditor will return all the 1500 cylinders by the end of 2019 is a self-woven imaginary story. The Operational Creditor has suffered huge losses, on account of payment of sales tax, on behalf of the Corporate Debtor, due to the non-provision of pending C forms by the Corporate Debtor.

8. The short written submissions have been filed by the petitioner vide Diary No. 00130/6 dated 24.02.2023 and by respondent-corporate debtor vide Diary No.00130/4 dated 05.05.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 dated 04.07.2019 was properly served. A demand notice dated 04.07.2019 in Form 3 is stated to be issued by the operational creditor on 06.07.2019 and the same has been delivered to the corporate debtor vide



registered post as delivery and tracking reports are annexed at Annexure A-IX of the petition. The corporate debtor gave a reply dated 15.7.2019 to demand notice. Therefore, a demand notice was duly served.

11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 04.07.2019 in Form 3 attached as (Annexure A-IX) was duly served on the corporate debtor. Although, the applicant has mentioned the date of default as 30.06.2019 but no basis for the same has been provided. However, the last invoice bearing no GST/3247 was issued on 12.01.2019 which fell due on 26.02.2019 which can be construed as date of default for the purpose of limitation. This application was filed vide Diary No. 4755 on 13.09.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of the affidavit by learned counsel for the operational creditor that till date no notice relating to a dispute by the Corporate Debtor has been received by the Operational Creditor in relation to the unpaid Operational Debt as the alleged dispute raised by the Corporate Debtor by way of reply is sham, vague, moonshine, got up and motivated and the same has been taken to evade the liability of the Operational Creditor.

13. However, on the hand, the corporate debtor has disputed the demand notice dated 04.07.2019 stating that the amount claimed is never due to the applicant. Copy of the ledger filed by the applicant has shown the balance outstanding for Rs. 12,56,556/- and in the calculation sheet as well as in form-5 amount claimed as debt, due and default is of Rs.



15,42,292/-.Therefore, the claim is incorrect and contradictory. According to the corporate debtor there is a pre-existing dispute as the operational creditor failed to return 1500 cylinders worth Rs. 16,50,000 (Rupees Sixteen Lakhs Fifty Thousand Only) since 2005.

The learned counsel for the corporate debtor placed reliance upon communication dated 29.09.2018 wherein it is stated that the corporate debtor despite repeated reminders through letters and telecom requested to return back the 1500 cylinders which were neither received nor there was any response from the operational creditor and the accounts were to be settled on or before 30.06.2019. After 30th June,2019, the cost of Rs. 9,18,500 was adjusted for 835 returned cylinders in the books of accounts and the cost of Rs. 7,31,500 for 665 cylinders was still outstanding towards the operational creditor. The copy of the ledger submitted by the corporate debtor shows the actual transactions and amount due wherein the cost of Rs. 7,31,500 for 665 cylinders is still outstanding towards the operational creditor.

Further, it is stated by the Operational Creditor that he has suffered huge losses, on account of payment of sales tax, on behalf of the Corporate Debtor, due to the non-provision of pending C forms by the Corporate Debtor. However, it is seen from the records that the corporate debtor has submitted the proof of C forms which were already served through courier on 21.01.2021 to the operational creditor.

After hearing both parties and careful perusal of the record we are of the considered view that the amount claimed is disputed. Although, an affidavit under Section 9(3)(b) of the Code is attached but communication dated



29.09.2018 issued by the corporate debtor to the applicant falsifies this averment that no notice regarding dispute was received. It is settled law that communications through emails and letters issued by corporate debtor to the operational creditor before receipt of demand notice dated 04.07.2019 pointing out deficiencies in service amounts to dispute. In the case in hand, as per communication on 29.09.2018, it is apparent that there was a pre-existing dispute. This factum of print cylinders lying with the applicant is also admitted by the applicant in its replication.

The learned counsel for the respondent-corporate debtor has placed reliance upon the following authorities:-

- i. **Macquarie Bank Ltd. v. Shilpi Cable Technologies Ltd.**, Supreme Court, (2017) 88 taxmann.com 180.
- ii. **Inqnest Marketing Solutions Pvt. Ltd. v. Koovs Marketing Consulting Pvt. Ltd.**, National Company Law Tribunal, Chandigarh (2019) 104 taxmann.com 237.
- iii. **Starlog Enterprises Limited v. Icici Bank Limited**, National Company Law Appellate Tribunal (2017) 82 taxmann.com 189.
- iv. **Zillion Infra Projects Pvt. Ltd. v. Indure Pvt. Ltd.** National Company Law Appellate Tribunal (2022) 136 taxmann.com 31.

In the last mentioned authority, it has been held by the Hon'ble National Company Law Appellate Tribunal that *"there is overwhelming material on record to come to the conclusion that there was dispute between the parties since prior to issuance of Demand Notice on 13-9-2017. The appellant has placed much reliance on Certificate, dated 16-4-2015 issued by Rajya Vidyut Utpadan Nigam Ltd. The certificate mentions*



that appellant has carried out erection work conveying System vide supplementary work order through corporate debtor. The Certificate cannot wipe out the inter se dispute between the corporate debtor and the appellant, who is sub-contractor of corporate debtor. On the strength of certificate dated 16-4-2015, the e-mails and letters, which were issued by the respondent to the appellant pointing out various deficiencies in service, cannot be overlooked and no conclusion can be arrived that there was no dispute between the corporate debtor and the appellant. Whereas, to the contrary many disputes have been referred to in reply to the Demand Notice and in reply to section 9 application, which have been considered by the Adjudicating Authority.”

In the light of the discussion foregoing, it is concluded that in the case in hand there is a dispute which is of civil nature and can be adjudicated upon by a civil court after taking evidence and appreciation thereof and is not within the domain of this Adjudicating Authority under the Code for triggering the Insolvency Resolution Process against the corporate debtor.

14. In the given facts and circumstances, the petition is liable to be rejected, in terms of Section 9 of IBC, 2016. Therefore, the claim of the petitioner is rejected and the petition stands dismissed, however, without any order to the costs.

-sd-
(Subrata Kumar Dash)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

April 12, 2023
SM/TB