



**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH (Court-II), CHANDIGARH**

**CP (IB) No. 430/Chd/Hry/2019  
Under Section 9 of IB Code, 2016.**

**In the matter of:**

**M/s Tilak Raj Yash Pal**

**Registered Office: New Grain Market,  
Shahbad, Haryana.**

**...Petitioner-Operational Creditor**

**vs.**

**M/s PEE PEE Agro Industries Pvt. Ltd.,**

**Registered Office: 6TH Km Stone Hissar Road VPO  
Dhurkara Ambala City, Haryana HR 134003 IN.**

**...Respondent-Corporate Debtor**

**Judgement delivered on: 05.01.2024**

**Coram: Dr. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**Mr. UMESH KUMAR SHUKLA, HON'BLE MEMBER (TECHNICAL)**

**Present:**

For the Petitioner-Operational Creditor: Mr. Vishal Aggarwal, Advocate.

For the Respondent-Corporate Debtor: Mr. Sarthak Gupta, Advocate; proxy counsel  
for Ms. Eshna Kumar, Advocate.

**Per: Dr. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**Mr. UMESH KUMAR SHUKLA, HON'BLE MEMBER (TECHNICAL)**



## **JUDGMENT**

1. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), on behalf of **M/s Tilak Raj Yash Pal**, (for brevity 'Operational Creditor' / 'Petitioner'), by its Partner and Authorized Signatory, Mr. Yash Pal S/o Sh. Purshotam Dass with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **M/s PEE PEE Agro Industries Pvt. Ltd.** (for brevity 'Corporate Debtor' / 'Respondent') for defaulting the payment of total outstanding amount of Rs.59,15,154.33/- including interest @18% per annum i.e. a principal amount of Rs.4,71,248.89/- and Rs. 54,43,905.44/- towards due interest.

2. The Corporate Debtor, namely, **M/s PEE PEE Agro Industries Pvt. Ltd.**, is a Company incorporated on 22.11.1994 under the provisions of Companies Act, 1956 with CIN No. U01111HR1994PTC032455 with its registered office at 6TH Km Stone Hissar Road VPO Dhurkara Ambala City, Haryana HR 134003. The copy of master data of the corporate debtor attached with the main petition and marked as Annexure-A confirms the address of the corporate debtor. Hence, the territorial jurisdiction lies with this Adjudicating Authority.

## **FACTS OF THE CASE**

3. The facts of the case, briefly, as stated in the petition are summarized hereinafter:

- a) That the operational creditor is in the business of supplying sunflower seeds, mustard seeds etc.
- b) The corporate debtor approached the operational creditor requesting for supplying the sunflower seeds and accordingly the operational creditor had been supplying the same to the corporate debtor since long, for which proper invoices/bills were raised, which were supposed to be cleared by corporate debtor within 5 days from the date of receipt of the same and the



same is clearly mentioned on the invoice/bills, further in the eventuality of failure to do so interest at the rate of 1.5% p.m. i.e. 18% per annum is applicable which is known to corporate debtor.

- c) The corporate debtor started defaulting in clearing the bills/invoices and in default even paid interest from time to time though that too remains due having not been paid in full.
- d) Eventually corporate debtor failed to clear the outstanding liability, which stood at Rs.59,15,154.33 (Rupees Fifty-Nine Lacs Fifteen Thousand One Hundred Fifty-Four and Thirty-Three Paise Only). As per books of accounts maintained by the operational creditor in due course of business, a total sum of Rs.59,15,154.33 is due and payable by corporate debtor and also liable to pay interest @18% p.a., which has been calculated upto 31<sup>st</sup> March, 2019 and is payable till the amount is paid.
- e) Corporate debtor acknowledged the receipt of bills/invoices for the goods, which were delivered to corporate debtor to its complete satisfaction upto financial year 2008-2009 and the last delivery having been made on 23.06.2008. Moreover, corporate debtor has also admitted the outstanding liability from time to time including that of interest, for which corporate debtor had even paid a part of the interest and also deposited TDS of Rs.10,000/- in the financial year 2011-12. Even prior that, it had paid interest in part in the previous financial years and deposited TDS admitting its liability. However, corporate debtor failed to pay the complete interest since 2008 and in fact after 31.03.2012 interest has not been paid at all.
- f) The operational creditor has also filed the audited balance sheet of corporate debtor, in which the principal amount due is the same as claimed by the operational creditor. However, the corporate debtor has not shown



the outstanding amount due towards interest. A copy of the audited balance sheet of corporate debtor as on 31.03.2012 and 31.03.2018 is annexed as Annexure A-6 and A-7.

- g) Operational creditor sent the demand notice under section 8(1) of the Insolvency and Bankruptcy Code dated 05.06.2019 in the prescribed form 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 wherein the operational creditor called upon the corporate debtor to pay a sum of Rs.59,15,154.33 including interest @18% per annum i.e. a principal amount of Rs.4,71,248.89/- and Rs.54,43,905.44/- towards due interest. A copy of the demand notice along with the postal receipt are annexed as Annexure A-8 (Colly).
- h) The corporate debtor refused to accept the said notice. A copy of the packet containing the notice as well as the report of the postal authorities are annexed at Annexure A-9 and A-10. The notice has also been sent twice by email on the email address mentioned in the MCA Master Data. Copies of the said emails are annexed along with as Annexure A-11 (Colly). The operational creditor has also annexed a General Body Meeting decision of the Shahbad Anaj Mandi Association showing that interest of 18% is payable on delayed payment is Annexure A-12 (Colly).

#### **REPLY OF THE CORPORATE DEBTOR**

4. The reply as stated by the corporate debtor is summarized hereinafter:
- a) The claim raised in the application filed by Tilak Raj Yash Pal for initiating insolvency is not due and payable in law, as it is barred by limitation under Section 238A of the Insolvency and Bankruptcy Code read with Article 137, Schedule I of the Limitation Act, 1963.



- b) The Applicant in Part IV of the Application under the head "date from which such default" states that the last date of delivery is 23/06/2008. Thus, the Applicant seems to state this as the date of default. Having taken this as the date of default, the period of limitation expired 3 years thereafter, i.e. on 23/06/2011, Thus, the Application is barred by limitation.
- c) In order to demonstrate an admission of liability by the Respondent, the Applicant relies on the Respondent's audited balance sheets (appended as Annexure A-6 and Annexure A-7). Such audited balance sheets are mandatory under Section 92(4) of the Companies Act, 2013 and attracts penal consequences under Section 92(5) and Section 92(6) of the Companies Act, 2013 (in case of failure to file), such documents cannot be considered an acknowledgment under the Limitation Act, 1963. Thus, the Application is barred by limitation.
- d) Without prejudice and in any event, Annexure A-6 (audited balance sheet, dated 31/08/2012) and Annexure A-7 (audited balance sheet, dated 25/08/2018) relied on the Applicant for the purposes of limitation are for a period after the expiration of 3 years i.e. after 23/06/2011. Thus, the Application is barred by limitation.
- e) The Applicant has accepted payments; however, the alleged amount is stated to include a component of interest of 18%, which has never been agreed by the parties. The interest rate mentioned is a unilateral act on behalf of the Applicant, thus making the entire amount a disputed amount/a disputed debt.
- f) The reliance of the Applicant on the copy of the letter issued by Shahabad Anaj Mandi Association is also not admissible/acceptable in this case, as it does not bind the Respondent at all, whatsoever.



- g) The claim of 1.5% per month by placing reliance on the invoice is incorrect, as the invoice itself does not mention "%". Such an ambiguity in a document being a standard form document/instrument i.e. made by the Applicant, must be read in favour of the Respondent and against the Applicant.
- h) The present Application has been filed prior to the expiry of the 10 days from the receipt of the demand notice under Section 8 of IBC. The Applicant admits that the demand notice having not been received by the Respondent speed post (on account of insufficient address) was sent to the Respondent by email. The Applicant attempted to send this by email, dated 10/06/2019. However, this email also was not received by the Respondent. Aware of this fact, the Applicant again sent an email to the Respondent, dated 18/06/2019. The expiration of 10 days from the latter expired only on 27/06/2019. Thus, the Applicant did not get sufficient opportunity to raise the dispute mentioned herein in reply to the notice issued.
- i) The respondent is an MSME. A copy of the MSME certificate is appended herein as Annexure R2. The Government by notification dated March 2020 uplifted the threshold from Rs.1,00,000.00p to Rs.1,00,00,000.00p in order to save MSME's from being pushed into insolvency. This notification is applicable to the present proceedings and thus, this Application is liable to be dismissed on this ground itself. The Respondent is a solvent company. The Respondent also denies that the Mr. Yash Pal is authorized to file the present Application on behalf of the Applicant. The Respondent reserves its right to produce further such documents to elaborate and substantiate the aforesaid contentions and submit other contentions before this Honourable Tribunal.



- j) The Respondent denies the synopsis and list of dates except those which are a matter of record. The Respondent denies that there was any agreement as stated in the invoices/bills that it had to be cleared within 5 days from the receipt and the failure to do so attracted an interest of 1.5% per month/18% per annum.
- k) The Respondent denies that there was any default in clearing of bills. There was no agreement as to the date of payment. Such payments being accepted without any objection could only mean that there was no agreement to such time period.

### **ANALYSIS AND FINDINGS**

5. We have heard the arguments advanced by the learned counsel for the Operational creditor and also the Counsel for Corporate debtor and have also perused the records and written submissions submitted by the parties.
6. The prime contention of the corporate debtor is that the Application is barred by limitation. The Applicant in Part IV of the Form 5 filed before this Adjudicating Authority, has neither mentioned the 'date from which the alleged operational debt fell due' nor the 'date on which the default occurred'. The last alleged unpaid invoice is dated 23/06/2008. The payment in respect of the said invoice, as mentioned in the invoice, was to be made within a period of 5 days from the date of issuance of invoice. Therefore, the date of default for the purpose of present application is 28/06/2008. It is a settled principle of law, that an application for initiation of CIRP has to be filed within a period of three years from the date of the default; therefore, the application should have been filed on or before 28/06/2011. The present application has been filed on 27/06/2019, which is nearly after 8 years.
7. Section 18 of the Limitation Act states that where before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party



against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed. Hence, for the purpose of extension of period of limitation under Section 18 of the Limitation Act on account of an acknowledgement of debt in a proceeding under the Code, the said acknowledgement has to be within a period of three years from the date of default. Any acknowledgement, which is beyond the three-year period from the date of default does not result in extension of period of limitation for the purpose of filing of an application under the provisions of the Code.

8. The Hon'ble Supreme Court of India, in the case of Laxmi Pat Surana v. Union Bank of India, (2021) 8 SCC 481 held that,

*"40..... Correspondingly, right to initiate action within three years from such acknowledgment of debt accrues to the financial creditor. That however, needs to be exercised within three years when the right to sue/apply accrues, as per Article 137 of the Limitation Act. This is the effect of Section 18 of the Limitation Act. In that, a fresh period of limitation is required to be computed from the time when the acknowledgment was so signed by the principal borrower or the corporate guarantor (corporate debtor), as the case may be, **provided the acknowledgment is before expiration of the prescribed period of limitation....."***

9. The Hon'ble Supreme Court of India, in the case of SBI v. Krishidhan Seeds (P) Ltd., (2023) 1 SCC 209 held that,

*"13 ..... The principles which emerge are that:*

*(i) The provisions of Section 18 of the Limitation Act are not alien to and are applicable to proceedings under the IBC; and*

*(ii) An acknowledgement in a balance sheet without a qualification can furnish a legitimate basis for determining as to whether the period of limitation would stand extended, **so long as the acknowledgement was within a period of three years from the original date of default."***



10. In the present matter, the operational creditor has appended balance sheets of the Corporate Debtor for the financial years 2011-12 (Annexure A6) and 2017-18 (Annexure A7) in support of his stand that the acknowledgement of alleged debt was made by the corporate debtor. However, the acknowledgement of the debt in the audited balance sheet for financial year 2011-12, for the year ended 31/03/2012, is beyond the period of three years from the date of default. Since any acknowledgement, which is beyond the three-year period from the date of default does not result in extension of period of limitation for the purpose of claiming the initiation of CIRP under the provisions of the Code; hence the present application is not within the time.
  
11. For the reasons stated above, the present section 9 petition is not maintainable against the corporate debtor. Therefore, the same is hereby dismissed without costs.

-Sd-

**(Umesh Kumar Shukla)**  
**Member (Technical)**

January 05 , 2024

Vishesh

-Sd-

**(Dr. P.S.N. Prasad)**  
**Member (Judicial)**