

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**CP(IB)/6(CHE)/2021**

*(Filed under Sec.9 of the Insolvency and Bankruptcy Code, 2016)*

In the matter of **EID PARRY (INDIA) LIMITED**

**Jain Irrigation Systems Limited,**

Having its Registered Office at  
Jain Plastic Park, NH No.6, Bambhori,  
Jalgaon, Maharashtra – 425 001, India  
Rep. by its Senior Manager (Accounts),  
Mr. Pravin Kumat

*... Applicant / Operational Creditor*

*Vs.*

**EID PARRY (INDIA) LIMITED,**

Having its Registered Office at  
"DARE HOUSE", Parry Corner,  
Chennai – 600 001.

*... Respondent / Corporate Debtor*

Present: -

*For Applicant : E. Om Prakash, Sr. Advocate  
K.S. Ravichandran, PCS  
S. Manjula Devi, Advocate  
M.S. Vishnu Sankar, Advocate  
K. Naveen Prabhu, Advocate*

*For Respondent : Krishna Srinivasan, Sr. Advocate  
Geethi Ara, Advocate  
Karthik Ram Mohan, Advocate*

*Order Pronounced on 11<sup>th</sup> July, 2023*

CORAM:

**SANJIV JAIN, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

ORDER

**Per: SAMEER KAKAR, MEMBER (TECHNICAL)**

This is an Application filed by the Operational Creditor  
M/s. Jain Irrigation Systems Limited against EID PARRY (INDIA)



LIMITED under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016").

2. Part - I of the Application discloses that the Operational Creditor Jain Irrigation Systems Limited is a company incorporated under Companies Act, 1956 with CIN No. L29120MH1986PLC042028 and having its Registered Office at Jain Plastic Park, NH No.6, Bambhori, P.O. Box:72, Jalgaon, Maharashtra - 425 001.

3. Part - II of the Application discloses that the Corporate Debtors' name is EID PARRY (INDIA) LIMITED. The Corporate Debtor was incorporated on 22.09.1975 with CIN No. L24211TN1975PLC006989. The Registered office of the Corporate Debtor is situated at "DARE HOUSE", Parry Corner, Chennai - 600 001.

4. The Application is signed by one Mr. Pravin K Kumat authorised through Special Power of Attorney dated 25.09.1990.

5. In Part - III of the Application the Operational Creditor has not named any Insolvency Resolution Professional.

6. In Part - IV of the Application, the Operational Creditor has demanded a sum of Rs.27,73,53,498/- including interest payable up to 31.03.2020 from the five units of the Corporate Debtor located at different places. It is stated that the debt fell due on account of non-payment of invoices raised by Jain Irrigation Systems Limited on the cane growers of EID Parry (India) Limited against supply, installation



and maintenance of Drip Irrigation Systems for the cane growers identified coordinated and monitored by the Corporate Debtor.

7. It is stated that the Corporate Debtor owned up the obligation (guaranteed) to pay the amounts due from the cane growers as per Clause D and Sub-Clause 2 of the Payment Terms in the Agreement dated 21<sup>st</sup> September 2010.

8. It is stated that the Corporate Debtor defaulted in their payments from the year 2011-12 and last payment was made on 09.03.2018 by online transfer dated 09.03.2018 for Rs.10,04,934/- . The total amount of debt consists of amount payable on invoices outstanding plus interest for the delayed payment on the paid / partly paid amount and interest @ 15% for the default amount from the date of default. Invoice copies and Interest Computation Sheet are attached at page nos.28 to 41. The Operational Creditor has relied upon the following documents:

1. Demand Notice dated 21st September 2020, **Annexure No. I**
2. Copy of reply dated 7th October 2020 sent by Corporate Debtor to the Operational Creditor **Annexure No.II(1)**
3. The Agreement entered between the EID Parry (India) Limited and Jain Irrigation Systems Ltd **Annexure No.II(2)**
4. Invoice copies and Interest Computation Sheets **Annexure No.II(3) series**
5. Copy of ledger showing the amount of debt due from the Corporate Debtor as on 31<sup>st</sup> March 2020 **Annexure No. II(4)** etc.



9. The Corporate Debtor replied to the Section 8 notice on 07.10.2020. It is stated in the reply that, Form-3 notice was received by them on 21.09.2020. The contentions raised in the reply at page no.14 in serial no.5 are summarised as below:

9.1. As per their records, all amounts that were payable by them under the Agreement dt. 21.09.2010 have been paid by them in full, and they are not liable to pay any more sums of money.

9.2. At para no.8 on page no.14, the Corporate Debtor has raised issues on limitation. It is stated that entire claim is barred by limitation.

9.3. According to the reply of the Corporate Debtor, no amount was payable to the Operational Creditor.

10. Corporate Debtor has filed reply under S.R.No.1508 dated 18.03.2021. The Corporate Debtor admits that an Agreement was entered between both the sides on 21.09.2010. However, the Corporate Debtor stated that there are infirmities in the supplies made.

11. From the documents available from both the sides following are undisputed facts:

11.1. Existence of Agreement dated 21.09.2010 between the parties for facilitating the installation of drip irrigation systems on



the lands of farmers who supply sugarcane to the Respondent's sugar factories. The Agreement was for the period between August 2010 to October 2011.

11.2. Based on mutual consultation between the parties, the Respondent was to identify farmers on whose land drip irrigation system could be installed. Thereafter the Applicant was to carry out soil and water analysis and survey of the lands of the farmers referred by the Respondent.

11.3. Upon completion of analysis and certification, the Applicant was to design the drip irrigation systems to be installed on the farmer's lands. Based on this design, the cost would be determined based on the material list as per the price list annexed to the Agreement itself. A quote arrived on this basis was to be submitted by the Applicant to the Respondent.

11.4. Based on such quote, a work order would be issued to the Applicant and upon receipt of the work order, the Applicant was to commence work and supply the materials within 7 days thereafter and complete installation of drip irrigation system and the farmer's land as per design within 15 days from the date of the work order.

11.5. Thereafter, the Applicant was required to show satisfactory operation of the drip irrigation system installed on the farmers lands in the presence of officials of the Respondent and the respective farmer. The acceptance of the farmer and Respondent was to be



obtained in the Acceptance Certificate to be executed by both of the said parties signifying the successful completion of supply, installation and commissioning of drip irrigation system on the farmer's lands.

11.6. A part of the consideration for the Applicant was from subsidy provided by the Tamil Nadu Government under the TANHODA Scheme for drip irrigation systems. The remainder was to be paid by the farmer.

11.7. The terms of payment is as per the Agreement are recorded at page no.21 of the Applicant's paper book which are reproduced as under:

"The amount payable to JISL by the Bank/Factory is arrived at after deducting the subsidy component from the project cost".

a) EID will arrange to pay Farmer's contribution of the invoice within 7 days after supply of drip components. In case of Bank loan is being arranged by EID, bank shall pay 90% of farmers contribution and balance 10% after submission of final invoice and verification by the concerned cane and bank officials.

b) JISL to directly follow up with the concerned office of the Government towards the collection of drip subsidy under the TANHODA scheme. The company will not be responsible for any delay in the disbursement of subsidy by



the Government. If a beneficiary for any reason whatsoever, does not receive the subsidy EID shall arrange to deduct the same from the cane proceeds of the concerned farmer and pay JISL after the first harvest or after 12 months whichever is earlier.

- c) EID shall stand guarantee for the above payment terms
- d) All payments should be made by demand drafts / at par cheques to JISL payable at Coimbatore.

It is this agreement dated 21.09.2010 which has given rise to the present litigation.

12. The summary of the amount outstanding from the Operational Creditor is appended at page 645 which is reproduced below:

EID PARRY INDIA LIMITED					
Unit wise O/s as on 31.12.2019 Int. Calculated up to 31.03.2020					
Unit	Debit	Credit	Int.@15%	Without Int. o/s	Total o/s along with Interest
NELLIKUPAM	26,733,610	(22,296,009)	5,747,741	4,437,601	10,185,342
PETTA	514,763,381	(483,275,577)	91,903,024	31,487,804	123,390,828
PUDUCHERRY	51,220,750	(46,788,733)	13,426,067	4,432,017	17,858,084
Pudukottai	306,355,806	(276,132,001)	84,471,615	30,223,805	114,695,420
PUGALUR	60,127,601	(58,037,667)	9,133,891	2,089,934	11,223,825
<b>Grand Total</b>	<b>959,201,147</b>	<b>(886,529,987)</b>	<b>204,682,338</b>	<b>72,671,160</b>	<b>277,353,498</b>

  

Total Principal Outstanding as on 31.12.2019 With Out Interest	72,671,160
Total Interest for the Outstanding(72,671,160) Calculated Till 31.03.2020	204,682,338
Total Principal Outstanding till 31.12.2019 + Interest till 31.03.2020	277,353,498



13. In the reply filed by the Corporate Debtor, the Corporate Debtor has raised a pre-existing dispute. It is the contention of the



Respondent herein that pre-existing disputes were informed by the Respondent to the Applicant in the reply to the Form 3 notice dated 07.10.2020. The Respondent further relied upon the email correspondence dated 31.03.2016. Pre-existing dispute and limitation are set out as main defense at page no.9 to 19 which are reproduced below:

**Pre-Existing Dispute**

*24. In the light of the above facts, it is evident that there exists a plausible and genuine dispute raised by the Respondent at a prior point in time to the issuance of the Notice in Form - 3 by the Applicant. The Respondent has clearly informed the Applicant vide its Mail dt. 31.03.2016 that, in the absence of relevant documentation including consent letters from the farmers, no payments could be withheld from the farmer's cane proceeds and paid to the Applicant. Despite being called upon to produce such documents, the Applicant has never come forward with the same. The Applicant's subsequent Letters in the years 2017 and 2020 do not contain any material particulars or details about the so called debts due from the Respondent. They do not even mention the names of the farmers or even the work order references under the Agreement. Thus, it is clear that, the Applicant has no documents to substantiate its claims as against the Respondent. A dispute having*



*been raised by the Respondent, that is plausible and genuine and pre-existing, the present Application ought to be dismissed as such.*

*25. It is further pertinent to point out that, the Applicant is well aware of the above facts, but has chosen to suppress these material particulars from this Hon'ble Tribunal. This itself establishes that the present Application is mala fide and devoid of merits. The Applicant, having failed to establish its claims is now seeking to mislead this Hon'ble Tribunal into initiating CIRP as against the Respondent and utilising the provisions of the Code as a threat in an attempt to snatch some undue gains. The present Application is thus an abuse of process of law and ought to be dismissed with exemplary costs.*

**Limitation**

*26. The Agreement itself relates to the period 2010-11. Under Clause C(4), if any lands were left uncovered, the same was to be done in the next plantation season 2011-12. The activity of procuring drip irrigation systems for farmers was stopped by the Respondent in the year 2013 itself.*

*27. The Respondent vehemently denies that any drip irrigation systems were installed or supplied by the Applicant under the provisions of the Agreement post the aforesaid dates. No proof to the contrary has been furnished by the Applicant, whereas the*



*Applicant's own documents bear out the Respondent contention in this regard.*

*28. The Applicant has stated in his Application that the date of default would be "For invoice raised during an year is deemed to be the year and date with further interest from date of invoice...". It is further alleged that the account is a "running account". All of these allegations are denied. Even going by the Applicant's own contentions, taking the date of default in respect of a particular invoice to be the year in which it was issued, the latest invoice filed by the Applicant before this Tribunal is of the year 2012. Therefore, the period of limitation has long since expired.*

*29. The Applicant further seeks to rely on a payment made by the Respondent in the year 2018 claiming that it is the "last payment made on 09.03.2018 by way of online transfer dated 09.03.2018 for Rs.10,04,934/- towards drip irrigation for season." The said contention is also denied as false.*

*30. The said payment was made by the Respondent's Bio Products division and relates to a totally unrelated transaction arising out of a separate Service Order No. 80565104 dated 12.04.2017 **(Annexure-4)** for the purpose of installation of Drip irrigation system in neem plantations at the Respondent's Pattamadai Farm, Cheranmahadevi Taluk, Tirunelveli District. The said amount was the last tranche of payment under the said Purchase Order, being 25%*



*of its total value. Thus, no reliance can be placed on the same. The present agreement dated 21-09- 2010 relates to designing and supplying of drip irrigation and fertigation system for sugarcane farmers located in the command area of the Respondents' sugar factories at Pudukkottai, Pugalur, Nelikkuppam, Pettavathalaiti in Tamilnadu and in Puducherry. It is further pertinent to note that, the Annexure II(4) to the present Applications, which is claimed to be a Ledger of the Respondent's Account in the Applicant's books does not reflect this payment. This fact in itself exposes the claims of the Applicant to be totally bogus and rooted in falsehood.*

*31. At any rate, even assuming without admitting that, the said payment is a part payment, the same does not extend or revive the period of limitation which has long expired.*

*32. The Letter dt. 26.05.2014 in Annexure No. II(8) states that the dues of Rs. 2.89 Crores has been overdue even as on 2009-10 itself, Thus, the Application has evidently been filed alleging default of dues that are more than 12 years old and is thus hopelessly time barred.*

*33. It is submitted that, the latest date mentioned under the Invoices, Work Orders and Material Lists filed by the Applicant along with the present Application is the Invoice dt. 13.03.2012. The payment terms on the said Invoice are not clear and some portion of the same is not visible. It is stated that, "Payment within 60 days from \_\_\_\_\_" and the rest is not available in the document.*



*Reckoned from the date of the Invoice itself, payment ought to have been made on or before 12.05.2012. The period of limitation has therefore long since expired, most certainly in respect of the amount allegedly due under the Invoice and also in respect of the time period for presenting the present Petition under the Code, as per the law laid down by the Hon'ble Supreme Court.*

*34. The claim in the present Application of a principal amount of Rs. 726.71 Lakhs and Interest of Rs.2046.82 Lakhs has been mentioned for the first time only in the Applicant's Notice in Form 3 issued in the Month of September, 2020. The said amounts have hitherto never been claimed or demanded from the Respondent. At no prior point in time has the said amount been claimed from the Respondent. This itself shows that the same is barred by limitation.*

*35. Thus, it is submitted that, the so-called operational debt and the present Application are time barred, being beyond the prescribed period of limitation.*

**There is no "Operational Debt"; The Applicant has failed to furnish any documentary evidence to support its case in the present Application**

*36. It is submitted that the documents furnished along with the Application, replete with false assertions, inaccuracies and contradictions. It is apparent that, the said documents are bogus and fabricated solely for the purpose of propping up the present non-*



*existent and fictitious claim as against the Respondent in the present proceedings. The entire Application is denied as being mala fide and an abuse of process of law.*

*a. The Applicant has failed to file a complete copy of the Agreement dated 21.09.2010, Crucially, the Annexures to the Agreement which provides the price list for the material supplied under the Agreement have conveniently not been filed.*

*b. The Applicant has filed certain letters, Invoices, Bills of Quantities, purportedly for work done under the Agreement. The said documents are indecipherable and are denied as being false and self-serving. In any event, the documents relate only to a few lakhs worth of work allegedly done by the Applicant, and not to the humungous "operational debt" of Rs. 27 Crores in the present Application. Furthermore, the latest such Invoice filed by the Applicant is dated 13.03.2012 and stipulates that payment is to be made within 60 days. Thus, any amounts claimed under such documents of almost a decade ago are barred by limitation*

*c. According to the Applicant, it has sent letters dt. 26.05.2014, 26.11.2014, 22.05.2017 demanding payment of balance dues from the Respondent. It is submitted that, the Applicant has no record of ever receiving any letters dt. 26.05.2014 and 26.11.2014 From the Applicant and the Applicant is put to strict*



*proof of their having been issued and delivered to the Respondent.*

*d. It is pertinent to note that, in the Letter dt. 26.05.2014, the Applicant has stated that an amount of Rs. 2.89 Crores has been overdue from 2009-10 onwards. This clearly shows that the "Operational Debt" claimed in the present Application is barred by limitation.*

*e. In the letter dt. 22.05.2017, the Applicant itself has once again clearly accepted and admitted that the farmer's share is to be arranged either through the bank or from out of the cane proceeds. Thus, even according to the Applicant, there is no "operational debt" payable by the Respondent and that the Respondent is only supposed to, subject to proper documentation being furnished by the Applicant, deduct the dues of farmers from out of the farmer's cane proceeds and pay the same to the Applicant. In the said Letter, the Applicant has not called upon the Respondent to make any payments and has not even quantified the same. There are no annexures or any details of the farmers, ryot numbers, work order numbers, acceptance certificates, invoices, material lists, etc. enclosed along with the said Letter. The said Letter is absolutely devoid of any material particulars relating to any dues allegedly payable by the Respondent. It is therefore evident that, the so*



*called "operational debt" claimed by the Applicant is totally fictitious and non-existent.*

*f. The Applicant then claims to have sent Letters in the year 2020. The Respondent has no record of having received the Letters dt. 02.07.2020 purportedly issued by the Applicant to the Respondent's factories at Nellikuppam, Pettavaithalai, Ariyur, Pudukottai and Pugalur and the same are denied.*

*g. It is submitted that, Annexure No. II(4) to the present Application is denied in full as been rooted in falsehood, entirely fabricated, fictitious and mischievous. The said document, described as a "Ledger" showing the alleged debt due from the Respondent, is a self-serving document fabricated by the Applicant solely for the purposes of the present Application. The said documents, though accompanied by a certificate from an Auditor in Annexure No. II(5), is not reliable and highly misleading.*

*h. The said document suffers from several defects that are ex-facie apparent:*

*i. The document is a unilateral document, which has not been approved or certified in any manner by the Respondent.*

*ii. An unintelligible copy of the said Annexure claims to have been enclosed along with the Notice in Form-3. However, since the copy enclosed with the notice was unreadable, there*



*is no way of confirming that the same document has been filed before this Hon'ble Tribunal. At any rate, this document has come to light for the first time only before this Hon'ble Tribunal.*

*iii. None of the entries in the said document are borne out or substantiated by any documents. The so called "Ledger" and the entries therein do not by any stretch of the imagination establish that there are any amounts payable by the Respondent to the Applicant. The entries are not corroborated by supporting documents in the form of Work Orders, Material Lists, Acceptance Certificates etc., all of which are essential under the Agreement dt. 21.09.2010, to substantiate any transactions thereunder.*

*iv. The details provided in the "Ledger" are themselves scanty and skeletal, with no way of deciphering what a particular entry relates to. Strangely, the entries are not correlated to any Work Order No. or any Invoice No. as is the normal practise for a Ledger, especially running accounts. The last column is captioned "narration" and contains a plethora of entries which do not shed any light or substantiate any claims as against the Respondent.*

*v. The entries themselves are, arbitrary and unreliable, inasmuch as they are devoid of all material particulars linking*



*them to any plausible transaction involving the Respondent. Merely mentioning the Respondent's name against a debit entry, without providing any of the back papers and supporting documents for the said entry is not sufficient to establish the Applicant's claim before this Hon'ble Tribunal;*

*vi. The entries specifying the Respondent's name along with the names of certain individuals, who are claimed to be farmers, is also meaningless and misleading. There is no proof or material to show that the said persons are actually farmers and that work orders have been issued for the installation of irrigation system on their lands.*

*vii. There is no way of confirming or corroborating that the said persons whose names are mentioned are actually farmers, that they are farmers who are supplying sugarcane to the Respondent, whether they were farmers who are within command areas of the Respondent's sugar plants at Pugalur, Nellikupam, Pettavaithalal, Pudukottal, Puducherry, that they had drip irrigation systems installed pursuant to the terms of the Agreement dt. 21.09.2010 etc. There is no reference to what was actually supplied or provided against such alleged sale.*

*vii. Shockingly, the said Annexure contains entries that go back more than 20 years, whereas the Agreement itself is*



dated 21.09.2010. All such amounts that predate the Agreement are self- evidently false and denied as such. The Agreement also contains entries that are subsequent to the period of the Agreement, even as recent as the 2017-18. These entries are denied as false and baseless as no work for installation of drip irrigation was carried out subsequent to the period of the Agreement. The Applicant is put to strict proof of these false and baseless entries. The details of these entries are as follows:

S.No.	Name of the Factory	Years outside the scope of the Agreement
1	Pudukottai	Period covered before execution of the Agreement: 2002-03, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009 - till July, 2010  Period covered beyond execution of the Agreement : 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18
2	Pettavathalai	Period covered before execution of the Agreement: 2000-01, 2003-04, 2004-05, 2005-06, 2006-07, 2007-08, 2008-09, 2009 - till July, 2010  Period covered beyond execution of the Agreement : 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18
3	Nellikuppam	Period covered beyond execution of the Agreement : 2012-13, 2013-14, 2014-15, 2015-16, 2016-17, 2017-18
4	Pondicherry	Period covered before execution of the Agreement :



		<i>2008-09, 2009-10</i> <i>Period covered beyond execution of the Agreement :</i> <i>2012-13, 2013-14, 2014-15, 2015-16</i>
5	<i>Pugalur</i>	<i>Period covered before execution of the Agreement :</i> <i>2008-09, 2009-10</i>  <i>Period covered beyond execution of the Agreement :</i> <i>2012-13, 2013-14, 2014-15, 2015-16</i>

*i. It is pertinent to mention that, the factory in Pettavaithalai has not been in operation since 2016-17. However, the ledger filed by the Applicant reflects transactions subsequent to the said periods also. This fact itself shows that the said document is rooted in falsehood and fabricated and concocted solely for the purposes of propping up the Applicant's illegal and bogus claim. The factories in Pudukottai and Puducherry were also closed, mainly due to inadequate number of sugarcane farmers, who had all stopped planting sugarcane and had switched over to other cash crops.*

*j. Several entries in the Ledger are in respect of entries that are self- evidently commercial concerns that have nothing to do with the Respondent. They are clearly not farmers, much less sugarcane farmers identified and referred by the Respondent. Some examples of these entries are as follows:*



S.No.	Page No of the Claim Statement	Name of the Person/Entity
1	51 - S.NO.24	Tamilnadu Precision Farming Projects, Pondicherry
2	Pudukottai, 289, S.No.6614	Vasanth Enterprises
3	Pudukottai, 289, S.No.6602	Dinakaran Enterprises
	Pudukottai, 292, S.No.6757	GSR Irrigation and Consultant, Trichy
4	Pettavathalai, 327, S.No.309	Sri Vidhya Traders, Trichy
5	Pettavathalai, 360, S.No.1761	Karur Sri Agro Services, Tamilnadu
6	Pudukottai, 242, S.No.2681	Sri Murugan Agro Trading Corporation

*k. It is an admitted fact that, the Applicant was also supplying and installing drip irrigation systems directly to farmers, other sugar factories and other persons. It is submitted that, the Respondent does not have any role to play or any obligation or relationship in respect of such transactions. The Applicant cannot seek to bring all such transactions within the Agreement. The Applicant's so-called "operational debt" and the documents filed in the present Application are clearly bogus, inflated and exaggerated and the same are denied in toto.*

*l. It is submitted that, all the entries in the so-called "Ledger" are entirely bogus. For example, there are entries reflecting credit i.e. payments even as recent as the period 2019-20. The Applicant ought to be called upon to explain as to what*



*such entries relate to by providing the relevant particulars, details and documents, back documents, transactions references etc. that substantiate the same. It is submitted that, such entries are entirely false and fictitious.*

*m. It is clear that the Applicant has sought to foist its entire sundry debtor's balance on the Respondent herein by way of the Annexure No. II(4). The said document and all entries therein are completely bogus and denied as being mischievous, false and concocted for the purposes of the present proceedings.*

14. The Additional documents have been filed by the Applicant vide S.R.No.1744 dated 20.04.2023. Additional reply was filed by the Corporate Debtor under S.R.No.3678 dated 21.06.2022 to which the Operational Creditor replied vide S.R.No.5136 dated 25.08.2022. Additional reply in one way or other repeats the allegations as contained in the original reply. It is stated that from several farmers, the Applicant has not taken compliance /completion certificate.

15. Written submissions have been filed by both the sides. Heard both the Counsels. Perusal of the Agreement dated 21.09.2010 would reveal that the Operational Creditor was to supply drip irrigation system to the farmers who were to be identified by the Corporate Debtor. After supply and installation, a Satisfaction



Certificate was to be obtained from the farmers by the Applicant. A perusal of the payment terms would reveal that farmers' contribution was to be paid within 7 days by the Respondent. In case, bank loan was being arranged by the Respondent, bank had to pay 90% of farmer's contribution and balance 10% after submission of final invoice and verification by the concerned bank officials. In case of Government subsidy, it was the duty of the Operational Creditor to follow up with the concerned office of the Bank towards collection of drip subsidy. Respondent was not responsible for any delay in the disbursement of the subsidy by the Government.

16. The Respondent was to deduct the amounts from the cane proceeds of the concerned farmers in case the beneficiary of the subsidy fails to receive the subsidy. Clause No.3 clearly states that the Respondent shall stand guarantee for the above payment terms.

17. The Applicant has attached along with the application the ledger account of the Corporate Debtor, the entire transactions as reflected in the accounts for almost 20 years and for all these years, there is a common ledger maintained by the Operational Creditor.

18. It is an admitted fact that supplies were made directly by the Operational Creditor to thousands of farmers involved under TANHODA Scheme for drip irrigation systems. Invoices were raised



by the Operational Creditor in the name of the Corporate Debtor giving the particulars of farmers where the drip irrigation system was installed.

19. A question was put by the Bench to Mr. E. Om Prakash, Ld. Sr. Counsel for the Applicant, whether the accounts in the books of the Applicant are maintained farmer wise to which the Sr. Counsel's reply is as under:

*"The accounts are only in reference to the Corporate Debtor. Farmers' names reflect in terms of work orders issued by the Corporate Debtor and invoices, delivery and installation in the particular farmer's place. As and when the payment is made by the Corporate Debtor, they refer to the invoice and based on the same, the farmers names are captured in the accounts".*

20. We fail to understand why a common account was maintained for five different units and why no individual farmer wise outstanding was ever filed in the present matter when thousands of transactions have taken place in the matter for a number of years. We also fail to understand why no independent certification of the amounts due was resorted by both the sides in the present matter. It is our observation that both the sides have not come out clean in the matter and have not taken any outside certification from any Chartered Accountant so as to the amounts receivable / payable.



21. As regards the limitation, the Respondent has very clearly brought out that fresh purchase order was issued on 12.04.2017 on the Applicant and to meet the payment terms of the said Purchase order a sum of Rs.10,04,934/- was released on 09.03.2018. A copy of the Purchase Order has been attached on page nos.32 to 35 of the Reply filed by the Corporate Debtor. No dispute has been raised so far as to the receipt of payment or the existence of the said purchase order in the rejoinder. No defence against the said payment has been set out in the rejoinder filed by the Operational Creditor.

22. It is pertinent to note that in the present case, drip irrigation system was to be installed at the field of the farmer, his satisfaction was to be recorded and in case all the above are complied with, payments were to be released by the farmer or on his behalf through release of subsidy or bank loan and when no payment was made, the Respondent was to withhold the payment for cane supplied by farmer and release the same to the Applicant and for which, consent of the farmer was required.

No concrete evidence was listed before us through which we can come to conclusion that

- a) Which farmers have not been paid?
- b) Whether all have given their satisfaction?
- c) Which farmers have given consent to the Respondent to deduct amounts due from cane supplied to the Respondent and for whom Respondent failed to deduct and pay



23. That being the position, a possibility of dispute cannot be ruled out. Hon'ble Supreme Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited** has held as under

*"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."*

24. As regards limitation, we are of the view that the application is barred by Limitation. The solitary payment made by the Respondent on 09.03.2018 for Rs.10,04,934/- which was made



for a separate purchase order, does not enable the Applicant to overcome limitation or the debts became time barred as early on 2017 and no acknowledgment of debt has been filed between 2017 to the date of Application giving a new lease of life to the time barred debt.

25. Though certain stray payments were received in late as 2017 & 2018, but they were from the Government towards release of subsidy to the farmers. It is nobody's case that such payments enlarge the limitation.

26. In our view the claim of the Operational Creditor is: -

- a) barred by limitation
- b) there is every possibility of a dispute which is existing.
- c) Applicant fails to establish any undisputed debt.

In view of the above discussions, the present application is dismissed.



**SAMEER KAKAR**  
**Member (Technical)**



**SANJIV JAIN**  
**Member (Judicial)**