



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

**IA No. 1784/2023  
and  
CP (IB) No. 225/Chd/Pb/2019  
Under Section 9 of Insolvency and  
Bankruptcy Code, 2016.**

**In IA No. 1784/2023**

**Chinar Forge Ltd.**

having its registered Office at  
C-85-86, Focal Point Extension,  
Jalandhar 144004  
CIN No. U27310PB1992PLC012269

...Applicant-Corporate Debtor

**Vs.**

**BLR Logistiks [I] Ltd.**

**Through : Mr. Gaurav Dutt, authorised signatory**

having its registered Office at  
D 201/202, Lotus Corporate Park,  
Western Express Highway  
Goregoan (East) Mumbai-400063  
CIN : U63010MH1989PLC052533

...Respondent-Operational Creditor

**In the matter of CP (IB) No. 225/Chd/Pb/2019:**

**BLR Logistiks [I] Ltd.**

**Through : Mr. Gaurav Dutt, authorised signatory**

having its registered Office at  
D 201/202, Lotus Corporate Park,  
Western Express Highway  
Goregoan (East) Mumbai-400063  
CIN : U63010MH1989PLC052533

...Petitioner-Operational Creditor

**Vs.**

**Chinar Forge Ltd.**

having its registered Office at  
C-85-86, Focal Point Extension,  
Jalandhar 144004  
CIN No. U27310PB1992PLC012269

...Respondent-Corporate Debtor

Judgement delivered on: 11.10.2023

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

For the Petitioner-Operational Creditor  
in main CP/Respondent in  
IA No. 1783/2023 : Mr. Gopal Sharma, Advocate

For the Respondent-Corporate Debtor  
in main CP/Applicant in  
IA No. 1784/2023 : Mr. Alok Jagga, Advocate  
Mr. A.P.S. Madaan, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

**IA No. 1784/2023**

The present application was filed by the applicant-corporate debtor against the operational creditor-respondent placing on record additional material information i.e. two separate ledger accounts for domestic and international transactions pertaining to the year 01.04.2006 till 31.03.2007, 01.04.2011 till 31.03.2012 (Annexure A1 to A3) in pursuance of order dated 04.05.2023.

2. The said material information is taken on record. Thus, IA No. 1784/2023 is allowed and disposed of accordingly.

**JUDGMENT in CP (IB) No. 225/Chd/Pb/2019**

3. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **BLR Logistiks [I] Ltd.** through its Authorized Signatory **Mr. Gaurav Dutt**, (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **Chinar Forge Ltd.** (for brevity 'Corporate Debtor' / 'Respondent').





4. The matter was relisted on 07.03.2023 that there was no dispute regarding the invoices. However, there was a dispute regarding the date of default. According to the learned counsel for the petitioner, the date of default is 27.07.2018 i.e. when the last payment of Rs. 1,00,000/- (Rupees One Lakh) was received by the petitioner. It also transpires from the documents available on the record that two separate ledger accounts are maintained by the parties. No doubt, an entry of Rs. 1,00,000/- (Rupees One Lakh Only) is there in the statement of accounts on 26.07.2018 of BLR Logistiks [I] Ltd. but it is not clear from the ledger accounts maintained by the petitioner whether this amount was credited as such for domestic or international transactions. In compliance of the same, short note was filed by the respondent-corporate debtor vide Dairy No. 00356/5 dated 24.03.2023.

5. The Corporate Debtor, namely, Chinar Forge Ltd., is a Company incorporated on 11.05.1992 under the provisions of the Companies Act, 1956 with CIN No. U27310PB1992PLC012269 with its Office: at C-85-86, Focal Point Extension, Jalandhar 144004. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure I.

6. The facts of the case, briefly, as stated in the petition are that the present application is filed for the non-payment of the bills raised between the period 12.11.2013 to 30.06.2015 pertaining to Logistics division of the Operational Creditor which covers the services rendered by operational creditor such as ocean freight, crane charges, weighment, bill of lading,



sealing charges, container movement, terminal handling charges and warehouse under Section 9 of IBC, 2016. The demand notice was sent in Form 3 and Form 4 on 24.10.2018 by speed post which was delivered on 27.10.2017 for demand of Rs. 58,14,551/- (Rupees Fifty Eight Lakhs Fourteen Thousand Five Hundred and Ffity One Only). No reply was received to the demand notice within stipulated 10 days and there is no pre-existing dispute with regard to the invoice. After the demand notice was delivered vide tracking report (Annexure C and D), the parties tried to resolve the matter and the corporate debtor assured that the invoice amounts will be cleared soon. However, this tactics was to prolong the matter.

7. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 58,14,551/- (Rupees Fifty Eight Lakhs Fourteen Thousand Five Hundred and Fifty One Only). The default occurred on 27.07.2018 i.e. when last payment of Rs. 1,00,000/- (Rupees One Lakh) was received. Copy of computation/ledger (Annexure E), invoices (Annexure F), bank certificate (Annexure G), Bank Account Statement (Annexure H) are attached with the main petition.

8. The notice of this petition was given to the respondent-corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Diary No.3490 dated 18.07.2019. The corporate debtor has filed reply vide diary No.5717 dated 17.09.2019 wherein it is stated that the amount claimed in default is barred by limitation. The last invoice was raised on 30.06.2015 which would expire on 30.06.2018 and petition was



filed on 29.03.2019 i.e. much after expiry of period of limitation. In order to cover the limitation, the petitioner has stated that he received part-payments pertaining to invoices No. 000958 dated 12.11.2013 to 000228 dated 30.06.2015. There were two different ledger accounts maintained by petitioner as well as respondent. Separate bills were issued for International Export Market and Domestic Market, the payments were separately adjusted. The payments made by respondents were instructed to be adjusted either against export or domestic ledger. The present case has been filed for ledger Account-1 (Export/International). There is not even one single domestic bill included by petitioner. The respondent had separate dealings for domestic bills and ledger and invoices were separately issued. (Annexure R1). The payment shown to be made by petitioner from 04.12.2017 to 27.07.2018 are not against International Bills but are for domestic transactions. These payments have been made by separate set of invoices (Annexure R2). The photographs of damaged goods received are placed on the record.

9. The rejoinder was filed vide diary No. 00356/3 dated 19.10.2022 wherein it is stated that the operational creditor has filed the application for non-payment of bills raised between the period 12.11.2013 to 30.06.2015 pertaining to Logistics Division of the operational creditor. The services are part and parcel of transaction related to import-export activities of respondent and covers outstanding bills. The ledger account of Log division of the operational creditor covering the outstanding bills related with this petition for



the period 01.04.2017 to 31.03.2018. The false and frivolous averments are made by the respondent pertaining to domestic services and not related to international dealings of the Respondent. The respondent never gave any payment advice, but used to orally say that payments are released of the bills pertain to log division account of the applicant/operational creditor i.e. the bills covered in above application. It is crystal clear that soon after receipt of the first notice dated 16.10.2017, the respondent made on account payment of the bills covered in above petition. The payments were made by respondent pertaining to domestic despatches/dealings, the operational creditor submitted that the operational creditor is maintaining separate ledger account for domestic despatches/dealings in their transport division and raised and submitted bills for domestic services to the respondent used to settle the said bills fully i.e. bill to bill. The payment made by the respondent for the period from 04.12.2017 to 27.07.2018, are for the domestic despatches covered under Annexure R-2 to the written statement whereby the respondent has annexed 4 lorry receipts bearing Nos. 680710 dated 05.12.2014, 680781 dated 10.03.2015, 1486887 dated 23.04.2016 and LR No. 1567477 dated 31.12.2016. Cheque No. 3044907 for Rs. 65,000/- pertaining to Bill NO. PHA-00128 dated 17.12.2014, Cheque No. 420227 for Rs. 45,000/- pertaining to Bill No. {JA-00168 dated 14.03.2015, Cheque No. 717931 for Rs. 1,05,000/- pertaining to Bill No. PHA-00010 dated 04.05.2016, cheque No. 604967 for rs. 99,000/- pertaining to Bill No. PHA-00089 dated 17.01.2017 were deposited with the HDFC Bank Ltd. The



detail of payments from 03.12.2017 to 27.07.2018 made by respondent is an under :- Cheque bearing Nos. 608024 dated 03.12.2017, 608025 dated 18.12.2017, 607237 dated 04.01.2018, 607238 dated 27.01.2018, 000904 dated 27.02.2018, 000905 dated 04.03.2018, 608786, 609642 dated 07.07.2018, 609643 dated 15.07.2018, 609644 dated 25.07.2018 are deposited in the Bank.

10. The short written submissions have been filed by applicant vide Diary No. 00356/4 dated 11.11.2022 and by respondent-corporate debtor vide Diary No. 00356/2 dated 29.06.2022.

11. We have heard the learned counsel for the petitioner and respondent, and have perused the records.

12. The first issue for consideration is whether the demand notice in Form 4 dated 23.10.2018 is stated to be issued by the operational creditor on 24.10.2018 and the same has been delivered to the corporate debtor vide registered post as tracking report is attached at Annexure C&D of the petition. No reply to demand notice was filed within ten days statutory time, however, corporate debtor gave reply dated 12.04.2019 to the demand notice. It is submitted by the petitioner that after the demand notice was delivered, the parties tried to resolve the matter and the corporate debtor assured that the invoice amounts will be cleared soon. Therefore, the demand notice was duly served.


13. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is submitted by learned counsel for



corporate debtor that till the date of filing of the present application there is no dispute communicated by the Corporate Debtor and no payment has been received during this period pertaining to the bills covered in the notice. That false and frivolous reply is received to the demand notice within the stipulated 10 days' time from receipt of demand notice. It is contended by the corporate debtor that the payments made were instructed to be adjusted either against export or domestic ledger. The present case has been filed for ledger Account-1 (Export/International). However, it is stated by the operational creditor that he has filed the application for non-payment of bills raised between the period 12.11.2013 to 30.06.2015. Further, it is seen from the records that the bills attached are from the period 01.04.2014 to 31.03.2015 and 01.04.2015 to 31.03.2016 are pertaining to the Domestic Division and not International Division. Moreso, it is not proved that an amount of Rs. One Lakh was deposited on 27.07.2018 in the international account ledger.

The reliance can be placed upon the judgment of Hon'ble Supreme Court **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353** wherein it was held that:

*“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.*

**43.** .....We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).

**45.** Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.

(Emphasis Supplied)

The definition of a ‘dispute’ as provided in the Insolvency and Bankruptcy Code, 2016 is as follows-

*“5. Definitions. – In this Part, unless the context otherwise requires, –  
(6) “dispute” includes a suit or arbitration proceedings relating to–  
(a) the existence of the amount of debt;  
(b) the quality of goods or service; or  
(c) the breach of a representation or warranty;”*

Moreover, whether the amount paid towards interest after 04.12.2017, is against the international or domestic ledger itself is a question of dispute and a pre-existing dispute much prior to the issuance of the demand notice. **Hon’ble NCLAT, New Delhi in the case of Manju Aggarwal Versus Shree Maru Trade Link Limited, bearing Company Appeal (AT) (Insolvency No.1203 of 2022)** in Para No.21 to 23, held that while



examining petition U/s 9, adjudicating authority is not supposed to enter into final adjudication with regard to the existing dispute between the parties.

Therefore, there is no cogent evidence placed on record to show that there was existence of debt and default. Moreso, there is pre-existing dispute between the parties regarding domestic and international transactions.

14. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 23.10.2018 in Form 4 is attached as Annexure-C. However, the period of limitation would begin from the date of default on 27.07.2018 i.e. when last payment of Rs.1,00,000/- (Rupees One Lakh) was received. It is pertinent to note that in the rejoinder it is admitted by petitioner that present petition under Section 9 of IBC,2016 has been filed for non-payment of bills for the period w.e.f 12.11.2013 to 30.06.2015 and the said claim is for International market transaction. It is further proved by respondent-corporate debtor that two separate ledger accounts are maintained by the petitioner for domestic and international transactions as is evident from Annexure A1 to A3 annexed in IA No. 1784/2023 filed by the respondent-corporate debtor. It is not proved by the petitioner that the amount of Rs. 1,00,000/- was credited on 27.07.2018 in the international account ledger. Thus, the date of default would be on 30.06.2015 or after one month of the issuance of the last invoice. The present application under Section 9 of the IBC, 2016 has been filed



on 29.03.2019 vide Diary No. 1649. Hence, this Adjudicating Authority finds that this application is beyond period of 3 years of limitation.

15. As a sequel to the above discussion and the facts as well as circumstances since there is a pre-existing dispute between the parties regarding the amount claimed by the petitioner and is barred by limitation, the petition is liable to be rejected, being not maintainable in terms of Section 9 of IBC, 2016. The petition consequently stands dismissed, however, with no order as to costs.

Sd/-

(Subrata Kumar Dash)  
Member (Technical)

October 11, 2023

VN/TBG

Sd/-

(Harnam Singh Thakur)  
Member (Judicial)