



IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH – I

CP (IB) 4387/MB/2019

Under section 9 of the Insolvency and Bankruptcy  
Code, 2016

**MANIRATNA INDUSTRIES PRIVATE LIMITED**  
[CIN: U24100MH1980PTC022520]

**(Formerly known as Pushpak Plastics Private Limited)**

Reg. Office: Q-1, Kama Industrial Estate, Walbhat  
Road, Mumbai MH 400063

Address for Correspondence:

17-17a, 3<sup>rd</sup> Floor, Nadirshah Sukhia Street, Opp.  
Rehman House, Fort, Mumbai – 400001.

...Operational Creditor/Petitioner

Versus

**SHREE MORAYA POLYMERS PRIVATE  
LIMITED**

[CIN: U25199PN2013PTC146190]

Reg. Office Plot No. E-75, Ranjangaon Industrial Area,  
AP- Ranjangaon TA- Shirur, Pune, Pune - 412209 MH

... Corporate Debtor/Respondent

**Order Delivered on: 04.05.2023**

***Coram:***

Hon'ble Member (Judicial) : Mr. H. V. Subba Roa

Hon'ble Member (Technical): Mr. Shyam Babu Gautam

***Appearances:***

For the Operational Creditor : Mr. Sandeep Jalan, Advocate

For the Corporate Debtor : Mr. Aniket Malu, Advocate

**ORDER**

***Per: H. V. Subba Roa, Member (Judicial)***

1. This Company Petition is filed under section 9 (“**the Petition**”) of the Insolvency and Bankruptcy Code, 2016 (**IBC**) by **Maniratna Industries**



**Private Limited, (formerly known as Pushpak Plastics Pvt. Ltd.) through its Director Mr. Mithalal J. Jain ("the Operational Creditor"), seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Shree Moraya Polymers Private Limited ("the Corporate Debtor").**

2. The Corporate Debtor was incorporated 08/02/2013 under the Companies Act, 1956. It has its registered Office situated at Plot No. E-75, Ranjangaon Industrial Area, AP- Ranjangaon TA- Shirur, Pune, Pune - 412209 MH. Therefore, this Bench has jurisdiction to deal with this petition.
3. This petition was filed on 06.12.2019 before this Adjudicating Authority (AA) on the ground that the Corporate Debtor failed to make payment of a sum of Rs.1,50,95,428/- (Rupees One Crore Fifty lakhs Ninety-Five thousand and Four hundred twenty-eight only) being Rs.1,30,00,000/- (Rupees One Crore Thirty lakhs only) as the Principal Amount and interest @ 24% p.a. amounting to Rs.20,95,428/- (Rupees Twenty lakhs Ninety-five thousand four hundred Twenty-eight only). The date of default is 01.07.2019. According to the Settlement Agreement, the entire debt should have been paid by 30.06.2019.
4. The Operational Creditor is a Private Limited Company incorporated on 17.04.1980 under the name and style of Pushapak Plastics Private Limited under the Companies Act, 1956. The Operational Creditor is engaged in the business of manufacturing and supply of Plastic Raw Materials/Pet Resins; and with effect from 31<sup>st</sup> May 2019, the name of the Operational Creditor has been changed to Maniratna Industries Private Limited from Pushpak Plastics Private Limited. A copy of the



Certificate evidencing the change of Name to the present name is annexed to the Petition as Annexure – A&B.

**Submissions made by Operational Creditor:**

5. The Operational Creditor has in the regular course of their business, sold and delivered the goods (Pet Resin) to the Corporate Debtor. The Corporate Debtor defaulted in making payments of Rs.2,37,18,468/- being Rs.1,59,25,052/- towards principal amount and Rs.77,93,416/- towards interest @ 24% per annum. The Operational Creditor after issuing Statutory Notice, preferred an Insolvency Application under Sec.9 of the I&B Code, 2016 being CP(IB) 1694/MB/2017, before this Tribunal, against the Corporate Debtor. The Corporate Debtor raised certain disputes, hence this Tribunal vide Order dated 16.11.2018, were pleased to dismiss the said Petition. Copy of the said order dated 16.11.2018 is annexed to this Petition as **Annexure – D**.
6. The Operational Creditor during the pendency of above Insolvency Application, registered F.I.R. No.177/2018 dated 17.07.2018, against the Directors of Corporate Debtor, for having committed the offence punishable under Sec.420,465, 467, 468, 471 r/w 34 of the Indian Penal Code (IPC), 1860. The Directors of the said Corporate Debtor have had preferred Anticipatory Bail Applications before the Hon'ble Court of Sessions, at Mumbai. During the pendency of aforesaid Anticipatory Bail Applications before Hon'ble Bombay High Court, the Corporate Debtor herein and Operational Creditor have resolved all their disputes and differences and have reached to an amicable settlement, which was reduced to in writing in the name and style as "Settlement Agreement", dated 14.12.2018; and the same was also recorded in the Order dated 18.12.2018 (para 3) passed by the Hon'ble High Court whilst allowing the Anticipatory Bail Applications. Copy of the Settlement Agreement



dated **14.12.2018** and copy of the Hon'ble Bombay High Court Order dated 12.12.2018 are annexed to this Petition as **Annexures – “F” & “G”**.

7. By virtue of aforesaid “Settlement Agreement”, the Corporate Debtor, in discharge of their liability for the goods sold and delivered by Operational Creditor to them, and in full and final settlement of all disputes, have agreed to pay a sum of Rs.2,41,00,000/- (Rupees Two Crores Forty-one lakhs only). That by virtue of aforesaid Settlement Agreement, a sum of Rs.41,00,000/- was paid at the time of signing of the said Agreement; and Eight post dated cheques for Rs.25,00,000/- (Rupees Twenty Five lakhs) each, aggregating to Rs.2.00 crores (Rupees Two Crores) were handed over to Operational Creditor, with an assurance that all these Cheques will be honoured on their presentation, failing which the Corporate Debtor would be liable to pay interest @ 14.50% per annum; and in any event the Corporate Debtor herein would have to pay the entire amount of Rs.2,41,00,000/- by 30.06.2019.
8. The Financial Creditor submits that all the cheques were dishonoured on the respective date of their presentation; and against the outstanding liability of Rs.2.00 crore, only payment of Rs.70,00,000/- (Rupees Seventy lakhs only) was made till 30.06.2019, that is —

Rs.5.00 lakhs	...	...	18.02.2019
Rs.3.00 lakhs	...	...	22.02.2019
Rs.5.00 lakhs	...	...	05.03.2019
Rs.2.00 lakhs	...	...	15.03.2019
Rs.10.00 lakhs	...	...	25.03.2019



Rs.45.00 lakhs                      ...                      29.06.2019

Copies of 8 Dishonoured cheques and respective Bank Memos are annexed to this Petition as **Annexure – H to H-7 & Annexure – I.**

9. The Operational Creditor submits that the Corporate Debtor by various documents unambiguously acknowledged and admitted their liability incurred under the Settlement Agreement dated 14.12.2018, copies of which are annexed to this Petition. The Operational Creditor further submits that they have issued a notice dated 18.03.2019 through their Counsel to the Corporate Debtor to honour their obligations incurred under the Settlement Agreement dated 14.12.2018. However, in reply to the aforesaid Notices, the Corporate Debtor, through their Advocate replied vide their letter dated 28.06.2019, *inter alia*, unambiguously and expressly admitted their liability incurred under the Settlement Agreement dated 14.12.2018 and requested therein for more time to clear the outstanding amount, the para 10 of the said Letter is reproduced hereinbelow:

Para 10:        *“My clients yet again assure you that they shall make outstanding payment of Rs.1,75,00,000/- within 45 days from the date of this notice. My clients further urge if and request you to kindly cooperate and allow some additional time for discharge of outstanding liability towards you.”*

10. That, as on that date of 28.06.2019 an amount of Rs.1,75,00,000/- was due and payable and post this letter 28.06.2019, the Corporate Debtor made payment of Rs.45,00,000/-. The Operational Creditor further submits that despite making an express promise and further admissions to make payment of Rs.2,41,00,000/- by 30.06.2019 under the Settlement Agreement dated 14.12.2018, the Corporate Debtor has made payment of Rs.1,11,00,000/- only, and defaulted in payment for



an amount of Rs.1,30,00,000/- (Rupees One crore Thirty lakhs only) being the Principal and Rs.20,95,428/- (Rupees Twenty lakhs Ninety Five thousand Four hundred and Twenty-eight only) towards Interest, aggregating to Rs.1,50,95,428/-. Copy of Bank Certificates showing the total payments received by Operational Creditor from 14.12.2018 to 30.06.2019 from Corporate Debtor is annexed to this Petition as **Annexure – O**.

11. Since there was default, the Operational Creditor, through their Advocate, issued Notice dated 06.11.2019 under Sec.9 of the I&B Code, 2016 and called upon the Corporate Debtor to pay Rs.1,50,95,428/- being Rs.1,30,00,000/- towards the Principal and Rs.20,95,428/- towards Interest. The said Notice dated 06.11.2019 is annexed to this Petition as **Annexure – P**.
12. The Operational Creditor further submits that there is no pre-existing, or otherwise any dispute whatsoever, in respect to the amount which is in default. The Corporate Debtor time and again have expressly acknowledged and admitted their liability.

**Affidavit in reply by the Corporate Debtor:**

13. The Corporate Debtor submits that the said Petition is filed based on a Settlement Agreement annexed to the Petition. The Corporate Debtor has raised the following objections:
14. The Corporate Debtor submits that the present Petition is barred by the doctrine of “*res judicata*” as the subject matter has already been heard and decided by this Tribunal by its Order dated 16.11.2018 in Company



Petition No.1694 of 2017 which was between the same parties, for the same cause of action and under the same title, where the this Tribunal has dismissed the Petition stating that, “*the debt claimed in this Petition has an essence of a “Dispute”, therefore, this Petition can’t be admitted for the CIRP and deserves Rejection*”. The alleged “Debt” in the said Company Petition No.1694 of 2017 claimed to have arisen out of the identical disputes between the parties. In view of this, the Petition deserved to be dismissed. The said Company Petition was heard and dismissed by this Tribunal after the categorical observation that there exists a dispute between parties. In view thereof, the Petition was not maintainable. Copy of the said Order is annexed to the Affidavit as **Annexure – A**.

15. The present Petition is also defective because of mandatory requirement u/s.9 of IBC as only an Operational Creditor can initiate insolvency proceedings for unpaid operational debt. In the present case, the Principal amount claimed appears to have arrived from a Settlement Agreement executed between the parties in respect of Anticipatory Bail Application No.2491 of 2018 with Anticipatory Bail Application No.2494 of 2018 before the Hon’ble High Court, Mumbai. The said alleged “debt” cannot be categorized as “Operational Debt” in terms of I&B Code. Therefore, the said Principal amount does not arise out of the provision of goods or services including employment or debt in payment of dues arising under any law for the time being in force and payable to



the Central Government or State Government or Local Authority which is the prerequisite of operational debt under Sec.5(21) of IBC. Moreover, the Petitioner has not provided any Invoices for the said amount, hence the same is liable to be dismissed.

16. The Petition is also defective because of mandatory requirement u/s.9(3)(b) of the I&B Code. As per section 9(3)(b) an Operational Creditor along with its application is required to furnish an Affidavit to the effect that there is no notice given by the Corporate Debtor relating to a dispute of unpaid corporate debt. Though the Operational Creditor has annexed the Affidavit u/s.9(3)(b) of I&B Code, but deliberately failed to mention in the affidavit that, *“there is no notice given by the Corporate Debtor relating to a dispute of unpaid Corporate Debtor”*.
17. The Operational Creditor in the past had also sought to initiate proceedings against the Corporate Debtor under sec.9 of the I&B Code, 2016 being Company Petition 1694 of 2017. The said Petition was dismissed on account of existence of the dispute. Therefore, the Petition is barred by the doctrine of *“res judicata”* and hence, the Petition stands to be dismissed. Further states that, the Anticipatory Bail Application No.2494 of 2018 along with Anticipatory Bail Application No. 2491 of 2018 were disposed off by the Hon’ble High Court by categorically recording dispute between the Operational Creditor and the Corporate



Debtor and after verifying the affidavit filed by the Complainant Company. The said Anticipatory Bail Applications were amicably settled. It was recorded and disposed of being the dispute of civil nature.

18. In view of the above, the Corporate submits that the Petition under the provisions of IB Code, 2016 is illegal and erroneous in law, as there exists a clear pre-existing dispute between the parties, the same is outside the purview of provisions of IB Cod, 2016. Further submits that the Corporate Debtor has liability whatsoever towards the Operational Creditor in compliance with Sec.7 and 9 of the IB Code as the principal amount does not amount to operational Debt within the meaning of Section 5(21) of the IB Code. The existence of liability qua each other has to be adjudicated by a Civil Court by leading evidence. Under such circumstances, the Corporate Debtor prays that the present Petition be dismiss with costs.

**Rebuttal by the Operational Creditor by way of Affidavit in Rejoinder of Operational Creditor:**

19. The Operational Creditor further states that there are express and series of documents wherein the Corporate Debtor through their Directors have unambiguously admitted their liability, Starting with:



- (a) Execution of Settlement Agreement dated 14.12.2018 with Operational Creditor, wherein Corporate Debtor agreed to pay Rs.2,41,00,000/- in full and final settlement of all dues and liabilities.
  - (b) Clear admission of Liability under Email by Mr. Santosh Sawant, who has filed the instant Affidavit in Reply, dated 11.03.2019 (Ex-J, pg.74)
  - (c) Clear admission of Liability by Corporate Debtor's Advocate's Reply dated 28.06.2019 (Ex-M, pg.85);
  - (d) Acknowledgement of liability by endorsement by New/Incoming Directors of Corporate Debtor in Letter dated 13.08.2019 by Operational Creditor. (Ex-N. pg.90)
20. The Operational Creditor says that the Corporate Debtor in its Affidavit in reply, does not even remotely disputed any of the above admissions. With reference to para 2 of the reply, there are mechanical denial and the Corporate Debtor has deliberately evaded to deal with facts averred in the instant Petition. With reference to para 4 of the Reply, the Operational Creditor vehemently denies that the Petition or the Affidavit in Reply, raises any "pre-existing dispute". Further denies that in view of Order dated 16.11.2018 in CP(IB) 1694/MB/2017 the instant Petition



is barred by Res judicata. The Operational Creditor has stated in the Affidavit in Rejoinder the instances and reasons where the principles of Res judicata not to apply to the instant petition.

21. The Operational Creditor states that with reference to para 5 of the Reply, the Corporate Debtor contends that claim founded on a “Settlement Agreement”, is not a “Operational Debt” in terms of Insolvency & Bankruptcy Code. The Section 3(6) of I&B Code defines “claim” means a right to payment. The said Section 3(6) further lays out a comprehensive definition of Claim and even includes cases where there is a breach of contract and such breach gives rise to right to payment.

Mandate of Law	Facts of present Case
<p>Section 3(6) Definition of Claim:</p> <p>Claim means —</p> <p>(a) A right to payment, whether or not such right is reduced to judgement, fixed, disputed, undisputed, legal, equitable, secured or unsecured;</p> <p>(b) Right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgement, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.</p>	<p>The right to payment is claimed on the premise breach of Settlement Agreement dated 14.12.2018, which inter alia, provided that payment of Rs.2,41,00,000/- have to be paid on or before 30.06.2019. Interest at the rate of 14.5% per annum in the event of default, to be paid.</p> <p>The Corporate Debtor paid only Rs.1,11,00,000/-</p>



Section 5(21) Definition of Operational Debt: Operational Debt means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.	The Settlement Agreement referred hereinabove arises out of supply of goods to Corporate Debtor.
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In view of various dispute between Corporate Debtor and Operational Creditor, the Settlement Agreement in writing dated 14.12.2018 was reached between the parties. Thus, the breach of this Settlement Agreement gives rise to right to payment, and triggers the cause of action, to prefer this Insolvency Resolution Application. Therefore, the claim founded on Settlement Agreement dated 14.12.2018 very much constitute “claim” within the meaning of Section 3(6) of the I&B Code. It is frivolous and mischievous to contend that Settlement Agreement pursuant to transaction of goods or services do not constitute operational debt.

**Findings:**

22. Heard Mr. Sandeep Jalan, counsel appearing for the Operational Creditor and Mr. Aniket Malu, counsel appearing for the Corporate Debtor and perused the record.



23. After hearing the submissions of both sides and upon perusing the pleadings and the documents relied on both parties, the following issues are framed for consideration:

- i. *Whether the above Company Petition is barred by the doctrine of res-judicate?*
- ii. *Whether the above Company Petition filed for recovery of the balance amounts under settlement agreement dated 14.12.2018 is maintainable?*

24. Let us deal with the plea of the doctrine of res-judicata. It is the contention of the Corporate Debtor that the petitioner previously filed Company Petition bearing No. 1694/2017 before this tribunal which was dismissed vide its order dated 16.11.2018 on the ground of pre-existence of disputes between the parties and the above dismissal order attained finality. During the pendency of the above Company Petition, the Operational Creditor got registered an FIR bearing FIR no. 177/2018 on 17.07.2018 against the directors of the Corporate Debtor for offences under Section 420, 465, 467, 468 and 471 r/w Section 34 of IPC. Since the accused persons who are the directors of the Corporate Debtor were apprehending arrest at the hand of the police, they have moved Anticipatory Bail Application before the Sessions Court of Bombay and during the pendency of the aforesaid Anticipatory Bail Application, the Corporate Debtor and Operational Creditor have resolved their disputes by entering into settlement agreement dated



14.12.2018 which was recorded by the Hon'ble Bombay High Court. Thereafter, the Corporate Debtor paid certain amounts and committed default of the remaining amount. Some of the postdated cheques issued by the Corporate Debtor also appears to have bounced and therefore the Operational Creditor got issued the demand notice and filed the present application for the resolution of balance debt. Upon perusing the earlier dismissal order and the high court proceedings, this Bench is in complete agreement with the contention of the Corporate Debtor that the above Company Petition is barred by res-judicata since the earlier order which was passed on merits attained finality. Therefore, the above issue No.1 is answered in favour of the Corporate Debtor and against the Operational Creditor.

25. Coming to the second issue of settlement agreement. As mentioned above both parties entered into a settlement agreement on 14.12.2018 i.e. one month after dismissal of the earlier company petition on 16.11.2018 during the pendency of anticipatory bail application. Thereafter Corporate Debtor paid some amount and committed default. Hence, the above Company Petition is filed for recovery of the balance amount under the settlement agreement. Therefore, it is very clear from the conduct as well as earlier proceedings that the above Company Petition is purposefully filed by the Operational Creditor for recovering the balance amount under the settlement agreement despite dismissal of



the earlier Company Petition and using NCLT as a recovery forum which is nothing but a clear abuse and misuse of the process of code.

26. In this connection it is important to mention here that the co-ordinate bench of NCLT, Allahabad in Delhi Control Device (P) Ltd. vs. Fedders Electric and Engineering Ltd. dismissed Section 9 petition in the similar circumstances with the following observations:

*“Unpaid instalments as per the settlement agreement cannot be treated as Operational debt within the meaning of its definition as prescribed to it under section 5 (21) of the code and any failure(s) or breach(es) of settlement agreement cannot be a ground to trigger CIRP against Corporate debtor under the provisions of the code and remedy may lie elsewhere but, not before the Adjudicating Authority”.*

Subsequently, another coordinate bench of NCLT, New Delhi, Bench-V in Suresh Yadav, Proprietor, Govind Shuttering Store Vs. S.P Contracts Pvt. Ltd by following the above order of NCLT, Allahabad dismissed the petition filed under section 9 of the Code.

27. It is needless to mention here that the Hon’ble Supreme Court as well as Hon’ble NCLAT in catena of decisions held that the proceedings under IBC are for resolution and not for recovery. The above Company Petition could have been considered to some extent by this Tribunal had the consent terms been entered into by the parties during the pendency of earlier company petition and had the earlier company petition was not dismissed on merits.



28. Therefore, for the aforesaid reasons, viewing from any angle, this bench has no hesitation in holding that the above Company Petition is nothing but a clear abuse and misuse of the process of code and is liable to be dismissed by imposing costs.
29. Accordingly, the above Company Petition is **dismissed** by imposing cost of Rs. 1,00,000/- payable by the Operational Creditor to “BHARAT-KOSH” within two weeks from the date of uploading of the order.
30. The Operational Creditor shall file compliance affidavit regarding payment of cost failing which an appropriate action may be initiated by the Registrar of Companies for recovering the above cost from the Operational Creditor as if it is a Government revenue recoverable from the Operational Creditor on production of this order either by the Corporate Debtor or by the Registrar of this Tribunal.
31. The petition bearing **CP (IB) 4387/MB/C-I/2020** filed by **Maniratna Industries Pvt. Ltd.**, (Formerly known as Pushpak Plastics Private 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 **Shree Moraya Polymers Private Limited [CIN: 29197MH1991PTC064661]**, the Corporate Debtor, is **rejected**.



32. Ordered accordingly.

**Sd/-**  
**SHYAM BABU GAUTAM**  
**Member (Technical)**  
04.05.2023  
SAM/Jenny

**Sd/-**  
**H. V. SUBBA RAO**  
**Member (Judicial)**