

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT No. V, MUMBAI BENCH**

C.P. No. 1211/I&B/2020

Under section 8 & 9 of the IBC, 2016

In the matter of

Unique Sugars Limited

Mhatre Pen Building, B Wing, Senapati
Bapat Marg, Dadar, Mumbai - 400 028.

.... Petitioner / Operational Creditor

V/s.

Rawal Agro Chem Industries Pvt. Ltd.

2nd Floor, Mhatre Pen Building, Senapati
Bapat Marg, Dadar, Mumbai - 400 028.

.... Corporate Debtor

Order Dated: 09.01.2024

Coram:

Hon'ble Ms. Reeta Kohli, Member (Judicial)

Hon'ble Ms. Madhu Sinha, Member (Technical)

Appearances (Physically):

For the Petitioner: Adv. Manoj Harit i/b Manoj Harit & Co.

For the Corporate Debtor: PCS Nitish Bangera

ORDER

Per: - Reeta Kohli, Member (Judicial)

1. This Petition has been preferred by the Resolution Professional of Unique Sugar Limited who has come as an Operational Creditor before this Tribunal against the Respondent/Corporate Debtor. The case of the Operational Creditor is that being the Resolution Professional of Unique Sugar Limited, while going through the Forensic Audit Report dated 08.01.2020 of the Unique Sugar Limited, the Petitioner came across certain entries so as to prove that the Respondent/Corporate Debtor owes an amount of Rs. 1.4 Crore to the Operational Creditor. Even though in the Part-IV, the default period has been stated to be from 17.03.2015 to 06.02.2016 but the submission of the Counsel for the Operational Creditor is that since it is only during the course of performance of his duty as RP, he chanced upon the Forensic Audit Report dated 08.01.2020 which confirmed a sum of Rs. 97,21,622/- as trade receivables from the Corporate Debtor as on 31.03.2019. The Counsel drew our attention to the table of '*Computation of Interest*' annexed as "Annexure-1" of his petition wherein he has tabulated all the entries with bill numbers and also the amount due so as to prove the outstanding debt against Respondent. Thus, his submission is that in view of the Audit Report dated 08.01.2020 and in view of the fact that these entries came to his notice only now, therefore he is not barred by the limitation Act *per-se* as the stated fact has come to his knowledge for the first time during the course of discharging his responsibilities as RP of Unique sugar Pvt. Ltd. Thus, by filing the present Petition the Petitioner/ RP is not trampling over any accrued rights of the Corporate Debtor. Hence as stated above the Limitation Act *per-se* is not applicable to the present case. The Demand notice was sent on the basis of the Forensic Audit Report dated 08.01.2020 by the Resolution

Professional on 11.01.2020. He emphasized on the fact that since the amount due is admitted in the balance sheets of the Corporate Debtor, thus the Corporate Debtor cannot deny the liability of the due debt. The demand notice was replied by the Corporate Debtor on 21.01.2020.

2. It is further submitted that on the perusal of the invoices, he came to know that the rate of interest agreed between the parties was 24% p.a. whereas in the table of '*computation of interest*' annexed as *Annexure 1*, he has tabulated the entire amount on the basis of 12% p.a. The invoices were placed on record by the Respondent vide Affidavit dated 12.05.2023 and it is from the perusal of these invoices that the Applicant has come to know the factum of interest at the rate of 24% p.a. The Applicant further emphatically argued that the Respondent and the Applicant are related parties as the directors in both the companies are same. The factory address of Petitioner is also same as that of the Respondent and the said fact is evident from the perusal of '*Annexure-5*' i.e. reply to the demand notice dated 21.01.2020 sent by Respondent to the Operational Creditor.
3. On the other hand, the Counsel for the Corporate Debtor has submitted that the claim of the Applicant is miserably barred by limitation. The case of the Applicant himself is that the defaults pertains to the year 2015-16, hence, on this ground itself the present Petition deserves to be dismissed at the outset. He further submitted that the Limitation Act is meant to protect the interest of the parties after a certain period of time. Certain rights in their favour accrue by the passage of time. Thus, the arguments of the Applicant cannot be accepted so as to trample over the accrued rights of the Respondent/Corporate Debtor. The Corporate Debtor is already in the protective realm being beyond the period of limitation. Hence at the behest of the Petitioner, he cannot be

dragged in litigation just because the Petitioner happens to come across some entries which are far beyond the period of limitation. Thus, on this ground itself, the Petition deserves to be dismissed.

4. He further argued that the Forensic entries relied upon by the Petitioner from the summary of findings of the Forensic Audit Report annexed as 'Annexure-2' are incorrect, wrong and faulty. Thus these cannot be relied upon to drag the Corporate Debtor in CIRP. The Counsel specifically drew the attention to Entry No. 25 of the table of 'Computation of Interest' annexed as 'Annexure 1' to the Petition and compared it with the invoice dated 10.12.2015 having Invoice number 0000201864 enclosed with his Affidavit dated 12.05.2023 so as to show the difference of an amount of Rs.20 lacs. The contention of the Ld. Counsel is that the Petitioner has made an attempt to inflate the entries with a malicious intention to cross the threshold limit for filing the present case. He also drew our attention to various other entries so as to show that the payment due stated to be in this table is also not correct and is presumptive.
5. The Ld. Counsel also referred to the balance sheet of the Corporate Debtor for the year ending on 31.03.2022 enclosed in their Affidavit dated 22.09.2023. He also referred to the entry of Rs.97,21,622/- in their balance sheet wherein it is said to be '*Disputed Sundry Creditor*' so as to emphasize that the contention of the Petitioner stating that the entry in the balance sheet proves the debt due is incorrect. To further corroborate his contention that the debt due is disputed and hence not payable he made reference to letters dated 08.03.2016 and 11.01.2017, so as to prove that the quality of goods/services rendered by the petitioner were not upto the mark and hence they were not liable to pay the stated amount. He also submitted that there is no documentary

evidence so as to show that the interest stipulated in the invoices was accepted by the Corporate Debtor. He further submitted that the invoice no. 1560001871 dated December 10, 2015 of Rs. 29,94,084/- has been added merely to inflate the claim so as to cross over the threshold limit. The Ld. counsel vehemently disputed the said entry. In addition, the counsel further added that the perusal of the balance sheet of Rawal Agro Chem Industries Pvt. Ltd. (Corporate Debtor) clearly shows that it is the disputed amount/debt. Thus, it cannot be claimed to be the due amount. The counsel for the Respondent further emphasized that the last invoice raised is dated 06.02.2016 and the Present Petition has been filed in August/September 2020. Thus, being beyond limitation, deserves to be dismissed.

6. On the otherhand, the Ld. Counsel for the Petitioner emphatically argued that not giving the details by the Respondent regarding the '*sundry creditors*' itself proves that they are making an attempt to hide certain relevant facts from the Hon'ble Court. In fact, no details or break-up has been given by them. The reference was made to the '*note 7 of Trade payables*' of the Balance sheet as on 31.03.2019 of the Respondent placed on record vide Affidavit dated 22.09.2023. Even in the balance sheet where the amount is reflected the names have been deliberately withheld. Responding to the arguments of the Corporate Debtor with respect to inflated claim by the Petitioner in the Present Petition, he submitted that the principal amount claimed in the Present Petition of Rs.97,21,622/- is not the creation of the Operational Creditor but is the sum reflected in the books of account of Corporate Debtor reflected from the documents places on records by the Corporate Debtor of his own balance sheet. Hence the arguments of the Corporate Debtor with respect to inflation made by the Resolution Professional is of no relevance.

7. To counter the contention of the Corporate Debtor, The Counsel for the Petitioner re-emphasized that firstly both the parties are related parties, having the same address and the same set of directors. Thus, all the communications particularly letters dated 08.03.2016 and 11.01.2017 which are being referred to now are self-created and are ante-dated. He further submitted that the Petitioner being the Resolution Professional of the Unique Sugars Limited is privy to the entire records of the Unique Sugars Limited and both these letters are not part of the record available with him hence both these letters are generated with the ulterior motive so as to make an attempt to dispute the pending liability towards the Corporate Debtor in favour of Unique Sugars Limited. Thus, these merit no consideration by the Hon'ble Court. Secondly, all these documents mysteriously surfaced in the Affidavit dated 22.09.2023 whereas the original reply was filed on 14.03.2022 wherein no reference to these documents was ever made. Even the reply to the demand notice dated 21.01.2020 makes no reference to the facts being agitated now. Thus, this itself proves the fact that the creation of these documents is an afterthought merely to wriggle out of the present situation. Thus, deserve to be dismissed by the Hon'ble Court.
8. While responding to the arguments of the Corporate Debtor with respect to the issue of maintainability of the Petition the counsel for the Petitioner submitted that in view of the fact that the Corporate Debtor having duly Acknowledge the debt in its audited annual financial statements for the year ending from 31.03.2016 to 31.03.2022 itself is a proof that the debt stands acknowledged and due hence the extension of limitation under Section 18 of the Limitation Act.

9. Further in response to the contention of the CD with respect to the quality of the goods it has been submitted that the same is an after thought as in the reply to the demand notice the Corporate Debtor had submitted that there were lapses in the services rendered. The Petitioner submitted that the issue of the dispute with respect to the services rendered on the part of the Operational Creditor for the first time has come on record with the Affidavit dated 22.09.2023 filed by the Corporate Debtor. That is more than 3 years after filing of the present Petition. Admittedly the office of the Petitioner company is still in possession of the Suspended directors and the Corporate Debtor herein being a related party operated out of the same office. Thus the letters regarding the quality of the material are fabricated after filing of the present petition. While summing up the arguments the counsel submitted that in view of the fact that there is an acknowledgement of Operational Debt in the Balance Sheet of the Corporate Debtor dated 31.03.2022. Thus the Demand Notice dated 27.08.2019 was sent to the Corporate Debtor requesting to release the due amount of Rs. 97,21,622/-. The same is replied to by the Corporate Debtor vide letter dated 27.08.2019 wherein they have raised the frivolous issue of quality of stock supplied by the Petitioner along with the submission that the claim is more than three years old. Hence the Present Petition.

Findings:

10. We have heard the Ld. Counsels of both the parties and have perused the entire documents available on the record of the case.
11. From a perusal of the record, it is revealed that the present Petition is filed by the Resolution Professional of the Petitioner company viz Unique Sugar Limited against the Respondent for an

Operational Debt of Rs. 1,47,62,637/-. The Resolution Professional has gone through its Forensic Audit Report 08.01.2020, which confirmed that a sum of Rs. 97,21,622/- was trade receivables from the Corporate Debtor as on 31.03.2019. The Part-IV of the Company Petition reveals that the default period was from 17.03.2015 to 06.02.2016.

12. The issues that needs to be addressed:

a) “Whether the Petition is maintainable?”

b) Whether any pre-existing dispute exists?”

Issue (a) – Re. Maintainability

13. The Part IV of the company petition reveals that several invoices were raised by the Petitioner to the Corporate Debtor from 17.03.2015 to 06.02.2016 for the supply of goods and the dues need to be cleared within 30 days from the date of each invoice. The Petitioner claimed that being into the CIRP vide order dated 28.02.2019, the Resolution Professional of the Petitioner while performing his duties had come across its Forensic Audit Report dated 08.01.2020 which confirms that a sum of Rs. 97,21,622/- as on 31.03.2019 are trade receivables from the Corporate Debtor. Hence is well within its rights to file this present Petition. The Counsel for the Petitioner argues that it was during the performance of his duties as Resolution Professional, he chanced upon the Forensic Audit Report dated 08.01.2020 which confirmed the Operational Debt towards Corporate Debtor. He made specific reference to the Balance Sheets of the Corporate Debtor placed on record on the direction by the Hon’ble Court which reflect that the Corporate Debtor has duly acknowledge the debt in its audited annual financial statement for the years ending 31.03.2016, 31.03.2017, 31.03.2018, 31.03.2019, 31.03.2020, 31.03.2021 and 31.03.2022. However, countering to the above, the Respondent

stated that in view of the fact that the Petitioner himself admits that the defaults pertains to the year 2015-16 and the petition is being filed in August 2020, thus the Present Petition is barred by Limitation. In view of the above, it is necessary to appreciate the relevant clauses of the Statue and the law laid down by the Hon'ble Supreme court on the issue of Limitation. It is pertinent to appreciate **Section 18 of the Limitation Act** which reads as under :-

(1) 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.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set off, or is addressed to a person other than a person entitled to the property or right,

(b) the word "signed" means signed either personally or by an agent duly authorised in this behalf, and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

In view of the fact that there is an acknowledgment of Debt in the Audited annual financial statements of the Corporate Debtor till 31.03.2022, thus in view of the acknowledged debt, the present Petition is well within the period of Limitation, Hence maintainable.

14. In addition Section 60 (6) of the IBC also deserves to be appreciated in the present facts and circumstances. The said Section states that it is always open to a Creditor to proceed with the suit or arbitration proceeding, if pending, on completion of the Moratorium:

“Section 60: Adjudicating Authority for corporate persons:

(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.”

In the present case the CIRP of the Petitioner commenced from the order dated 28.02.2019 and the present petition is filed on

17.09.2020 which is well within the period of limitation. In addition the **Hon'ble Supreme Court in Civil Appeal No. 1669 of 2020 In Sabarmati Gas Limited Vs Shah Alloys Limited Dated 04.01.2023 in Para 21** has held as under :-

*“the decision in B.K. Educational Services Private Limited (supra) would thus reveal that Articles 137 and 5 of the Limitation Act, 1963 are applicable to applications filed under Sections 7 and 9 of IBC. It be so, the position is that the period of limitation is three years from the **right to apply accrues** but the delay is condonable on sufficient grounds. It is to be noted that the third column in Article 137 of the Limitation Act posits that time runs when the **‘right to apply accrues’.**”*

In the present case, the right to apply accrued to the Petitioner RP only on getting the forensic audit report dated 08.01.2020. Thus in view of this also, the Present Petition is maintainable.

Further, the Petitioner has presented one tabulated Computation of Interest table at 'Annexure 1' of the Petition containing the details of all the invoices raised along with their bill date, bill no., bill amount, balance amount, rate of interest and payment due date. On perusing the same this bench has observed that the Petitioner has charged an interest at the Rate 12% p.a. and the due date having 30 days period. However, while going through the invoices raised and incorporated in the table it was further observed that the invoices in fact contain the interest rate of 24%p.a. instead of 12 % p.a. and no clause for 30 days due period

is there in the invoices. The said facts came to the notice of the Petitioner also only when the documents were placed on record by the Corporate Debtor. Hence, the computation with respect to the period as well as the interest charged are not as per the Invoices raised by the Petitioner. In addition it is pertinent to take note that the principal due amount of Rs. 97,21,622/- is same as reflected in the Balance Sheet of the Corporate Debtor for the year ended on 31.03.2022, placed on record vide affidavit dated 25.09.2023 by the Corporate Debtor on the direction of the Hon'ble Court during the course of the arguments in the present Petition. Thus the factum of one entry may not grant any benefit to Corporate Debtor as on computation of the principal amount with interest at the rate of 24% p.a. is beyond the threshold limit for the Petition under IBC.

Issue (b) – Re. Pre-Existing Dispute

15. The counsel for the Corporate Debtor has submitted that there is a pre-existing dispute in view of the fact that the goods supplied were of the poor quality and the same was conveyed to Corporate Debtor vide letter dated 08.03.2016 and 11.01.2017. He further submitted that these letters were duly received by the Operational Creditor. The contention is that in view of the poor quality of the goods supplied, the amount even if stated to be due, is remarked as '*Disputed Sundry Creditor*'. Thus, to counter the issue of the pre-existing dispute on the part of the Corporate Debtor the arguments advanced by the Petitioner is that firstly the office of the Petitioner Company being still in possession of the Suspended Directors and the Corporate Debtor being the related party operating from the same office premises has fabricated the letters dated 08.03.2016 and 11.01.2017. It is interesting to take notice that in both these letters the address of the Corporate Debtor i.e.

Rawal Agro Chem Industries Pvt. Ltd and the Petitioner i.e. Unique Sugars Limited is same, thus further substantiating the fact that all these documents on the strength of which the Corporate Debtor is attempting to raise the issue of pre-existing Dispute are self-generated and self-produced to protect their own interest. Hence, the same cannot be relied upon and on the strength of these documents there cannot be said to be a pre-existing dispute.

16. In addition to the above stated facts, it further deserves to be noticed that these letters for the first time have been placed on record by the Corporate Debtor along with the Affidavit dated 22.09.2023 where as in the entire communication prior thereto, no such reference has been made. It further deserves to be appreciated that the applications filed by the Petitioner under Section 19(2) for non-cooperation & Section 70 of the Code, 2016 for punishing the Suspended Directors for failure to handover the possession of the Applicant Company's Corporate Office is pending for final adjudication. Thus, all the documents from the Operational Creditor to the Corporate Debtor or from Corporate Debtor to Operational Creditor have to be taken with the pinch of salt and cannot be relied upon to decide the pending issues.

17. Therefore, in view of the above stated facts and circumstances the present petition deserves to be admitted in the following terms.

18. Accordingly, the above Company Petition is **'Admitted'**.

ORDER

- a. The above Company Petition No. 1211/IBC/MB/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Rawal Agro Chem Industries Pvt. Ltd.

- b. Since there is no proposal for the name of Interim Resolution Professional by the Petitioner, Mr. Shekhar Kumar Agrawal having Registration Number IBBI/IPA-002/IP-N00883/2019-2020/12874 having email Id- shekhar2308@gmail.com and having address at Flat 606 D Wing, RNA Continental CHSL, Subhash Nagar, Chembur (East) , Hanuman Temple, Mumbai City, Maharashtra , 400071 is appointed as the Interim Resolution Professional.
- c. The Petitioner shall deposit an amount of Rs. 5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, as the case may be.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai for updating the Master Data of the Corporate Debtor.
- k. Accordingly, CP 1211 of 2020 is **admitted**.

SD/-

Madhu Sinha

Member (Technical)

/Abhay/

SD/-

Reeta Kohli

Member (Judicial)