



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER
SHRI PRASNTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

IA No. 518/JRP/2022 &
CP No. (IB)- 64/9/JPR/2020

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/s Steel Tube Traders
B-2-3, MGD Market, Aatish Market,
Tripolia Bazar, Jaipur,
Rajasthan-302002

...Applicant / Operational Creditor

VERSUS

Halcyon Technologies and Engineers LLP
171-A Krishna Sagar Colony, Mansarovar,
Ward No. 29, Tehsil Sanganer, Jaipur-302020

...Respondent / Corporate Debtor

For Petitioner (s) : Nivedita R. Sarda, Adv.
For Respondent (s) : Pratibha Khandelwal, PCS

ORDER PRONOUNCED ON: 19.04.2023



ORDER

Per: Shri Prasanta Kumar Mohanty, Technical Member

1. This Application is filed by M/s Steel Tube Traders ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') in the matter of M/s Halcyon Technologies & Engineers LLP ('Corporate Debtor' / 'Respondent'), under Section 9 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The Applicant, M/s Steel Tube Traders, is a partnership firm engaged in supplying pipes, flanges, valves, and pipe fittings suitable for domestic and industrial use.
3. The Corporate Debtor, Halcyon Technologies and Engineers LLP is a registered LLP as per the LLP Act, 2008 is incorporated on 31.05.2016 having its registered office situated at 171-A Krishna Sagar Colony, Mansarovar Ward No. 29 Tehsil Sanganer, Jaipur, Rajasthan-302020.
4. The Applicant has filed the present Application under Section 9 of the IBC, 2016 alleging the following set of facts:
 - a) The Corporate Debtor approached the Applicant in 2018 for procuring various construction materials such as UPVC pipes, sockets, and bends. There was an oral understanding between the Applicant and



the Corporate Debtor for the supply of aforesaid construction material.

- b) Pursuant to the mutual oral agreement between the parties the Applicant supplies the requisite material through local transporters. Further, it is submitted that against the supply of the material the Applicant raises several invoices to the Corporate Debtor.
- c) It is pertinent to note that in order to discharge from the outstanding liability the Corporate Debtor has issued various cheques to the Applicant however on the presentation, the said cheques were dishonoured by Bank with the remark Fund Insufficient.
- d) The last payment towards the supply of the material was made on 05.08.2019 and thereafter no payment has been made toward the outstanding liabilities.
- e) Pursuant to that the Applicant issued a Demand Notice dated 26.08.2019 in Form-3 to the Corporate Debtor demanding the payment of Rs. 39,33,273/- (Rupees Thirty-Nine Lakh Thirty-Three Thousand Two Hundred Seventy-Three Only) including interest @14% per annum.
- f) The Applicant submits that no reply has been received after the issuance of the aforesaid demand notice. Subsequently, the Applicant has filed a Company Petition *vide* IB No. 265/9/JPR/2019 dated



09.10.2019 for claiming the above-mentioned amount mentioned under the Demand Notice.

g) Thereafter, the Corporate Debtor approached the Applicant for an out-of-court settlement and paid an amount of Rs. 12,12,075/- (Rupees Twelve Lakh Twelve Thousand Seventy-Five Only) at that point of time, and for the remaining amount settlement deed has been executed between the Applicant and Corporate Debtor on 05.12.2019. As per the Settlement deed the amount was supposed to pay in three installments, the details of the same are as follows:

(i) Rs. 8,00,000/- shall be paid within 15 days from the date of signing of the settlement deed;

(ii) Rs. 8,00,000/- shall be paid within 15 days from the withdrawal of the case from NCLT by the Operational Creditor;

(iii) And the balance of Rs. 9,53,758/- will be paid in after 15 days from the due date of second installment.

h) It is submitted that first installment of Rs. 8,00,000/- was paid by the Corporate Debtor on the date of signing of the Settlement Deed. Thereafter based on assurance made by the Corporate Debtor the Applicant has filed an application for withdrawal of the case and based on the Settlement Deed vide order dated 12.12.2019 the said petition has been withdrawn.

i) Pursuant to the withdrawal of the petition the Applicant has approached the Corporate Debtor on due date for making the balance



payment however the Corporate Debtor denied for the entire payment and failed to release the last two installments against the outstanding debt of the Applicant.

- j) Thereafter on the account of failure on the part of the Corporate Debtor the Applicant issued a statutory demand notice dated 09.01.2020 under Section 8 of the IBC for demanding the payment of Rs. 18,76,628/- (Rupees Eighteen Lakh Seventy-Six Thousand Six Hundred Twenty-Eight Only) inclusive of interest @14% p.a. accrued till 09.01.2020, which is enumerated in Part IV of the Application:

Part IV

Particulars of Operational Debt

1.	Total amount of debt, Details of transactions on account of which debt fell due, and the date from which such debt fell due.	<p><u>Amount of Debt Due:</u> Rs. 18,76,628/- (Rupees Eighteen Lakh Seventy-Six Thousand Six Hundred Twenty Eight Only) inclusive of interest of 14% interest per annum.</p> <p>Principal Outstanding: Rs. 17,53,758/- (Rupees Seventeen Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight) being due and unpaid</p> <p>Interest on outstanding: Invoice amount @ 14% from the dated of default Rs. 22,870/- (Calculated as on 09.01.2020)</p> <p>Litigation Charges Rs. 1,00,000/- (Rupees One Lakh Only) on the account</p>
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		of failure of making balance payment as per the admitted settlement deed placed on record vide Application under Rule 8 the IBC (Application to Adjudicating) Rules, 2016.
2.	Amount claimed to be in default and the date on which the default occurred	The total amount to be in the default is Rs. 18,76,628/- (Rupees Eighteen Lakh Seventy-Six Thousand Six Hundred Twenty Eighty Only) inclusive of interest of 14% interest per annum. The date of default is 27.12.2019

5. The Applicant has further filed an Additional Affidavit *vide* Diary No. 718/2022 dated 08.03.2022 and submitted the ledger account statement of the Applicant from 01.04.2019 to 28.02.2022.

6. Pursuant to that the Respondent has filed an Interlocutory Application ('IA') No. 518/JPR/2022 *vide* Diary no. 3049/2022 dated 14.10.2022 under Section 65 of Code, 2016 read with Rule 11 of NCLT Rules, 2016 and stated the following:

- (i) It is submitted that prior to filling the present Application the Operational Creditor had issued a demand notice dated 26.08.2019 on the account of non-payment of Rs. 39,33,273/- (Rupees Thirty-Nine Lakh Thirty-Three Thousand Two Hundred Seventy-Three Only) inclusive of interest calculated till 16.08.2019 and further filed an



Application under section 9 of the Code bearing the CP IB No. 265/9/JPR/2019.

- (ii) Thereafter the Respondent, Applicant herein in the present matter made a payment of Rs. 5,10,000/- (Rupees Five Lakh Ten Thousand Only) through Demand Draft No. 085997 which is duly acknowledged by the Operational Creditor.
- (iii) The Corporate Debtor further made a payment of Rs. 7,02,075 (Rupees Seven Lakh Two Thousand Seventy-Five Only) on 25.10.2019 vide NEFT reference ID910257737272RTGS which is also acknowledged by the Operational Creditor and accordingly in total Rs. 12,12,075 (Rupees Twelve Lakh Twelve Thousand Seventy-Five Only) paid during the pendency of the CP(IB) No. 265/9/JPR/2019.
- (iv) It is submitted by the Corporate Debtor that Rs. 25,53,758/- (Rupees Twenty-Five Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight Only) remained payable to the Operational Creditor. Further based on the settlement agreement between the parties the CP (IB) 265/9/JPR/2019 has been withdrawn. Copy of the settlement agreement annexed as Annexure-A1 of the present IA.
- (v) It is stated that as per the said settlement deed no clause which has mentioned the payment of interest on due invoices hence full and final



payment settlement was agreed upon at an amount of Rs. 37,65,833/- (Rupees Thirty-Seven Lakh Sixty-Five Thousand Eight Hundred Thirty-Three Only). Out of the full and final settlement amount the Corporate Debtor has already paid Rs. 12,12,075/- (Rupees Twelve Lakh Twelve Thousand Seventy-Five Only) to the Operational Creditor, remaining amount of Rs. 25,53,758/- (Rupees Twenty-Five Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight Only) was required to be paid in three installments as per schedule-I of the Settlement deed, details of which are as follows:

- a) Rs. 8,00,000/- shall be paid within 15 days from the date of signing of the settlement deed; i.e. 5th December 2019*
- b) Rs. 8,00,000/- shall be paid within 15 days from the withdrawal of the case from NCLT by the Operational Creditor;*
- c) And the balance of Rs. 9,53,758/- will be paid in after 15 days from the due date of second installment.*

(vi) It is pertinent to note that the first installment of Rs. 8,00,000/- was duly paid by the Corporate Debtor on the date of signing of the Settlement Deed itself and the second installment required to pay within 15 days from the withdrawal of the Company Petition. Thereafter the Operational Creditor has filed a withdrawal of the Company Petition and the Adjudicating Authority allowed such Application vide order dated 12.12.2019 in CP(IB) 265/9/JPR/2019.



Copy of the order dated 12.12.2019 annexed as Annexure- A 2 of the present IA.

- (vii) It is pertinent to note that the Corporate Debtor has further paid an amount of Rs. 17,53,758/- (Rupees Seventeen Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight Only) on the due date on the second installment and the third installment was due on 11.01.2020 as per the settlement deed however the Applicant due to crisis delayed in making payment to the second installment.
- (viii) Meanwhile the Operational Creditor has sent another fresh demand notice dated 09.01.2020 under section 8 of the Code, 2016 claiming an outstanding amount liability of Rs. 18,76,628/- (Rupees Eighteen Lakh Seventy-Six Thousand Six Hundred Twenty-Eight Only) being Rs. 17,53,758/- (Rupees Seventeen Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight Only) as principal Debt including interest 14% per annum and litigation fees of Rs. 1,00,000/- (Rupees One Lakh Only).
- (ix) Thereafter the Operational Creditor immediately filed the present petition under section 9 of IBC, 2016 being CP (IB) No. 64/9/JPR/2020 seeking CIRP of the Corporate Debtor and notices were issued to the Corporate Debtor Meanwhile before issuance of notices the Corporate Debtor has made the payment as follows:



S. No.	Date	Amount (In Rupees)
1.	02.03.2020	5,00,000/-
2.	21.01.2021	1,00,000/-
3.	15.01.2022	5,00,000/-
4.	05.02.2022	6,53,758
	TOTAL	17,53,758/-
	(Rupees Seventeen Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight Only)	

- (x). The Corporate debtor submits that in the Settlement Deed a full and final payment of Rs. 37,65,833/- was duly made to the Operational Creditor. There is no outstanding amount due on the Corporate Debtor. The Ledger Account of the Corporate Debtor clear that the entire payment has been made. Copy of the ledger account of the Corporate Debtor is annexed as Annexure- A3 of the present IA.
- (xi) Despite in receipt of the entire amount the Operational Creditor has filed an affidavit on 07.03.2022 wherein interest has been claimed at the rate of 18% per annum on the defaulted invoices.
- (xii) It is pertinent to note that the demand of the principal debt amounting to Rs. 37,65,833/- is well covered under the ambit of the definition of the Operational Debt, however, the alleged amount of interest demanded by the Operational Creditor does not arise out of the right of the Operational Creditor in the absence of any agreement or clause in the Settlement Deed for interest.



(xiii) The Corporate Debtor also relied on the following judgments which state the same:

A. *The Hon'ble NCLAT, New Delhi in S.S. Polymers Vs. Kanadia Technoplast Ltd.*

"5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the 'Corporate Debtor' paid the total debt. The application was pursued for realization of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realize only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the 'Corporate Debtor and which is barred in view of Section 65 of the I&B Code"

B. *The Hon'ble NCLAT New Delhi in Krishna Enterprises Vs. Gammon India Ltd. 2018 SCC Online NCLAT 360*

"5. In the present appeals, as we find that the principal amount has already been paid and as per agreement no interest was payable, the applications under Section 9 on the basis of claims for entitlement of interest, were not maintainable. If for delayed payment Appellant(s) claim any interest, it will be open to them to move before a court of competent jurisdiction, but initiation of Corporate Insolvency Resolution Process is not the answer."

C. *The Hon'ble NCLAT New Delhi in Amsons Communication (P) Ltd. vs ATS Estates (P) Ltd.*

(xiv) Considering the aforesaid facts and circumstances this Application is being filed by the Operational Creditor under section 9 of the Code, 2016 with the malicious intention of recovery which is contrary to the purpose of the resolution of the Corporate Debtor under the Code.



7. The Respondent has filed written submission *vide* Dairy No. 527/2023 dated 27.02.2023 whereby it reiterates the same as mentioned in the IA and additionally relied on the judgment of Hon'ble NCLAT *Rohit Motawat Vs Madhu Sharma Proprietor Hind Chem Corporations & Anr. Comp. App. (AT) (Ins) No. 1152 of 2022.*
8. We have heard the Learned Counsels for the parties and perused the averments made in the Application, IA, Written Submissions, and the Documents enclosed with the Application.
9. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. Further, this matter is within the purview of Laws of Limitation, as the cause of action arose in 2019, and the Application was filed before this Adjudicating Authority in 2020. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application. Therefore, the present Application has been filed within the prescribed period of limitation.
10. The Applicant had filed earlier an Application under Section 9 in the year 2019 which was withdrawn on the ground of a settlement deed dated 05.12.2019 entered between the parties for the payment of an amount as mentioned under Schedule -I of the Deed of Settlement. Consequent to the



settlement arrived between parties, the Corporate Debtor has made the payment of Operational Debt of Rs. 17,53,758/- (Rupees Seventeen Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight Only) which is also evident from the ledger statement of the Corporate Debtor. The details of payment made by the Corporate Debtor as follows:

<i>S. No.</i>	<i>Date</i>	<i>Amount (In Rupees)</i>
1.	02.03.2020	5,00,000/-
2.	21.01.2021	1,00,000/-
3.	15.01.2022	5,00,000/-
4.	05.02.2022	6,53,758
	TOTAL	17,53,758/-
	(Rupees Seventeen Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight Only)	

Copy of the ledger account of the Corporate Debtor is annexed as Annexure-A3 of the IA (IBC) No. 518/JRP/2022 filed by the Corporate Debtor.

11. After hearing the submission of both parties and taking note of the fact that the principal amount of debt has already been discharged, the issue which emerges for our adjudication is “Whether the CIRP can be initiated/triggered solely on the basis of the unpaid amount of interest when the entire principal amount of debt has been discharged by the Corporate Debtor”.

12. At this juncture, we consider it relevant to refer the Judgment of Hon’ble NCLAT in the matter of *S. S. Polymers v. Kanodia Technoplast Ltd. in Company Appeal (AT) (Insolvency) No. 1227 of 2019, dated 13.11.2019*. The relevant extracts are given below:



“5. Admittedly, before the admission of an application under Section 9 of the I&B Code, the ‘Corporate Debtor’ paid the total debt. The application was pursued for realisation of the interest amount, which, according to us is against the principle of the I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent (to realise only Interest) for any purpose other than for the Resolution of Insolvency, or Liquidation of the ‘Corporate Debtor’ and which is barred in view of Section 65 of the I&B Code.”

13. In view of the aforesaid discussion, it can be inferred that the “interest” component alone cannot be claimed or pursued without the debt to trigger a CIR process against the Corporate Debtor. Further, the Application pursued for the realization of the interest amount alone is against the intent of the IBC, 2016

14. It has also been laid down by the Hon’ble Supreme Court in *Swiss Ribbon Pvt. Ltd. Vs Union of India (2019 4 SCC 17)*, IBC is not a recovery proceeding, and the Application which has been filed by the Operational Creditor in the present matter for claiming the balance amount of Rs. 18,76,628/- (Rupees Eighteen Lakh Seventy-Six Thousand Six Hundred Twenty-Eight) arising out of the settlement deed however during the pendency of the matter Corporate Debtor had made the substantial payment of the alleged claim i.e., 17,53,758/- (Rupees Seventeen Lakh Fifty-Three Thousand Seven Hundred Fifty-Eight Only). The remaining amount of Rs. 1,22,870/- (One Lakh Twenty-Two Thousand Eight Hundred Seventy Only)



mentioned in the Part-IV of the Petition which is inclusive of Rs. 22,870/- (Rupees Twenty-Two Thousand Eight Hundred Seventy Only) as outstanding interest amount and Rs. 1,00,000/- (Rupees One Lakh) on the account of litigation charges are not being paid by the Corporate Debtor.

15.If there is an agreement for payment of interest on the debt, the same can be considered while allowing the claim for the principal amount. But when the Corporate Debtor discharges the debt, it would be showing that it is not insolvent. Hence, declaring the Corporate Debtor as insolvent by ordering CIRP only because of the default in paying interest, which is not agreed upon, would be against the spirit of IBC. The Operational Creditor would nevertheless have the right to claim and recover interest if it is permitted under any other law, by moving an appropriate forum. The Adjudicating Authority does not decide the amount that is due to the Operational Creditor. The only test to admit an Application under section 9 IBC is whether a debt above the threshold limit is due and whether the Corporate Debtor has defaulted in repayment. When by the date of admission, the Operational Debt in terms of Section 5(21), which does not include interest, stands discharged, the interest alone which remains under the claim amount, does not qualify for an Operational Debt, for the default of which alone CIRP can be ordered. When admittedly the principal amount is paid, Operational



Debt ceases to be in existence and consequently Application under section 9 becomes invalid.

16. The CIRP process is not intended to be adversarial to the interest of the Corporate Debtor but to protect and maximize the value of all stakeholders associated with it. The provisions of the Code cannot be allowed as a recovery mechanism or to recover the claim of interest by the Operational Creditor. The Application under Section 9 cannot be converted into proceedings for recovery, that is not the objective of IBC. The object of the IBC is to resolve the insolvency of the Corporate Debtor and to bring back the Corporate Debtor on its feet.

17. Further, in view of the order of the Hon'ble NCLAT in *Permali Wallance Pvt. Ltd. Vs Narabada Forest Industries Pvt. Ltd. in 'Company Appeal (AT) (Ins) No. 36 of 2023 decided on 17.01.2023'* in which it is observed that:

"5. Having heard Learned Counsel for the parties, we are of the view that Adjudicating Authority did not commit any error in rejecting Section 9 Application. It has been laid down by the Hon'ble Supreme Court in "Swiss Ribbon Pvt. Ltd. Vs. Union of India" (2019) 4 SCC 17, IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor. We are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application filed by the Appellant. There is no merit in the Appeal, the Appeal is dismissed."



18. Hence, we conclude that the CIRP against a Corporate Debtor cannot be initiated/triggered solely based on the unpaid amount of interest where the entire principal amount has already been discharged by the Corporate Debtor.

19. Hence, in the view of above we are not inclined to commence CIRP of the Corporate Debtor. The present Petition is dismissed. The Order in the present matter is made in terms of Section 9 (5) (ii) of IBC, 2016, and based on the facts and pleadings submitted by the parties in the instant case and shall not prejudice any matter or proceedings between the parties, if any, before any other Court, Tribunal or any judicial or other authority.

20. Accordingly, CP No. (IB)64/9/JPR/2020 is dismissed. Further in the view of forgoing all the pending IAs in the present matter stands disposed off.

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**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**

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**PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER**