



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-1438/MB/2020

Under Section 9 of the IBC, 2016

In the matter of

Sumiran Masterbatch Private Limited

...Operational Creditor

v/s.

Union Quality Plastics Limited

...Corporate Debtor

Order Pronounced on: **17.03.2023**

Coram:

Mr. Prabhat Kumar
Hon'ble Member (Technical)

Mr. Kishore Vemulapalli
Hon'ble Member (Judicial)

Appearances (via videoconferencing):

For the Petitioner : Mr. Vijay Limbachiya, Advocate.

For the Respondent : Mr. Divyakanat Lahoti, Advocate.

ORDER

Per: Kishore Vemulapalli, Member (Judicial)

1. The Petitioner Company M/s. **Sumiran Masterbatch Private Limited** is a company registered under the provision of the Companies Act, 1956, having its Registered Office at Block B-8, Alaknanda Mandakini Co. Op. Housing Society, Behind Civil Hospital, Shahibaug, Ahmedabad –



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-1438/MB/2020

380004, Gujarat, is engaged in the business of manufacturing of plastic products i.e. Plastic Tarpaulin, HDPE Geo Membrane Sheet, etc.

- 1.1. That the Respondent M/s. **Union Quality Plastics Limited** is the company registered under the provision of the Companies Act, 1956 engaged in the business of production of plastic products i.e. tarpaulin, UN Lami Fabric, Uni Agro, etc. having its registered office at 209/A, Shyam Kamal B, CHS Ltd., Agarwal Market, Tejpal Rd., Ville Parle East, Mumbai, Maharashtra – 400057.
2. The Operational Creditor supplied plastic Tarpaulin to the Corporate Debtor from time to time, the outstanding amount payable by Corporate Debtor is ₹1,21,00,722/- (principal amount) and interest @ 18% p.a. ₹37,57,294/- on account of non-payment in time line, in total ₹1,58,58,016/- is outstanding and payable by Corporate Debtor. The goods were supplied from 13.01.2018 to 01.01.2019 and the invoices were raised for aggregate sum of ₹1,21,00,722/-. These invoices contained stipulation for levy of interest @24% p.a. on the due date. The date of default is stated in Part IV of the application as *“As Corporate Debtor making on account payment, the default amount outstanding from the date of first bill dated 13.01.2018 and default continue to last bill dated 01.01.2019”*.
- 2.1. The Operational Creditor issued a demand notice dated 02.11.2020 in form C demanding amount due along with interest from the Corporate Debtor and sent it by speed post vide receipt dated 02.11.2020, which was returned as unclaimed.



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV**

CP(IB)-1438/MB/2020

- 2.2 This demand notice was also dispatched at email id rajesh.p@unionqulityplastics.com on 24.11.2020 and also on info@unionqulityplastics.com; s.patel@unionqulityplastics.com; sp.mishra@unionqulityplastics.com; anand.s@unionqulityplastics.com; cs.uqpl@gmail.com; ikaonassociates@yahoo.com. Vide these emails the Applicant informed the Corporate Debtor that notice sent by speed post as returned unclaimed.
- 3 The Corporate Debtor has filed affidavit-in-reply dated 19.03.2022 stating that the Application is not maintainable on the ground of (a) non-service of demand notice as per Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016; (b) Lack of pecuniary jurisdiction; and (c) statutory bar under Section 10A of the Code.
- 3.1 The Corporate Debtor has submitted that the Applicant has failed to deliver the notice after it returned unclaimed and also failed to deliver it by email to whole time director or key managerial personnel of the Corporate Debtor. It has further stated that a sum of ₹11,68,200/- paid from January 2019 to January 2020 has not been accounted for; also a sum of ₹18,12,657/-, due from the Applicant on account of goods supplied by the Corporate Debtor, has not been taken into account. If these two sums are reduced from the total amount payable for invoices referred in the Application, which aggregates to ₹1,26,33,080/-, the principal sum payable falls below the threshold limit prescribed under Section 4.



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-1438/MB/2020

- 3.2 It is further submitted that the Applicant has computed interest till 25.03.2020. As a result, it is evident that the date of default has arisen on 25.03.2020 as per Operational Creditor. Hence, the application cannot be maintained on account statutory bar under Section 10A of the Code.
- 3.3 The Corporate Debtor has also filed an Interlocutory Application No. 1654 of 2022 raising ground of 10A and Section 4. It has further submitted an offer to settle with the Operational Creditor by enclosing a demand draft of Rs.30 lakhs purchased on 13.06.2022 and promising to pay remaining balance of ₹66,52,223/- in three instalments. It has submitted their interest is not includable in the debt amount and relied upon decision in the case of **“CBRE South Asia Private Limited vs. M/s. United Concepts and Solutions Private Limited, (IB)-797(ND)2021”**.
4. The Applicant has filed a written submission dated 25.03.2022 clarifying the issues raised by the Corporate Debtor.
5. We have heard both the Counsel and perused the material on record.
- 5.1 We find that the date of default is stated in Part IV of the application as *“As Corporate Debtor making on account payment, the default amount outstanding from the date of first bill dated 13.01.2018 and default continue to last bill dated 01.01.2019”*. The plea of the corporate debtor that interest till 25.03.2020 has been claimed in the application, accordingly, the date of default has to be considered as 25.03.2020. However, we do not find any merit in this argument as the debt is said to be in default when the debt is not paid on the date when it is due for payment. Accordingly, the date of



**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV**

CP(IB)-1438/MB/2020

default in this case shall be 13.01.2018 and latest date of default shall be 01.01.2019. The applicant has pleaded that the corporate debtor has made on account payments, hence, the date of default is to be reckoned accordingly. We find that whether it is 13.01.2018 or 01.01.2019, both the dates are outside the period stated in section 10A of the Code, accordingly, this application is not barred u/s 10A of the Code.

5.2 The corporate debtor has also pleaded that the notice in form 3 was not served in the manner provided in Rule 5(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. We find that the applicant served the notice at the registered office address and the same returned “unclaimed”. The notice was also served on e-mail address(es) rajesh.p@unionqulityplastics.com; info@unionqulityplastics.com; s.patel@unionqulityplastics.com; sp.mishra@unionqulityplastics.com; anand.s@unionqulityplastics.com; cs.uqpl@gmail.com; ikaonassociates@yahoo.com on 24.11.2020. These were the addresses available in public domain and with the applicant. The applicant cannot be wronged for not having specific mail ID of the key managerial personnel. Hence, this ground is not sustainable.

5.3 It is also pleaded that a sum of ₹11,68,200/- paid from January 2019 to January 2020 has not been accounted for; also a sum of ₹18,12,657/-, due from the Applicant on account of goods supplied by the Corporate Debtor, has not been taken into account. If these two sums are reduced from the total amount payable for invoices referred in the Application, which aggregates to ₹1,26,33,080/-, the principal sum payable falls below



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-1438/MB/2020

the threshold limit prescribed under Section 4. After taking into consideration of these sums, the amount in default comes to ₹96,52,223/- which is below the threshold limit of Rs. 1.00 crores provided in section 4 of the Code and as applicable at the time of filing of present application. However, the invoice(s) issued by the applicant clearly states that interest shall be payable on delayed payment, accordingly, the same need to be considered for determination of total debt for threshold limit. The case relied upon by the Corporate Debtor is distinguishable as in that case there was no mention of levy of interest on the invoice. If it is taken into consideration, the debt in default exceeds ₹1.00 crore.

- 5.4 The corporate debtor has also offered to pay the principal sum ₹96,52,223/-, determined by it as payable to the applicant vide its Interlocutory Application No. 1654 of 2022 by enclosing a demand draft of ₹30 lakhs purchased on 13.06.2022 and promising to pay remaining balance of ₹66,52,223/- in three instalments. We find that the objective of the Code is to resolve the default of the Corporate Debtor and not recovery. The NCLAT, New Delhi in the case of *"Rohit Motawat Vs. Madhu Sharma Proprietor Hind Chem Corporation & Anr."* (2023) *ibclaw.in* 128 NCLAT expounded that when the principal amount had already been paid by the Appellant and the issue was only regarding the recovery of interest, a Section 9 Application under the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC") could not have been maintainable as the Code envisages 'resolution of debt' and not 'recovery'. Following this proposition, we find that the application



IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH : C-IV

CP(IB)-1438/MB/2020

cannot be allowed in the present case in case the Corporate Debtor has undertaken to pay the principal amount.

6. In view of the foregoing discussion and taking into consideration, the undertaking of Corporate Debtor to pay the principal amount of ₹96,52,223/- through demand draft of ₹30 lakhs immediately and promising to pay remaining balance of ₹66,52,223/- in three monthly instalments, we feel that the default does not survive if the Corporate Debtor fulfils this stipulation. In view of this, we feel that the Petition deserves to be disposed of as settled.
7. We make it clear that in case of non-fulfilment of the offer placed before this Bench by the Corporate Debtor, the present Petition will stand restored and shall be adjudicated, on merits, considering the default in payment of principal amount of ₹1,21,00,722/- and interest, if any.
8. Accordingly, CP(IB)-1438(MB)/2020 is hereby **disposed** of as settled.

Sd/-

PRABHAT KUMAR
MEMBER (TECHNICAL)

17.03.2023/rn/pvs

Sd/-

KISHORE VEMULAPALLI
MEMBER (JUDICIAL)