



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO.I
KOLKATA**

C.P (IB) NO. 37/KB/2022

***An Application under Section 9 of the Insolvency and Bankruptcy Code,
2016***

IN THE MATTER OF:

Mittal Polysacks Private Limited

... Operational Creditor

Versus

Burnpur Cement Limited

... Corporate Debtor

Date of Pronouncement of Order: 20.04.2026

Coram

Smt. Bidisha Banerjee, Member (Judicial)

Cmde Siddharth Mishra, Member (Technical)

Appearance:

For the Petitioner: Mr. Rishav Banerjee, Adv.

Ms. Sweta Mukherjee, Adv.

Mr. Moulinath Moitra, Adv.

For the Respondent: Mr. Dhruv Dewan, Adv.

Mr. Deepanjan Dutta Roy, Adv.

Ms. Sanjana Jha, Adv.



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ORDER

Per: Cmde Siddharth Mishra, Member (Technical)

1. The court congregated through a hybrid mode.
2. Heard the Ld. Counsels of both the parties.
3. The present application has been filed by **Mittal Polysacks Private Limited**, hereinafter referred to as the **Operational Creditor** under section 9 to initiate Corporate Insolvency Resolution Process against **Burnpur Cemenet Limited**, hereinafter referred to as the '**Corporate Debtor**'

4. Facts in a nutshell

4.1 The Corporate Debtor, engaged in the manufacture of cement at its Asansol plant, procured polypropylene cement bags from the Operational Creditor for packing its cement.

4.2 Pursuant to the Corporate Debtor's request and assurance of payment upon delivery, the Operational Creditor supplied cement bags between 16.01.2016 and 23.12.2016 and raised invoices aggregating to ₹1,25,14,519/-.

4.3 The goods were accepted without objection. However, the Corporate Debtor failed to make payment despite demands. The Corporate Debtor acknowledged the outstanding amounts by issuing account confirmations dated 31.03.2018 and 01.02.2019, thereby extending limitation under Section 18 of the Limitation Act, 1963. In any event, limitation stood extended by the Hon'ble Supreme Court's COVID-19 orders.

4.4 A demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 was issued on 29.09.2021. No dispute or pending proceedings were raised in response. A principal sum of ₹1,25,14,519/- together with interest of



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₹1,00,47,273/- (calculated @18% p.a.) is due, aggregating to ₹2,25,61,792/-, and remains unpaid, constituting default under the Code.

5. Submissions of the Ld. Counsel on behalf of the Petitioner

5.1 The Operational Creditor is, inter alia, engaged in the business of manufacture and supply of polypropylene cement bags. The said bags are used by the Corporate Debtor for packing cement manufactured at its aforesaid plant and thereafter supplied to distributors, wholesalers and retailers for onward sale.

5.2 The Corporate Debtor, being fully aware of the business activities of the Operational Creditor, approached and requested the Operational Creditor to supply polypropylene cement bags from its manufacturing unit at Palashdiha, Kanyapur, Asansol, District Burdwan, West Bengal.

5.3 The Corporate Debtor represented and assured that upon delivery of the said polypropylene cement bags, payment in respect thereof would be made forthwith.

5.4 Acting upon such representation and assurance, the Operational Creditor supplied polypropylene cement bags to the Corporate Debtor between January 16, 2016 and December 23, 2016.

5.5 The goods so supplied were duly received and accepted by the Corporate Debtor without any demur, objection or protest. No dispute was ever raised with regard to the quality or quantity of the goods supplied.

5.6 In respect of the said supplies, invoices were duly raised and forwarded to the Corporate Debtor. Copies of the said invoices are annexed hereto and collectively marked with the letter "C".



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5.7 The total value of the invoices raised between January 16, 2016 and December 23, 2016 amounts to ₹1,25,14,519/-, comprising:
(a) ₹54,29,173/- in respect of invoices issued between January 16, 2016 and June 30, 2016; and
(b) ₹70,85,346/- in respect of invoices issued between May 10, 2016 and December 23, 2016.

5.8 Despite receipt and acknowledgment of the said invoices, the Corporate Debtor failed and neglected to make payment of the aforesaid outstanding amounts. Several verbal demands were made by the Operational Creditor, however, no payment was forthcoming.

5.9 The Corporate Debtor acknowledged its liability in respect of ₹54,29,173/- by issuing account confirmations dated March 31, 2018 and February 1, 2019. Copies thereof are annexed collectively and marked with the letter "E".

5.10 The Corporate Debtor further acknowledged its liability in respect of ₹70,85,346/- by issuing an account confirmation dated February 1, 2019. A copy thereof is annexed and marked with the letter "D".

5.11 The aforesaid acknowledgments were made within the prescribed period of limitation and constitute valid acknowledgments under Section 18 of the Limitation Act, 1963, thereby entitling the Operational Creditor to a fresh period of limitation of three years to initiate proceedings under Section 9 of the Insolvency and Bankruptcy Code, 2016.

5.12 Without prejudice to the above, even assuming that the limitation period had expired, the same stood extended pursuant to the orders dated March 8, 2021, September 23, 2021 and January 10, 2022 passed by the Hon'ble Supreme Court of India in view of the COVID-19 pandemic. Copies of the said orders are annexed collectively and marked with the letter "F".



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5.13 Accordingly, the claim of the Operational Creditor in respect of the principal sum of ₹1,25,14,519/- is well within the prescribed period of limitation. Copies of the documents maintained by the Operational Creditor evidencing acknowledgment of liability are annexed collectively and marked with the letter “G”.

5.14 On account of non-payment of the aforesaid operational debt, the Operational Creditor issued a demand notice under Form 3 of the Insolvency and Bankruptcy Code, 2016 on September 29, 2021. A copy of the said demand notice along with its enclosures is annexed hereto and marked with the letter “H”.

5.15 Despite receipt of the said demand notice, the Corporate Debtor failed to raise or establish the existence of any dispute. The Corporate Debtor has neither brought to notice any pre-existing dispute nor demonstrated the pendency of any suit or arbitral proceedings in relation to the said operational debt.

5.16 The principal amount due and payable is Rs.1,25,14,519/-. Interest calculated @18% per annum from April 1, 2017 to September 15, 2021 amounts to Rs. 1,00,47,273/-. Accordingly, the total amount due and payable by the Corporate Debtor is Rs. 2,25,61,792/-.

5.17 In the circumstances aforesaid, the debt is due and payable, the claim is within limitation, and there exists no pre-existing dispute. The Corporate Debtor has committed default within the meaning of the Insolvency and Bankruptcy Code, 2016.

6. Submissions of the Ld. Counsel on behalf of the Respondent



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6.1 At the outset, the Corporate Debtor (“CD”) respectfully submits that the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“Code”) is wholly misconceived, not maintainable, and liable to be dismissed in limine in view of the admitted factual and legal position set out hereinbelow.

6.2. There is admittedly no written agreement or underlying contract between the CD and the Operational Creditor (“OC”) in respect of the alleged supply of cement bags. No purchase orders were ever issued by the CD upon the OC. In fact, the invoices relied upon by the OC themselves describe the alleged arrangement as “verbal” (Annex C/CP/V.1/Pg.21). The complete absence of any contractual documentation itself renders the alleged transaction commercially suspect.

6.3. There is no correspondence between the parties regarding essential commercial terms such as specifications, quality, quantity, price, delivery timelines, payment terms, or acceptance conditions. For transactions allegedly aggregating ₹1,25,14,519/-, the absence of any documentary exchange is highly unusual and contrary to normal business conduct.

6.4. It is submitted that the OC has failed to produce any documentary evidence evidencing delivery of the alleged cement bags to the CD. There are no transport receipts, lorry challans, goods receipt notes, weighment slips, gate entry records, acknowledgment of receipt, or any other contemporaneous documents to substantiate actual delivery.

6.5. That the alleged invoices (Pg. 21–56/CP) have been filed for the first time along with the Company Petition. Though the Section 8 demand notice dated 29.09.2021 (Pg. 95–105/CP) states that invoices were annexed thereto, no such invoices were in fact enclosed with the said notice. This omission is material and prejudicial.



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6.6. None of the alleged invoices bear acknowledgment of receipt by the CD. The Petition is silent as to the mode and date of delivery of such invoices. The CD disputes their authenticity and states that such invoices are not available in its records.

6.7. The invoices do not stipulate any payment period. The Petition asserts that payment was “forthwith”. Even assuming so, the alleged supplies were completed by 23.12.2016. However, the OC remained completely silent for nearly five years and issued no reminders, demands, or correspondence seeking payment until the Section 8 notice dated 29.09.2021. Such extraordinary silence is inconsistent with ordinary commercial prudence and undermines the credibility of the claim.

6.8. In light of the above admitted deficiencies, the very substratum of the alleged operational debt is doubtful, unsupported by primary evidence, and incapable of forming the basis of insolvency proceedings.

6.9. The OC has sought to rely heavily upon the balance sheets of the CD for FY 2016–17 and FY 2017–18 to contend that the alleged debt of ₹1,25,14,519/- stands acknowledged.

6.10. It is pertinent to note that in the balance sheets of the CD for FY 2015–16, FY 2016–17, and FY 2017–18, the OC has been recognized as an “Associate” of the CD and the alleged purchases have been disclosed as “related party transactions”.

6.11. The following facts are undisputed:

(a) Mr. Manoj Kumar Agarwal was a Whole-Time Director of the CD from 30.07.2010 to 12.12.2016.

(b) He was also a Director of the OC between 08.01.2005 and 18.07.2016.



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(c) He was disclosed as Promoter of the CD during FY 2015–16, 2016–17 and 2017–18.

(d) Majority shareholding of the OC was held by his family members.

(e) At the time of institution of the petition, the directors of the OC were his family members.

6.12. The alleged supplies (16.01.2016 to 23.12.2016) coincide entirely with the tenure of Mr. Agarwal as director of the CD. Thus, the present petition has effectively been instituted by a company controlled by the family members of the erstwhile promoter against the CD, in respect of transactions allegedly undertaken during his own management.

6.14. The balance sheets relied upon by the OC were prepared and finalized during the tenure of the said previous management.

6.15. On 01.10.2019, UV Asset Reconstruction Company Ltd., in exercise of its rights under the SARFAESI Act, assumed management control of the CD.

6.16. Upon takeover, serious irregularities were discovered, including embezzlement, diversion of funds, siphoning of money, and window dressing of accounts by the previous management. In particular, with respect to related party transactions, there was a substantial mismatch between recorded entries and actual underlying documents.

6.17. Although the balance sheet reflected a credit balance of Rs.1,25,14,519/- in favour of the OC, no corresponding invoices or primary documents were found in the CD's records.

6.18. Consequently, the said entry was reversed in subsequent financial statements and not carried forward beyond FY 2020–21. This reversal occurred



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prior to issuance of the Section 8 notice dated 29.09.2021. The balance sheet being a public document, the OC had constructive notice of such reversal.

6.19 The repudiation of liability thus predated the demand notice and constitutes a clear pre-existing dispute.

6.20 Whether such reversal complied with the Companies Act is itself a disputed issue, and the existence of such dispute is sufficient to non-suit the OC under Section 9 of the Code.

6.21. The OC has argued that the FY 2017–18 balance sheet was signed by Mr. Indrajeet K. Tiwary, who has affirmed the affidavit on behalf of the CD. It is submitted that Mr. Tiwary joined the CD only in June 2017, after completion of the alleged supplies. The FY 2016–17 balance sheet had already been finalized prior to his joining. In FY 2017–18, there were no fresh dealings with the OC. The amount was merely carried forward from the previous year. Mr. Tiwary had no personal knowledge of the alleged transactions and the signing of a carried-forward entry cannot constitute conscious acknowledgment of liability.

6.22. The OC's own list of invoices discloses that 11 invoices totaling ₹28,87,646/- were raised between 16.01.2016 and 25.03.2016. However, the balance sheet of the CD for the year ending 31.03.2016 records zero outstanding in favour of the OC.

6.23. This balance sheet was prepared and signed during the tenure of Mr. Manoj Kumar Agarwal. The inconsistency between the OC's pleaded case and the CD's balance sheet further demonstrates fundamental discrepancies in the accounts prepared during the previous management.

6.24 In *Prarthna Sales Pvt. Ltd. & Anr. v. Burnpur Cement Ltd. (Civil Appeal No. 6899 of 2022)*, this Tribunal dismissed a Section 7 petition



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despite written loan agreements and balance sheet acknowledgments, holding the transactions to be sham and collusive.

6.25. One significant factor noted was the unexplained delay of several years in enforcing the alleged debt. The decision was affirmed by the Hon'ble NCLAT and the Hon'ble Supreme Court. The same reasoning squarely applies in the present case, where the OC remained inactive for nearly five years.

6.26. The OC has selectively relied upon portions of a forensic audit report comparing prices of HDPE bags supplied by two vendors. The forensic audit does not certify the genuineness of the transactions between the OC and CD.

6.27. It is settled law that proceedings under Section 9 are not recovery proceedings. In ***Mobilox Innovations v. Kirusa Software Limited*** reported in **2018(1) SCC 353** the Hon'ble Supreme Court held that if a plausible dispute exists, the petition must be rejected.

6.28. In ***K. Kishan v. Vijay Nirman Co.(P) Ltd.***, reported in **(2018) 17 SCC 662** it was held that the Code cannot be used in terrorem or as a substitute for debt enforcement.

6.29. The Hon'ble NCLAT in *Raju Jagtap, Oyster Steel, and Agarwal Veneers* has reiterated that once a plausible pre-existing dispute is shown, detailed adjudication is impermissible.

6.30. In *Indus Biotech v. Kotak India Venture*, the Hon'ble Supreme Court emphasized the need for objective assessment before admission.

- i. Balance sheets prepared under tainted management
- ii. Reversal of entries prior to demand notice
- iii. Prior judicial findings of sham transactions



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6.31. These facts clearly establish a genuine, substantial, and pre-existing dispute. Admission of the present petition for a disputed amount of Rs.1,25,14,519/- would cause grave and irreparable prejudice to the CD and its stakeholders and would convert the IBC into a recovery tool.

6.32. The Corporate Debtor therefore respectfully prays that the present petition under Section 9 of the Code be dismissed.

7. We have heard the Ld. Counsels of both the parties and perused the documents on record.

8. ANALYSIS AND FINDINGS

8.1. Before going through the rival contentions, it is apposite to examine the statutory scheme governing an application under Section 9 of the Code. We must test the application under Section 8(1), an Operational Creditor is required to deliver a demand notice of unpaid operational debt. Under Section 9(1), upon non-payment within ten days of receipt of such notice, an application may be filed. However, Section 9(5)(ii)(d) mandates that the Adjudicating Authority shall reject the application if notice of dispute has been received by the Operational Creditor or if there exists a record of dispute in the information utility.

8.2. The expression “dispute” is defined under Section 5(6) of the Code to include a dispute with respect to the existence of the amount of debt, quality of goods or services, or breach of representation or warranty.

8.3. We believe that the scope of enquiry under Section 9 is no longer res integra. In ***Mobilox Innovations Pvt. Ltd. v. Kirusa Software Pvt. Ltd.***, reported in **(2018) 1 SCC 353**, the Hon’ble Supreme Court held that at the stage of admission, the Adjudicating Authority is only required to see whether



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there exists a “plausible contention” which requires further investigation and that the dispute is not a patently feeble legal argument. If a real dispute exists in fact and is not spurious, hypothetical or illusory, the application must be rejected.

8.4. Further, in *K. Kishan v. Vijay Nirman Co. (P) Ltd.*, reported in **(2018) 17 SCC 662**, the Hon’ble Supreme Court reiterated that the Code cannot be used as a substitute for debt enforcement and cannot be invoked in terrorem to extract payment where disputes are pending or plausible.

8.5. In the present case, the Corporate Debtor has raised multiple grounds disputing the very existence of the operational debt. The CD’s record brings out that there is admittedly no written agreement or purchase order between the parties. The alleged transaction is stated to be “verbal”. No contemporaneous correspondence has been produced regarding specifications, quantity, delivery schedules or payment terms.

8.6. Significantly, no primary evidence of delivery such as transport receipts, lorry challans, goods receipt notes, or acknowledgment of delivery has been placed on record. None of the invoices bear acknowledgment of receipt by the Corporate Debtor. These deficiencies go to the root of the claim and are not mere technical objections.

8.7. The Operational Creditor has placed heavy reliance upon certain balance sheets of the Corporate Debtor for FY 2016–17 and FY 2017–18 to contend that the debt stands acknowledged. It is settled law that entries in balance sheets may amount to acknowledgment under Section 18 of the Limitation Act, 1963, subject to qualification. However, such acknowledgment is not conclusive proof of liability and must be examined in the factual context.



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8.8. In the present case, it is not disputed that during the relevant period the Operational Creditor was an “Associate” of the Corporate Debtor and the alleged transactions were reflected as related party transactions. It is also borne from the record that the alleged supplies coincided with the tenure of the erstwhile promoter and director who had connections with both entities.

8.9. The Corporate Debtor has placed material on record to show that upon change of management on 01.10.2019 under SARFAESI proceedings, serious financial irregularities and discrepancies in related party transactions were discovered. The alleged outstanding entry in favour of the Operational Creditor was subsequently reversed in later financial statements, prior to issuance of the demand notice dated 29.09.2021.

8.10. The reversal of entries prior to the demand notice and the assertion that no primary supporting documents were found constitute a clear repudiation of liability preceding the Section 8 notice. In terms of *Mobilox* (supra), what is required to be seen is whether the dispute is pre-existing and not spurious.

8.11. The contention regarding non-compliance with the Companies Act in reversing entries itself demonstrates that there exists a substantive dispute requiring detailed adjudication, which is beyond the limited summary jurisdiction under Section 9.

8.12. Additionally, the Corporate Debtor has pointed out inconsistency between the alleged outstanding invoices prior to 31.03.2016 and the balance sheet of FY 2015–16 reflecting zero outstanding. Such contradiction further evidences that the matter requires thorough examination, which cannot be undertaken in a summary insolvency proceeding.

8.13. This Tribunal also notes that in ***Prarthna Sales Pvt. Ltd. & Anr. v. Burnpur Cement Ltd.*** (CP(IB) No. 964/KB/2020), allegations of sham and



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collusive transactions during the tenure of the previous management were judicially considered. The said judgment, affirmed by the Hon'ble NCLAT and Hon'ble Supreme Court, recognized serious irregularities in the affairs of the Corporate Debtor during the relevant period. While each case must be decided on its own facts, the background circumstances cannot be ignored.

8.14. The delay of nearly five years in issuing the demand notice, without any contemporaneous written demand or reminder on record, is another circumstance which raises a plausible dispute regarding the genuineness of the claim. As observed in *Mobilox* (supra), insolvency proceedings cannot be invoked prematurely or for extraneous considerations.

8.15. The Hon'ble NCLAT in ***Raju Jagtap v. Jayesh Steel Pvt. Ltd.*** reported in **(2023) SCC Online NCLAT 689** and ***Oyster Steel and Iron Pvt. Ltd. v. Brilliant Metals Pvt. Ltd.(Company Appeal (AT) (Insolvency) No. 1089 of 2022)*** has reiterated that once the defence raises a dispute requiring adjudication, the Adjudicating Authority must refrain from entering into detailed examination and reject the Section 9 application.

8.16. The Code is a beneficial legislation aimed at resolution of insolvency and not a substitute for recovery proceedings. This principle has been emphatically reiterated in ***Indus Biotech Pvt. Ltd. v. Kotak India Venture (Offshore) Fund***, reported in **(2021) 6 SCC 436**, wherein the Hon'ble Supreme Court underscored the need for an objective assessment before admission.

8.17. Applying the above principles to the facts of the present case, this Tribunal is of the considered view that the Corporate Debtor has raised substantial and bona fide disputes with regard to (i) existence of the underlying transaction, (ii) proof of delivery of goods, (iii) authenticity of invoices, and (iv) correctness of balance sheet entries prepared under previous management, including related party transaction.



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8.18. The disputes raised are neither illusory nor spurious. They require detailed evidence and adjudication, which falls outside the limited jurisdiction under Section 9 of the Code.

8.19. In view of the foregoing analysis, this Tribunal is satisfied that there exists a pre-existing dispute between the parties within the meaning of Sections 5(6) and 9(5)(ii)(d) of the Code.

8.20. Consequently, the present petition is not maintainable under I&B Code and is liable to be rejected. However, the claim under any other provisions of law if permissible may be pursued by the applicant.

9. In view of the foregoing discussions, the **C.P. (IB) NO. 37/KB/2022** stands **dismissed** and **disposed of**.

10. The certified copy of this order be supplied upon compliance with all requisite formalities.

Cmde Siddharth Mishra
Member (Technical)

Bidisha Banerjee
Member (Judicial)

This Order is signed on this, 20th day of April, 2026

Oindrila, K. (LRA)/Sagar M. (LRA)