

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT-1**

ITEM NO. 303  
C.P.(IB) No. 371(AHM)2020

**Order under section 9 IBC,2016**

**IN THE MATTER OF :**

Yug International Pvt. Ltd.  
V/s.  
Optus Laminates Pvt. Ltd.

....Applicant

....Respondent

Order delivered on: 25.01.2024

**Coram:**

Mr. Shammi Khan, Hon'ble Member (J)  
Mr. Sameer Kakar, Hon'ble Member (T)

**PRESENT:**

For the Applicant :  
For the Respondent :

**ORDER**

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-  
**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-SD-  
**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
(COURT-I)**

**CP (IB) No.371/AHM/2020**

*(Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**IN THE MATTER OF:**

**Yug International Private Limited**

Registered office at:  
113/131, Swaroop Nagar,  
Kanpur, Uttar Pradesh- 208002  
CIN:U65910UP1997PTC021784

**Applicant/  
Operational  
Creditor**

**VERSUS**

**Optus Laminates Private Limited**

Registered office at:  
Block- B, 903- 904,  
Solitaire Corporate Park,  
Nr. Divya Bhaskar Press,  
SG Highway, Ahmedabad- 380051  
CIN:U20210GJ2004PTC044949

**Respondent/  
Corporate  
Debtor**

**Order pronounced on: 25.01.2024**

**CORAM:**

**MR. SHAMMI KHAN (MEMBER JUDICIAL)**

**MR. SAMEER KAKAR (MEMBER TECHNICAL)**

**APPEARANCE:**

For the Operational Creditor: Ms. Megha Jani, Adv. a/w. Ms. Aditi Sheth, Adv.

For the Corporate Debtor: Ms. Vacha Shah, Adv. for Mr. Pratik Thakkar, Adv.

**ORDER**

1. The Present Application was filed on 09.11.2020 by **Yug International Private Limited** (hereinafter referred to as “**the Applicant/Operational Creditor**”) against **Optus Laminates Private Limited** (hereinafter referred to as “**the Respondent/Corporate Debtor**”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short “**CIRP**”) against the Corporate Debtor for having defaulted in payment of its outstanding dues of **Rs.1,49,74,385/-**.
2. On perusal of Part-I of the Form-V reveals that the Applicant/Operational Creditor is one Yug International Private Limited having CIN No. U65910UP1997PTC021784. The

registered office of the Applicant/Operational Creditor is situated at 113/131, Swaroop Nagar, Kanpur, Uttar Pradesh-208002.

3. On perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor is one Optus Laminates Private Limited having CIN No.U20210GJ2004PTC044949. The registered office of the Respondent/ Corporate Debtor is situated at Block-B, 903-904, Solitaire Corporate Park, Nr. Divya Bhaskar Press, SG Highway, Ahmedabad-380051, Gujarat.
4. An affidavit for filing this application is signed by one Mr. Madhur Vinod Gupta, Director and authorized representative of Applicant authorized by Board Resolution dated 03.09.2020 which is annexed to the Petition.
5. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has not proposed the name of any person to be appointed as Interim Resolution Professional.
6. On perusal of Part-IV of the Form-V reveals that total dues as claimed by the Applicant/Operational Creditor is Rs.1,49,74,385/- consisting of Rs.94,18,713/- being principle and amount of Rs.55,55,672/- as interest at the rate of 18%.
7. The averments made by the Applicant in its application are summarized hereunder:-

- a) The Applicant was regular supplier of chemical products to the Respondent. Both the parties maintained running account for their transactions. The Respondent made payment periodically by opening LC, through cheques and RTGS.
- b) The opening balance of Respondent in the books of Applicant as on 01.04.2017 is Rs.1,71,16,856/- in addition to said amount, further transaction took place between 01.04.2017 to 31.03.2018 and the total amount payable by Respondent to Applicant on 30.03.2018 arrived at Rs.4,06,52,207/-. Against the said amount the Respondent made payment of Rs.2,81,69,090/- during the period from 01.04.2017 to 31.03.2018.
- c) The Respondent issued confirmation of accounts which reflects that total outstanding payable by Respondent to Applicant as on 01.04.2018 is Rs.1,24,83,117/-. Further, in the period from 01.04.2018 to 01.03.2019 additional business worth Rs.1,86,01,846/- was done between the parties. In the said period the Respondent made payment of Rs.2,11,66,246/- i.e. during the period from 01.04.2018 to 28.02.2019.
- d) The Respondent issued another confirmation of accounts which reflects that total outstanding payable by Respondent to Applicant as on 01.03.2019 as Rs.99,18,717/-.

- e) However, the Respondent failed to make payment of Rs. 99,18,717/-. Therefore, the Applicant issued demand notice dated 03.04.2019 under section 8 of Insolvency and Bankruptcy Code, 2016 demanding payment of Rs.1,19,00,464/- comprising of principal amounting to Rs.99,18,713/- and interest amounting to Rs.19,81,751/-.
- f) After issuance of demand notice the Respondent made payment of Rs.5,00,000/- on 17.04.2019 through RTGS and addressed an email on 18.04.2019 stating that they have deposited Rs.5,00,000/- and would deposit Rs.20,00,000/- within 5-6 months. The Corporate Debtor also issued 5 post-dated cheques of Rs.20,00,000/- each dated 23.04.2019, 21.05.2019, 25.06.2019. 20.07.2019 and 22.08.2019. The first three cheques were dishonored and remaining two cheques were not deposited in good faith.
- g) The Director of the Respondent addressed an email dated 28.09.2019 acknowledging the transactions and indicating that they would like the Applicant to continue the supply. If the Applicant opts to continue the supply the Respondent would make payment of consignment upfront before the delivery and if he is not willing to consider the offer, the Respondent would make payment of Rs.5,00,000/- per month.

- h) As the Respondent failed to respond to demand notice the Applicant had filed a Company Petition bearing C.P. No.434 of 2019 on 07.06.2019 claiming an amount of Rs.1,19,00,464/-. This Tribunal vide its order dated 02.07.2020 dismissed the said Petition stating that invoices mentioned in demand notice have been paid and the invoices forming part of rebuttal documents are not reflected in Form-5 of the original petition.
- i) The Applicant again issued demand notice dated 24.09.2020 under section 8 of Insolvency and Bankruptcy Code, 2016 demanding payment of Rs.1,49,74,385/- (94,18,717/- [Principal] + 55,55,672/- [Interest]) and filed present petition on 09.11.2020.
- j) The Applicant relies upon below mentioned documents to prove its case:

6	I	Demand notice in Form – 3 dated 24.09.2020	21 – 31
7	II-A	Confirmation of accounts dated 01.04.2018 by Optus along with ledger	32 – 35
8	II-B	Confirmation of accounts dated 01.03.2019 by Optus along with ledger.	36 – 37
9	II-C	8 outstanding invoices mentioned above.	38 – 45
10	II-D	Five cheques each of Rs.20,00,000/- bearing No.008602, 008603, 008604, 008605 and 008606 dated 23.04.2019, 21.05.2019, 25.06.2019, 20.07.2019 and 22.08.2019 respectively along with cheque return memo qua cheque no. 008602, 008603 and 008604.	46 – 49

11	II-E	E-mail dated 18.04.2019 addressed by Mr. Saumil Chokshi to Yug	50
12	II-F	E-mail dated 28.09.2019 addressed by Mr. Saumil Chokshi to Yug.	51 – 52
13	II - G	Interest calculation sheet	53
14	II - H	Entire set of Company Petition No. 434 of 2019	54 - 152
15	II - I	Order dated 02.07.2020 passed by the National Company Law Tribunal, Ahmedabad Bench in Company Petition No. 434 of 2019	153 - 161
16	III	Relevant accounts from bank as per Item 7, Part – V of Form – 5	162 - 209

8. Subsequently, settlement was arrived between the parties and withdrawal purshis dated 01.12.2021 along with settlement agreement dated 23.11.2021 was filed before this Tribunal on 02.12.2021, on the basis of said purshis withdrawal of C.P. (IB) No. 371 of 2020 was granted vide order dated 07.12.2021.
9. The Respondent defaulted and committed breach of the settlement agreement. Therefore, an interlocutory application bearing I.A. No. 948 of 2022 was filed by the Applicant seeking revival of present petition i.e. C.P. No. 371 of 2020. The said application was allowed and the present petition was revived vide order dated 03.07.2023.
10. In view of settlement certain amount was paid by Respondent. Therefore, a chart revealing calculation of dues was filed by Applicant on **04.01.2024 vide Inward Diary No.93**, according to said chart the amount payable as on 05.01.2024 is

Rs.1,36,10,464/- which consists of Rs.99,74,385/- being principal and Rs.36,36,079/- as interest.

11. The Respondent has filed its reply on **23.03.2021** the averments of the Respondent in the reply are stated below:-

a) The invoices claimed by Applicant in Form-5 are barred by limitation, these invoices are as under:-

<b>DATE</b>	<b>INVOICE NO.</b>	<b>AMOUNT IN Rs.</b>
11.02.2017	AHD/1526/16-17	21,84,786/-
17.02.2017	GIM/TI/1317/16-17	13,15,806/-
30.03.2017	GIM/TI/1472/16-17	12,19,809/-
30.03.2017	GIM/TI/1473/16-17	6,35,860/-
08.03.2017	DEL/291/16-17	17,29,058/-
13.04.2017	GIM/0011/17-18	19,51,371/-
05.07.2017	GJGM/0012/17-18	4,93,476/-
19.12.2017	GJGM/2304/17-18	8,44,998/-

Further, section 18 & 19 of Limitation Act, 1963 falls under category of 1<sup>st</sup> Division Suit and the present proceedings fall under 3<sup>rd</sup> Division Application thus, section 18 & 19 of Limitation Act, 1963 are not available under the present

proceedings. Reliance is placed on judgment passed by the Hon'ble National Company Law Appellate Tribunal in the case of ***Bimalkumar Manubhai Savalia v. Bank of India*** reported in [2020] 117 taxmann.com 227 (NCL-AT) & ***V. Padmakumar v. Stressed Assets Stabilisation Fund (SASF)*** reported in [2021] 123 taxmann.com 331 (NCL-AT).

- b) It is stated that the default amount in the present petition is under Rs.1.00 Crore and there was no agreement for interest. Thus, present petition is not maintainable and liable to be dismissed.
- c) The Applicant filed C.P. No.434 of 2019 claiming the same amount in the present petition and the invoices claimed in the present petition were also placed as rebuttal in C.P. No.434 of 2019. The C.P. No.434 of 2019 was dismissed vide order dated 02.07.2020. Thus, the claim qua present invoices was not entertained and the petition was dismissed thus, the present petition is not maintainable and deserves to be dismissed.
- d) The finished products of the Respondent were returned by the customers as they were of defective quality this was due to poor quality of raw material supplied by the Applicant.
- e) The claim of the Operational Creditor is defective as the Corporate Debtor had already issued several LCs in favour

of the Operational Creditor. The List of the LCs that were issued in the favour of the Operational Creditor are as follows:

LC Ref. No.	LC Amount
201710061557HDFC0000006000104136	Rs.17,82,742/-
201711141233HDFC0000006000105047	Rs.24,73,579/-
201711291811HDFC0000006000105893	Rs.19,92,015/-
2018201301144HDFC0000006000107541	Rs.25,10,049/-

- f) The receipt of the products mentioned in the invoices as well as the invoices are disputed thus, there is no operational debt as claimed by Applicant.
- g) The definition of “Operational Debt” does not include interest, damages and loss and even otherwise there was no agreement between the parties for 18% interest as claimed in the Petition. There are disputes with regards to principal and interest, hence, the petition deserves to be dismissed.

12. The Applicant filed a rejoinder to the reply of the Respondent on **31.03.2021** and made the following submissions:

- a) The Applicant states that the Respondent has admitted and acknowledged its liability by

Confirmation of Accounts dated 01.04.2018 and 01.03.2019, email dated 18.04.2019 and by issuing five cheques of Rs.20,00,000/- (first three cheques were dishonored and remaining were not deposited). Further, the Respondent has not issued notice of pre-existing dispute on receipt of demand notice and no payment of unpaid Operational Debt has been made.

- b) The Applicant states that the Operational Debt in the petition is crystallized at Rs.1,49,74,385/- and the invoices against which the Operational Debt is due stipulates that the Respondent would be liable to pay interest at 18% per annum if the invoices are not cleared on their due dates. Even otherwise the bar under amended section 4 of the IBC, 2016 would not apply as the debt fell due much prior 24.03.2020.
- c) The Applicant states that the Respondent has acknowledged the outstanding within the period of limitation thus, the petition is not barred by limitation.
- d) The Applicant denies that there is no agreement for interest and that the petition is barred by Res Judicata.

- e) The Applicant denies the pre-existing dispute and states that the Respondent has admitted its liability in three ways (i) by issuance of cheques aggregating to Rs.1,00,00,000/- (ii) by emails of directors and (iii) by Confirmation of Accounts dated 01.04.2018 and 01.03.2019.
- f) The Applicant denies that the amount claimed as outstanding in the present petition stands adjusted by the LCs.
- g) The Applicant denies that the receipts of the products mentioned in the invoices as well as the invoices are disputed. The Applicant states that the receipt of invoices and goods are acknowledged in many ways in fact the Respondent themselves at para 9 of their reply have stated that the Applicant use to send raw materials to the Respondent.
- h) The Applicant denies that the definition of Operational Creditor does not include interest, damages or loss and relies on provisions of the Code and Section 3(11), 3(12) and 5(21). It is also denied that there was no agreement between the parties for 18% interest.

13. We have heard the Ld. Counsel for both the parties and perused the material available on record.
  
14. It is noted that the Applicant supplied chemical products to the Respondent and maintained running accounts for their transactions, out of said transactions an amount of Rs.99,18,717/- was payable by Respondent to Applicant. The Respondent defaulted in paying said amount therefore, the Applicant issued demand notice dated 03.04.2019 claiming an amount of Rs.1,19,00,464/-. After issuance of demand notice the Respondent made payment of Rs.5,00,000/- on 17.04.2019 and addressed an email dated 18.04.2019 wherein they have acknowledge the liability by stating that they would deposit Rs.20,00,000/- within a period of 5-6 months. The Respondent had also issued 5 post-dated cheques of Rs.20,00,000/- each dated 23.04.2019, 21.05.2019, 25.06.2019, 20.07.2019 and 22.08.2019 out of which 3 cheques were dishonored and 2 were not deposited. As no reply to demand notice was received therefore, the Applicant proceeded to file an application under section 9 of IBC, 2016 bearing C.P. No. 434 of 2019. The said petition was dismissed vide order dated 02.07.2020 as the invoices forming part of rebuttal documents were not mentioned in Form-5. The Applicant again issued demand notice dated 24.09.2020 claiming an amount of Rs.1,49,74,385/- and filed the present petition on

09.11.2020. Subsequently, the parties arrived at settlement and the petition was withdrawn. However, the Respondent again defaulted and the present petition got revived vide order dated 03.07.2023. Such revival order has attained finality.

15. It is observed that no specific date of default is mentioned in the application therefore, we proceed to consider the date of default to be 12.05.2017 i.e. 90 days from the invoice dated 11.02.2017 as per the terms of invoice. All the subsequent events that is confirmation of accounts, issuance of demand notice, payment by Respondent, emails of Director of Respondent (wherein they acknowledge the liability to pay) and issuance of cheques took place within a period of three years from the date of default which further extended the period of limitation. Therefore, it can be said that the present application is within limitation.
16. The claim of the Applicant stands established as there is a default in payment of the amount due to the Applicant. The confirmation of accounts, email dated 18.04.2019 and 28.09.2019, issuance of cheques although the same were dishonored for the reason “payment stopped by drawer” and the settlement agreement dated 23.11.2021 indicates acknowledgment of the debt. The existing default amount is of more than rupees one crore which meets the threshold limit

as per section 4 of the Code and is well within the limitation for filing the present Application.

17. In our view the application is complete in terms of Section 9 of the Code. The Applicant has proved that there is debt and default has occurred. We have also seen that the amount defaulted is more than Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent deserves to be admitted.

18. Accordingly, in light of the above facts and circumstances, it is, hereby ordered as under:-

(i) The Respondent/Corporate Debtor **Optus Laminates Pvt. Ltd.** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.

(ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- a. 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;
- b. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- c. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- d. 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. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the

Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

- (iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- (iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) As the Applicant/Operational Creditor has not named any IRP in the matter, we hereby appoint **Nakshatra Insolvency Resolution Professional Ltd**, Registered Insolvency Professional Entity having Reg. No. **IBBI/IPE-0018/IPA-1/2022-23/50017** under section 13

(1)(c) of the Code to act as Interim Resolution Professional (IRP). The IPE shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

- (vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- (vii) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

- (viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- (x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- (xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/-** (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- (xii) The Registry is directed to communicate this order to the Operational Creditor, corporate

debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

19. Accordingly, this Application **CP(IB)/371/AHM/2020** is allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities

-Sd-

**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

-Sd-

**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

Arati-LRA