

**IN THE NATIONAL COMPANY LAW TRIBUNAL
COURT-III, NEW DELHI
IB-725(ND)/2022**



Order 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. INNOVATIVE INCENTIVES & REWARDS PRIVATE LIMITED

Having Its Registered Office at:

Plot No. A-37, Sector-8, Block-A,

Dwarka, New Delhi-110003.

Through its Director

Mr. Brahm Alreja

... Applicant/Operational Creditor

Versus

M/s. FEDERAL-MOGUL GOETZE (INDIA) LIMITED

Having Its Registered Office at:

DLF Prime Towers, 10 Ground Floor, F-79 & 80,

Okhla Phase-I, New Delhi-110020.

... Respondent/Corporate Debtor

Order Pronounced On: 18.10.0000

CORAM:

SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Phagun Kalra, Adv.

For the Respondent : Mr. Vaibhav Verma, Mr. Vinay Shukla, Mr. Shubham Tyagi, Mr. Nishant Dwivedi, Advs.

ORDER

PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)

IB - 725/ND/2022


Date of Order: 18.10.2023



1. This Application has been filed by M/s. Innovative Incentives & Rewards Private Limited, the Applicant/Operational Creditor on 25.07.2022, before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”) against M/s. Federal-Mogul Goetze (India) Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted in clearing the outstanding amount of Rs. 33,64,354.96/- (Rupees Thirty Three Lakh Sixty Four Thousand Three Hundred Fifty Four and Ninety Six Paise Only) along with interest @ 12%. The Date of Default in the present matter is 14.03.2018.

2. It is the case of the Operational Creditor that an Agreement dated 01.11.2016 ("Agreement") was executed between the Operational Creditor and the Corporate Debtor, whereby, the Applicant was required to provide various services as mentioned in clause 1.1 of the Agreement, which included project and data, management services, communication management services, Redemption Management, etc., and the Corporate Debtor was liable to make payments as per the Agreement. For better understanding, Clause 1.1 of the Agreement is extracted below:

“1.1. Services. This Agreement sets forth the terms and conditions under which the Service Provider shall perform certain services (the "Services") in accordance with the specifications and work schedule described in the SOW set forth in Exhibit A and future SOWs that may be signed by both Parties. The SOWs shall also specify the deliverable items associated with the Services to be performed (the "Deliverables"). Each executed SOW is incorporated into this Agreement by reference as though fully set forth herein. In the event any provision contained in this Agreement conflicts with any



provision in the SOW, the provision set forth in the SOW shall control.”

- 3.** The Corporate Debtor despite availing the contractual services from the Operational Creditor did not pay and clear the invoices from November 2016 to December 2017. Further, the agreement stood terminated by the Corporate Debtor w.e.f. 31.01.2018 and the Corporate Debtor admitted its liability for the outstanding dues and promised to clear all the pending/old invoices. Furthermore, the Corporate Debtor put pressure on the Operational Creditor to hand over the Intellectual Property ("IP") of the Operational Creditor to the Corporate Debtor, which was beyond the scope of the agreement, as according to the agreement the Operational Creditor is the sole owner of the IP. The Corporate Debtor vide Email dated 11.01.2018 has admitted that their demand for the IP of the Operational Creditor is outside the purview of the agreement.
- 4.** The Corporate Debtor did not clear the old/ pending invoices despite various reminders. The Operational Creditor issued a Demand Notice dated 13.03.2018, under Section 8 of the IBC, to the Corporate Debtor, seeking payment of the outstanding dues, amounting to Rs. 36,50,629/- (Rupees Thirty Six Lakhs Fifty Thousand Six Hundred and Twenty Nine Only) along with interest. Further, after receiving the notice dated 13.03.2018, the Corporate Debtor made a part payment of Rs. 14,49,900/- (Rupees Fourteen Lakhs Forty Nine Thousand and Nine Hundred Only) on 14.03.2018 to the Operational Creditor. The Corporate Debtor did not object to the demand notice dated 13.03.2018 and only made a part payment.
- 5.** The Operational Creditor issued another Demand Notice dated 12.05.2022 under Section 8 of the IBC to the Corporate Debtor, seeking payment of the remaining outstanding admitted dues amounting to Rs. 22,00,728.3/- (Rupees Twenty Two Lakhs Seven Hundred Twenty Eight and Three Paise Only) along with interest @ 12% being Rs.



11,63,626.66/- (Rupees Eleven Lakhs Sixty Three Thousand Six Hundred Twenty Six and Sixty Six Paise Only). No reply to the demand notice has been received from the Corporate Debtor nor any dispute has been raised to the Demand Notice dated 12.05.2022.

6. The Respondent/Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant and contended that the Operational Creditor has suppressed the material facts that in lieu of the Demand Notice dated 13.03.2018 issued by the Operational Creditor, the Corporate Debtor in good faith and as a gesture of willingness to resolve the outstanding alleged debts, made an aggregate payment of Rs. 26,27,056/- (Rupees Twenty Six Lakh Twenty Seven Thousand and Fifty Six Only) in two tranches:

- i) The first payment of Rs. 14,49,900/- (Rupees Fourteen Lakh Forty Nine Thousand and Nine Hundred Only) was made on the very next day *i.e.* on 14.03.2018 of the receipt of the aforesaid demand notice against Invoice No. 172031 dated 23.11.2017.
- ii) The second payment of Rs. 11,77,156/- (Rupees Eleven Lakh Seventy Seven Thousand One Hundred and Fifty Six Only) was made on 09.04.2018 against 3 (three) invoices bearing no. 171899 dated 19.06.2017, 172035 dated 11.12.2017 and 171902 dated 19.06.2017.

7. However, the Operational Creditor acknowledged only the First payment of Rs. 14,49,900/- and has intentionally not disclosed the Second Payment of Rs. 11,77,156/- with the oblique motive to obtain unjust enrichment at the expense of the Corporate Debtor. It is noteworthy in this regard that the Operational Creditor in its second Demand Notice dated 12.05.2022 has again included the aforesaid invoices bearing no. 171899 dated 19.06.2017 of Rs. 5,67,700/- and bearing no. 171902 dated 19.06.2017 of Rs. 44,638/- to inflate the claim and to gain wrongfully.



8. It is the case of the Corporate Debtor that as the agreement stood terminated on 31.01.2018 and no transactions have ever been entered into between the parties since then, accordingly, no new invoices could have been issued. Thus, the Operational Creditor with the oblique motive of obtaining unjust enrichment has Demanded an amount of Rs. 22,00,728.3/- towards the principal outstanding sum instead of raising a demand of only Rs. 10,23,573/-.
9. It is contended by the Corporate Debtor that there is a pre-existence of dispute between the parties. During the term of the agreement, the Operational Creditor has continuously been deficient in providing services. The Corporate Debtor has several times requested the Operational Creditor to resolve the issues occurring during the term of the agreement entered into with the Operational Creditor but the Operational Creditor paid no heed to the request of the Corporate Debtor, consequently, due to the aforesaid reasons Corporate Debtor has terminated the agreement on 31.01.2018. The Operational Creditor has left many issues arising in the project unattended and unresolved and the same can be corroborated from the email conversations relied upon by the Operational Creditor.
10. In Rejoinder, the Operational Creditor submitted that the amount of Rs. 11,77,156/- was received by the Operational Creditor from the Corporate Debtor on 09.04.2018. The aforesaid amount was not a suppression of material fact but an inadvertent error/omission. The Operational Creditor does not seek or intend to seek any amount that has already been received by it from the Corporate Debtor. The Operational Creditor had received an email dated 26.04.2018 from the Corporate Debtor, wherein the aforesaid amount of Rs. 11,77,156/- had been shown as the amount due by the Corporate Debtor and accordingly, this inadvertent mistake occurred taking into account the balance statement of the Corporate Debtor. Further, the aforesaid



amount had been kept in a suspense account as there was no clarity regarding the same.

11. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
12. The main dispute in this application is whether the present application is within the minimum default amount of Rs.1,00,00,000/- as provided under Section 4 of the Code or not and whether this Application is barred by Limitation Period or not.
13. It is noted that the Operational Creditor issued the first Demand Notice dated 13.03.2018 amounting to Rs. 36,50,629/- and the second Demand Notice dated 12.05.2022 amounting to Rs. 22,00,728.3/- which shows that the demand raised in both the demand notices is less than the threshold limit of Rs.1,00,00,000/- as provided under Section 4 of the Code. This Adjudicating Authority (Court-III), in the matter of M/s. Ultratech Cement Ltd. vs. M/s. Universal Journeys (India) Pvt. Ltd. in IB – 1027/ND/2020 has held that:

“We find that the Operational Creditor issued multiple demand notices to the Corporate Debtor which is not acceptable. The IBC, 2016 is a procedural Code and the process stipulated therein needs to be followed in the letter and spirit. There is no such provision in the IBC, 2016 and in the Regulation made thereunder that allows the Operational Creditor to issue multiple demand notices to the Corporate Debtor. Hence, we are of the view that the multiple demand notices are beyond the ambit of the IBC, 2016.”

Hence, the present application is below the threshold limit of Rs.1,00,00,000/- as provided under Section 4 of the Code.

14. The Date of Default as disclosed by the Operational Creditor in Part-4 of the Application is 14.03.2018. Therefore, the present Application under Section 9 of the Code has to be filed on or before 13.03.2021.



However, it was the admitted case of both the Operational Creditor and Corporate Debtor that Rs. 14,49,900/- was paid on 14.03.2018 and Rs. 11,77,156/- was paid on 09.04.2018 by the Corporate Debtor to the Operational Creditor.

Assuming that the Corporate Debtor acknowledged the debt and Rs. 11,77,156/- was paid on 09.04.2018, then the period of limitation would expire on 08.04.2018, in terms of Section 18 of the Limitation Act, 1963. Hence, the present application was filed on 25.07.2022 which is clearly beyond the Limitation Period.

In view of the above, we are of the considered view that the present claim under Section 9 of the Code is barred by the limitation period.

15. In view of the discussion in the foregoing paragraphs, we are satisfied that the present application is barred by the Limitation Period as well as below the threshold limit of Rs.1,00,00,000/-, hence the present application is not maintainable. It is accordingly ordered as follows:

- i.** The Application bearing **IB-725/ND/2022** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.
- ii.** The Registry is directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

No order as to costs.

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**(ATUL CHATURVEDI)
MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)**