

**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH-II, CHENNAI**

IBA/364//2020 filed under Section 9 of
the I&B Code, 2016 read with Rule 6 of
the Insolvency and Bankruptcy
(Application to Adjudicating
Authority) Rules, 2016.

In the matter of M/s. Ucal Fuel Systems Limited

M/s. Primee Silicones (Chennai) Private Limited

Rep. by its R. Giridharan
No. 131/B, JRR Tower, Mustafa Street,
Rajarajan Nagar, Muttukuppam,
Vanagaram, Chennai-600095

---Operational Creditor

Vs.

M/s. Ucal Fuel Systems Limited

[CIN: L31900TN1985PLC012343]
Raheja Towers Delta Wing-Unit-705177,
Anna Salai, Chennai-600002.

---Corporate Debtor

CORAM

R. SUCHARITHA, MEMBER (JUDICIAL)

B. ANIL KUMAR, MEMBER (TECHNICAL)

For Operational Creditor : *Shri. T. Sri Krishna Bhagavat, Advocate*
Shri. Srenik S. Jain, Advocate
Shri. Moheet Rathore, Advocate
Shri. A. Vikash, Advocate

For Corporate Debtor : *Shri. P.H Arvindh Pandian, Sr. Advocate*
Ms. Preeti Mohan, Advocate
Shri. Varsha Balasubramanian, Advocate

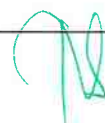
ORDER

Per : R. SUCHARITHA, MEMBER (JUDICIAL)

Order Pronounced on: 29.04.2021

Under consideration is an application filed pursuant to Section 9 of the I&B Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**) by M/s. Primee Silicones (Chennai) Private Limited (hereinafter referred to as "**Operational Creditor**") for initiation of Corporate Insolvency Resolution Process (in short "**CIRP**") against M/s. Ucal Fuel Systems Limited (hereinafter referred to as "**Corporate Debtor**") on the ground that Corporate Debtor defaulted an amount of Rs.13,24,275/- (principal amount Rs.8,03,815/- and interest Rs.5,20,460/- at the rate 24% per annum).

2. On perusal of this Application, the Averments made in the application, the Operational Creditor is involved in the business of manufacture of metal forming fluid, lubricant oil and industrial oil. During the course of business, on the orders placed by Corporate Debtor, the Operational Creditor has supplied "Die Coat" material for which tax invoices were raised and they were



duly received, acknowledged and accepted by the Corporate Debtor and not disputed till date. Payments have been received by the Operational Creditor periodically on various dates and however payments for some invoices have not been paid by the Corporate Debtor. Total amount outstanding as on 07.02.2020 (Page 43) is reproduced hereunder:

SL No	Date	Invoice No.	Principal amount (Rs)	Interest @ 24% (Rs)	Total amount due (in Rs)
1.	29.04.2015	PSCPL/0062/15-16	5904.00	6351.23	12255.23
2.	25.05.2015	PSCPL/0140/15-16	51303.85	54323.08	105626.93
3.	04.06.2015	PSCPL/0181/15-16	51304.00	53989.76	105293.76
4.	16.06.2015	PSCPL/0218/15-16	12451.00	13005.69	25456.69
5.	01.07.2015	PSCPL/0281/15-16	12826.00	13272.34	26098.34
6.	06.07.2015	PSCPL/0300/15-16	25652.00	26461.32	52113.32
7.	13.07.2015	PSCPL/0330/15-16	25652.00	26344.60	51996.60
8.	22.07.2015	PSCPL/0363/15-16	25652.00	26194.50	51846.54
9.	03.08.2015	PSCPL/0406/15-16	25652.00	25994.45	51646.45
10.	11.08.2015	PSCPL/0446/15-16	25652.00	25861.06	51513.06
11.	22.08.2015	PSCPL/0496/15-16	12826.00	12838.83	25664.83
12.	22.09.2015	PSCPL/0629/15-16	51304.00	50321/53	101625.53
13.	22.10.2015	PSCPL/0705/15-16	12826.00	12330.28	25156.28
14.	26.10.2015	PSCPL/0719/15-16	25652.00	24593.86	50245.86
15.	03.11.2015	PSCPL/0767/15-16	51304.00	48920.93	100224.93
16.	09.12.2015	PSCPL/0840/15-16	51304.00	47720.42	99024.42
17.	21.12.2015	PSCPL/0874/15-16	12826.00	11830.06	24656.06
18.	18.07.2017	PSCPL/0364/17-18	5715.36	3135.45	8850.81
19.	11.03.2019	PSCPL/1321/19-20	19502.00	3080.34	22582.34
20.	02.04.2019	PSCPL/0005/19-20	49751.00	7146.73	56897.73
21.	17.04.2019	PSCPL/0046/19-20	49751.00	6661.66	56412.66
22.	08.05.2019	PSCPL/0131/19-20	49751.00	5982.56	55733.56

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23.	30.05.2019	PSCPL/0216/19-20	49751.00	5271.12	55022.12
24.	19.06.2019	PSCPL/0294/19-20	49751.00	4624.36	54375.36
25.	02.07.2019	PSCPL/0343/19-20	49751.00	4203.96	53954.96
		Total	803814.21	520460.15	1324274.36

3. Thus, the total outstanding operational debt of Rs.13,24,275/- (principal amount being Rs.8,03,815/- together with interest at the rate of 24% per annum Rs.5,20,460/-) fell due on 08.11.2019. After sending several reminders for repayment of outstanding amount, the Operational Creditor had sent demand notice on 07.02.2020 but the Corporate Debtor has not paid the amount but defaulted in making payments. The Operational Creditor has furnished ledger account from 01.04.2012 to 31.12.2019 maintained in respect Corporate Debtor (P.71) showing payments received and outstanding debt of Rs.8,03,709.31.

4. In its counter filed by the Corporate Debtor on 11.01.2021, it is contended that out of 25 invoices raised, 17 invoices clearly date back to the year 2015 and are barred by limitation. It is submitted that the applicant has to prove essential ingredients to treat the account as a 'running account' such as (i) value of the goods



supplied is debited in the debit column; (ii) when amounts are paid by the buyer to the seller, they are entered in the credit column; and (iii) the difference is continuously struck in the column for balance. In the present case, the transaction between the parties cannot be treated as a 'running account'. In fact, independent invoices are clubbed and treated as a 'running account' in an attempt to get over limitation. On 05.03.2021, the respondent filed additional documents along with case laws in CP/1299/2017 of Mumbai Bench and Company Appeal (AT) (Insolvency) Nos.144 to 148 of 2018 of Hon'ble NCLAT, New Delhi in Krishna Enterprises & Others -vs- Gammon India Limited.

5. The applicant filed additional type set on 21.01.2021 citing various case laws. In the written submission filed on 12.03.2021, the applicant has stated that they had adjusted the amount paid by the respondent towards the interest dues as per Section 60 of the Contract Act. The respondent intimated vide e-mail dated 29.05.2019 (Page.51) that an amount of Rs.1 lakh would be paid but the same has not been credited to the applicant's bank account. The

default in payment by the Corporate Debtor was on 23.10.2018. Further, the Judgements relied on by the respondents do not buttress their case, instead are all in favour of the applicant and the courts have consistently taken a view that Section 18 of Limitation Act is applicable for transactions of this nature and written admission extends the limitation period.

6. Further, the account is not a "*Running Account*" as stated in reply by respondent. Clearly, 17 out of 25 invoices are beyond the period of limitation. The applicant has not filed any documents to satisfy that the old invoices are valid and enforceable in the eye of law. The respondent has stated in para-8 of the reply, the payment was made to exact amount of each invoice. Hence, on perusal of pleadings and documents, we conclude that the account cannot be termed as "running account" as evidence in Invoices at Page 18 to page 42, calculation sheet at page.43. The Operational Creditor has claimed interest at the rate of 24% per annum since earliest invoice dated 29.04.2015. The claim of Applicant included principal and interest since 29.04.2015. Admittedly, out of 25 invoices 17 are

barred by limitation. The applicant has failed to prove “debt” and “default” as stated in application. However, this order does not bar the applicant to approach Civil Court for recovery, if any.

7. In view of the above, this application IBA/364/2020 stands **dismissed.** No costs.

-sd-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-sd-
(R. SUCHARITHA)
MEMBER (JUDICIAL)

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