

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-1727/ND/2019**

(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:**PRAYAG POLYTECH PVT. LTD.****...Applicant/Operational Creditor****VERSUS****M/S. PRITHVI PLASTO INDIA PVT. LTD.****...Respondent/ Corporate Debtor****Judgment Pronounced on:28.07.2020****CORAM:****DR. DEEPTI MUKESH****HON'BLE MEMBER (Judicial)****SH. HEMANT KUMAR SARANGI****HON'BLE MEMBER (Technical)***IB-1727/ND/2019**Prayag Polytech Pvt. Ltd. vs M/s. Prithvi Plasto India Pvt. Ltd.*

MEMO OF PARTIES

PRAYAG POLYTECH PVT. LTD.

Registered office at C-587, Industrial Area, Phase-1,

Bhiwadi- 301 019, Rajasthan, India

...Applicant/Operational Creditor

VERSUS

M/S. PRITHVI PLASTO INDIA PVT. LTD.

Registered office at 280, Kailash Hills, New Delhi,

Delhi - 110065

...Respondent/ Corporate Debtor

For the Applicant: Mr. Vipul Ganda, Adv. Ms. Aastha, Mr. Aman, Adv.

For the Respondent: Mr. Aayush Agarwala, Adv.

IB-1727/ND/2019

Prayag Polytech Pvt. Ltd. vs M/s. Prithvi Plasto India Pvt. Ltd.

ORDER**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by M/s Prayag Polytech Private Limited (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/s Prithvi Plasto India Pvt. Ltd. (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company having its CIN U28994RJ1982PTC012328 and having its registered office at C-587, A-585, A-585(B), A-585 (C), Phase-I, RIICO Industrial Area, Bhiwadi, Alwar, Rajasthan-301019.
3. The Corporate Debtor is a private limited company incorporated under the provisions of Companies Act, 1956 on 05.03.2004 bearing CIN U25209DL2004PTC125013 and is having its registered office at 280, Kailash Hills, New Delhi, Delhi - 110065
4. The Applicant has stated that the applicant had supplied the master batches to the Corporate Debtor to the tune of Rs.33,99,6671- (Rupees

Thirty-Three Lakhs Ninety-Nine Thousand Six Hundred and Sixty-Seven only), for which the applicant had raised invoices. It is submitted that out of the said amount, the applicant had received a sum of Rs. 30,37,5271- (Rupees Thirty Lakhs Thirty-Seven Thousand Five Hundred Twenty-Seven Only) and balance of Rs. 3,62,1401- (Rupees Three Lakhs Sixty-Two Thousand One Hundred and Forty Only) still stands due and payable towards the Corporate Debtor.

5. The Applicant submits that the last payment was made by the corporate debtor for an amount of Rs 1,12,100/- on 20 June 2018 and thereafter, the Corporate Debtor has failed to make payment and clear the invoices to the applicant thereafter, despite continuous follow-ups with the Corporate Debtor.
6. The Applicant issued a demand notice dated 04.03.2019 in Form 3 along with the invoices as contemplated under section 8 of the Insolvency and Bankruptcy Code, 2016 upon the Corporate Debtor, demanding Rs. 5,03,618/- (Rupees Five Lakhs Three Thousand Six Hundred and Eighteen only), being aggregate of the total amount of Rs. 3,62,140/- (Rupees Three Lakhs Sixty-Two Thousand One Hundred and Forty Only), and interest thereon at the rate of 24% per annum as on February 28, 2019, which was duly delivered to the Corporate

Debtor as per the tracking report filed by the applicant. The Corporate Debtor has neither responded to the aforesaid demand notice raising any dispute nor credited the legitimate dues of the applicant.

7. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the affidavit of service filed by the applicant.
8. The Corporate Debtor has replied to the application and has contended that the alleged outstanding sum of Rs.3,62,140/- was not paid since the material received in respect thereof was found to be of inferior quality and the colour of the final product manufactured by the corporate debtor using the material supplied by the Applicant was found to start fading heavily within just 15-20 days of storage. The corporate debtor had accordingly brought up the matter with the Applicant and raised a Debit Note dated 25.06.2017 on the Applicant for a sum of Rs.10,90,000/-. The corporate debtor asserts that an endorsement on the Debit Note was made by an authorized signatory for the Applicant.
9. The Applicant has filed a rejoinder controverting the averments made in the reply and has asserted that the Corporate Debtor had never made any communication with the applicant regarding any issue in relation to the quality of the goods, prior to the filing of Reply. There are no

correspondences/emails exchanged between the parties with respect to the issuance of inferior quality goods. The applicant has further submitted that the Purported Debit Note was not received/acknowledged by authorized signatory of the applicant, at any point of time or in any manner whatsoever. Further, the applicant has asserted that the Purported Debit Note does not bear the name or the official stamp of the applicant and further, it is a general business practice that operational transactions happen with the official stamp of the company or at least the name and therefore, the debit note, if accepted by a company, must bear the official stamp of the applicant.

10. As on date, the Corporate Debtor is liable to pay a sum of Rs. 5,34,574/- (Rupees Five Lakhs Thirty-Four Thousand Five Hundred and Seventy-Four only) being aggregate of the total amount of Rs. 3,62,140/- (Rupees Three Lakhs Sixty-Two Thousand One Hundred and Forty Only), and interest thereon at the prescribed rate of 24% per annum as on July 8, 2019.
11. On perusal of documents on record and submission made by the counsels, it is clearly established that the default in payment of the Operational debt has occurred by the corporate debtor and further the dispute raised by the corporate debtor with respect to the purported

debit note issued to the applicant does not manifest the authorized signatory nor bear the official stamp of the applicant. The corporate debtor is not able to establish the dispute raised prior to notice under section 8 and has tried to concoct story by creating post-dated debit note. The dispute allegedly raised by the corporate debtor is spurious in nature. Hence, the present case is fit to be admitted as the alleged dispute raised by the corporate debtor with respect to the purported debit note has never been served or acknowledged by the applicant and hence is not considered to be plausible dispute.

12. The Hon'ble Supreme Court in "**Innoventive Industries Ltd. Vs. ICICI Bank and Ors. – (2018) 1 SCC 407**" observed and held as follows:-

"The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3(6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the

moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

13. Therefore, in the given facts and circumstances, the present application is complete and the Applicant has established its claim which is payable and due by the corporate debtor. In the light of above facts and records, the present application is admitted, in terms of section 9 (5) of IBC, 2016.
14. The Applicant has filed its bank statement from the period 18.04.2016 to 12.04.2019 stating that the amount claimed or any part thereof, has not been received by the applicant nor had any person, on its behalf had received in any manner the amount due to them as required u/s. 9(3)(c) of I & B Code. The Applicant has filed an affidavit under section 9(3)(b)

dated 15.07.2019 affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.

15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. The default occurred from 20.06.2018, hence the debt is not time barred and the application is filed within the period of limitation.
17. Since the Applicant has not named the Insolvency Resolution Professional, Mr. Aditya Kumar, with registration number IBBI/IPA-001/IP-P00338/2017-18/10609 (email – aditya@ashwaniassociates.in, is appointed by this Hon'ble Tribunal as the Interim Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

18. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Aditya Kumar to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.
19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the Corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
20. A copy of the order shall be communicated to the Applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP.

A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Sd/-
(HEMANT KUMAR SARANGI)
MEMBER (T)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (J)