

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 180/9/JPR/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:

M/s Jesons Industries Limited
CIN: U24295MH1999PLC122193
904, Peninsula Tower No.1, Ganpat
Rao Kadam Marg, Lower Parel (West),
Mumbai-400013 (Maharashtra)

...Operational Creditor

VERSUS

Axiom Polypack Private Limited
CIN: U25209RJ2013PTC043271
G1, 343, Chopanki Road, RIICO
Industrial Area, Bhiwadi-301019
(Rajasthan)

...Corporate Debtor

For Petitioner (s) : Naresh Kumar Sejvani, Adv.

ORDER PRONOUNCED ON: 01.06.2022

ORDER**Per: Shri Raghu Nayyar, Technical Member**

1. This application is filed by the Jesons Industries Limited ('Applicant' / 'Operational Creditor'), claiming to be an Operational Creditor, under Section 9 of the Insolvency and Bankruptcy Code ('IBC' / 'Code'), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of Corporate Insolvency Resolution Process ('CIRP') against the Corporate Debtor.
2. The Applicant is a Public Limited Company incorporated on 12.10.1999 under the provisions of the Companies Act, 1956. The application is filed through the authorized signatory, Mr Vipin Kumar Mittal, who is duly authorized to sign this application *vide* Board Resolution dated 17.11.2018. The Operational Creditor is a manufacturer of Synthetic Adhesives, Vinyl Acetate, and Acrylic Emulsion and has supplied goods to Corporate Debtor on an "on order" basis from time to time.
3. Axiom Polypack Private Limited ('Corporate Debtor' / 'Respondent') is a private limited company incorporated on 19.07.2013 under the Companies Act, 1956. The registered office of the Corporate Debtor is G1, 343, Chopanki Road, RIICO Industrial Area, Bhiwadi, Rajasthan – 301019, and hence it falls under the jurisdiction of this Adjudicating Authority.

4. The Applicant submitted that it had raised three invoices in the past against the Respondent, and the last Invoice No. JIL/V/15-16/2250 was issued on 19.11.2015 whereby goods were sold, supplied and delivered as per the specification of the Corporate Debtor. Despite this, the Corporate Debtor has not paid its outstanding dues and is giving assurances while dilly dallying on its liability for one reason or another. Copy of Tax Invoice cum Challan dated 19.11.2015 is annexed *vide* Page No. 56 of the application.
5. Further, the Operational Creditor submits that the debt fell due on 19.11.2015 when the invoice was issued. However, the Corporate Debtor has provided the confirmation and acknowledgement through Form C under the Central Sales Tax Act, 1956 on 10.10.2016. The Form C was issued under the seal and signature of the director of the Corporate Debtor, namely 'Ms. Asha Tiwari' whereby it squarely admits the receipt of the goods and debt. Therefore, the present application is within the period of limitation as a fresh period limitation began on 10.10.2016.
6. The Applicant issued and served multiple Demand Notice dated 21.07.2018, 31.01.2019 and 20.05.2019 to the Respondent under Section 8 of the Code as per Form 3 as prescribed under Rule 5 of the Rules at its registered office, demanding a sum of Rs. 5,42,566/- along with interest @24% per annum on the invoice. The Respondent neither paid the outstanding debt nor raised a dispute regarding the outstanding debt till

the filing of the present petition. The demand notice was accompanied by computation of interest, details of invoices, and relevant dates of default. Copy of Demand Notice dated 20.05.2019 and Consignment Receipt and Tracking Reports dated 20.05.2019 sent to the Respondent's factory address, available alternate address & email address of the Corporate Debtor are annexed on Page No. 52 and 62 of the Application, respectively. Additionally, it sent the copy of the Demand Notice to the addresses of the individual directors of the Corporate Debtor.

7. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 5,13,079/- (Five Lakh Thirteen Thousand Seventy-Nine Only), as an outstanding amount, as reflected in Part IV of Form - 5 filed with the application.

Part IV

PARTICULARS OF OPERATIONAL DEBT

1.	Total Amount of Debt, Details of Transactions on account of which debt fell due, and the Date from which such debt fell due.	<u>Total amount of debt:</u> Rs. 2,94,873/- (Rupees Two Lakh Ninety-Four Thousand Eight Hundred Seventy-Three Only)
2.	Amount claimed to be in default and the date on which the default occurred	<u>Amount Claimed to be in default:</u> Rs. 5,13,079/- (Five Lakh Thirteen Thousand Seventy-Nine) <u>Principal amount -:</u> Rs. 2,94,873/-

		<p><u>Interest Amount @24% p.a. from the period of 19.11.2015 to 18.11.2018 -:</u> Rs. 2,18,206/-</p> <p>(Computation of Amount to be claimed from Corporate Debtor is Annexed <i>vide</i> Page No. 35 of the application)</p> <p><u>Date on which default occurred:</u> The debt fell due on 19.11.2015 on the date of issuance of Invoice No. JIL/V/15-16/2250</p>
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8. The Operational Creditor has in Part IV claimed a total of Rs. 5,13,079/- which is the same as the First and Second Demand Notice dated 21.07.2018 and 31.01.2019, respectively. The said amount includes the principal amount of Rs. 2,94,873/- along with interest amount @ 24% per annum from 19.11.2015 to 18.11.2018. Thereafter, *vide* Third Demand Notice dated 20.05.2019, the Operational Creditor claimed Rs. 5,42,566/- which is inclusive of further interest from 19.11.2018 to 20.05.2019.
9. This Adjudicating Authority, in its Order dated 15.11.2019, proceeded *ex-parte* against the Corporate Debtor as no representation was made, despite the service of notice by the Registry.
10. Furthermore, it is well established that the defence of a plea of limitation is always available to the opposite party. In cases where the Order is to be passed *ex-parte*, the Adjudicating Authority has to be

extra cautious, vigilant and strictly follow the limitation laws, as Limitation Act, 1963 is duly applicable to the IBC.

11. The Sales Tax Declaration Form counted on by the Operational Creditor is the sole document/ representation that brings its case within the limitation period. It is a well-settled principle of the higher fora that Sale Tax Declaration can at best be considered as an acknowledgement of the goods received but does not establish the jural relationship between a debtor and creditor.
12. The Hon'ble Calcutta High Court in the case of *Zion Steel Ltd. v. Subtleweigh Electric (India) Private Limited, C.P. No. 326 of 2013* deals with the issuance of the 'C' Form under the Central Sales Tax Act vis-à-vis its influence on the Limitation Act, 1963 has held

'32. ... Section 18 can be pressed when there is a valid acknowledgment of the subsisting liability and not the past liability. The words used in the acknowledgment must sufficiently indicate the circumstances of the jural relationship as that of her debtor and creditor and there must be a manifest intention to admit such jural relationship. The object behind the issuance of the Sales Tax Declaration Form is to avail of the reduce rate of sales tax.

The Declaration Form does not require to contain the statements relating to the payments already made or to be made but can at best be a best piece of evidence relating to the contract of sale and the goods being sold and delivered at a price agreed upon. The letter which contains the Declaration Form does not indicate the acknowledgment of the liability as well as the admission of the existence of a jural relationship. There is no express intention of the Company to acknowledge the liability in a letter containing the Declaration Form.'

13. Further, the Hon'ble Delhi High Court in *Lamicoat International Pvt. Ltd. v. M/s Galore Prints Industries Ltd., Co. Pet. 331/2009 & Co. Appl. 950/2009* relied on *M/s Alliance Paints and Varnish Works Pvt. Ltd. v. Hari Kishan Gupta, 168 (2010) DLT 591*, which was passed by another co-ordinate bench of the same High Court. The following has been observed in the aforesaid matters:

'32. Firstly, there is no acknowledgment of a present and subsisting liability. The said form can at the most be treated as an acknowledgment of the goods received under the contract of supply of goods and the price fixed to be paid for them. Whether or not payments were effected thereafter, or any amount remains due or outstanding cannot be inferred from the said "C" form in the facts and circumstances of this case. Secondly, no intention to acknowledge a liability can be inferred from the contents of the said "C" form. Thirdly, one cannot establish a jural relation of debtor and creditor from the contents of the said "C" form. Thus, the essential requirements for a writing to constitute acknowledgment are missing from the document.'

14. The default in the debt payment should be established to trigger proceedings under Section 9 of the IBC. This Adjudicating Authority has perused all the relevant papers and relies upon a detailed consideration of the application and documents filed by the Applicant and available records. It is seen that no financial statements or books of accounts have been submitted for the subsequent years after the debt

fell due. Copy of Ledger Account for 01.04.2015 to 31.03.2016, which is of the year when the debt fell due, is annexed *vide* Page No. 38 of the application, which is not indicative of proving default. However, in the present matter, neither the default is established, nor the application is under limitation.

15. In the light of aforesaid observations, CP No. (IB) 180/9/JPR/2019 is dismissed.

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