

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

Company Appeal (AT) (Insolvency) No. 261 of 2025

**[Arising out of the Order dated December 11, 2024, passed by
the 'Adjudicating Authority' (National Company Law Tribunal,
Court-V, Mumbai Bench) in C.P(IB) No.177 /MB/2023]**

IN THE MATTER OF:

OM SAI MOULDS & PLACTICS

A Partnership Firm
Having its Office at:
D-111, MIDC, Ambad,
Nashik – 422 010, Maharashtra
Email: niilesh.dahanukar@omsaimoulds.com

...Appellant

Versus

1. Pllastomax Engineering Private Limited

A Company incorporated under the provisions
of Companies Act, 2013 (as amended till date),
Having its Registered Office at:
Flat No.7, Shriram Apartment,
College Road, Amandwan Colony,
Nashik – 422007, Maharashtra
Email: ashwini.gaurang@gmail.com;
accounts@pplastomax.com
Mobile: (+91) 9820063929

Also At:
SR. No.176/ 1/2, P. No.52,
Shri Guru Gajanan Industrial Estate,
Villoli Shivar, Ambad, Nashik,
Maharashtra-422010

...Respondent No. 1

2. Sheetal Dahanukar

Flat No. 2605, Wing-13,
Casa Scereno, Lodha Amara, Kolshet Road,
Thane (West) - 400607, Maharashtra.
Email: sheetalj9@gmail.com;
Mobile No: (+91) 9892653381

...Respondent No. 2

Present:

For Appellant : Mr. Vijay Nair, Mr. Arpit Dwivedi, Mr. Manmeet
Nagpal, Ms. Sakshi Kapoor, Advocates.

For Respondent :

ORDER
(Hybrid Mode)

[Per: Arun Baroka, Member (Technical)]

The Appellant – Om Sai Moulds & Plastics has filed an Appeal against the dismissal of Section 9 Application 9 filed before the Adjudicating Authority. The claims debt and default a sum of ₹1,27,91,513/- with includes principal amount of ₹1,21,76,420/- and interest of ₹ 6,15,093/-.

Brief facts of the case

2. The Appellant-OC-Om Sai, an Operational Creditor, filed the Section 9 Petition for recovery of ₹ 1.27 crore (inclusive of interest) against the Corporate Debtor for goods supplied between 2021 and 2022. The goods, being plastic injection moulds, were delivered with proper invoices and duly acknowledged delivery challans. No disputes were raised at the time of supply. Despite multiple reminders and a statutory Demand Notice, the Respondent failed to make the payment. The NCLT dismissed the Section 9 Petition on the ground that the claim was motivated by personal disputes between the parties, specifically the matrimonial dispute between Mr Nilesh Dahanukar (partner of the Appellant) and Mrs Sheetal Dahanukar (director of the Respondent), and allegations of oppression and mismanagement by minority shareholders. The NCLT imposed a cost of ₹ 10 lakh on the Appellant for filing a frivolous and vexatious Petition. The Appellant contends that the NCLT erred in dismissing the Section 9 Petition based on personal disputes, which do not qualify as a "dispute" under Section 5 (6) of the Code. It is claimed that the Code mandates that the dispute must relate to the existence of the debt,

quality of goods, or breach of representation or warranty. The disputes raised by the Respondent were unrelated to these criteria. The Corporate Debtor admitted the debt and default, and there was no objection raised regarding the quality of goods supplied. The NCLT lifted the corporate veil to consider personal disputes and minority shareholder conflicts, which are irrelevant to operational debt and default under the Code. The Appellant had paid GST for the transactions, further validating the genuineness of the debt. The Appellant seeks to set aside the Impugned Order and admit the Section 9 Petition to initiate the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor.

Submissions of the Appellant

3. The Appellant, an Operational Creditor, filed Section 9 Petition for recovery of ₹ 1.27 crore (inclusive of interest) against the Corporate Debtor for goods supplied between 2021 and 2022. The goods were delivered with proper invoices and duly acknowledged delivery challans. No disputes were raised at the time of supply. Despite multiple reminders and a statutory Demand Notice, the Respondent failed to make the payment. The NCLT dismissed the Section 9 Petition on the ground that the claim was motivated by personal disputes between the parties, specifically the matrimonial dispute between Mr Nilesh Dahanukar (partner of the Appellant) and Mrs Sheetal Dahanukar (director of the Respondent), and allegations of oppression and mismanagement by minority shareholders. The Appellant contends that the NCLT erred in dismissing the Section 9 Petition based on personal disputes, which do not qualify as a "dispute" under Section 5 (6) of the Code. The Code

mandates that the dispute must relate to the existence of the debt, quality of goods, or breach of representation or warranty. The disputes raised by the Respondent were unrelated to these criteria. The Corporate Debtor admitted the debt and default, and there was no objection raised regarding the quality of goods supplied. The NCLT incorrectly lifted the corporate veil to consider personal disputes and minority shareholder conflicts, which are irrelevant to operational debt and default under the Code. The Appellant had paid GST for the transactions, further validating the genuineness of the debt. The Appellant seeks to set aside the Impugned Order and admit the Section 9 Petition to initiate the Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor.

4. The Respondent Company had admitted the claims of the Appellant. The Code for the purpose of Section 9 Petition mandates that the "dispute" ought to be a dispute in relation to existence of the amount of debt; quality of goods or services; or the breach of a representation or warranty. Section 5 (6) of the Code defines "dispute" as under:

“(6) "disputes" includes a suit or arbitration proceedings relating to-

- (a) the existence of the amount of debt
- (b) the quality of goods or service
- (c) the breach of a representation or warrant”

Section 4 (11) of the Code defines "debt" as a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt. Section 4 (12) of the Code defines "default" as non-payment of debt when whole or any part or instalment of the amount of debt has

become due and payable and is not paid by the Debtor or the Corporate Debtor, as the case may be. In view of above, the non-payment of invoice amount by the Respondent post supply of goods pursuant to the Work Order constitutes a legal and valid "debt" under the Code.

5. The dispute alleged by Mrs Sheetal Dahanukar, one of the directors of the Respondent-CD-Plastomax Engineering were not "disputes", and they fall outside Section 5 (6) of the Code - warranting rejections of the Section 9 Petition as the same did not relate to the existence of the amount of debt claimed by the Appellant or quality of goods or services provided by the Appellant to the Respondent. The disputes alleged by one director of the Respondent were relating to matrimonial dispute between her and one of the partners of Appellant being spouses. Similarly, another dispute alleged by one of the Director of the Respondent was related to pending oppression of minority shareholder of the Respondent Company and mismanagement of affairs of the Respondent Company. The Section 9 Petition arose out of non-payment of invoices raised by the Appellant-OC-Om Sai against supply of plastic injection moulds/dies requested for production of irrigation parts against several Work Orders issued on the Appellant by the Respondent during the year 2021. The pendency of dispute between the shareholders of Respondent Company and/or matrimonial dispute between one of the partners of the Appellant and director of Respondent Company, who happen to be husband and wife cannot be a ground for rejection of Section 9 Petition. None of the grounds failing under Sub-Section 5 (ii) of Section 9 of the Code

existed for rejection of the Section 9 Petition. Sub-Section 5 (ii) of Section 9 provides that Section 9 Petition can be dismissed by the Adjudicating Authority if-

- (a) The Application made under Sub-Section (2) is incomplete
- (b) There has been payment of the unpaid operational debt
- (c) The Creditor has not delivered the invoice or notice for payment to the Corporate Debtor
- (d) Notice of dispute has been received by the Operational Creditor or there is a record of dispute in the information utility
- (e) Any disciplinary proceeding is pending against the proposed Resolution Professional

6. The disputes alleged by the Respondent were not disputed in relation to existence of debt, quality of goods and service and/or breach of representation or warranty. In the plea raised by one of the Director of Respondent Company that one of the partner of Appellant was running and managing the Respondent and she was merely a namesake shareholder and Director is considered for the sake of arguments without admitting any liability arising therefrom then the Appellant would not have filed and instituted the Section 9 Petition seeking insolvency of its own Company. Thus, Section 9 Petition was liable to be admitted at the threshold.

7. Despite having received the emails dated 25.08.2022 and 09.11.2022 and also Demand Notice dated 29.11.2022, the Intervenor/Director of the Respondent did not dispute the transaction with the Appellant against which payment was sought nor had filed any suit/litigation claiming that the Appellant had forged and fabricated the Works Orders as alleged to contest the Section 9 Petition. Further, the Appellant had deposited GST payment to

the tune of Rs 18,57,420/- on the basis of e-way bills for the material supplied to the Respondent/Corporate Debtor. The Appellant would not have deposited such a hefty sum only to cause harassment to the wife.

Submissions of Respondent No 2

8. Bases the materials placed on record, we note the contentions of the Respondent's Director-Mrs. Sheetal Dahanukar - intervener in original application before the adjudicating authority.

9. The Petitioner and the Respondent Company have direct nexus with each other and effectively are governed and controlled by same set of people. As such the Deponent has not even been provided the hard/physical copy of the present Petition.

10. The goods alleged to be supplied were never actually supplied to the Respondent Company. Back-dated invoices and purchase orders were signed by Ashwini on Nilesh's insistence and the same is clear from Reply filed by Respondent Company. The delivery note annexed to the Petition does not bear signature of any of parties of Respondent Company, which clearly shows none of goods as alleged were supplied by the Petitioner firm. Furthermore, generating e-way bill does not in any way confirm or show that the material is being delivered rather the same is generated by Petitioner firm. The Petitioner firm had all means, that is, signed back dated purchase orders and invoices to generate false e-way bills. This clearly shows that Petitioner firm has forged the documents to pressurise the Deponent and put the Respondent and, hence, the Deponent under financial burden.

11. Due to certain astrological reasons and to avail the subsidies for women led Company and in order to show that the Company is owned and led by women, the Deponent and Ashwini were made Directors of the Respondent Company. However, the Company i.e. Respondent-CD-Plastomax Engineering and its day-to-day affairs were run by Nilesh and Gaurang. Respondent's Director-Mrs. Sheetal Dahanukar had limited role in running the Company except signing certain documents and forms etc. Respondent No 2 was not at all involved in the day-to-day business activities of the Respondent Company and it was in fact Nilesh viz. the partner of the Petitioner itself, along with Gaurang who used to run the Respondent Company as their own. Taking advantage of the said fact, Nilesh has 'created' fake invoices merely in order to bring the present frivolous petition without there being any real underlying business/trading transactions between the Petitioner and the Respondent Company.

12. The registered and official email address/ID of Respondent Company viz. niilesh.dahanukar@omsaimoulds.com, as shown in the master data of the Respondent Company, is in fact the personal work email ID used by Nilesh for the official and business purposes of the Petitioner firm and in the name of the domain of the Petitioner firm. The said email ID, just like the Respondent Company, is completely managed and operated by Nilesh viz., the partner of the Petitioner herein. This clearly shows the extremely close nexus between the Petitioner and the Respondent Company as well as their management and operations, which are being run by the same email id for

the convenience of Nilesh who in fact runs the Respondent Company as well making it easy for Nilesh to create fake paperwork forming the basis for the present frivolous proceedings.

13. Further, the registered address of the Respondent Company viz. Flat No. 7, Shriram Appt, PNO-37 Anandwan Colony, Nashik - 422007, Maharashtra, as shown in the master data of the Respondent Company, is in fact the personal residential address of Nilesh viz. the partner of the Petitioner firm. This further clearly shows the extremely close nexus between Nilesh and the Respondent Company as well as their management and operations. which are being run from the same address for the convenience of Nilesh who in fact runs the Respondent Company as well making it all the more easier for Nilesh to create fake paperwork forming the basis for the present frivolous proceedings given his control over the registered address of the Respondent Company entities and their paperwork/documentation maintained at one and the same address.

14. Nilesh is not only Respondent No 2's husband but also the partner of the Petitioner firm but he was also placed at the post of Secretary of the Respondent Company as stated above.

15. The captioned Petition is a frivolous Petition filed with nothing but a malafide intention and by "creating" fake invoices in the name of the Respondent Company in connivance with Ashwini and, hence, it should be dismissed by imposing heavy cost on the Petitioner. The present proceedings

are a classic example of revenge litigation. The Work Orders and invoices, forming the subject matter of the present dispute, have been created out of thin air without any actual underlying business transactions as allegedly shown by the said work orders and invoices. Furthermore, none of the Work Orders/purchase orders contain my signatures and only contains signature of Ashwini and Gaurang which also clearly shows nexus between the parties.

16. The Reply to Demand Notice is made without proper approval/resolution passed by the Respondent Company and furthermore, the Deponent was never referred to in this matter.

17. Without prejudice, it is pertinent to note that Ashwini herself in the Reply has mentioned she has signed back dated purchase orders and invoices to the Company on Nilesh's instructions. Entire reading of Reply dated 03.01.2023 shows the nexus between the Petitioner and Ashwini, Gaurang. Furthermore, Ashwini has mentioned in the Reply as it is pertinent to state that Sheetal Dahanukar never attended any of the meetings of the Company and all the decisions of the Company were taken by NPD. This is evident from various email correspondences sent by NPD with the Company and Mr Gaurang Ghodi that NPD was de facto a shareholder and Director of the Company.

18. Nilesh is one of the partners of the Petitioner, Secretary of the Respondent Company and the husband of one of Directors of the Respondent Company. Thus, it is clear that Nilesh had plenty of access not only to the

Respondent Company (given the ownership cum governing structure mentioned in the foregoing paragraphs) but also Petitioner as well as the documentation pertaining to the business relationship/transactions between the Petitioner and the Respondent Company. Furthermore, Nilesh has access to registered office of the Company and to Company's seal, stamp and letterheads and he also had access to Respondent's Director-Mrs. Sheetal Dahanukar digital signature which was kept in registered office of the Company.

19. The entire mischief has been played by Nilesh viz. partner of Petitioner firm only to wreak havoc in the life of wife i.e. Director of the Respondent Company and exact revenge against her due to the ongoing matrimonial disputes between Nilesh and Respondent's Director-Mrs. Sheetal Dahanukar. Nilesh and Respondent No. 2 are currently going through a nasty divorce and several other ancillary matrimonial and criminal proceedings related to the matrimonial disputes and the same are now pending.

20. The bitterness of the partner of the Petitioner firm viz. Nilesh becomes clear from the fact that almost all of the Work Orders and invoices forming the basis of the captioned Petition are dated after April 2021 viz. after the date on which disputes between Nilesh and Respondent No. 2 grew toxic and strenuous and she left her matrimonial house viz. the registered address of Respondent Company as mentioned above. The timing of the said invoices

and work orders clearly show that all of it has been done by Nilesh in his spite against Respondent No. 2 over our matrimonial disputes.

21. Further, a FIR dated 12.05.2021, No. 126 of 2021 has also been registered against Nilesh and the related criminal proceedings are currently underway. Also, criminal proceedings namely Cri MA No. 1290 of 2021 filed by Respondent No. 2 against Nilesh for the offence of 'forgery' before the Court of the Addl Chief Judicial Magistrate, Nashik. In the said proceedings, vide an Order dated 07.11.2022, the Court found sufficient grounds to proceed against Nilesh for offence punishable under Section 465 of IPC and, hence, Court was pleased to issue process of summons against Nilesh viz. partner of the Petitioner firm, and to register a Summary Criminal Case against the Petitioner. Hence, Summary Criminal Case No. 5613 of 2022 came to be registered. It is pertinent to note that only after passing of the Order dated 07.11.2022, the Demand Notice dated 29.11.2022 was issued by the advocate for Nilesh against the Respondent Company merely as a counterblast to the said Order dated 07.11.2022.

22. After filing of the FIR and under apprehension that Nilesh will create more fake bills and withdraw monies from the Respondent Company, Respondent No. 2 stopped/blocked the operations of the bank account of the Company in June, 2022. Hence, as the operations of the bank account was blocked, Nilesh, through his firm, that is, the Petitioner started raising back-dated invoices and further fake invoices even though no goods were supplied

to the Respondent Company only to raise financial obligations against Respondent No. 2 who is a Director of the Respondent Company. Ashwini has signed back dated purchase orders and invoices, the same is clear from the Reply to Demand Notice. Furthermore, it is pertinent to note that none of the delivery notes annexed with the Petition are signed by the Respondent Company, which shows that goods as alleged were never delivered to the Respondent Company.

23. It clearly shows the malafide intention of Nilesh (acting through the Petitioner firm) in engaging in frivolous and false litigation like the captioned Petition. Now these proceedings are nothing but a revenge litigation created by Nilesh in order to wreak havoc in my life in view of the pending matrimonial disputes. It is an attempt to not buy Respondent No. 2's shares in the Respondent Company but to dissolve the Respondent Company, pocket the alleged claims amounts and then revive the Company and operate it by kicking Respondent No. 2 out or to make sure the same exists just on paper with no money and/or assets making it impossible for Respondent No. 2 to run the Respondent Company even after its revival and completion of CIRP proceedings, if at all.

24. Before the Demand Notice was raised by the Petitioner, there were mediation talks going on between Respondent No. 2, Nilesh, Ashwini and Gaurang wrt buying of Respondent No. 2's shares. However, the Petitioner, along with Ashwini and Gaurang, has resorted to this method for kicking the

Deponent out of the Respondent Company. Further, the nexus is clearly established as Ashwini and Gaurang replied to the Legal Notice and failed to appear before this Tribunal on behalf of the Respondent Company.

25. On the one hand Nilesh is trying to make sure that the insolvency of the Respondent Company goes through by showing that the Respondent Company is unable to pay its dues and is trying to reduce Respondent No. 2's financial standing down to zero and on the other hand is taking a stance in the maintenance proceedings (filed by me) decided before the Family Court, Nashik, that Respondent No. 2 is a Director of the Respondent Company and owns 49% stake in the same and, hence, cannot be said to be one who is not capable for earning a livelihood for herself. On the basis of the said stance, the Family Court also rejected interim maintenance as prayed for by Respondent No. 2. Thus, Nilesh is trying to blow hot and cold at the same time and this Tribunal should be pleased enough to take a note of the same and stop the Petitioner at the threshold by dismissing the captioned Petition in limine.

26. Nilesh, the Petitioner firm, Gaurang (through Pan Products) and Ashwini, are all conspiring in order to gain financial advantage to all of them with regards to an outstanding loan amount of ₹ 42,12,000/- due and payable to SIDBI. A loan of the said amount under loan agreement dated 21.12.2020 was borrowed by Respondent Company and Pan Products as co-borrowers and in lieu of the same, a charge has been created on certain moveable

properties and a fixed deposit belonging to the Respondent Company, as more particularly stated in the said agreement dated 21.12.2020. Also, the claim in the captioned Petition is conveniently higher than that of the outstanding loan which can be repaid from the claim amount herein (as sought to be recovered in the insolvency process if the Petition gets admitted) which means that effectively the Respondent Company will repay the entire loan on Respondent's Company as alienation of the assets of the Respondent Company will render the value of my share/stake in the Respondent Company effectively nil since the Respondent Company doesn't have any other major assets. There can also be some of my personal liability since the assets of the Respondent Company is clearly not enough to make up for the claim amount.

27. If the captioned Petition is actually admitted and CIRP proceedings are initiated, there will be claims from Pan Products as well since they have also created a fake claim based on fabricated documents/invoices which come up to ₹ 70,00,000/-. The same is also done with the aid and support of Ashwini who is also a partner in Pan Products along with her husband viz Gaurang. Further, Pan Products is also the co-borrower of the said loan of ₹ 42,12,000/- and their conduct, as described in the oppression mismanagement Petition is to completely try and evade the burden of repayment of the said loan and push the brunt of the same completely on the Director, that is, Respondent No. 2. All of this highlights a clear scheme of fraudulently creating claims and filing the present frivolous petition against the Respondent Company only to

corner Respondent No. 2 and put the brunt of losses and repayment of loan singly on Respondent No. 2.

28. Furthermore, Respondent No 2 claims that the partners of the Petitioner along with the other Director and Gaurang have conspired together by creating fake bills, documents and misusing the official documents of the Respondent Company and used fake bills etc. without her knowledge and consent. Furthermore, it is claimed that many financial documents, transactions documents etc. were signed with Respondent No 2's digital signature without her knowledge and consent. Hence, Respondent No 2 has also filed a police complaint to Officer-in-Charge/Senior Police Inspector, Kasarvadavli Police Station, Thane, 400615, on 01.06.2023 via email.

29. Also, another matter was pending before the Micro Small Medium Enterprise Facilitation Council, wherein the Council was dealing with similar cause of action and similar amounts had been claimed by the Petitioner herein before this Tribunal. On filing of Intervention Petition by Deponent, the Petitioner withdrew the same. This has been done with the sole intention to get an award to show that there is no pre-existing dispute and to indulge in forum shopping. This Tribunal should not consider the Company Petition filed by the Petitioner on its merits.

30. The Petitioner did not include Respondent No 2's Reply in the Petition and the Petitioner as well as Ashwini failed to inform the Deponent about actions taken on behalf of the Respondent Company. This non-disclosure and

lack of transparency clearly shows that this is a well-planned Company Petition to dissolve the Respondent Company and discharge its liabilities for pennies on dollar by the Petitioner and the Respondent Company.

31. It is claimed that Respondent No 2's digital signature was used without her knowledge and consent in financial transactions, which further raises concerns about the authenticity of the claims in the Petition. The Respondent No 2 blocked the operations of the Respondent Company Company's bank account due to apprehension of misuse by the Petitioner. The Company Petition is a reaction to legitimate actions taken by the Deponent to protect the company's finances. The Respondent No 2 claims that the present Company Petition has been filed by the Petitioner in connivance with the Respondent Company and the other director and the claim is false claim. The Claim has been filed as counter blast to marital proceedings going on between the Deponent and husband of the Deponent. Hence, on this ground the Petition should be dismissed with costs.

Appraisal

32. Recapitulating the case in hand, we note that the Appellant-OC-Om Sai filed the Section 9 Petition under the IBC to seek the initiation of the Corporate Insolvency Resolution Process against Respondent-CD-Plastomax Engineering. The Appellant's claim arises from operational debt of about ₹1.27 crore (including interest) for goods supplied by the Appellant-OC-Om Sai under eight work/purchase orders issued between 2021 and 2022. It is contended that the Appellant-OC-Om Sai provided invoices, delivery challans,

and received no objections from the Respondent-CD-Plastomax Engineering at the time of delivery. The Appellant-OC-Om Sai issued a statutory demand notice on 29.11.2022, claiming Appellant-OC-Om Sai ₹ 1.27 crore, which was acknowledged by the Respondent-CD-Plastomax Engineering on 12.12.2022 admitting the debt but offering frivolous pleas regarding non-payment. In its reply to the demand notice dated 12.12.2022, the Respondent acknowledged the delivery of goods but claimed that the payment was contingent on the Respondent becoming profitable, which constitutes an acknowledgment of debt. Despite multiple reminders and a statutory demand notice under Section 8 of the IBC, the Corporate Debtor failed to make the payment for the goods supplied.

33. On 24.01.2023, the Appellant filed the Section 9 Petition for initiating CIRP against the Corporate Debtor due to the default in the payment of ₹1.27 crore. However, on 25.01.2023, the Respondent's Director-Mrs. Sheetal Dahanukar- who is the wife of Director of the Appellant firm filed a counter petition under Section 241-242 of the Companies Act, 2013, to address shareholder disputes and involving the partner of the Appellant as a party. On 31.10.2023, Mrs. Sheetal Dahanukar filed an Intervention Application (No. 60 of 2023) seeking to intervene in the Section 9 Petition and raise objections against it.

34. On 11.12.2024, the NCLT - Adjudicating Authority dismissed the Section 9 Petition of the Appellant, finding it to be a "blatant attempt to misuse the process of law" for personal agendas between the parties. The

NCLT - Adjudicating Authority highlighted the personal disputes between the parties, including a matrimonial dispute involving one of the partners of the Appellant and the Respondent's director, and shareholder oppression and mismanagement allegations. The NCLT - ADJUDICATING AUTHORITY also imposed a cost of INR 10 lakh on the Appellant for filing a frivolous and motivated petition.

35. Before the Impugned Order on 11.12.2024, on 31.10.2023, an Intervention Application (No. 60 of 2023) was filed by Mrs. Sheetal Dahanukar in the ongoing Section 9 Petition, who is one of the directors of the Corporate Debtor (Respondent). The intervention was intended to raise objections against the Section 9 Petition and seek the dismissal of the petition based on the personal and matrimonial disputes between the parties involved. Mrs. Sheetal Dahanukar contended that the Section 9 Petition was a strategic manoeuvre to settle personal grievances, particularly related to matrimonial disputes between her and Mr. Nilesh Dahanukar, one of the partners of the Appellant Company. She also brought forward the issue of oppression and mismanagement in the Respondent-CD-Plastomax Engineering, claiming that there were shareholder disputes affecting the Respondent Company, which she argued were more pertinent to the dispute than the financial claims of the Appellant. The Section 9 Petition filed by the Appellant was dismissed by the Ld. Adjudicating Authority (NCLT) raising serious doubts about the genuineness of the claim. The reasons cited included:

- The close relationships between the parties involved, notably Mr. Nilesh Dahanukar (Partner of the Appellant) and Mrs Ashwini Gaurang Ghodi (Partner of the Respondent), and
- Allegations of personal disputes, such as a petition for oppression and mismanagement filed by Mrs. Sheetal Dahanukar (Director of the Respondent).

The Impugned Order notes that the petition was filed with ulterior motives to advance personal agendas, rather than to resolve corporate debt.

36. The Appellant is seeking the following reliefs:

- Setting aside the Impugned Order dated 11.12.2024 passed by the Ld. NCLT, Court-V, Mumbai Bench, in C.P(IB) No. 177/MB/2023.
- Allowing the Section 9 Petition and initiating the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
- Setting aside the imposition of costs of INR 10 lakh.
- Directing the Respondent to pay the outstanding debt of INR 1.27 crore along with interest as per the applicable terms.

37. We have heard the Learned Counsel for the Appellant and also perused the material on record.

38. Application on behalf of Appellant under Section 61(2) of the Insolvency & Bankruptcy Code was filed read with Rule 11 of National Company Law Appellate Tribunal, 2016 seeking condonation of delay of 9 days in filing of the appeal arising out of impugned order dated 11.12.2024. This was condoned vide order dated 21.02.2025.

39. While going through the Section 9 Application, we find that Mr. Nilesh Dahanukar, partner of the Petitioner firm, is the husband of the Intervener, Mrs. Sheetal Dahanukar, who is a director of the Respondent Company. Furthermore, Mr. Nilesh Dahanukar has been acting as the Secretary of the Respondent Company. We find close nexus between the Appellant Firm and the Respondent Company as is evident from the Agreement for Term Loan cum Hypothecation dated 21.12.2020, entered between the Respondent Company, i.e., M/s Pllastomax Engineering, and Pan Products, wherein Mr. Nilesh Dahanukar has signed the said Agreement as the Secretary of the Respondent Company. Also Mr. Nilesh Dahanukar is the Secretary of the Respondent Company and is in such a position to have complete access to the Respondent Company's privileged information. Further, we find that the registered email address of the Respondent Company is 'niilesh.dahanukar@omsaimoulds.com', which is the Email address mentioned in the Master Data of the Respondent Company. The aforementioned email address contains the domain name of the Petitioner Firm, i.e., Om Sai Moulds, and the name of the partner of the Petitioner Firm i.e. Mr. Nilesh Dahanukar. Therefore, we find that the registered email address of the Respondent Company is the Email address of Mr. Nilesh Dahanukar, partner in the Appellant's Firm, and the said Email address could be used for official communication of the Petitioner Firm. Therefore, in light of the fact that the partner of the Petitioner Firm, Mr. Nilesh Dahanukar, was placed at the post of Secretary of the Respondent Company, it becomes clear that Mr. Nilesh Dahanukar was very well involved in the management

and operations of the Respondent Company as both the Companies are being run by the same email address. Otherwise also the letterhead of the Petitioner Firm bears the same Email address as that of the Corporate Debtor Company. Furthermore, it is also noted that the registered address of the Respondent Company is the personal residential address of Mr. Nilesh Dahanukar, the Petitioner. Therefore, we note that the Petitioner Mr. Nilesh Dahanukar was in a position to influence the working of the Respondent Company and is capable of exercising control over its affairs and has also access to its registered email address, company seal end of this.

40. On perusal of the documents placed on record, we find that the Intervener, Mrs. Sheetal Dahanukar, one of the Directors of the Respondent Company, is a minority shareholder in the Respondent Company, owning 49% stake in the said Company and Mrs. Ashwini Ghodi is the other Director in the said company, having 51% shareholding. Further, upon perusal of the reply dated 12.12.2022 filed by the Respondent Company in response to the Demand Notice dated 29.11.2022, it has come to light that, as contented in the reply, *"Mrs. Sheetal Dahanukar never attended any of the meetings of the Company and all the decisions of the Company were taken by NPD ("Nilesh Dahanukar")"*. Further, it was also contented in the said reply that *"NPD insisted that Ashwini Ghodi should sign back dated purchase orders and raised various invoices to the Company"*. The relevant extract from the reply of the Respondent-CD-Plastomax Engineering dated 12th December 2022 is as below:

“ ...

7. However, since May 2021, the operations of the Company were obstructed owing to the personal disputes between NPD and NPD's wife Mrs. Sheetal Dahanukar who is named as a director/shareholder of the Company. **It is pertinent to state that Sheetal Dahanukar never attended any of the meetings of the Company and all the decisions of the Company were taken by NPD.** This is evident from various email correspondences sent by NPD with the Company and Mr. Gaurang Ghodi that NPD was de facto a shareholder and director of the Company. Meanwhile, Ashwani Ghodi kept on investing money in the Company.

8. In June 2021, NPD attempted to transfer the shares held in the name of Sheetal Dhanukar to himself. However, he was unsuccessful. Moreover, both the parties continued incurring expenses towards business operations of the Company and it was reagreed that the payments towards the same will not be done unless the Company is profitable.

9. It is pertinent to state that, **upon several occasions your Client's partner, NPD insisted that Ashwini Ghodi should sign backdated purchase order's and raised invoices to the Company misinforming as that the same is required only to confirm receipt of the goods by the Company.** However, your Client's partner, NPD, specifically agreed that the payment was due only after Company is profitable. Therefore, Ashwini Ghodi signed the purchase order periodically only to confirm receipt of the moulds and upon a clear understanding that quantum and time of payment will be agreed when the Company is profitable.”

[emphasis supplied]

41. Upon perusal of the Purchase Orders, which form basis of the current Company Petition, annexed as "ANNEXURE V-1 to V-8", we find that all the said Purchase Orders have been signed by Mrs. Ashwini Ghodi or Mr. Gaurang Ghodi, and not a single Purchase Order bears the signature of the Intervener, Mrs. Sheetal Dahanukar. Further it is claimed by the Intervener that all the said purchase orders are post April 2021, which is after the date on which dispute between Mr. Nilesh Dahanaukar and the Intervener grew strenuous and the intervener left her matrimonial house. This disputed nature of the aforementioned facts raises serious doubts about the

genuineness of the claim filed by the Petition Firm. Thus, the Intervener's contention with respect to the same holds merit and cannot be ignored.

42. We also find that Mr. Gaurang Ghodi, partner of Pan Products and the husband of Mrs. Ashwini Ghodi (Director of Respondent Company), are involved in the internal affairs of the Respondent Company. The same can be noted from an email dated 03.01.2023 sent by Mr. Gaurang Ghodi using the email address of the Respondent Company to the Intervener, which is extracted by the AA in the impugned order as follows:

From: <gpg.pllastomax@gmail.com>
Date: Tue, 3 Jan 2023 at 2:24 PM
Subject: FW: Reply to your notice dated 30th November 2022.
To: <sheetalj9@gmail.com>
Cc: <Ashwini@gmail.com>

Dear Mrs. Sheetal Nilesh Dahanukar,
We have appointed Agram Legal Consultants to reply to the notice sent by Om-Sai Moulds And Plastics, this is for your information. They have also replied to the notice send by Om-Sai Moulds And Plastics via MSME, please note.
Regards,
Gaurang P. Ghodi

Thus, in view of the abovementioned email, we find that there exists a nexus between the partner of Pan Products, Mr. Gaurang Ghodi, and the Respondent Company and Mr Nilesh who is the Director of Appellant-OC-Om Sai. In view of the aforementioned email dated 03.01.2023 and the Purchase Orders dated 27.10.2021 and 13.06.2022, which are signed by Mr Ghodi, we find that Mr. Gaurang Ghodi is also involved in the day-to-day internal affairs and workings of the Respondent-CD-Plastomax Engineering, to such an

extent that Mr. Gaurang Ghodi was in a position to send official emails and even sign Purchase Orders on behalf of the Respondent Company.

43. We also note that Mrs. Sheetal Dahanukar, the intervener, in January 2023, has filed an Oppression and Mismanagement Petition with Company Petition No. 66 of 2023 before the NCLT under Sections 213, 241 to 242 of Companies Act, 2013. This was against oppression and mismanagement being faced by her in the Corporate Debtor Company and the said Petition has been filed against Mrs. Ashwini Ghodi (Director of the Corporate Debtor), Mr. Gaurang Ghodi (Partner in Pan Products), Mr. Nilesh Dahanukar (Partner in Petitioner Firm), Om Sai Moulds and Plastics (Petitioner Firm), and Pan Products (Partnership run by Mr. and Mrs. Ghodi). The contentions as raised by Mrs. Sheetal Dahanukar in the reply to the present Company Petition highlight the blatant collusion between Pan Products and the Petitioner Firm, Om Sai Moulds & Plastics, and further evidencing the said oppression and mismanagement against her.

44. There are also criminal proceedings pending against Mr. Nilesh Dahanukar, including an FIR and an Order by the Hon'ble Chief Judicial Magistrate, Nashik, finding sufficient grounds to proceed against him for offences under Section 465 of IPC, which casts a shadow on the credibility of the present Company Petition. The fact that the Demand Notice was issued shortly after these legal developments suggests that it may be a retaliatory measure rather than a genuine attempt for resolution of the Corporate Debtor/Respondent Company.

45. We also note allegations of fabrication of documents as alleged by the Intervenor, Mrs. Sheetal Dahanukar who is wife of the Petitioner. The Intervenor has raised serious allegations about the authenticity of the invoices and purchase orders presented by the Petitioner. While the Petitioner has contended that the invoices are genuine and based on actual transactions, the close relationship between the parties and the circumstances surrounding the case raise doubts about the veracity of these claims. Further, as it is evident from the perusal of the documents on record, vide an order dated 07.11.2022, the Hon'ble Addl. Chief Judicial Magistrate, Nashik found sufficient grounds to proceed against Mr. Nilesh Dahanukar for the offence punishable under Section 465 of IPC. Thus, keeping this offence of forgery committed by Mr. Nilesh Dahanukar in mind and in view of the contentions raised by the Intervener, we have sufficient grounds to believe that it is plausible for Mr. Nilesh Dahanukar to forge signature of his wife, the Intervener and the contention raised by the Intervener with respect to the same holds merit and cannot be brushed aside.

46. The Appellant claims to qualify as an operational creditor under Section 5(20) of the IBC, and accordingly claims that the debt is clearly an operational debt arising from the supply of goods to the Respondent. It claims that the personal and matrimonial disputes raised by the director of the Respondent do not constitute a "dispute" as per Section 5(6) of the IBC. And the IBC defines a "dispute" as one related to the existence of the debt, quality of goods/services, or breach of warranty or representation, none of which are

applicable to the alleged personal disputes between the parties. The disputes raised by Mrs. Sheetal Dahanukar were personal in nature (e.g., matrimonial issues and shareholder oppression) and not related to the operational debt or quality of goods supplied. It claims that the NCLT erroneously lifted the corporate veil to consider personal disputes, which are irrelevant to the determination of operational debt and default and against the statutory requirements for filing a Section 9 Petition. It is also claimed that the Respondent did not raise any valid dispute about the debt, and the alleged disputes are related to personal matters such as matrimonial discord and shareholder disputes, which do not qualify as valid disputes under Section 5(6) of the IBC.

47. The Adjudicating Authority in its order has elaborated the reasons for dismissal of Section 9 Application which are contained at paragraph 15, which are extracted as follows:

“....

15. In light of the aforementioned observations highlighted, it stands established that there are serious doubts about the genuineness of the claim presented in the Company Petition. The close relationship between the parties, the involvement of Mr. Nilesh Dahanukar (Partner of the Petitioner Company) and Mr. Gaurang Ghodi (Partner of Pan Products) in the internal affairs of the Respondent Company, and the backdrop of personal disputes between the Intervener (Director of the Respondent Company) and Mr. Nilesh Dahanukar and also the oppression and mismanagement Petition filed by Mrs. Sheetal, suggest that this Petition is a blatant attempt to misuse the due process of law and is filed furtherance of the personal agendas between the parties rather than to resolve the Corporate Debtor. It deserves to be taken note of that the present Company Petition is an attempt to exploit the provisions of the Insolvency and Bankruptcy Code for purposes other than its true and correct objective. There exists a close nexus

between the parties, Mr. Nilesh Dahanukar being Secretary of the Respondent Company, the personal email address of Mr. Nilesh Dahanukar and official email address of the Respondent Company is same, and there exists a blatant collusion between the Directors of Pan Products and the Petitioner Firm, and the backdrop of personal disputes all point towards a blatant attempt to abuse and misuse the legal process by misleading the courts. It further deserves to be appreciated that by filing a Petition which is evidently collusive and motivated by personal disputes, the Petitioner has attempted to play fraud on this Hon'ble Tribunal. Such a deception is gravely prejudicial to the cause and interest of justice and also to the judicial institution as well.”

[emphasis supplied]

Conclusions

48. From the material which is placed on record and by the sequence of events and circumstances, we find sufficient reasons not to agree with the grounds raised by the Appellant to admit the Section 9 application. Firstly, we find that there is a close nexus between the parties. The Appellant - operational creditor and the Respondent-CD-Plastomax Engineering are interrelated as the OC has the husband as its Director [Mr Nilesh] and his wife [Sheetal] is the Director of CD. Furthermore, Mr Nilesh is also the Secretary of the Respondent-CD-Plastomax Engineering. Thus, we find that Nilesh had plenty of access not only to the Respondent Company (given the ownership cum governing structure mentioned in the foregoing paragraphs) but also Petitioner as well as the documentation pertaining to the business relationship/transactions between the Petitioner and the Respondent Company. Furthermore, Nilesh had access to registered office of the Company and to Company's seal, stamp and letterheads and he also had access to

Respondent's Director-Mrs. Sheetal Dahanukar's digital signature which was kept in registered office of the Company.

49. Both husband and wife were having matrimonial disputes and have filed criminal complaints and counter complaints against each other- which have not been disputed by the Appellant. Also, a case of forgery has been filed by Respondent No. 2 against Appellant-OC-Om Sai's Director Mr Nilesh and proceedings are underway. Since the Director of the operational creditor had full access to the management and the governance of the CD, such a situation is not possible without him creating it. Mr Nilesh has created a situation in which insolvency has been manufactured to make sure that the CD suffers and in turn her wife also suffers. There is 3rd entity also namely M/s Pan Products whose Director's [Mr Ghodi] wife Mrs Ashwini is the Director of the CD. This third entity is also having strong control in the day to day working and affairs of the CD. From the materials placed on record, we find that the intervener namely Mrs Sheetal Dahunker - the Director of the CD is not having any say in the working of the CD. We find that the personal disputes between Mr Nilesh and Ms Sheetal have reached such extreme that Mr Nilesh is using the insolvency proceedings through Appellant to settle personal score and take revenge.

50. It is argued by the Appellant that the debt is clearly an operational debt arising from the supply of goods to the respondent, invoices raised and issued and demand notice issued and the demand was never disputed and therefore there is a debt and a default and which was admitted also. Thus, the

Appellant qualifies as an operational creditor and argues that the personal and matrimonial disputes raised by the director of the respondent do not constitute a dispute as per Section 5(6) of the code. Therefore, the adjudicating authority should have admitted the application under Section 9 of the Code. This argument presumes that all that which has been produced before the adjudicating authority is correct and believable and not manufactured and fabricated. From the materials placed on record and also the sequence of events, we find that personal disputes are being settled by creating a situation wherein insolvency is being manufactured against the corporate debtor. In such a background, we don't have any hesitation in concluding that the issue of admission under Section 9 does not arise.

51. We also agree with the intervener that these are not insolvency proceedings but revenge litigation. The claim of operational debt was motivated by personal disputes between the parties, specifically the matrimonial dispute between Mr Nilesh Dahanukar (partner of the Appellant) and Mrs Sheetal Dahanukar (director of the Respondent), and allegations of oppression and mismanagement by minority shareholders. We, thus, find that the company petition has not been filed for insolvency proceedings but is for ulterior motives. We don't find any infirmity in the findings of the adjudicating authority that the Section 9 application has been filed to settle personal disputes and such an act is reprehensible. In this background, we also agree with the finding of the adjudicating authority for imposition of a cost of ₹ 10 lakhs on the petitioner for filing frivolous and motivated petition.

Orders

52. Accordingly, the appeal is dismissed. All IAs are also disposed of accordingly. No orders as to costs.

[Justice Ashok Bhushan]
Chairperson

[Arun Baroka]
Member (Technical)

New Delhi.
April 23, 2025.
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