



**IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI**  
**COURT - IV**

**ITEM No.1**  
**IB/656/ND/2021**

**IN THE MATTER OF:**

Rashtriya Polmers & Solvents  
V/s  
Kanodia Technoplast Ltd.

... Applicant  
... Respondent

**Order under Section 9 of IBC, 2016.**

**Order delivered on 12.07.2023**

**Coram:**

**Mr. P.S.N. PRASAD,**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA,**  
**HON'BLE MEMBER (TECHNICAL)**

**ORDER**

Order pronounced in open Court vide separate sheets.

**IB/656/ND/2021 stands dismissed.**

**Sd/-**

**DR. BINOD KUMAR SINHA,**  
**MEMBER (TECHNICAL)**

**Sd/-**

**P.S.N. PRASAD,**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
COURT-IV**

**Company Petition No.(IB)-656(ND)/2021**

**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. Rashtriya Polymers & Solvents .... **Applicant/  
Operational Creditor**

**Vs.**

M/s.Kanodia Technoplast Limited  
.... **Corporate Debtor**

**CORAM:**

**SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**Order Delivered on:12.07.2023**

**ORDER**

**PER: SH. P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)**

**PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

The instant application is filed by M/s. Rashtriya Polymers & Solvent, a proprietorship firm having Mr. Anil Kumar Gupta as its sole proprietor (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Kanodia Technoplast Limited (hereinafter referred as 'Respondent Company' or



‘Corporate Debtor’) for defaulting the payment of Rs.2,76,14,749/- (Rupees Two Crores Seventy Lakhs Fourteen Thousands Seven Hundred Forty Nine Only) including Principal Amount of Rs. 1,70,68,121/- (Rupees One Crore Seventy Lakh Sixty Eight Thousand One Hundred Twenty One Only.) and interest of Rs.1,05,46,628/- at the interest rate of 24% p.a. against the invoices raised for the period starting from the date on which the debt fell due on 20.09.2021.

2. The Respondent Company M/s. Kanodia Technoplast Limited having CIN: U74899DL1995PLC067544 incorporated on 20.04.1995 under the provisions of the Companies Act, 1956 is having its registered office situated at A-54, Wazirpur Industrial Area, New Delhi – 110052. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under sub-section (1) of Section 60 of the Code.
3. Succinctly stated facts of the present case as averred by the applicant are that the applicant is the sole proprietorship firm and is engaged in the business of supplying the best chemicals products. It was submitted that the Corporate Debtor had placed orders with applicant for supply of Chemicals and the applicant had duly supplied the same to the Corporate Debtor as per the specifications. The Applicant had raised various invoices from time to time to the Corporate Debtor which were also duly accepted by the Corporate Debtor.
4. Furthermore, it was submitted that the Corporate Debtor had defaulted in making the outstanding payment of Rs.1,70,68,121/- in respect of invoices Seventeen (17) invoices from 01.06.2019 to 30.09.2019 and Rs.1,05,46,628/- (Rupees One Crore, Five Lakh, Forty Six Thousand, Six



Hundred and Twenty-Eight only) in respect of interest on delayed payment @24% p.a. as mentioned in the invoices. It was submitted that in view of continuity of business with Corporate Debtor and ad hoc payments being received, the need to finally settle the account between the parties did not arise and hence the occasion to compute and debit the interest becoming payable by the Corporate Debtor for the delayed payments did not arise. The Applicant had categorically stated that at no time the interest becoming so due and payable by the Corporate Debtor was waived.

5. The Applicant stated that after several reminders and follow ups, when no favourable response was received from the Corporate Debtor, the Operational Creditor had served the statutory demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate Debtor on 21.09.2021 for the due amount of Rs.2,76,14,749/-. The Corporate Debtor had replied to the statutory demand notice dated 21.09.2021 on 07.10.2021 wherein the frivolous and baseless grounds are raised.
6. Per Contra in the reply filed by the Corporate Debtor, the Corporate Debtor submitted that the debt claimed by the Applicant has neither fallen due as on the date of the Demand Notice nor on the date of filing the present application. The Corporate Debtor submitted that a meeting was held between the representatives of the applicant and the corporate debtor wherein it was amicably resolved that the applicant shall accept the principal amount of Rs.1,69,78,144/- as per the revised schedule of payment from 03.06.2022 till 09.03.2023 and a total of '79' cheques were duly handed over to the applicant starting from 03.06.2022 till 09.03.2023.



7. Moreover, it was stated that the Applicant had vide e-mail dated 17.09.2021 had called upon the Corporate Debtor to make payment of the alleged outstanding dues. The Corporate Debtor vide its reply dated 20.09.2021 had unequivocally submitted that the Corporate Debtor had already paid cheques to the tune of Rs.1,69,78,144/- to the Applicant as per the understanding of the parties in the meeting.
8. The Corporate Debtor submitted that the interest claimed by the Applicant is not a part of the “Operational Debt” as defined under Section 5(21) of the Code, 2016 and the interest claimed by the applicant is a unilateral stipulation without any agreement or understanding between the parties is untenable. Further, the Corporate Debtor stated that the I&B Code, 2016 is not intended to be a tool available to the Applicant for recovery of interest component which has never been agreed between the parties. To support the contention, the Corporate Debtor had placed reliance on **the Hon’ble NCLAT judgement in S.S. Polymers vs. Kanodia Technoplast Limited [CA(AT)(Ins.) No.1227/2019; judgement dated 13.11.2019]** wherein it was held as follows:-

5. Admittedly before the admission of an application under Section 9 of the I&B Code, the ‘Corporate Debtor’ paid the total Debt. **The application was pursued for realisation of the interest amount, which, according to us is against the principle of I&B Code, as it should be treated to be an application pursued by the Applicant with malicious intent** for any purpose other than for the Resolution of Insolvency, or Liquidation of the ‘Corporate Debtor’ and which is barred in view of Section 65 of the I&B Code,”

9. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been examined.



10. Adverting to the factual matrix of the present case, it is an admitted fact that the Corporate Debtor during the pendency of the instant application filed under Section 9 of the Code, 2016 had paid the entire Principal amount of Rs.1,78,68,122 Crores as claimed by the Applicant in the present application through RTGS on 02.03.2023. The receipt of the said amount is acknowledged by the Applicant though, during the arguments the Ld. Counsel for the Applicant had strenuously argued that the payment of Rs.1,78,68,122/- Crores through RTGS is without the consent of the Applicant and is only a dishonest conduct of the Corporate Debtor to reduce the pecuniary threshold limit as envisaged under Section 4 of the Code, 2016.
11. Further, the Applicant argued that the interest for delayed period in respect of supplies made during the period 29.10.2018 to 05.09.2021 was accounted strictly as per terms of sale contracts after allowing interest free credit period of 90 days and a debit note was issued on the interest payable by the Corporate Debtor.
12. After hearing the submission of both parties and taking note of the fact that the principal amount of debt has already been discharged, the issue which emerges for our adjudication is “**Whether the CIRP can be initiated/triggered solely on the basis of the amount of interest when the entire principal amount of debt has been discharged by the Corporate Debtor**”?.
13. When by the date of admission, the Operational Debt in terms of Section 5(21), which does not include interest, stands discharged, the interest alone which remains under the claim amount, does not qualify for an Operational Debt, for the default of which alone CIRP can be ordered. When admittedly the principal amount is paid, Operational Debt ceases to



be in existence and consequently Application under section 9 becomes invalid.

14. At this juncture, it is pertinent to refer to the order of **Hon'ble NCLAT Principal Bench, New Delhi in the case of "Rohit Motawat v. Madhu Sharma", Comp. App.(AT) (Ins) No. 1152 of 2022, dated 03.02.2023,** wherein it is held that

“the Adjudicating Authority has erred in not looking into the facts that **the principal amount has entirely been paid and the issue was only regarding to interest for which the application under Section 9 of the Code was not maintainable** as the spirit of the legislation of the Code is for ‘resolution of debt’ and not for recovery’.”

15. Further, in view of the order of the **Hon'ble NCLAT in Permali Wallance Pvt. Ltd. Vs Narabada Forest Industries Pvt. Ltd. in 'Company Appeal (AT) (Ins) No. 36 of 2023 decided on 17.01.2023'** wherein it is observed that:

“5. Having heard Learned Counsel for the parties, we are of the view that Adjudicating Authority did not commit any error in rejecting Section 9 Application. **It has been laid down by the Hon'ble Supreme Court in "Swiss Ribbon Pvt. Ltd. Vs. Union of India" (2019) 4 SCC 17), IBC is not a recovery proceeding and the Application which has been filed by the appellant in the present case is only the application for recovery of balance amount of the interest and application was not filed for resolution of any insolvency of the Corporate Debtor.** We are of the view that no error has been committed by the Adjudicating Authority in rejecting Section 9 Application filed by the Appellant. There is no merit in the Appeal, the Appeal is dismissed.”

16. Therefore, declaring the Corporate Debtor as insolvent by ordering CIRP only because of the default in paying interest claimed for the period 2018-



2021, which was accounted by the Applicant in its ledger in September, 2021 by issuing debit notes, would be against the letter and spirit of IBC.

17. However, the Applicant would nevertheless have the right to claim and recover interest if it is permitted under any other law, by moving an appropriate forum. In such a situation where the alleged interest has neither been accounted by the Applicant in its Books of Account as receivables on the accrual basis nor it is reflected in the Corporate Debtor's Books of Account and the charging of interest is contested by the Corporate Debtor, this Adjudicating Authority is of the view that the present application does not warrant triggering of the Insolvency Proceedings when the entire principal amount is paid by the Corporate Debtor to the Applicant.

18. Accordingly, in the light of the decision laid down in the judgements cited supra, this Adjudicating Authority hereby dismiss the present application filed under section 9 of the IBC as not maintainable since the Principal amount has entirely been paid during the pendency of the application and the issue is only regarding to interest outstanding.

19. According, we do not find any merit in **CP (IB) No.656/ND/2021**, hence the same is **dismissed**. No orders as to costs. It is made clear that the present order shall not preclude the applicant from pursuing remedies for recovery of interest in accordance with law, if so advised.

**Sd/-**

**(DR.BINOD KUMAR SINHA)**

**MEMBER (T)**

**Sd/-**

**(SH. P.S.N PRASAD)**

**MEMBER (J)**