



**NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT – II  
CHENNAI**

**ATTENDANCE CUM ORDER SHEET OF THE HEARING OF NATIONAL  
COMPANY LAW TRIBUNAL, CHENNAI BENCH, HELD ON 15.12.2025 AT  
10.30 A.M. THROUGH VIDEO CONFERENCING:**

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**PRESENT: SHRI. JYOTI KUMAR TRIPATHI, HON'BLE MEMBER (JUDICIAL)  
SHRI. RAVICHANDRAN RAMASAMY, HON'BLE MEMBER (TECHNICAL)**  
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**APPLICATION NUMBER : --**  
**PETITION NUMBER : CP/IBC/118/(CHE)2024**  
**NAME OF THE PETITIONER : Sabic Asia Pacific Pte Ltd**  
**NAME OF THE RESPONDENT(S) : Global Poly Bags Industries Pvt Ltd**  
**UNDER SECTION : Sec 9 Rule 6 of IBC, 2016**  
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**ORDER**

Present: Ld. Counsel Mr.Bharadwajaramasubramaniam for the Petitioner.

Vide separate order pronounced in open court, Application is allowed.

**Sd/-  
RAVICHANDRAN RAMASAMY  
Member (Technical)**

**Sd/-  
JYOTI KUMAR TRIPATHI  
Member (Judicial)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI  
CP(IBC)/118(CHE)/2024**

*(Filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, R/w, Rule 4 of the  
Insolvency and Bankruptcy Rules, 2016)*

*In the matter of Global Poly Bags Industries Private Limited*

**SABIC ASIA PACIFIC PRIVATE LIMITED,**

Registered office at:

10, Collyer Quay, #10-01, Ocean Financial Centre,  
Singapore – 049 315.

Represented by its Authorised Signatory/  
Power of Attorney Holder

Mr. Gajendra Harakchand Golchha

*... Petitioner/ Operational Creditor*

*V/s*

**GLOBAL POLY BAGS INDUSTRIES PRIVATE LIMITED,**

Having Address at

No. 500 A, Perali Road, Virudhnagar, Tamil Nadu – 626 001.

*... Respondent/ Corporate Debtor*

*Order pronounced on 15.12.2025*

**CORAM:**

**SHRI. JYOTI KUMAR TRIPATHI, MEMBER (JUDICIAL)**

**SHRI. RAVICHANDRAN RAMASAMY, MEMBER (TECHNICAL)**

Present:

*For Applicant: M/s Vivrti Law, Advocates*

*For Respondent: Bharadwajaramasubramaniam Ravi Ramachandran, Advocate*

**ORDER**

*(Heard through Hybrid Mode)*

Under consideration is a petition under Section 9 of IBC filed by

**SABIC ASIA PACIFIC PRIVATE LIMITED, Petitioner/ Operational**



Creditor herein against **GLOBAL POLY BAGS INDUSTRIES PRIVATE LIMITED**, Respondent/ Corporate Debtor herein for initiating Corporate Insolvency Process (CIRP) against the Corporate Debtor.

## **2. SUBMISSIONS OF THE APPLICANT**

2.1. Part I of the Application contains the particulars of the Applicant SABIC Asia Pacific Private Limited. Part II of the Application sets out the details of the Corporate Debtor. It was incorporated on 04.02.1998 with its authorized share capital of Rs. 61,20,00,000/- and paid up share capital of Rs. 56,70,00,000/- and address at No. 500 A, Perali Road, Virudhnagar, Tamil Nadu – 626 001, within the jurisdiction of this Tribunal. In Part III of the application, the Operational Creditor has not proposed anyone as the IRP. Part IV of the application sets out the details of the debt being USD 2,265,752.50 which is equivalent to INR 18,88,40,728.14 (Indian Rupees Eighteen Crores Eighty Eight Lakh Forty Thousand Seven Hundred and Twenty Eight and Fourteen Paisa) as per prevailing exchange rate of USD 1 = INR 83.35, due as on 06.12.2017. The Corporate Debtor has acknowledged the outstanding debt on December 26, 2017, January 05, 2018, September 02, 2020 and April 05, 2022. This application has been filed on 01.05.2024.



2.2. The Applicant submits that they, Saudi Basic Industries Corporation (“SABIC”) entered into a Supply Contract dated 01.09.2016 with the Corporate Debtor for supply of Polyethylene for the period 01.09.2016 to 31.08.2017. Under the terms of the Contract, SABIC’s affiliate, namely the Applicant/ Operational Creditor, was entitled to supply the contracted goods and raise invoices for the same.

2.3. It is submitted that pursuant to the said Contract, the Applicant supplied the contracted goods to the Corporate Debtor between September 2016 and September 2017, and raised invoices from 04.07.2017 to 08.09.2017. However, the Corporate Debtor failed to pay the invoices within their respective due dates.

2.4. It is further submitted that owing to persistent non-payment, the Applicant issued a letter dated 26.12.2017, stating that a sum of USD 5,177,452.50 was outstanding towards goods supplied. The Corporate Debtor’s Managing Director duly acknowledged and admitted this liability.

2.5. It is also submitted that thereafter by email dated 05.01.2018, the Corporate Debtor sought extension of time till 31.03.2018 for clearing the



outstanding dues, while also asserting a claim of contractual rebate of USD 310,000.

2.6. It is submitted that they again wrote on 20.03.2018, stating difficulties with their banking arrangements, seeking further time to make part payments between early to mid-April 2018. In April 2018, the Corporate Debtor made part payments totalling USD 200,475 (USD 114,840 on 11.04.2018 and USD 85,635 on 18.04.2018).

2.7. The Applicant states that, to safeguard its commercial risk, it had taken a credit insurance policy from Atradius vide Policy No. 822195 dated 21.04.2017. Under this policy, Atradius indemnified losses suffered by the Applicant due to non-payment by the Corporate Debtor.

2.8. It is submitted that as the Corporate Debtor continued to default, the Applicant lodged a claim under the insurance policy. After examining the materials, Atradius accepted the claim and, vide claim offer letter dated 29.08.2018, paid a sum of USD 4,675,770 to the Applicant. As per the terms of indemnification, any monies thereafter received from the Corporate Debtor were required to be held “in trust” by the Applicant for Atradius. And the relevant extract is as follows:



ANNEXURE " 11- 91 " "



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Lim D D  
SABIC ASIA PACIFIC PTE LTD  
ONE TEMASEK AVENUE #06-01  
MILLENNIA TOWER  
SINGAPORE 039192

If you have any queries,  
please contact Dheeraj Chandre  
Our Reference: 9853385  
Telephones: + 65 63725317  
Fax: + 65 63988310  
Date: 29<sup>th</sup> August 2018

Dear Sirs

Buyer name: GLOBAL POLYBAGS INDUSTRIES PRIVATE LIMITED.  
Country: INDIA

Thank you for your claim.

Based on the information you have provided to us, including that the receivables under the invoices listed in this offer ("Invoices") are legally due and owing to you, Atradius has assessed your Claim lodged under Policy No. B22195 and found it to be valid with the main cause of your loss being that GLOBAL POLYBAGS INDUSTRIES PRIVATE LIMITED failed to make payment for six (6) months after the original due date for payment (refer Policy Section 00500.00).

Atradius has assessed the amount, which we are to pay you as set out in the following calculations:

Gross debt	USD	5,176,710.00
Less Recoveries	USD	500,940.00
Amount Covered	USD	4,675,770.00
Indemnity Percentage (100%)	USD	4,675,770.00
Insurance Liability	USD	4,675,770.00
Payable Amount	USD	4,675,770.00

This interim offer is subject to the following conditions:

- By agreeing to this interim settlement offer, SABIC ASIA PACIFIC PTE LTD and its representatives agrees that Atradius has the right to re-assess liability under the policy if the final concluded quantum of contractual debt which is legally due and owing by GLOBAL POLYBAGS INDUSTRIES PRIVATE LIMITED is less than USD 4,675,770.00.
- By agreeing to this interim settlement offer, SABIC ASIA PACIFIC PTE LTD and its representatives agrees to undertake all measures directed by Atradius to support Atradius with all recovery action driven by Atradius and its agent.

In exchange for payment of this interim settlement of this Claim, a Director or a legal representative of SABIC ASIA PACIFIC PTE LTD is required to sign and return this Claim Offer ("Offer") to Atradius. Once payment has been made, you will no longer have any claim against Atradius, or its assignee, and you discharge Atradius, and its assignee, from all further obligations in respect of the claim.

Please note that Atradius' Offer will remain open for 21 days from the date of this letter. If we do not receive your signed acceptance of our Offer, or otherwise hear from you during this period, Atradius reserves the right to withdraw this Offer without further notice.

Atradius  
ANA Tower, 8 Shenton Way, #23-02  
Singapore 068811  
www.atradius.sg

Telephones + 65 6392 3305  
Fax + 65 6328 8310

Atradius Crédito y Comercio S.A.  
de Seguros y Reaseguros

The Applicant accepted the claim offer on 04.09.2018.

2.9. It is further submitted that thereafter Atradius took over correspondence for collection of dues directly from the Corporate Debtor.

The Corporate Debtor made certain part payments to Atradius between 2018 and 2020. Vide email dated 02.09.2020, the Corporate Debtor admitted that the outstanding amount stood at USD 2,969,172.50, while seeking a rebate of USD 625,000. No agreement was reached on such rebate.

2.10. It is also submitted that various settlement proposals were thereafter sent by the Corporate Debtor during 2020–2023, none of which



were accepted by Atradius. Vide email dated 31.03.2022, Atradius informed the Corporate Debtor that it had received USD 703,420 as part-payments and that the balance outstanding was USD 2,265,752.50. The Corporate Debtor acknowledged liability of USD 1,600,000 on 05.04.2022, but sought to settle for USD 400,000, which was rejected.

2.11. It is submitted that on 09.05.2022, the Corporate Debtor claimed that a rebate of USD 560,829 was due on the basis of alleged purchases of USD 22,433,174.50. Through a letter dated 31.05.2022, the Corporate Debtor requested the Applicant to pay USD 561,485 to Atradius towards the alleged rebate. However, the Applicant, vide email dated 10.08.2022, categorically rejected the rebate claim, relying on Clause 4.2 of the Contract, which provides that rebate is payable only where invoices are paid within the due date. Since the Corporate Debtor admittedly defaulted in timely payment, the Applicant submits that no rebate is contractually payable.

2.12. It is further submitted that the Corporate Debtor nevertheless continued sending communications, repeating requests for rebate and raising issues which the Applicant asserts are frivolous and afterthoughts. Emails dated 06.01.2023 and 09.03.2023 attempted to raise



issues relating to cost, quantity and alleged hardships, which were never raised contemporaneously during supply or in the years following supply.

2.13. It is submitted that under the insurance policy, it was obligated to initiate legal proceedings against the Corporate Debtor despite having received indemnification, since no letter of subrogation existed in favour of Atradius. Therefore, the Applicant remained the creditor entitled to recover the unpaid operational debt.

2.14. It is also submitted that as no further payments were received and the Corporate Debtor remained in default, the Applicant issued a Demand Notice dated 11.08.2023 under Section 8 of the IBC, calling upon the Corporate Debtor to pay the outstanding operational debt of USD 2,265,752.50, equivalent to INR 18,88,40,728.14. The notice was duly delivered on 14.08.2023.

2.15. It is submitted that the Corporate Debtor replied through its Advocate on 19.08.2023, denying liability and alleging (i) shortage of goods to the extent of 4372 MT, (i) unilateral rate increase above Platts prices, and (iii) non-payment of quantity rebate. The Applicant submits that these objections were never raised at the time of delivery of goods,



during the period of part payments, or during earlier exchanges acknowledging liability. Under Clause 9.1 of the Contract, quantity/quality issues must be reported within 10 days of delivery; therefore, the Applicant submits that such objections are barred and fabricated to avoid liability.

2.16. It is further submitted that the allegation of rate manipulation is untenable since Clause 4.1 provides that monthly price negotiations would apply, and the Corporate Debtor accepted all invoices and made part payments without protest. Similarly, rebate is contractually unavailable due to the Corporate Debtor's admitted delay in invoice payment.

2.17. The Applicant states that the Corporate Debtor has admitted the outstanding dues on several occasions, namely 26.12.2017, 05.01.2018, 02.09.2020, and 05.04.2022, and has never disputed the invoices until the reply to the Demand Notice. Thus, no "pre-existing dispute" exists under Section 8(2)(a) of the IBC.

2.18. It is finally submitted that according to the Applicant, the Corporate Debtor has failed, neglected and avoided paying the admitted and outstanding operational debt, and the continued default



demonstrates that the Corporate Debtor is commercially insolvent and unable to meet its obligations.

### **3. SUBMISSIONS OF THE RESPONDENT**

3.1. The Respondent submits that at the threshold, the present Company Petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”) is not maintainable in law and on facts, and is liable to be dismissed. The Respondent denies all allegations and averments made by the Applicant unless specifically admitted.

3.2. It is submitted that operational debt claimed by the Applicant is entirely based on 19 invoices, the last of which was issued on 06.12.2017. As per the Limitation Act, 1963, the 3-year limitation period expired on 05.12.2020.

3.3. It is also submitted that even after giving full effect to the extension of limitation granted by the Hon’ble Supreme Court in Suo Motu Writ Petition (C) No. 3 of 2020 (Orders dated 10.01.2022 and 23.09.2021), the limitation in the present case would have expired by December 2022.

3.4. It is further submitted that the Applicant issued its Demand Notice only on 11.08.2023, well beyond the extended limitation period. Hence, the Petition is ex facie time-barred.



3.5. It is submitted that the Applicant has made no averments as to any acknowledgement of liability or payments within limitation which could extend the limitation period. The Applicant itself states that the last communication from the Corporate Debtor was on 02.04.2018.

3.6. It is further submitted that even assuming without admitting that the settlement proposal dated 01.09.2022 is relied upon, such proposal was addressed only to the insurer Atradius and not to the Applicant. Further, it did not pertain to any specific invoice and cannot constitute acknowledgment under Section 18 of the Limitation Act.

3.7. It is submitted that the computation of any alleged liability itself requires detailed examination of contract terms, Platts pricing, evidence, witnesses, and accounting principles, matters which are outside the scope of proceedings under Section 9 of the IBC.

3.8. It is submitted that under Clauses 4.2 and 4.4 of the Supply Contract, the Applicant was mandatorily required to grant rebate on the purchase price based on quantities purchased and paid for.

3.9. It is further submitted that despite repeated requests by the Respondent (emails dated 02.09.2020, 09.05.2022, 31.05.2022), the



Applicant arbitrarily and summarily rejected the rebate claim vide email dated 10.08.2022 without reasons.

3.10. The Respondent asserts that it has purchased and paid the minimum quantities stipulated under Clause 4.2 and is therefore entitled to a rebate. The rejection amounts to breach of contract by the Applicant.

3.11. It is further submitted that thus the Petition is a mala fide attempt to misuse the IBC mechanism to pressurize the Respondent, and to circumvent the arbitration clause in the contract.

3.12. The Respondent places reliance on the well-settled principle, reiterated in *Maulik Kirtibhai Shah v. United Telecoms Ltd.*, that IBC proceedings cannot be used for debt recovery or coercion.

3.13. It is submitted that the present Petition is filed purely to arm-twist the Respondent into settlement despite the existence of genuine disputes requiring adjudication under the contractual arbitration mechanism.

3.14. It is further submitted that long before the issuance of Section 8 Notice or the filing of the Petition, detailed disputes existed between the parties. Vide letters/ emails dated 31.05.2022, 10.08.2022, 17.08.2022, and in earlier communications with the insurer (including 02.09.2020,



31.03.2022, 05.04.2022, 09.05.2022), the Respondent had repeatedly asserted its entitlement to rebate of USD 560,829.

3.15. Further, in its Reply dated 19.08.2023 to the Section 8 Notice, the Respondent raised the following specific, detailed disputes:

- a. Supply shortage of 4372 MT, valued at USD 6,679,131, causing losses of USD 1,049,280.
- b. Violation of Platts benchmark pricing; Applicant allegedly charged USD 1400/MT instead of Platts USD 1180/MT.
- c. Entitlement to 2.5% quantity discount, as per Clause 4.4, on purchases of USD 22,433,174.50, amounting to USD 560,829.
- d. Arbitrary denial of quantity discount despite it being regularly allowed until FY 2016–17.
- e. After adjusting for breaches, supply shortages, unilateral pricing, and rebate entitlement, the Respondent has overpaid USD 287,751.5, which the Applicant now owes the Respondent.

3.16. It is further submitted that the Supply Contract contains a binding arbitration clause (Clause 14) requiring all disputes to be referred to arbitration under the laws of the Kingdom of Saudi Arabia.



Reliance is placed on *Indus Biotech Pvt. Ltd. v. Kotak India Venture Fund*, where the Hon'ble Supreme Court held that where disputes require determination under the arbitration clause, insolvency proceedings must not be invoked to short-circuit the agreed contractual mechanism.

3.17. The Respondent submits that the Petition is an attempt to bypass the contractual dispute resolution framework. The Respondent and the Applicant have had a business relationship since 1998, with an open credit line of INR 60 crores extended since 2005.

3.18. It is further submitted that during COVID-19, demonetization, and regulatory disruptions, the Respondent faced cash-flow constraints and sought time to make payments, but continued to act in good faith. It is also stated that they are profitable going concern, and allegations of insolvency are baseless.

3.19. The Respondent reiterates that it has already paid USD 1,788,299, which the Applicant has not disputed. After accounting for breach of contract and rebate entitlement, the Respondent has overpaid and is owed USD 287,751.5.



3.20. It is further submitted that the petition is based on disputed claims, barred by limitation, and is an abuse of the IBC framework. The

Respondent submits that:

- The Petition is barred by limitation.
- Substantial pre-existing disputes exist.
- The Applicant has breached the contract and is liable to the Respondent.
- An arbitration clause governs all disputes.
- The Applicant is attempting to misuse IBC as a debt recovery tool.

#### **4. REJOINDER FILED BY THE APPLICANT**

4.1. The operational creditor in their rejoinder stated that if there were an acknowledgement of debt or part payment by the corporate debtor before expiry of limitation period, then in such case, the period of limitation would get extended by a further period of three years as envisaged under section 18 of the Limitation Act, 1963.

4.2. It is submitted that the corporate debtor had made part payment on 31.03.2022 and acknowledged the debt owed to the operational creditor vide email dated 02.09.2020 & 05.04.2022 before the expiry of limitation period and the limitation period expires on 04.04.2025 and the



demand notice was issued on 11.08.2023 and hence the operational creditor submits that the claim is well within the limitation period.

4.3. It is further submitted that the corporate debtor had made lumpsum payments and not as per each invoice and therefore the settlement proposal was in relation to the lumpsum outstanding debt which arose from the outstanding invoices.

4.4. It is further submitted that there was no agreement entered between the parties to supply goods as per the platt price.

4.5. The operational creditor submits that as per clause 4.2 of the supply contract, the rebate shall be due and payable within 90 days after the end of respective contract year provided that the corporate debtor has paid all due invoices in the contract year to the operational creditor within 30 days from the date it becomes due.

4.6. The operational creditor is reliance to clause 4.2 of the supply contract states that the corporate debtor has failed to make payment of invoices within 30 days from the due date to the operational creditor. Therefore, operational creditor submits that there is no obligation of the Operational Creditor to give rebate to the Corporate Debtor, as the



Corporate Debtor has become disentitled for such benefit in terms of the Supply Contract.

4.7. It is further submitted that as per clause 3.1 of the supply contract there would be plus/minus 20% in supply of goods to the corporate debtor and further submitted that the corporate debtor had never raised any issues at the time of supply of goods.

4.8. It is further submitted that as per clause 4.1 of supply contract, the goods were to be supplied on the price negotiated between the parties on monthly basis and therefore the operational creditor submits that there is no obligation for the operational creditor to supply goods at platt prices.

4.9. It is submitted that except the frivolous issue raised by the corporate debtor regarding the rebate, remaining issues were raised only in the letter dated 19.08.2023 which was in response to the demand notice.

4.10. The operational creditor has further denied that the fact that corporate debtor has overpaid the operational creditor a sum of USD 287,751.5 which the operational creditor now owed the corporate debtor.



## **5. WRITTEN SUBMISSION OF THE APPLICANT**

5.1. The applicant has filed the written submission vide 24.02.2025 wherein the applicant has retreated the facts stated in the application and the rejoinder.

5.2. It is further stated that corporate debtor has never raised any dispute or contention prior to filing of the company petition or issuance of demand notice except for rebate.

5.3. Applicant has relied on *Mr. Shahi Md. Karim vs M/s. Kabamy India LLP & Anr. (Company Appeal (AT) (CH) (Ins.) No. 16 of 2023)*, *Hasan Shafiq vs CT- Technologies ApS & Anr. (Company Appeal (AT) (Insolvency) No. 802 of 2020)*, *V. M. Yarns Pvt. Ltd. vs Vijay Weaving and Dying Pvt. Ltd. (Company Petition (IB) No. 1046 / MB / 2019)*.

## **6. WRITTEN SUBMISSION OF THE RESPONDENT**

6.1. The corporate debtor has filed the written submission dated 21.02.2025 where in the corporate debtor has retreated the facts stated in the reply filed by the corporate debtor.

6.2. Based on the above submissions, corporate debtor prayed for dismissal of the present petition.



## 7. FINDINGS OF THE TRIBUNAL

7.1. This Tribunal has carefully considered the pleadings, documents, contractual terms, email correspondences, ledger statements, the Demand Notice and Reply, and the rival submissions advanced by both parties.

7.2. The primary questions for determination are: (i) whether the operational debt is within limitation; (ii) whether any “pre-existing dispute” exists within the meaning of Section 8(2)(a) of the IBC as interpreted in *Mobilox Innovations v. Kirusa Software*; and (iii) whether the Petition is liable to be admitted under Section 9 of the Code.

7.3. The Respondent contends that the debt is time-barred as invoices pertain to 2017. The Applicant, on the other hand, relies on a series of written acknowledgements of debt by the Corporate Debtor made in 2017, 2018, 2020, 2022 and even 2023.

7.4. The record discloses that the Corporate Debtor, by its letters and emails dated 26.12.2017, 05.01.2018, 02.09.2020, 31.03.2022, 05.04.2022, and subsequent communications in 2023, repeatedly acknowledged the outstanding dues and sought time for payment or offered settlement



proposals. These are categorical and unconditional admissions of liability.

7.5. Under Section 18 of the Limitation Act, read with Section 238-A IBC, a written acknowledgement before expiry of limitation extends the limitation period afresh. The Hon'ble Supreme Court in *B.K. Educational Services Pvt. Ltd. v. Parag Gupta, (2019) 11 SCC 633* has clarified that Section 18 applies to IBC proceedings.

7.6. The admissions in 2020 and 2022 are squarely within the original period of limitation and therefore create a fresh cause of action. The subsequent emails in 2023, wherein the Corporate Debtor acknowledged outstanding amounts while merely seeking rebates, further fortify the continuous acknowledgement of debt.

7.7. Thus, this Tribunal holds that the operational debt claimed by the Applicant is well within limitation, and the Respondent's plea of time-bar is rejected.

7.8. The Respondent alleges disputes regarding (i) shortage of supply, (ii) breach of Platts pricing, (iii) entitlement to rebates/ quantity discount, and (iv) overpayment. The Tribunal must evaluate whether such disputes are genuine and pre-existing, or mere afterthoughts, applying



the test laid down in *Mobilox Innovations v. Kirusa Software, (2018) 1 SCC 353*.

7.9. At the outset, Clause 9.1 of the Supply Contract mandates that any quantity/ quality issues must be raised within 10 days of delivery. The Respondent has not produced a single contemporaneous document from 2016–2017 raising such issues within the prescribed timeframe.

7.10. On the contrary, the Respondent not only accepted all deliveries without protest but also made subsequent part-payments in April 2018 and issued repeated emails admitting liability and seeking extensions.

7.11. The allegations of price manipulation or deviation from Platts benchmarks are similarly unsupported. Clause 4.1 expressly provides that pricing would be on the basis of monthly negotiated prices, and the Respondent admittedly made no protest contemporaneously. Acceptance of invoices without demur and part-payments made over multiple years belie these belated allegations.

7.12. As regards rebate, Clause 4.2 stipulates that rebate is payable only where invoices are paid within the due date, usually 30 days. The Respondent itself admits cumulative delays in payment and requests for extension of time. A party who has failed to meet contractual



prerequisites cannot claim contractual rebates. Thus, the rebate claim is contractually unsustainable.

7.13. The “disputes” relied upon by the Respondent were raised for the first time only in 2022–2023, i.e., five to six years after completion of supplies, and only after the Demand Notice was issued. They are directly contradicted by numerous earlier admissions of liability and requests for time.

7.14. The Tribunal relies on the principles reiterated in *Deepak Modi v. Shalfeyo Industries (2023 SCC OnLine NCLAT 169)*, *GR Infraprojects Ltd. v. Bharat Hitech (Cements) Pvt. Ltd. (2024 SCC OnLine NCLT 2287)*, *Lumi Vietnam JSC v. Hogar Controls India Pvt. Ltd. (2024 SCC OnLine NCLT 3550)*, and *Metro Tyres Ltd. v. Hero Electric (2024 SCC OnLine NCLT 3823)*, wherein belated, unsubstantiated disputes raised only at the stage of reply to demand notice were held to be “moonshine” and insufficient to defeat a Section 9 petition.

7.15. Applying the Mobilox test, this Tribunal finds that the alleged disputes:

- were not contemporaneous,
- have no documentary foundation,



- contradict the Respondent's repeated admissions, and
- were evidently raised only to avoid payment after issuance of Demand Notice.

7.16. Therefore, the Tribunal holds that no real, substantial, bona fide pre-existing dispute exists, and the defence is a mere afterthought.

7.17. The Respondent relies on Clause 14 of the Contract, containing an arbitration clause governed by Saudi Arabian law. However, it is settled law that the existence of an arbitration clause does not bar initiation of CIRP, as held in *Shahi Md. Karim v. Kabamy India LLP, Hasan Shafiq v. CT-Technologies ApS, and V.M. Yarns Pvt. Ltd. v. Vijay Weaving & Dyeing Pvt. Ltd.*

7.18. The judgment in *Indus Biotech Pvt. Ltd. v. Kotak* is distinguishable, as that case involved a genuine dispute requiring adjudication, whereas in the present case, the Respondent's defence fails the Mobilox test and is devoid of merit.

7.19. The IBC being a special statute with overriding effect under Section 238, once a default is established and no genuine dispute exists, the presence of an arbitration clause cannot oust the jurisdiction of this Tribunal.



7.20. The Applicant has produced contract documents, invoices, ledger statements, insurance claim records, and multiple written admissions. The Respondent has not denied that it made part-payments amounting to USD 1,788,299 and that the balance remained unpaid.

7.21. The outstanding operational debt, as claimed in the Demand Notice, is USD 2,265,752.50 (equivalent to Rs. 18,88,40,728.14). The Respondent has not disputed the quantum, except on grounds of rebate, shortages, and alleged pricing issues, all of which this Tribunal has found to be unsustainable.

7.22. The Tribunal therefore holds that default is clearly established within the meaning of Section 3(12) and Section 9 of the Code.

7.23. Based on the detailed discussion above, this Tribunal concludes that:

- the claim is within limitation,
- the Respondent has repeatedly admitted the liability,
- the alleged disputes are not genuine pre-existing disputes,
- the arbitration clause does not bar these proceedings, and
- the default is clearly established.



7.24. Consequently, all requirements under Section 9 of the IBC, as crystallized in Mobilox, stand fully satisfied. Hence, we hold that the default is established beyond any doubt.

7.25. Accordingly, this Tribunal is satisfied that the application deserves to be admitted, and a Corporate Insolvency Resolution Process is required to be initiated against the Corporate Debtor, **Global Poly Bags Industries Private Limited**.

7.26. In the present case, the Operational Creditor has not named the Insolvency Resolution Professional in Part – III of the Application. Hence, this Tribunal appoints Mr. S Amarendran, having Registration No: IBBI/IPA-002/IP-N00634/2018-2019/11962, (email id: sivakumar.amarendran@gmail.com) who is having Authorization for Assignment till 31.12.2026 as the “Interim Resolution Professional” (IRP) in respect of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Code, more specifically in terms of Section 15,17,18 of the Code and file the report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the



initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

7.27. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- b. Transferring, encumbering, alienating or disposing of by the respondent any of its assets or any legal right or beneficial interest therein;*
- c. Any action to foreclose, recover or enforce any security interest created by the respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.*

*Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under*



*any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;”*

7.28. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

*“(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.*

*(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.*

*(3) The provisions of sub-section (1) shall not apply to*

*(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;*

*(b) a surety in a contract of guarantee to a corporate debtor.”*



7.29. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

*“(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process: Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.”*

7.30. The Operational Creditor is directed to pay a sum of Rs.2,00,000/- (Rupees Two lakh only) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

7.31. Based on the above terms, the Application stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by



the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

8. Accordingly, **CP(IB)/118/(CHE)/2024** is **allowed**.

-Sd-  
**RAVICHANDRAN RAMASAMY**  
MEMBER (TECHNICAL)

-Sd-  
**JYOTI KUMAR TRIPATHI**  
MEMBER (JUDICIAL)