

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH-V**

CP (IB) No. 1110/MB-V/2020

Under Section 9 of the I&B Code, 2016

In the matter of:

Elastochemie Impex Pvt Ltd

[CIN: U25110MH1989PTC052081]

...Operational Creditor/Applicant

V/s

Meheev Industries Private Limited

[CIN: U25190MH1986PTC039290]

...Corporate Debtor/Respondent

Order Dated: 04.08.2023

Coram:

Hon'ble Shri Kuldip Kumar Kareer, Member (Judicial)

Hon'ble Smt. Anuradha Sanjay Bhatia, Member (Technical)

Appearances (via videoconferencing):

For the Petitioner(s) : Mr. Chaitanya Nikte, Advocate.

For the Respondent(s) : None.

ORDER

Per: Kuldip Kumar Kareer, Member (Judicial)

1. This is an application bearing C.P. (IB) No. 1110/MB-V/2020 filed by **Elastochemie Impex Pvt. Ltd.**, the Operational Creditor/Applicant, under Section 9 of the Insolvency & Bankruptcy Code, 2016 (I&B Code) seeking initiation of Corporate Insolvency Resolution Process (CIRP) against **Meheev Industries Private Limited**, Corporate Debtor, for claiming total outstanding of Rs.1,59,60,296/- (Rupees one crore

fifty-nine lakh sixty thousand two hundred ninety-six only) which includes:

- a. Principal amount of Rs.63,40,998/-; and
 - b. Interest amount of Rs.96,19,298/- @ rate of 24% p.a. calculated upto 15.03.2020.
2. The Date of Default as mentioned in Part-IV is 21.03.2017. The Petition is filed on 20.03.2020.
 3. The submission of the Operational Creditor is that:
 - 3.1. The Corporate Debtor has changed its name from “Amee Rubber Industries Pvt. Ltd.” to “Meheev Industries Private Limited”.
 - 3.2. The Corporate Debtor had been placing requisitions from time to time for various types of synthetic rubber products supplied by the Operational Creditor and accordingly the Operational Creditor had been supplying the required quantity and raising appropriate running account invoices against the same. The Corporate Debtor has been making on account payment against such invoices as the account of the Operational Creditor was a running account with the Corporate Debtor.
 - 3.3. Every invoice raised by the Operational Creditor also contained a conspicuous provision that interest @24 % p.a. will be charged on overdue unpaid bills and the Corporate Debtor was very well aware of the said provision.
 - 3.4. The Operational Creditor has been supplying the required quantity of product as and when the requisition is placed by the Corporate Debtor and there had never been any concern raised by the

Corporate Debtor with regard to the quantity or quality of the material supplied by the Operational Creditor.

3.5. The Operational Creditor states that, up to April 2015, the total unpaid debt owed by the Corporate Debtor was to the tune of Rs.77,90,998/- which the Corporate Debtor was liable to pay to the Operational Creditor immediately. However, the Corporate Debtor sought time to make payment towards the outstanding invoices debt.

3.6. The Operational Creditor states that, upon much follow up, the Corporate Debtor issued 31 post-dated cheques of HDFC Bank to the Operational Creditor collectively amounting to Rs.17,50,000/-. The details of the cheques are as follows:

Sr. No.	Cheque No.	Date of Deposit	Amount in Rs.	Status
1.	00159	06.08.2016	50,000/-	Honoured
2.	001591	13.08.2016	50,000/-	Honoured
3.	001592	20.08.2016	50,000/-	Honoured
4.	001593	27.08.2016	50,000/-	Honoured
5.	001595	10.09.2016	50,000/-	Honoured
6.	001596	17.09.2016	50,000/-	Honoured
7.	001594	20.09.2016	50,000/-	Honoured
8.	001597	24.09.2016	50,000/-	Honoured
9.	001598	01.10.2016	50,000/-	Honoured
10.	001599	08.10.2016	50,000/-	Honoured
11.	001600	15.10.2016	50,000/-	Honoured
12.	001641	29.10.2016	50,000/-	Dishonoured
13.	001640	22.10.2016	50,000/-	Dishonoured
14.	RTGS	16.11.2016	2,00,000/-	Honoured
15.	001644	22.11.2016	50,000/-	Honoured
16.	001645	26.11.2016	50,000/-	Honoured
17.	001646	07.12.2016	50,000/-	Honoured

18.	001647	10.12.2016	50,000/-	Dishonoured
19.	001648	17.12.2016	50,000/-	Honoured
20.	001649	24.12.2016	50,000/-	Honoured
21.	001650	31.12.2016	50,000/-	Honoured
22.	001657	07.01.2017	50,000/-	Dishonoured
23.	001652	14.01.2017	50,000/-	Honoured
24.	001653	21.01.2017	50,000/-	Honoured
25.	001654	28.01.2017	50,000/-	Honoured
26.	001655	04.02.2017	50,000/-	Honoured
27.	001656	11.02.2017	50,000/-	Honoured
28.	001657	11.02.2017	50,000/-	Honoured
29.	001658	27.02.2017	50,000/-	Dishonoured
30.	001659	06.03.2017	50,000/-	Honoured
31.	001660	11.03.2017	50,000/-	Honoured
32.	001661	18.03.2017	50,000/-	Dishonoured

- 3.7. The Operational Creditor states that, the Corporate Debtor assured and undertook that the remaining balance of Rs.60,40,998/- shall be paid in instalments upon clearance of all the above-mentioned cheques. Out of the above cheques, 6 cheques each amounting to Rs.50,000/- had been dishonoured and the last cheque was dishonoured on 21.03.2017 stood at Rs.63,40,998/- and thereafter no payments had been received by the Corporate Debtor till date.
- 3.8. The Operational Creditor issued two notices dated 18.08.2018 and 16.10.2018 through its advocate demanding the said outstanding dues.
- 3.9. The Operational Creditor further issued a Demand Notice dated 20.12.2019 in Form 3 upon the Corporate Debtor claiming total outstanding of Rs.1,55,89,337/- payable within 10 days from the receipt of this Demand Notice. Since the Demand Notice had been returned with a remark as “Not Known”, the Operational Creditor

sent an Email dated 18.02.2020 attaching the said Demand Notice dated 20.12.2019.

4. The Operational Creditor has filed the Affidavit under Section 9 (3) (b) of the Code. The Operational Creditor has further the ledger accounts of Operational Creditor from year 01.04.2012 to 09.12.2019.
5. The Corporate Debtor neither appeared nor filed its reply in the matter.

Findings/Observations:

6. We have heard the arguments of the Learned Counsel for Operational Creditor, and perused the records.
 - 6.1. It is observed that that it is the case of Operational Creditor that the Operational Creditor supplied rubber products to the Corporate Debtor. Pursuant to the said supply, the Operational Creditor raised various Invoices upon the Corporate Debtor. As per the delivery note, the payment was to be made within 60 days from the issue of each invoice. The invoices also provide the interest provision @24 % p.a. for delay payment. It is pertinent to note that all the invoices had been acknowledged by the Corporate Debtor.
 - 6.2. After perusal of the material on record, it is further observed that the Corporate Debtor issued 32 cheques to the Operational Creditor towards the payment of dues. Out of the 32 cheques, 6 cheques were dishonoured either on account of “payment stopped by drawer” or “insufficient fund in the account of the Corporate Debtor” while the rest of the cheques were honoured and paid. The last cheque was dishonoured on 20.03.2017.

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- 6.3. It is further observed that the Corporate Debtor has not appeared and filed its reply despite having been given sufficient opportunity in the matter. Vide order dated 01.08.2022, the Court Notice was ordered to be served upon the Corporate Debtor to appear and file its reply in the matter. Thereafter, the matter was listed on 22.09.2022, 11.11.2022, 22.12.2022, 20.02.2023, 28.03.2023, 18.04.2023 and 08.06.2023. However, the Corporate Debtor neither appeared nor filed any reply in the matter. Eventually, vide order dated 08.06.2023, right to file reply of the Corporate Debtor was forfeited.
- 6.4. After hearing the Counsel for the Operational Creditor and going through the record, we find that the entire claim of the Operational Creditor is based on the invoices which were issued during the period from 08.10.2012 to 15.04.2015. As per the invoices placed on record, the period of payment is 30 days from the date of invoices and in some invoices, the period is either 60 or 90 days. If the due date of all the invoices relied upon by the Operational Creditor is taken into consideration, the claim based on such invoices would be found to be barred by time as the last invoice was issued on 15.04.2015 whereas the present Petition has been filed on 20.03.2020.
- 6.5. However, the Operational Creditor has relied upon certain cheques which were issued by the Corporate Debtor from time to time and the detail of said cheques has been given in the preceding part of this order i.e. Para No. 3.6. The cheques, which are 32 in number, were issued between 06.08.2016 and 18.03.2017, if considered in chronological order. Out of these, 32 cheques, 6 cheques were dishonoured. Issuing a cheque whether honoured or not, amounts

to acknowledgment of liability on the part of the issuer of the cheque which is Corporate Debtor in this case. Even if these cheques and the payments made through the cheques is taken into consideration, the acknowledgment of liability took place in the year 2016-17 when the cheques were issued. The last cheque was issued on 18.03.2017 which was dishonoured. Even if the cheque dated 18.03.2017 is taken into account, the last acknowledgment of debt on the part of the Corporate Debtor, if any, took place on 18.03.2017. For the purpose of limitation, the present Petition under Section 9, therefore, should have been filed on or before 18.03.2020. However, the present Petition has been filed only on 20.03.2020. No application or request has been made on behalf of the Operational Creditor seeking condonation of the delay. Therefore, in our considered view, the instant petition is not within time and is apparently barred by law of limitation and, therefore, deserves to be dismissed on this ground alone.

- 6.6. As a result of the above discussion, the above CP 1110 of 2020 filed under Section 9 is hereby **dismissed** being barred by time.

SD/-
ANURADHA SANJAY BHATIA
MEMBER (TECHNICAL)

SD/-
KULDIP KUMAR KAREER
MEMBER (JUDICIAL)