



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-447/(ND)/2022

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

M/S. NAPIN IMPEX LIMITED

Registered Office At: Building no.-1419, H-Block,
First Floor, DSIIDC Industrial Area Narela,
Delhi 110040

...Applicant/Operational Creditor

Versus

M/S. GROMOR OVERSEAS LIMITED

Registered Office At: Office No. DSM-321, 3rd Floor,
DLF Tower, Shivaji Marg, New Delhi- 110015

...Respondent/Corporate Debtor

Coram:

Shri. Bachu Venkat Balaram Das, Member (Judicial)
Shri.Rahul Bhatnagar, Member (Technical)

Counsel for Applicant : Mr. Avneesh Arputham
Counsel for Respondent : Mr. Mohit Chaudhary



ORDER

Per: Bachu Venkat Balaram Das, Member (Judicial)

Date: 28.02.2023

1. This is an application filed by the Applicant M/s. Napin Impex Limited seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") against the Respondent M/s. Gromor Overseas Limited for the alleged default on the part of the Respondent in clearing the debt of Rs. 1,59,30,000/- (Rupees One-Crore Fifty-Nine Lakhs Thirty Thousand). The details of the transactions leading to the filing of this application as averred by the Applicant/Operational Creditor are as follows:

- i. That the Operational Creditor is a trader of petrochemicals & polymer raw material of various kinds.
- ii. That the Corporate Debtor approached the Operational Creditor and its authorized representative/officer to



buy the petrochemicals and polymer raw material from Operational Creditor and after consultation with each other regarding price of goods, quality of goods, and quantity of goods, they had purchased the goods. At that time, the Corporate Debtor assured Operational Creditor that it shall make timely payments i.e. within 180 days from the date of raising of all the invoices.

iii. That based on Corporate Debtor's assurances, the Operational Creditor supplied petrochemicals and polymer raw materials of various kinds between the period 06.03.2021 to 26.07.2021 under various invoices with their supporting E-way Bills on 180 days payment due basis.

iv. That despite having accepted and utilized the goods supplied under the Invoices with their supporting E-way Bills, the Corporate Debtor only made part payment of the Invoices to Operational Creditor and failed to pay a substantial part of the outstanding invoices.



2. Consequent to the notice issued by this Tribunal, the Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor stating as below:
 - i. That the Operational Creditor is misleading this Tribunal by misrepresenting the date of default as 01.12.2021 when all the invoices are dated 06.03.2021 to bypass Section 10A, IBC,2016.
 - ii. That the alleged debt became due and payable on the date of issuance of each invoice by the Operational Creditor.
 - iii. That no goods were ever supplied by the Operational Creditor. The Operational Creditor had only raised invoices without actual supply of goods.
3. In compliance of Section 9 (3)(b) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 29.04.2022 stating that no notice of any pre-existing dispute has been received by the Applicant from the Corporate Debtor relating to the dispute of the un-paid Operational Debt.



4. In compliance of Section 9 (3)(c) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has filed affidavit dated 29.04.2022 stating that no payment has been received by the Applicant from the Corporate Debtor.
5. Consequent to the reply of the Corporate Debtor, the Operational Creditor has filed rejoinder.
6. We have heard the arguments of Ld. Counsel for the Operational Creditor as well as the Corporate Debtor and perused the averments made in the application as well as the documents relied upon by the Applicant and the Respondent.
7. The Applicant has alleged that the Respondent has defaulted in payment of debt of Rs. 1,59,30,000/- (Rupees One-Crore Fifty-Nine Lakhs Thirty Thousand) vide invoices dated 06.03.2021. The Applicant has further alleged that the invoices were to be paid within 180 days from the date of raising of invoices. However, the Applicant has failed to establish that the invoices were indeed payable after 180 days from the date of



raising of invoices. There is no agreement on record to show that there was any such agreement between the parties w.r.t the payment schedule. Further, the invoices attached with the petition also have no mention of the payment schedule. Therefore, in the absence of any clarity w.r.t due date of the said invoices, reliance is placed on Section 9(1) of the IBC, 2016 which states as follows:

“ After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”

Per Section 9(1) of IBC, 2016 once the invoice demanding payment is generated, the operational creditor may file an Application u/s 9, IBC, 2016 if the payment w.r.t such invoice is not made within 10 days. In light of the above, the date of default in the instant case is the date of invoices raised.



8. Per Section 10A of the IBC, 2016 and the MCA Notifications dated 24.09.2020 and 22.12.2020, no application for CIRP may be filed for defaults occurring between 25.03.2020 to 24.03.2021. The invoices based on which the present Application has been filed are dated 06.03.2021. Therefore, the present Application is barred by Section 10A of the IBC, 2016.

9. Accordingly, we hereby **dismiss** the present application filed under Section 9 of the IB Code, 2016.

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BHATNAGAR

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(Rahul Bhatnagar)
Member (Technical)

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(Bachu Venkat Balaram Das)
Member (Judicial)