

**THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.1/Chd/Pb/2020

**Under Section 9 of the Insolvency
and Bankruptcy Code, 2016.**

In the matter of:

RKG Polyplast Private Limited
E-242, Shastri Nagar,
Delhi-110052
email: rkpolyplast@gmail.com
PAN No. AARCR6332F

...Petitioner-Operational Creditor

Vs.

M/s Paragon Cable Industries Private Limited
212, G-Block, B.R.S. Nagar,
Ludhiana-141001, Punjab

Union of India
Ministry of Corporate Affairs
through Secretary
A-Wing, 5th Floor, Shastri Bhawan
Dr. Rajinder Prasad Road,
New Delhi-110001

...Respondent-Corporate Debtor

Judgment delivered on: 02.07.2024

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. L. N. Gupta, Member (Technical)**

For the Petitioner- Operational Creditor : Mr. Parveen Kapoor, Advocate

For the Respondent-Corporate Debtor : Mr. Vishal Mittal, Advocate

Per: Harnam Singh Thakur, Member (Judicial)
L. N. Gupta, Member (Technical)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **M/s RKG Polyplast Pvt. Ltd. (for brevity 'Operational Creditor' / 'Petitioner')**, with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **M/s Paragon Cable Industries Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor is a Company incorporated on 03.03.1984 under the provisions of the Companies Act, 1956 with CIN No. U74899PB1984PTC032795 with its registered office at B.R.S Nagar Ludhiana Punjab-141001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition.

3. It is averred that the operational creditor started supplying the pet resins, chips to the corporate debtor. However, the corporate debtor started committing default in payment for the goods supplied. In the meanwhile, the corporate debtor sent the account statement for the period 01.04.2013 to 26.06.2016 vide email admitting the amount of Rs. 1,09,51,413.40/- (Rupees One Crore Nine Lakhs Fifty One Thousand Four Hundred Thirteen and Forty Paise Only) to be outstanding as on 28.06.2016. However, the last payment of Rs. 8,00,000/- was received by the operational creditor on 15.01.2018 from the corporate debtor. Thereafter, a legal notice dated 14.08.2018 was sent by the operational creditor demanding a sum of Rs. 1,03,38,269.21/- to the corporate debtor through registered post (Annexure 6 of the main petition), for which the reply dated 05.09.2018 was sent by the corporate debtor wherein it was stated that due to the inferior quality of the goods supplied by

the operational creditor, the corporate debtor suffered the loss of Rs. 2 crores and machinery got damaged. Further, it is deposed by way of the affidavit filed vide Dairy No. 410 dated 16.11.2020 by the operational creditor that the notice dated 14.08.2018 was not as per the procedure and rules under the Insolvency and Bankruptcy Act, 2016, the same is to be treated as withdrawn. Further, the parties to whom the pet bottles were sold, stopped the payment for Rs. 80-85 lakhs and goods worth Rs. 50 lakhs were returned. Therefore, the corporate debtor suffered the total loss of Rs. 3 crores approx. (Annexure-7). Furthermore, the demand notice dated 09.10.2019 in Form 3 was sent by the operational creditor again demanding sum of Rs. 1,03,38,269.21/- (Annexure-8). For which the corporate debtor gave reply on 22.10.2019 wherein it was stated that the inferior quality of material was supplied. It was assured by the operational creditor that the loss suffered would be compensated to the tune of Rs. 3,30,00,000/- (Annexure-9).

4. It is submitted by the petitioner in Part IV that the amount claimed to be in default is Rs. 1,03,38,269.21/- (Rupees One Crore Three Lakhs Thirty Eight Thousand Two Hundred Sixty Nine and Paise Twenty One Only) along with 18% interest w.e.f. 2011 to 2018 till the final realisation of the amount. According to the petitioner, the default occurred on 15.01.2018 i.e. when last payment was received by the operational creditor for Rs. 8,00,000/- from the corporate debtor. Copy of statement of account on which payment has been received (Annexure 1), unpaid bills and invoices (Annexure 2), statement of account sent by the corporate debtor for the period 01.04.2013 to 28.06.2016 (Annexure 3), account statement of operational creditor as on 28.06.2016 (Annexure 4), account statement after 28.06.2016 till 15.01.2018 (Annexure 5) are attached with the main petition.

5. On issuance of notice of this petition, the reply has been filed by the corporate debtor vide Dairy No. 00004/01 dated 08.06.2022 wherein it is stated that the operational creditor was supplying resin to the respondent. However, in the year 2017 the raw material i.e. resin supplied by the operational creditor was of lower quality as it did not have the tendency to hold a particular shape and at the minimum temperature it melted down sticking to the surface of machinery, thereby clogging and damaging the machinery due to which the business of corporate debtor suffered losses. Moreso, the finished product was also manufactured with poor quality and was rejected by the purchasers. Thereafter, the operational creditor, time and again kept on giving assurances for supplying the better quality goods and making up for the losses. However, the operational creditor never paid for the losses suffered by the corporate debtor. As a result, this affected the loan account of the corporate debtor and hence was declared NPA. Thereafter, a legal notice dated 14.08.2018 was sent by the operational creditor for which a reply dated 05.09.2018 was sent by the corporate debtor wherein the issue of inferior quality of goods supplied was raised and based upon that, the operational creditor contacted the corporate debtor and gave assurance that they would not take any action against the corporate debtor and would settle the accounts as per damage caused. Thereafter, a fresh demand notice dated 09.10.2019 was sent by the operational creditor for which a reply dated 22.10.2019 was given stating the same issue of inferior quality of goods supplied.

6. In its rejoinder filed by the operational creditor vide Dairy No. 00004/2 dated 25.10.2022 and re-filed on 28.10.2022, it is stated that there is an admission on the part of the corporate debtor that he had received the complete supply of the raw

material as per the bills filed from 2012 to 2018. The material was supplied in the year 2017-18 for Rs. 52,05,939/-.

7. The corporate debtor never raised any dispute prior to the issuance of the legal notice dated 14.08.2018. Only in the reply dated 05.09.2018 to the legal notice, the issue was raised regarding the quality of the goods without annexing any documents and the said reply filed is time-barred. The corporate debtor has claimed Rs. 3,30,00,000/- from the operational creditor but no case or any legal proceedings are initiated by the corporate debtor for the same dispute between the parties prior to the legal notice. Moreover, no reply was ever made by the corporate debtor for the legal notice dated 09.10.2019. It is further submitted that the corporate debtor is making a false case of dispute regarding the material supply in the year 2017. There was no communication ever on behalf of the corporate debtor regarding the issues faced by them. The invoices were not sent alongwith the reply notice dated 14.08.2018. Furthermore, the operational creditor did not avail VAT benefit and the legal notice dated 14.08.2018 was withdrawn, as it was not in compliance with provisions of IBC.

8. It is deposed by way of counter affidavit filed by the corporate debtor vide Dairy No. 00004/10 dated 09.01.2024 that the operational creditor has submitted 142 unpaid bills pertaining to the period between 2012-17, out of which seven bills pertained to the year 2017 amounting to Rs. less than 1 crore and rest are from the period between 2012-14, by during which the operational creditor is trying to bring the claim within the pecuniary jurisdiction of this Adjudicating Authority. However, the present petition is time-barred. It is further deposed that the account statement certified by the corporate debtor is dated 09.07.2016 and a demand notice issued was dated 09.10.2019, on the basis of which the present petition has been filed.

The demand notice dated 9.10.2019 is time-barred, as it was sent three years after the acknowledgment dated 09.07.2016 which was an account statement certified by the corporate debtor. The operational creditor was silent after the reply dated 05.09.2018 to the first legal notice which itself is an admission that they had sent the inferior quality goods. The amount of Rs. 3 crore was demanded as compensation, which it was never denied by the operational creditor. Furthermore, there is no provision under IBC for withdrawing the demand notice.

9. The short written submissions are filed by the petitioner vide Diary No.00004/3 dated 27.02.2023 and by the corporate debtor vide Dairy No. 00004/7 dated 29.08.2023 reiterating the above-mentioned facts.

10. We have heard the learned counsel for the petitioner and have perused the records.

11. The first issue for consideration is whether this application is filed within limitation. The demand notice was issued on 09.10.2019 in Form 3 (Annexure-8) which was duly served on the corporate debtor. However, the period of limitation would begin from the date of default on 15.01.2018 i.e. when last payment was received by the operational creditor of Rs. 8,00,000/- from the corporate debtor. This application was filed vide Diary No. 7070 on 12.12.2019. Therefore, this Adjudicating Authority finds that this application is filed within the limitation period of 3 years.

12. The next issue for consideration is whether there is a pre-existing dispute between the parties. It is deposed by Ld. counsel for the petitioner by way of affidavit filed vide Dairy No. 00004/9 dated 29.08.2023 under Section 9(3)(b) dated 15.11.2019 that the operational creditor issued demand notice dated 09.10.2019 calling upon the corporate debtor to pay the unpaid operational debt within 10 days

of receipt of the notice. No reply was filed by corporate debtor to the demand notice. It is further deposed that the corporate debtor has admitted their liability towards the operational creditor several times and never raised any dispute over the amount of operational debt due from them.

However, it is seen from the records that a notice dated 14.08.2018 was sent by the operational creditor, which was later withdrawn, against which a reply dated 05.09.2018 was sent by the corporate debtor raising a dispute regarding the poor quality of the goods. Therefore, the affidavit filed under Section 9(3)(b) on 15.11.2019 seems to be incorrect. During the course of hearing, it was admitted by the Ld. counsel that there was a clerical error in the affidavit filed.

In reply to the above-mentioned notice, it is contended on behalf of the corporate debtor that there was a pre-existing dispute between the parties regarding the quality of the goods supplied i.e. resin. The corporate debtor suffered a loss of Rs. 3 crores due to machinery breakdown and poor quality of goods manufactured and supplied to the customers which were returned back. The relevant extracts of the reply dated 05.09.2018 to the legal notice are produced as overleaf:-

Mobile No:- 94173-36387

Phone (R) 0161-2501745



S.K.SINGLA, ADVOCATE

Office:- Chamber No.1011
1st Floor, Lawyers Chambers,
Part-II, District Courts, Ludhiana

Residence:-681-D, Model Town Extension,
Dugri Road, Near Lites Bus Service
Ludhiana

REF:- _____

DATE:- 05.09.2018

2. That Sh.Kamal Aggarwal is the director of the firm and has been authorized to deal with the present case and to send the present legal notice vide resolution No.PCIPL/121/2018 dated 16.08.2018.

3. That the company of my client had purchasing pet resin chips from your company since 2009 and my clients were paying you the amount against the bills.

4. That your company had supplied pet resin chips to the company of my client which was used in manufacturing the empty pet bottles. When the empty pet bottles were being manufactured, then due to inferior quality of raw material the company of my client had suffered a loss to the tune of about Rs.2,00,00,000/- (Rupees Two Crores) as the moulds of the machinery were damaged and due to inferior quality of the product, the parties to whom my client had sold pet empty bottles had stopped payment worth Rs.80 to 85 Lacs due to inferior quality

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For RKG Polyplast Pvt. Ltd.

Director

Mobile No:- 94173-36387

Phone (R) 0161-2501745



S.K.SINGLA, ADVOCATE

Office: Chamber No.1011
1st Floor, Lawyers Chambers,
Part-II, District Courts, Ludhiana

Residence:-681-D, Model Town Extension,
Dugri Road, Near Libra Bar Services
Ludhiana

REF:- _____

DATE:- 05.09.2018

of the product and that some of the clients of my client had returned the inferior quality of goods worth Rs.50 Lac (Rupees Fifty Lac). As such my client has suffered a loss to the tune of more than Rs.3 Crores (Rupees Three Crores).

5. That many a times my client had verbally interacted with you and with your concern that due to inferior quality of raw material sold to my client, the moulds etc. of the machinery were damaged and the payments of my clients from different quarters were stopped and even the material was returned by some of the clients of the firm.

6. That due to inferior quality of the raw material, my client had suffered a loss to the tune of Rupees more than Three Crores.

7. That many a times, my client had contacted you to reimburse the amount to my clients but of

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For RKG Polyprest Pvt. Ltd.

Director

Mobile No:- 94173-36387

Phone (R) 0161-2501745



S.K.SINGLA, ADVOCATE

Office:- Chamber No.1011
1st Floor, Lawyers Chambers,
Part-III, District Courts, Ludhiana

Residence:-681-D, Model Town Extension,
Dagri Road, Near Libra Bus Service
Ludhiana

REF:- _____

DATE:- 05.09.2018

no consequences and your company has failed to make the reimbursement of the inferior quality of the goods to my client.

So, you are called upon to reimburse my client to the tune of Rs'3,00,00,000/- (Rupees Three Crores) along with interest otherwise my client will be constrained to have civil and criminal and other remedies available to him and in that event, you will be solely responsible for all the consequences and in that eventuality you will be squarely responsible for all the costs and expense arising out of avoidable litigation.

A copy of this notice is retained in my office for further proceedings.


S.K.Singla, Advocate

Copy to:-

Sh.Rishi Sethi, Advocate
For Sethi and Associates
F-18, L.G.F. Lajpat Nagar-III, New Delhi

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For RKG Polyplast Pvt Ltd.


Director

Thus, the reply to the legal notice clearly shows the dispute between the parties, which is prior to the fresh demand notice dated 09.10.2019 issued by the operational creditor in Form 3 upon the corporate debtor, which require adducing of evidence and examination by appropriate civil forum.

Here, we refer to the judgment of Hon'ble Supreme Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353**, wherein it was held that:

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.

(Emphasis Supplied)

Therefore, in the case in hand, there is a cogent and convincing evidence present in the records that there was a pre-existing dispute between the parties.

13. As a sequel to the above discussion and the fact that there is a pre-existing dispute between the parties regarding the goods supplied by the petitioner, the

petition is liable to be rejected. The petition is accordingly dismissed, however, with no order as to costs.

Sd/-

(L.N. Gupta)
Member (Technical)

July 02, 2024

TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)