

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III**

IA-5038/2021
In
IB-930(ND)/2019

IN THE MATTER OF IB-930(ND)/2019:

M/s. S. P. Packagings

..... Operational Creditor

Versus

M/s. Jagpin Breweries Limited

..... Corporate Debtor

AND IN THE MATTER OF IA-5038/2021:

M/s. S. P. Packagings

..... Applicant

Versus

M/s. Jagpin Breweries Limited

..... Respondent

Order Pronounced On: 18.07.2024

CORAM:

**SHRI ATUL CHATURVEDI
MEMBER (TECHNICAL)**

**SHRI BACHU VENKAT BALARAM DAS
MEMBER (JUDICIAL)**

PRESENT:

For the Applicant : Mr. Abhishek Anand, Ms. Jasleen Singh Sandha,
Advs.

For the Respondent : Ms. Salonee Keshwani, Adv.

ORDER

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. The present Application has been filed by M/s. S. P. Packagings, the Applicant under Section 5 of the Limitation Act read with Section 238A of the Insolvency & Bankruptcy Code, 2016 before this Adjudicating Authority, seeking the following reliefs:

“a. Allow the present Application and condole the delay in filing the Application under Section 9 of the Code being C.P. (IB) No. 930(ND) of 2019 before this Hon'ble Adjudicating Authority;

b. Pass such other or further order/order(s) as may be deemed fit and proper in the facts and circumstances of the instant case.”

2. It is submitted that the invoices in question pertain to the year 2013-2014 against which payment stands due and payable by the Corporate Debtor. However, the Corporate Debtor in January 2014, assured the Operational Creditor that non-payment was due to financial crunch and the same was merely a temporary phase that it would be able to tide over soon and sought some time to make the outstanding payments by the end of the year 2014 i.e. the time by when it is expected that the fund flow will improve.
3. It is further submitted that the delay in filing of the present application under Section 9 of the IBC, 2016 has occurred due to the aforesaid reasons and due to the arbitrary and unjustified actions on the part of the Corporate Debtor which were beyond the control of the Operational Creditor.
4. It is a matter of record that the Applicant and the Respondent had argued the same contentions raised in this application in IB-930(ND)/2019 which has been dismissed by this Adjudicating Authority. In view of the order passed in IB-930(ND)/2019, we do not deem it appropriate to examine afresh the merits of the contentions raised by the Applicant in the present Application.
5. Hence, the present IA-5038/2021 stands **disposed of** with the above order passed in IB-930(ND)/2019.

Sd/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-
(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI, COURT-III
(IB) -930(ND)/2019**

Order 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. S. P. Packagings

Having Its Registered Office at:

F-16, Brij Industrial Area,
Bharatpur, Rajasthan-321001.

..... Operational Creditor

VERSUS

M/s. Jagpin Breweries Limited

Having Its Registered Office at:

C-115, Mansarovar Garden, Ground Floor
New Delhi-110015.

CIN: U74899DL1993PLC052406

..... Corporate Debtor

Order Pronounced On: 18.07.2024

CORAM:

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER
(JUDICIAL)**

SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)

APPEARANCES:

For the Applicant : Mr. Abhishek Anand, Ms. Jasleen Singh Sandha,
Advs.

For the Respondent : Ms. Salonee Keshwani, Adv.

ORDER

(IB) -930(ND)/2019
Date of Order: 18.07.2024

PER: ATUL CHATURVEDI, MEMBER (TECHNICAL)

1. This Application has been filed by M/s. S. P. Packagings, the Applicant/Operational Creditor before this Adjudicating Authority, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. Jagpin Breweries Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 31,57,890/- as on 28.02.2019 (Principal amount of Rs. 9,77,738/- along with interest @ 24% amounting to Rs. 21,80,152/-).

2. **Submissions of the Applicant/Operational Creditor:**

- i. The Corporate Debtor and Operational Creditor had business relations earlier and entered into multiple transactions. In 2013, the Corporate Debtor approached the Operational Creditor to supply PET bottles for its factory at Nawgaon, Chhatarpur, Madhya Pradesh.
- ii. The Operational Creditor supplied the Corporate Debtor goods against which invoices were raised. The same have remained unpaid which are as follows:

Invoice No.	Issued on	Amount	Due Date
13	05.04.2013	80,846	05.05.2013
18	07.04.2013	1,44,144	07.05.2013
20	07.04.2013	1,44,144	07.05.2013
22	08.04.2013	1,37,278	08.05.2013
671	04.03.2014	1,60,159	03.04.2014
672	04.03.2014	1,60,159	03.04.2014
689	13.03.2014	1,51,008	12.04.2014
Total		9,77,738/-	

- iii.** As per the terms of payment contained in the invoices raised on behalf of the Operational Creditor in the name of erstwhile M/s. Cox India Ltd., the payment was to be made within 30 days, from the date of dispatch. The invoices raised on 5.4.2013, 7.4.2013, 7.4.2013, 8.4.2013, 4.3.2014, 4.3.2014 and 13.3.2014 remained unpaid and the Corporate Debtor continued ignoring the requests of the Operational Creditor even after receiving letters dated 24.1.2015, 29.4.2015 and 3.6.2015 of the Operational Creditor wherein requests were made for releasing the payment of the Operational Creditor.
- iv.** The Operational Creditor was left with no alternate remedy but to send a statutory notice on 10.5.2015 under Section 433 of the Companies Act, 1956. On receiving a reply dated 6.6.2015 wherein the Corporate Debtor had sought account statements from 2011 to 2015. The Operational Creditor vide its letter dated 23.6.2015 had supplied the same to the Corporate Debtor. However, to the utmost shock, even after receiving all the requisite documents and details, the Corporate Debtor failed to give any reply to the Operational Creditor.
- v.** After coming into force of the Insolvency and Bankruptcy Code, 2016 and having tried all ways possible, the Operational Creditor was left with no option but to send another notice dated 19.07.2017 in accordance with Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, to the Corporate Debtor. The Corporate Debtor vide reply dated 31.08.2017, did not deny the fact of delivery of goods by the Operational Creditor to the Corporate Debtor.
- vi.** It is the case of the Operational Creditor that the amount of Operational Debt in the year 2013-14 amounts to Rs. 9,77,738/- which has been sought to be adjusted in the ledger by showing entries of Rs.7,00,000/- (which is admitted payments in lieu of bills relating to the year 2012-13) and by making entries of debit notes amounting to Rs.3,34,250/- which have never been received by the Operational Creditor. Further, the amount of Rs. 3,34,250/- as provided in the

reply to the notice is not a cash payment made to the Operational Creditor but is in the nature of debit notes raised against the Operational Creditor. The said debit notes have never been received by the Operational Creditor.

- vii.** The Operational Creditor thereafter filed an application under Section 9 of the Code of 2016 before the Adjudicating Authority, Delhi Bench which came to be registered as (IB)-539/ND/2018. During the course of the Argument, the counsel for the Corporate Debtor for the first time apprised this Adjudicating Authority and Operational Creditor on 7.8.2018 of the fact that the Corporate Debtor is the resulting company of amalgamation process that took place between M/s. Cox India Ltd. and M/s. Jagpin Breweries Ltd. and placed on record the Order dated 12.5.2014 of the Hon'ble High Court of Delhi validating the scheme of amalgamation. The Operational Creditor without being at any fault had to request for withdrawal of the application filed before this Adjudicating Authority, Delhi Bench and the same was allowed by this Adjudicating Authority, Delhi Bench vide its order dated 4.10.2018.
- viii.** After serving upon the Corporate Debtor with statutory notice dated 19.2.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2006 and on not receiving any response from the Corporate Debtor, the instant application has been filed by the Operational Creditor against the resulting company of the scheme of amalgamation i.e. M/s. Jagpin Breweries Ltd, for the outstanding amount of Rs. 31,57,890/- till 28.02.2019.

3. Submissions of the Respondent/Corporate Debtor:

- i.** The Respondent/Corporate Debtor has filed a reply affidavit denying the allegations made by the Applicant/Operational Creditor and stated that in 2014, the Respondent stopped making purchases due to the severe quality issues that the bottles had.

- ii.** On a bare perusal of the application, it is evident that the date of default is 12.04.2014. Therefore, as per the case set up by the Applicant, the debt claimed to be in default was barred by limitation as the present Application was filed in April 2019. The invoices in default do not pertain to the period of 2013-2014 but rather pertain to the time period before that.
- iii.** As per Article 137 of the Limitation Act read with the **B.K Educational Services Pvt. Ltd. vs. Parag Gupta and Associates** reported in *2018 SCC Online SC 1921*, it becomes apparent that the period of limitation is three years from when the right to sue accrues and the right to sue accrues when a 'default' occurs. Thus, the period of limitation (for the last invoice dated 13.03.2014) which started on the date of default elapsed on 12.04.2017 (i.e. within a period of 3 years from the date of default of the last invoice).
- iv.** It is submitted that there is a pre-existing dispute between the parties which is obvious from the exchange of correspondence between the parties, and the difference in the treatment of the invoices in the ledgers of both the parties. It is an admitted position that this pre-existing dispute has been brought to the attention of the Applicant vide reply to the Section 8 notice dated 31.08.2017. It is further submitted that the Respondent has already made full and final payments for all invoices in 2013-2014 amounting to INR 32,54,388 through banking channels which is also reflected in the monthly bank statements. Further against the defective and mostly useless goods, the Respondent issued debit notes amounting to INR 3,34,250 in the financial year 2013-2014. Thus the Respondent in the financial year 2013-2014 has effectively made payments of over INR 35,88,638.
- v.** It is contended that in the business undertaken by the parties, the quality of the pet bottles is of utmost importance. Pet bottles with even the slightest of defects could not be utilized by the Respondent. Therefore, in the event the goods did not meet the requisite standards, the purchaser was not entitled to make the payment, and suitable

deductions were required to be made in the invoices on account of the nature of the bottles. These deductions were for damaged bottles, rejected bottles and leakages in the bottles. These deductions were made in the nature of debit notes.

- vi.** The present Applicant appears to be an unregistered partnership. It is well settled that an unregistered partnership is not a legal entity and therefore cannot sustain a proceeding in its name. The present application having been filed in the name of the unregistered partnership, is therefore not sustainable and liable to be dismissed on this ground alone. Further, the present application does not contain an affidavit from the Applicant to the effect that no dispute exists between the parties. Pursuant to Section 9(3)(b) of the Code the aforementioned is mandatory.

4. **Key Analysis and Findings:**

- i.** We have heard the submissions of Ld. Counsel appearing for the Applicant as well as Ld. Counsel appearing for the Respondent. We have also perused the records.
- ii.** The following issues arise for consideration:
 - First Issue:** Whether the present application is barred by Limitation period to initiate the CIRP against the Corporate Debtor or not.
 - Second Issue:** Whether there is a pre-existing dispute with respect to the amount claimed to be due in the application or not.
- iii. First Issue: Limitation period**
 - a)** The Ld. Counsel appearing for the Corporate Debtor has raised a Preliminary Objection as to the maintainability of the present application filed under Section 9 of the Code on the ground that the present application is not within the Limitation period.

However, the Applicant has failed to justify the aforesaid claim and also failed to substantiate the submission by any documentary evidence.

- b)** It is seen from the records of the case that the last invoice was raised by the Applicant on 13.03.2014 which has not been specifically denied/disputed by the Respondent.
- c)** In the present case, the Applicant has claimed to have raised the last unpaid invoice on 13.03.2014. Further, as per the Applicant's case, 30 30-day credit period was granted to the Respondent/Corporate Debtor to make payment, as stipulated by the terms and conditions of the invoices placed on record. Accordingly, the Limitation for filing the present Section 9 Application starts from the date of default i.e., 12.04.2014 (30 days from 13.03.2014). Limitation Period of 3 (Three) years, if calculated from the date of default i.e., 12.04.2014, shall expire on 11.04.2017. However, we find that there is no date of default as mentioned in Form-5, Part-IV, in the present application.
- d)** It is noted that the Applicant earlier filed an application under Section 9 of the Code of 2016 registered as (IB)-539/ND/2018 on 04.04.2018. Whereas the Limitation Period of 3 (Three) years, if calculated from the date of default i.e., 12.04.2014, shall already be expired on 11.04.2017.
- e)** Thereafter, no such evidence is produced on record by the Operational Creditor to show that the Corporate Debtor either acknowledged the debt within the period of three years from the date of default of the outstanding amount in terms of Section 18 of the Limitation Act, 1963 or paid any amount to the Operational Creditor within the period of three years in terms of Section 19 of the Limitation Act, 1963 which can enhance the limitation period to initiate the CIRP against the Corporate Debtor as laid down by the Hon'ble Supreme Court in **B.K**

Educational Services Pvt. Ltd. vs. Parag Gupta and Associates reported in *2018 SCC Online SC 1921*.

- f)** The present Application under Section 9 of the Code has been filed on 29.03.2019 which is beyond the period of limitation. Article 137 of the Limitation Act, 1963 prescribes a limitation period of three years. Thus, if such period is calculated from the date of the last Invoice No.689 and from the date of default i.e., 12.04.2014 (30 days from 13.03.2014), its limitation expires on 11.04.2017, but the present application was filed on 29.03.2019.
- g)** The present Applicant/Operational Creditor filed an Application bearing no. IA-5038/2021 for seeking condonation of delay under Section 5 of the Limitation Act read with Section 238A of the Insolvency & Bankruptcy Code, 2016. However, it is noted that the Operational Creditor/ Applicant has failed to explain the delay in filing the present Application.
- h)** In view of the above, we are of the considered view that the period of delay in filing the present application deserves not to be condoned and accordingly, the present application can be said to be beyond the limitation period.
- i)** Hence, the Application filed under Section 9 of the Code is barred by the Law of Limitation and is not maintainable.

iv. Second Issue: pre-existing dispute

- a)** The other dispute in this application is whether there is a pre-existing dispute with respect to the amount claimed to be due in the application or not.
- b)** The Corporate Debtor has written letter dated 24.04.2015 to the Applicant/Operational Creditor raising a varied range of concerns/disputes with respect to the defective goods and the goods did not meet the requisite standards which was before the issuance of the demand notice. The letter dated 24.04.2015 is extracted below:

“एस.पी. पैकेजिंग्स

भरतपुर (राजस्थान)

विषय: - बकाया राशि के भुगतान के संबंध में।

महोदय,

उपरोक्त विषयांतर्गत आपको हमें यह लेख करना है कि आपके द्वारा जो पेट बोतल की सप्लाई की गई है। वह मानक के अनुसार काफी हद तक खराब होने के कारण एवं बोतलों में छेद होने के कारण देशी सदिरा की भराई नहीं हो सकी, जिससे देशी मदिरा का, कैप, लेबिल इत्यादि का हमें काफी नुकसान हुआ है। काफी समय से हमारे यहाँ करीब 4-5 ट्रक आपका माल डेमेज पड़ा हुआ है, जो हमारे किसी भी उपयोग का नहीं है (फोटोग्राफ संलग्न है)। इस संबंध में आपको कई बार दूरभाष पर सूचित किया गया एवं आपके द्वारा इस माल को उठाने का आश्वासन भी दिया गया था, किन्तु आपके द्वारा बोतल उठाने के लिए कोई भी कार्यवाही नहीं की गई है।.....

यहाँ यह भी स्पष्ट करना उचित होगा कि पर्यावरण विभाग द्वारा कई बार हमको इस खराब बोतलों का डिस्पोजल करने को कहा गया है। अतः आप अपना प्रतिनिधि भेजकर उक्त माल वापिस मगवा ले। तदनुसार आपका भुगतान आपके संशोधित बिल आने पर कर दिया जावेगा।

कृपया इस संबंध में आप त्वरित कार्यवाही करें।

धन्यवाद ।

SP Packagings

Bharatpur (Rajasthan)

Subject: Regarding payment of Balance amount.

Sir,

On the above subject matter, we have to state this that the Pet bottles which have been supplied, the same is being spoiled upto much extent as per Standard, and due to hole in the bottles, the country made liquor could not be filed, from which we have suffered heavy loss of country made liquor, cap, labels etc. For a very long time, your goods of about 4-5 tucks is lying damaged with us, which is not of

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any use of use. (Photographs enclosed). In his regard you have been informed on phone so many times and you had also given assurance to take away this goods but you have not taken any action for taking away the bottles.

Here it will also to be clarified that the Environment Department has asked us to dispose of this damaged bottles. Therefore, you send your representative, and take back the above said goods. Accordingly, your payment will be made on receiving your modified bill.

Please you take immediate action in this regard.

Thanking you,”

- c) In the letter dated 01.06.2015, written on behalf of the Corporate Debtor to the Applicant, a reminder was given to the Applicant, with respect to taking back the unused pet bottles. The letter dated 01.06.2015 is extracted below:

“प्रति,

एस. पी. पैकेजिंग्स

एफ 16 ब्रिज औद्योगिक क्षेत्र

भरतपुर राजस्थान

विषय:- अनुपयोगी पैट बोतल के संबंध में

महोदय

उपरोक्त विषांतर्गत लेख है कि आपको कई दूरभाष पर सूचित करने एवं अंत में पुत्र दिनांक 24.04.2015 द्वारा आपको अनुपयोगी पैट बोतलो को वापसी ले जाने के संबंध में पत्र भेजा गया था परन्तु आपके द्वारा आज दिनांक 01.06.2015 तक उक्त बोतलों के निराकरण के संबंध में कोई भी कार्यवाही नहीं की गयी है।

अतः अंतिम रूप से इस स्मरण पत्र के माध्यम से आपको सूचित किया जाता है कि यदि एक सप्ताह के अन्दर आपके द्वारा अनुपयोगी पैट बोतल को हमारी ईकाई से वापस नहीं ले जाया जाता है तो उक्त पैट बोतलो को आपके

उत्तरदायित्व पर हमारे द्वारा स्थानीय स्केप क्रेताओ को विक्रय कर दिया जावेगा। जिसके परिणामों के लिए हम किसी प्रकार उत्तरदायी नहीं होंगे।

S P Packagings

F-16 Brij Industrial Area

Bharatpur (Rajasthan)

Subject: Regarding Unused Pet Bottles

Sir,

On the above subject matter, it is to state that after informing you on phone so many times and finally vide letter dated 24.04.2015, sent to you in respect of taking back the unused pet bottles but you have not taken any action regarding the disposal of the above bottles till today 01.06.2015.

Therefore, finally through this reminder you are informed that if the unused pet bottles are not taken back by you from our unit within a week, then the above said Pet Bottles will be sold by us to the local scarp Purchaser at your responsibilities. We shall not be responsible in any manner for its consequences.”

- d)** In view of the above analysis, we are of the considered view that the Applicant has not only failed to prove their claim but also has concealed material facts. Further, from perusal of all aforesaid correspondence, there is no iota of doubt that the Respondent has multiple times raised plausible disputes which are certainly prior to date of Demand Notice raised by Applicant under Section 8 of the Code. In view of the law settled in **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd.** reported in (2018) 1 Supreme Court Cases 353 that if the Corporate Debtor raises a plausible contention about a pre-existing dispute, which is not just a moonshine or feeble legal argument it would suffice for the Adjudicating Authority to reject the application filed under Section 9 of the Code.

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e) Thus, the present application is legally untenable even after the argument of the Ld. Counsel appearing for the Operational Creditor is taken into consideration.

Therefore, we are of the considered view that the letter dated 24.04.2015 and the letter dated 01.06.2015 can be deemed to be considered as a pre-existing dispute between the parties.

v. Therefore, after considering and perusing the facts and circumstances of the present case, we do not find any cogent reason to entertain this application which is liable to be dismissed on the grounds mentioned in the preceding paragraphs.

5. In view of the above analysis and findings, we are satisfied that the present Applicant fails to fulfil the criteria laid down under Section 9 of the Code. It is accordingly ordered as follows:

i. The Application bearing **IB-930(ND)/2019** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is **dismissed**.

Sd/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

Sd/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)