

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

**CP (IB) No. 171/Chd/Chd/2020
Under Section 9 of IBC, 2016**

In the matter of C.P. (IB) No. 171/Chd/Chd/2020

J.V. Textpro Private Limited
Having its Registered Office at
SCO No. 148-149, 1st Floor
Sector 34A, Chandigarh, 160034

...Petitioner/Operational Creditor

Vs.

Rana Polycot Limited
Having its registered office at
SCO 49-50, Sector 8-C
Chandigarh, 160009

...Respondent/Corporate Debtor

Judgement delivered on: 23.04.2024

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. L.N. GUPTA, MEMBER (TECHNICAL)**

Present:

For the Operational Creditor: Mr. Nahush Jain, Advocate
For the Corporate Debtor : Mr. Aalok Jagga with Mr. APS Madaan, Advocates

Per: Sh. Harnam Singh Thakur, Member (Judicial)

Sh. L.N. Gupta, Member (Technical)

JUDGEMENT

1. The instant application has been filed by J.V. Textpro Private Limited, (hereinafter referred to as “**Petitioner/Operational Creditor**”) against Rana Polycot Limited (hereinafter referred to as “**Respondent/Corporate Debtor**”) under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**the Code**”), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor.
2. The Operational Creditor has claimed an amount of Rs. 17,47,266.42/- (Seventeen Lakh Fourty Seven Thousand Two Hundred Sixty Six and Fourty Two paisa only), [principal amount being Rs. 13,98,176.42 and interest being Rs. 3,49,089/- till 25.01.2020 , at a rate of 21 percent per annum], on the basis of supply of goods to the Corporate Debtor. Since the Corporate Debtor defaulted in the repayments of the debt, the Operational Creditor sent telephonic reminders and ultimately, issued demand notice under Section 8 of the Code, for an amount of Rs. 13,98,176.42/- in Form 3 on 29.01.2020, by speed post and email, which was delivered to the Corporate Debtor on 30.01.2020. The Corporate Debtor replied to the said demand notice on 12.02.2020. According to the Operational Creditor, the account is a running account and the date of default continued till the last date of payment, i.e., 04.12.2019.
3. The Corporate Debtor filed its reply dated 22.08.2022, vide diary no. 00413/2, wherein it has been stated that the amount of Rs. 13,98,176.42 claimed is below

the threshold limit of Rs. One Crore and interest cannot be a part of the operational debt as it does not fall within the definition of the same.

- 3.1. The Corporate Debtor has also contended that the Operational Creditor is estopped from continuing with the present petition as he has accepted an amount of Rs. 5.50 Lacs, paid against the principal amount, after filing the present petition.
- 3.2. The Corporate Debtor has further submitted that the dispute existed between the parties even prior to the issuance of demand notice dated 29.01.2020. In the month of December 2019, after the repeated requests of the Corporate Debtor, Operational Creditor's officers came to the Corporate Debtor's unit and inspected the goods lying there and affirmed that they were defective, faulty, and flawed and liable to be replaced. It was further agreed that the accounts were required to be reconciled and that the value of the goods could be reduced, if not replaced. Neither any replacement took place nor any further goods were supplied, in spite of having received Rs. 3,29,038/- for the other batch of material, which was not provided.
On account of the defects, a dispute prevailed between the parties, and in order to resolve it, assurances were made by the Operational Creditor to consider and compensate the Corporate Debtor for the loss caused by the defective, faulty, and flawed goods.
- 3.3. It is also argued by the Corporate Debtor that invoice in itself is not an agreement. In the present case, the alleged offer of providing goods were prior to the issuance of invoice. No offer agreeing to interest was ever

made. Invoice only contains a unilateral action of the Corporate Debtor to claim interest. Since it was never a part of the offer, there is no acceptance of the same, nor does it acquire the colour of a concluded or enforceable contract. It is alleged by the Corporate Debtor that the person sending the demand notice is not the authorised person to do so, and no specific authority has been attached authorising the signatory of the demand notice to issue the same.

4. The Operational Creditor in its rejoinder dated 15.11.2022, filed vide diary no. 00413/3 stated that he has received Rs. 6.50 lacs out of the total debt of Rs. 17,47,266.42/- from the Corporate Debtor after filing the present petition, which amounts to admissibility of liability by the Corporate Debtor to pay for the goods delivered to him by the Operational Creditor. Further, in response to the Corporate Debtor's allegation that the petition is not maintainable in view of the threshold notification dated 24.03.2020, it is submitted by the Operational Creditor that the same is not applicable as the date of filing of the present petition is 24.02.2020.
 - 4.1. The Operational Creditor with regards to Corporate Debtor's contention that interest cannot be claimed on the ground that it is only mentioned in the invoices, submitted that as per the settled law, the total amount of maintainability of the claim includes both the principal amount as well as interest on delayed payment, which was clearly stipulated in the invoice.
 - 4.2. The Operational Creditor referred to Regulation 7(b)(ii) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for

Corporate Persons) Regulations, 2016, which enables the debt to be demonstrated through an invoice. Further, the Operational Creditor stated that all the invoices relied upon carry a stipulation of interest at the rate of 21 percent per annum if the payment is delayed beyond 15 days. The Corporate Debtor never raised any dispute as to the stipulation of interest either at the time of placing an order, or soon after receiving the goods/services.

- 4.3. The Operational Creditor denied Corporate Debtor's contention that there was any pre-existing dispute. Neither any inspection of the goods was carried out by Operational Creditor's officer in December 2019, nor any dispute as to the quality of goods was ever raised by Corporate Debtor prior to the delivery of the demand notice.
5. Short written submissions dated 28.10.2022, were filed by the Corporate Debtor vide diary no. 00413/4. The Operational Creditor filed its short submissions dated 02.01.2023, vide diary no. 00413/5, reiterating the facts of the petition and rejoinder.
6. During the course of arguments, the Ld. Counsel for the Operational Creditor has placed reliance upon the following authorities to assert that the present petition is maintainable in terms of the threshold limit prescribed under the Code:
 - i. ***Mr. Daxesh D. Desai vs. Shopzo Brand Pvt. Ltd., IB-533/(ND)/2021***, wherein NCLT Delhi has observed that for determining the maintainability of an application in terms of Section 4 of IBC, 2016, the date of filing of a petition has to be seen and not the date of default or demand notice. No

petition under Section 7 or 9 of IBC could be filed for a default of less than Rs. 1 Crore, or on after 24.03.2020, even if the default had occurred or demand notice was sent prior to 24.03.2020.

- ii. Reliance is also placed upon the judgement in the matter of ***Jumbo Paper Products vs. Hansraj Agrofresh Pvt. Ltd., (Company Appeal (AT) (Ins) No. 813 of 2021).***

6.1. While submitting that the amount claimed under the Code includes both the principal amount as well as the interest, reliance is placed upon NCLAT's judgment in the matter of ***Mr. Prashat Agarwal, Member of Suspended Board of Bombay Rayon Fashions Ltd. vs. Vikash Parasrampuria, Company Appeal (AT) (Ins) No. 690 of 2022.***

6.2. The Operational Creditor with regards to Corporate Debtor's contention that interest cannot be claimed by the Operational Creditor on the ground that invoice is not an agreement, is unsustainable, and reliance is placed upon the following authorities to assert the same:

- a) ***Jatin Koticha v. VFC Industries Pvt. Ltd. 2008 (2) BomCR 155,***

wherein the Bombay High Court observed that the invoices must be treated as a written contract and the suit based on such invoices is a suit based on the written contract.

- b) Reference is made to the Hon'ble Bombay High Court's decision in the matter of ***Olive Tree Trading Pvt. Ltd. v. F.Ili De Cecco Di Filipro - FAra S. Martino SPA, Writ Petition No. 2694 OF 2018,*** and the Hon'ble

Madras High Court's decision in the matter of ***Mahendra Kumar Shah and Anr. vs. Ramesh Steel House, 1988, M.L.J.R. 187.***

6.3. The Ld. Counsel for the Operational Creditor, while stating that no dispute existed between the parties prior to the issuance of the statutory demand notice under Section 8 of the Code, has referred to the following authorities:

- i. Hon'ble NCLAT's judgment in ***Ahluwalia Contracts (India) Ltd. vs. Raheja Developers Ltd., Company Appeal (AT) (Insolvency) No. 703 of 2018***, wherein it has been held that the application under Section 9 of the IBC cannot be rejected on the mere grounds of the claim being disputed claim and held that "disputed claim" cannot be a ground to reject an application under Section 9 of the IBC to initiate insolvency proceedings, if it is not raised before issuance of demand notice.
- ii. Reliance is also placed upon the decisions in the following matters: Hon'ble Supreme Court's decision in the case of ***Mobilox Innovations Pvt. Ltd. vs. Kirusa Software (P) Limited- 2017 1 SCC OnLine SC 353***, (Hon'ble Supreme Court), and Hon'ble NCLAT's decision in the matter of ***Pedersen Consultants India Pvt. vs. Nitesh Estates Limited, Comp. App. (AT) (Ins) No. 720 of 2018.***

6.4 The Operational Creditor, in response to the Corporate Debtor's contention that the demand notice be rejected due to the absence of specific authority authorizing the signatory of the demand notice, has placed reliance upon Hon'ble NCLAT's judgment in the matter of ***Mohit Minerals Ltd. vs. Nidhi Impotrade Pvt Ltd, Company Appeal (AT) Ins No. 905 of 2020***, wherein

the Hon'ble NCLAT, while reiterating the dictum of Hon'ble Supreme Court in **Macquaire Bank Ltd. vs. Shilpi Cable Technologies Ltd. (2018) 2 SCC 674**, held that once an advocate is instructed to issue demand notice, it cannot be said that it has been sent by an unauthorised person.

7. On the other hand, the Ld. Counsel for the Corporate Debtor, during the course of arguments, contended that the present petition is liable to be dismissed as there is no 'debt' owed to the Operational Creditor, and in the absence of the date of default. Also, no specific authority has been attached authorizing the signatory of the demand notice to issue/serve the notice upon the Corporate Debtor. Reliance is placed upon Hon'ble NCLAT's judgment in the matter of **Uttam Galva Steels Limited vs. DF Deutsche Forfait AG & Anr, Company Appeal (AT) (Insolvency) No. 39 of 2017**.

7.1. It is further stated by the Ld. Counsel for the Corporate Debtor that despite assurance, the Operational Creditor failed to replace the defective goods, and no reconciliation of the accounts was done, as agreed upon between the parties.

8. During the course of the final hearing, the Ld. Counsel for the Corporate Debtor submitted that an amount of Rs. 10,25,000/- upto 30.01.2023 has been paid to the Operational Creditor, and only the interest component of Rs. 3,73,232/- is left to be paid, which is not tenable in law as the petition is not maintainable on the sole ground of the interest component. Reliance is placed upon the judgment in the matter of **M/s Oswal Cable Products Limited vs. M/s Jindal Speciality Textiles Limited in CP(IB) No. 187/Chd/Pb/2019**, passed by this Bench,

wherein the application for initiation of the CIRP of the Corporate Debtor was dismissed on the ground that the principal amount was paid by the Corporate Debtor to the Operational Creditor, and only the interest component was disputed.

9. On rival contentions of the Ld. Counsel for the parties, the following issues arise in the case in hand:-

9.1. Whether the petition is filed within the period of limitation?

Although, it is stated by the Ld. Counsel for the Operational Creditor that the last payment was made on 04.12.2019, and default is continuing till the date of filing of the petition, i.e., 24.02.2020. However, even if the date of default is taken as 04.12.2019, the petition is well within the period of limitation.

9.2. Whether there is any pre-existing dispute between the parties?

Though, it is alleged by the Corporate Debtor that a pre-existing dispute existed inter-se the parties, much prior to the issuance of a demand notice dated 12.02.2020, the Corporate Debtor has failed to place on record any evidence to substantiate its claim with regards to the existence of pre-existing dispute before issuance of the demand notice about the quality of goods. Moreover, the demand notice is issued by the authorised person. Thus, this contention of the Corporate Debtor lacks merit and is unsustainable.

9.3. The third issue is whether the amount claimed by the Operational Creditor is below the threshold limit of Rs. One Crore?

The Petition was filed on 24.02.2020, before coming into effect of the threshold limit notification dated 24.03.2020, issued by the Ministry of Corporate Affairs. The said notification, without any retrospective effect, is not applicable to the facts of the present case, and the amount of Rs. 17,47,266.42/-, claimed by the Operational Creditor is well within the threshold limit.

9.4. The next issue is whether the Corporate Debtor committed default in payment of the debt?

Though the Corporate Debtor committed a default in the payment of debt, however, as submitted by the Ld. Counsel for the Corporate Debtor and recorded in the daily order dated 07.02.2023, that an amount of Rs. 10,25,000/- upto 30.01.2023 has been paid to the Operational Creditor, and only the interest component of Rs. 3,73,232/- is left to be paid. In the daily order dated 22.02.2024, both the parties have admitted that the principal amount of Rs. 13,98,176.42 as claimed in the demand notice has been paid by the Corporate Debtor to the Operational Creditor. Thus, the Corporate Debtor has rectified the default committed by it by paying the principal amount in full.

10. After hearing both parties and a careful perusal of records, we are of the considered view that CIRP cannot be initiated solely on the basis of claim of interest component. Principal amount stands paid as admitted by learned counsel for the Petitioner as well as clearly established from the record available.

- 10.1. Hon'ble NCLAT in the matter of ***Rohit Motawat v. Madhu Sharma Proprietor of Hind Chem Corporation & Anr., Comp. Appeal (AT) (Ins.) No. 1152 of 2022***, held that an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC') for initiation of Corporate Insolvency Resolution Process ('CIRP') being pursued only for the interest component, where the principal amount had already been paid in full, is not maintainable as the spirit of the legislation of the IBC is for 'resolution of debt' and not for 'recovery'.
- 10.2. In the case of ***M/s Oswal Cable Products vs. M/s Jindal Speciality Textiles Limited*** (supra), adjudicated by this Bench, based on similar facts, application was dismissed vide order dated 16.05.2023, where the principal amount was paid by the corporate debtor, only interest component was disputed. The said order was challenged by the Operational Creditor by filing an appeal before the Hon'ble NCLAT, but the same was dismissed while upholding the order dated 16.05.2023 passed by this Bench.
- 10.3. The authority ***Mr. Prashat Agarwal, Member of Suspended Board of Bombay Rayon Fashions Ltd. vs. Vikash Parasrampuriah (supra)***, relied upon by the Operational Creditor is not applicable to the facts and circumstances of the present case.
11. In light of discussion foregoing, the present petition is not maintainable as the principal amount admittedly stands paid and only the interest component is disputed, for which the parties are at liberty to approach civil courts.

12. Thus, the present petition stands dismissed and disposed of accordingly, however, without any order as to costs.

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(L. N. Gupta)
Member (Technical)

-sd-
(Harnam Singh Thakur)
Member (Judicial)

April 23 , 2024
ASG