

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

**IB-636/(ND)/2023**

*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 IPACK SOLUTIONS  
(THROUGH ITS PARTNERS)**

Office at: -

Plot No. 33, 11211,  
Sikri, Sahapur Road,  
Near Balaji Dharam Kanta,  
Sikri, Faridabad,  
Haryana-121004

**...Applicant/Operational Creditor**

**Versus**

**M/s XTRACTPRO SEATING PRIVATE LIMITED  
(Through Its Directors)**

Office At: -B-1, 1<sup>st</sup> Floor, Phase-4 Community Centre,  
Nimri Colony, Ashok Vihar,  
New Delhi-110052.

**...Respondent/Corporate Debtor**

**CORAM:**

**SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)**

**SHRI.RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**PRESENT**

**Counsel for the Petitioner** : Adv. Bharat Arora, Adv. Hardik Nagpal.

**Counsel for the Corporate Debtor** : Adv. Ankit Tripathi

**ORDER**

**PER – MAHENDRA KHANDELWAL, MEMBER (JUDICIAL)**

**Date: 05.09.2024**

1. The present application has been filed by the Petitioner i.e., **M/s IPACK SOLUTIONS** (hereinafter referred to as the Operational Creditor) to initiate Corporate Insolvency Resolution Process (“CIRP”) in accordance with Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) against the Respondent i.e., **M/s XTRACTPRO SEATING PRIVATE LIMITED** (hereinafter referred to as the Corporate Debtor) for the alleged default on the part of the Respondent in clearing the debt of Rs. Rs. 1,01,01,387.57 /- (Rupees One Crore One Lakh One Thousand Three Hundred Eighty Seven and Fifty Seven Paise Only) due and payable w.e.f. 27.01.2023 which includes Rs. 93,19,665.24/- as basic amount and Rs. 7,81,722.33/- as interest charges.
2. The particulars of transactions leading to the filing of the present application as averred by the Applicant/Operational Creditor are as under –
  - I. The Operational Creditor incorporated as a Partnership concern and is engaged in the business of fabricated metal products, manufacturing of server panel, manufacturing & trading of packing items, etc ..

- II. The Corporate Debtor had approached the Operational 2022 Creditor for the supply of 'sheet metal parts' after which the business started between the Operational Creditor and the Corporate Debtor.
- III. The Operational Creditor had supplied sheet metal parts to the Corporate Debtor on number of occasions and towards which various invoices were raised in the year 2022 & 2023.
- IV. A chart of the invoices raised by the Operational Creditor upon the Corporate Debtor against the supply of "sheet metal parts" is provided -:

<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Invoice Amt.</b>
258	22.11.2022	1,30,526.88
282	08.12.2022	7,46,446.76
285	09.12.2022	18,50,870.12
286	09.12.2022	14,83,875.96
287	09.12.2022	13,70,999.52
288	09.12.2022	4,26,776.50
291	09.12.2022	16,39,702.04
295	15.12.2022	19,31,571.50
298	17.12.2022	3,06,526.24
299	17.12.2022	2,71,707.98
300	17.12.2022	5,88,230.00
301	21.12.2022	9,06,038.22
302	21.12.2022	6,63,679.20
309	23.12.2022	6,67,587.36
311	26.12.2022	5,12,120.00
312	26.12.2022	8,75,712.22
322	29.12.2022	5,70,434.42

325	02.01.2023	13,91,841.86
327	07.01.2023	32,43,879.00
328	09.01.2023	12,37,233.54
329	09.01.2023	1,24,724.82
333	12.01.2023	23,17,360.70
336	16.01.2023	13,13,937.08
339	20.01.2023	2,69,724.40
340	20.01.2023	3,76,847.16
342	20.01.2023	31,506.00
344	28.01.2023	5,85,775.60
345	30.01.2023	54,232.80
353	04.02.2023	5,23,934.16
362	09.02.2023	1,74,931.46
364	11.02.2023	4,52,239.72
398	09.03.2023	16,64,769.00
404	15.03.2023	21,44,912.00
408	20.03.2023	10,98,914.00
418	26.03.2023	4,85,108.62
2	03.04.2023	1,09,079.20
9	07.04.2023	39,825.00
10	07.04.2023	62,748.00

V. The Operational Creditor has been maintaining a running account in the name of Corporate Debtor wherein all the transactions between these two parties including Sales, Receipts and others are recorded in the regular course of business. As per the said Ledger Account maintained in due course of business, an amount of Rs. 1,01,01,387.57

remains to be paid by Corporate Debtor to Operational Creditor towards supply of materials/goods as mentioned above against tax invoices duly received by Corporate Debtor.

- VI. The last payment of Rs. 10,00,000/- was made on 11.03.2023 after various communications regarding the outstanding amount due from Corporate Debtor which was adjusted in the total outstanding amount. But however, the Corporate Debtor failed to pay and clear the remaining outstanding amount and interest thereupon.
- VII. The above noted unpaid amount, various requests and reminders for payments were made by Operational Creditor to Corporate Debtor on various occasions through different modes including phone calls, email and WhatsApp among others. Despite these reminders and requests, Corporate Debtor, has failed to clear their unpaid dues and have even stopped responding to the communications from Operational Creditor for sole intention to defraud and cheat Operational Creditor.
- VIII. The Corporate Debtor kept on assuring and promising the payment to Operational Creditor but despite various assurances failed to make the payments of outstanding amount.
- IX. The Operational Creditor for payment against supply of 'sheet metal parts', were to be payable within a period of 30 days. Accordingly, the date on which the debt fell due on each of the invoices is provided below-:

<b>Invoice No.</b>	<b>Invoice Date</b>	<b>Payment Due by/ Date on which Debt fell due</b>
258	22.11.2022	22.12.2022
282	08.12.2022	07.01.2023
285	09.12.2022	08.01.2023
286	09.12.2022	08.01.2023
287	09.12.2022	08.01.2023
288	09.12.2022	08.01.2023
291	12.12.2022	11.01.2023
295	15.12.2022	14.01.2023
298	17.12.2022	16.01.2023
299	17.12.2022	16.01.2023
300	17.12.2022	16.01.2023
301	21.12.2022	20.01.2023
302	21.12.2022	20.01.2023
309	23.12.2022	22.01.2023
311	26.12.2022	25.01.2023
312	26.12.2022	25.01.2023
322	29.12.2022	28.01.2023
325	02.01.2023	01.02.2023
327	07.01.2023	06.02.2023
328	09.01.2023	08.02.2023
329	09.01.2023	08.02.2023
333	12.01.2023	11.02.2023
336	16.01.2023	15.02.2023
339	20.01.2023	19.02.2023
340	20.01.2023	19.02.2023
342	20.01.2023	20.02.2023
344	28.01.2023	27.02.2023
345	30.01.2023	01.03.2023

353	04.02.2023	06.03.2023
362	09.02.2023	11.03.2023
364	11.02.2023	13.03.2023
398	09.03.2023	08.04.2023
404	15.03.2023	14.04.2023
408	20.03.2023	19.04.2023
418	26.03.2023	25.04.2023
2	03.04.2023	03.05.2023
9	07.04.2023	07.05.2023
10	07.04.2023	07.05.2023

X. The Applicant issued a notice dated 04.08.2023 under Section 8 of the Code, in terms of Clause (a) of Sub-Rule (1) of Rule 5 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. Despite issuance of the demand notice in terms of Clause (a) of Sub-Rule (1) of Rule 5 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016, the Corporate Debtor has failed to make payments to the Operational Creditor towards satisfaction of the unpaid Operational Debt. Copy of Demand Notice as issued under Section 8 of IBC along with Postal Receipts and Tracking Reports are annexed herewith and marked as ANNEXURE A-6 of the Petition.

3. The Counsel for the Corporate Debtor filed its reply on behalf of the Corporate Debtor as below: -

- i. The Applicant has concealed an undisputable fact from this Hon'ble Tribunal that on 18.04.2023, after the Respondent made a payment of Rs. 2,32,60,000/- [Rupees Two Crore Thirty-Two Lakh and Sixty Thousand only] to the Applicant towards the pending dues, the Applicant calculated the remaining amount due to be paid by the Respondent which came out to be Rs. 65,22,178/- [Rupees Sixty-Five Lakh Twenty-Two Thousand One Hundred and Seventy-Eight only]. The Applicant shared the calculation sheet with the Respondent on WhatsApp, however, as explained hereinafter, the remaining debt of Rs.



65,22,178/- [Rupees Sixty-Five Lakh Twenty-Two Thousand One Hundred and Seventy- Eight only] is also subject to dispute between the parties owing to the defaults of the Applicant. A copy of the calculation sheet dated 18.04.2023 settling the quantum of the amount payable along with a screenshot of the WhatsApp message by the Applicant sending a copy of the calculation sheet dated 18.04.2023 to the Respondent is annexed herewith and marked as ANNEXURE-R 2.

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**ANNEXURE R2**

Prccn - 20/2/23	
feet - 4237 @ .835	3537295
Railing & S&W parts	600701
f. cement	50,000
Railing part materials	40,000
2 set Blanchev chinal part	126000
<b>Total</b>	<b>4354596</b>
20/2/23 → old settled	22724538
<b>Total</b>	<b>2,70,79,134</b>
Cost - 4600 kg wastage @ 40	1840,000
	<b>2,52,39,134</b>
+ GST 18%	45,43,044
	<b>2,97,82,178</b>
payment Received	2,32,60,000
<b>Total - Balance payment</b>	<b>65,22,178</b>
Settled with MR ARUNGI	
Dated 18/04/2023	
<i>[Signatures]</i>	



- ii. The Applicant has also concealed the fact that before the date of filing of the present Application, the Respondent had in fact intimated the National E-Governance Services Limited ("NeSL") regarding the dispute between the parties, on receiving an e-mail dated 01.09.2023 from the NeSL requesting authentication of the default information submitted by the Applicant.
- iii. The e-mail dated 01.09.2023, NeSL informed the Respondent that a financial information has been submitted to NeSL-Information Utility by IPACK Solutions/ the Applicant stating that there is an operational debt owed by the Respondent having a Unique Debt IDAAGF/ 7440G\_ Due from Xtractpro to IPACK. In response to the said email, the Respondent disputed the claim of the Applicant on the NeSI, website on 15.09.2023 and received a confirmation of the dispute raised by e-mail dated 16.09.2023. Relevant portion of the Respondent's clarification for raising dispute against the Applicant's claim which is mentioned in e-mail dated 16.09.2023 is reproduced hereunder:

*"Followings are the dispute with I Pack Solutions:- Quality of the goods supplied by the party was not good. Delivery of goods was not on time, finishing of the goods was not good. We given raw material to I Pack Solutions 335550 Kg but they delivered weight 243244 kg balance material(92306Kg) never returned to us. An amount Rs. 5393703 is not shown on GST portal before 31-03-23 As these bills was issued before march 23. Considering these disputes debt claimed is not payable by the company."*

- iv. The Applicant has concealed the said calculation sheet as well as the fact regarding the deduction of Rs. 18,40,000/- out of the total amount due in addition to concealing the fact that the Respondent has made a payment of [Rs. 2,32,60,000/-] Rupees "Two Crore Thirty Two Lakh and Sixty Thousand only and the total amount due as on date is only Rs. 65,22,178/- [Rupees Sixty-Five Lakh Twenty-Two Thousand One Hundred and Seventy-Eight only].
  - v. The Applicant has fraudulently and with a mala-fide intention misrepresented the amount of operational debt owed by the Respondent with the sole intent to bring the instant Application under the jurisdiction of the IBC and this Hon'ble Tribunal. It is submitted that as per the Applicant's own case [see Part IV (Total Amount of Debt) on Page 13 of the Application", the principal amount owed by the Respondent is only Rs. 93,19,665.24/-. Although this amount is disputed, the Applicant in any event does not meet the threshold under Section 9 of IBC.
4. The Petitioner has filed its rejoinder and made the following averments –
- i. The existence of the dispute' and/or the suit or arbitration proceeding must be pre-existing i.e., it must exist *before the receipt of the demand notice or invoice*, as the case may be. That in the instant matter, the Demand Notice dated 04.08.2023 was duly served upon the Respondent through Speed Post and E-Mail wherein, in spite of receipt

- of the such notice, the Corporate Debtor had not disputed the claim nor submitted any reply under sub-section (2) of Section 8 within a period of ten days.
- ii. The Respondent has made an unequivocal and unambiguous admission that the Respondent received an Email dated 01.09.2023 from the NeSL regarding the debt wherein the Respondent has disputed the claim vide E-mail dated 16.09.2023 sent to NeSL and same can be corroborated from the ANNEXURE -R3 COLLY annexed with the Reply. Thus, it is not pre-existing dispute as defined under the code. Moreover, it is a settled position that raising of dispute in regard to quality of goods being inferior/substandard or defective for the first time in reply to demand notice or in response to notice served by the Adjudicating Authority would not constitute a prior and pre-existing dispute contemplated under law in terms of *Rajeev K Aggarwal Vs. Panipat Texo Fabs Pvt. Ltd.*; 2018 SCC OnLine NCLAT 656.
- iii. It is vehemently denied that despite the fact that the Respondent disputed the claim, the Applicant has filed the present Application by conveniently suppressing the aforementioned e-mails evidencing pre-existing dispute between the parties and the quantum of total amount due as on date which is only Rs. 65,22,178/- [Rupees Sixty-Five Lakh Twenty-Two Thousand One Hundred and Seventy Eight only]. It is further denied that this amount is also subject to dispute between the parties owing to the defaults of the Applicant.

- iv. The Respondent was also facing difficulties owing to the dishonest behavior of the Applicant. It is further denied that the Respondent has given 3,35,550 Kg of raw material to the Applicant, however the manufactured good delivered by the Applicant weighed only 2,43,244 Kg. It is further denied that the balance raw material and/or the scrap material weighing 92,306 Kg was never even returned to the Respondent. It is submitted that the quantity of the manufactured goods which were delivered to the Respondent were measured in terms of 'Unit' and not in Kilogram (KG).
- v. It is denied that after several confrontations, the Applicant conceded to its defaults and as evident from the calculation sheet dated 18.04.2023, while making the calculations for settlement of dues, the Applicant deducted an amount of Rs. 18,40,000/- against 46,000 Kg of scarp material which was never returned to the Respondent. It is further denied that the Applicant has concealed the said calculation sheet as well as the fact regarding the deduction of Rs. 18,40,000/- out of the total amount due in addition to concealing the fact that the Respondent has made a payment of Rs. 2,32,60,000/- and the total amount due as on date is only Rs. 65,22,178/-.
- vi. It is further submitted that during the manufacturing of the goods no scrap material was left over as it has been already mentioned above that the Corporate Debtor delivered the less quantity of the raw material wherein the Applicant purchased the rest of the raw material

from his own expense and duly delivered the finished products which was in **Excess to the quantity as mentioned in the Purchase Order being order no. 2022-23/24, dated 08.12.2022.** It is further submitted that the amount of Rs. 65,22,178/- was not a full and final settlement between the parties as same was roughly calculated without including the GST.

- vii. It is denied that even after the settlement of dues, the Applicant failed to return the unused raw material weighing approximately 30,000 Kg and failed to deliver the finished Product weighing approximately 16,000 Kg. It is further denied that the Applicant has also failed to compensate the Respondent for the losses suffered by it due to its other defaults. It is submitted that the averments made in the present paragraph are coupled with factual inconsistency and same requires strict proof. It is further submitted that the parties never arrived at the settlement of Rs. 65,22,178/- as the said amount was only a rough calculation which was shared with the Respondent thereby not including the amount of GST. It is pertinent to mention herein that from bare perusal of the Whatsapp correspondence between the parties as filed on record by the Applicant it is significant that the since the Applicant was in direct need of the funds, applicant was repeatedly requesting the Respondent for the payment of the outstanding dues wherein the Respondent was delaying the same on one or the other pretext. Therefore, the aforesaid amount was the part of the total claim

rather full and final settlement. Furthermore, mere assertion with respect to alleged settlement is not sufficient as the Applicant had nowhere admitted or specified the said amount to be final amount.

**ANALYSIS AND FINDINGS-:**

5. We have perused the documents filed by the Operational Creditor as well as Corporate Debtor and have heard the arguments made by the counsels appearing for both the parties.
6. The Demand Notice dated 04.08.2023 was duly served upon the Respondent through Speed Post and E-Mail. The Respondent received an Email dated 01.09.2023 from the NeSL regarding the debt wherein the Respondent has disputed the claim vide E-mail dated 16.09.2023 sent to NeSL and same can be corroborated from the ANNEXURE -R3 COLLY annexed with the Reply. Thus, it is not pre-existing dispute as defined under the code. Moreover, it is a settled position that raising of dispute in regard to quality of goods being inferior/substandard or defective for the first time in reply to demand notice or in response to notice served by the Adjudicating Authority would not constitute a prior and pre-existing dispute contemplated under law in terms of Rajeev K Aggarwal Vs. Panipat Texo Fabs Pvt. Ltd.; 2018 SCC OnLine NCLAT 656.
7. The amount of Rs. 1,01,01,387.20/- comprises of the alleged principal amount of Rs. 93,19,665.24/- and a self-imposed interest of Rs. 7,81,722/-. The alleged principal amount of Rs. 93,19,665.24/- is disputed in light of the

calculation cum reconciliation sheet dated 18.4.2023, duly signed off by the Applicant and the Respondent. As per the calculation cum reconciliation sheet, an amount of Rs. 65,22,178/-.

8. The Applicant has arbitrarily, in absence of any agreement, calculated and adduced an interest in tone of Rs. 7,81,722/- to the alleged defaulted amount of Rs. 93,19,665.24/- solely for the purposes of meeting the threshold of Rs. 1 Cr provided under Section 4 of the Code. It is a settled proposition that an operational creditor cannot add or impose an interest with the principal amount provided that the interest is either expressly stipulated in an invoice raised for the goods supplied/ the services rendered or in an agreement entered between the parties.
9. It is submitted that by the Operational Creditor that there is no illegality in the application while clubbing the principal amount with the amount of interest due over late payment as it took a loan from Bank of India for the purpose of carrying out the business with CD wherein at present, the concerned bank is charging a rate of interest @ 9% wherein OC is compelled to pay the huge amount of interest and the sole reason behind the same is only the intentional and deliberate default on the part of CD by not making payments towards invoices.
10. The Hon'ble NCLAT in the case of **Pavan Enterprises Vs. Gammon India Ltd.** Company Appeal (AT) (Insolvency) No. 144 of 2018 dated 27.07.2018, wherein the Hon'ble NCLAT held that:



*"4. It is submitted that the 'debt' includes the interest, but such submission cannot be accepted in deciding all claims. If in terms of any agreement, interest is payable to the Operational or Financial Creditor then the debt will include interest, otherwise, the principal amount is to be treated as the debt which is the liability in respect of the claim which can be made from the Corporate Debtor."*

11. We are inclined to agree with the Corporate Debtor that the filing of petition is for the purpose of recovery of the balance amount. The **Hon'ble National Company Law Tribunal**, New Delhi also has held vide order dated 08.05.2017 passed in Company Petition No. (18)-76 (ND) I 2017 (**M/s India Design Worx Infrastructure Private Limited V/s M/s Premier Restaurant Private Limited**) that the "provisions of the Code cannot be used for recovery of a Debt."

12. The Principal amount due is Rs. 93,19,665.24/-. As stated above the interest amount has been claimed in absence of any written agreement or provision in the invoices. The interest liability is shown as Rs. 7,81,722/-. As observed above, in absence of any written agreement or provision in the invoice the interest liability claimed can not be considered as operational debt within the meaning of IBC, 2016. Therefore, the amount due is Rs. 93,19,665.24/- which is below the threshold limit of Rs. 1 Crore, as laid down under Section 4 of the Code. The minimum threshold limit of Rs. 1 Crore as laid down under Section 4 of the Code is the statutory requirement which has to be mandatorily complied with and no person shall be entitled

to have the privilege of not complying with the statutory requirements. Since, the present petition fails to meet the minimum threshold amount of Rs. 1 crore, hence, the present petition is not maintainable and is liable to be dismissed on this ground alone.

13. In view of the observations made herein above, and the judicial pronouncements, the instant application bearing **CP (IB) No. 636/ND/2023** filed by, **M/s IPACK SOLUTIONS**, (Operational Creditor), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s XTRACTPRO SEATING PRIVATE LIMITED**. (Corporate Debtor) is liable to be dismissed and accordingly, the same stands **dismissed**.

**-SD/-**  
**(Rahul Bhatnagar)**  
**Member (T)**

**-SD/-**  
**(Mahendra Khandelwal)**  
**Member (J)**