

IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 95/MB/2022

*[Under Section 9 of the Insolvency and Bankruptcy Code, 2016
r/w Rule 6 of the Insolvency and Bankruptcy (Application to
Adjudicating Authority) Rules, 2016]*

IN THE MATTER OF:

MITTAL POLYMERS

F-179, Indraprastha Industrial Area

Kota — 324005, Rajasthan.

...Operational Creditor

V/s

SUVARNA ADDITIVES PRIVATE LIMITED

[CIN: U24100MH2011PTC221076]

Registered Office: D-61, Shree Vignesh

Sector 4, Airoli, Navi Mumbai-400708

Maharashtra.

...Corporate Debtor

Pronounced: 12.06.2024

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Hearing: Hybrid

Appearances:

Operational Creditor: Adv. Prashansa Agarwal a/w Adv. Akhilesh Gupta

Corporate Debtor: Adv. Burjis Bhathena a/w Adv. Tony D'Cunha and Adv.

Sanan Kamthe

ORDER

[Per: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This Company Petition bearing C.P. (IB) No. 95/MB/2022 (Application) was filed on 20.02.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (AA Rules) by Mittal Polymers, the Operational Creditor (OC), through Mr. Ashok Kumar Agrawal, Authorised Signatory of the OC, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Suvarna Additives Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.2,33,10,961/- (Two Crore Thirty-Three Lakh Ten Thousand Nine Hundred Sixty-One Rupees), which comprises of principal amount of Rs. 1,12,46,443/- and Rs. 1,20,64,518/- as compound interest as on 01.11.2019, calculated as per the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (MSMED Act). It is based on several unpaid invoices issued by the OC during the period between 2015 and 2019 in lieu of selling and supplying goods to the CD.

1.3 The date of default as mentioned in Part IV of the Application is 16.09.2019, i.e., the date on which the CD finally stopped making payments towards the invoice dated 02.05.2019, bearing No. 29 issued by the OC to the CD. Since the CD defaulted in payment of outstanding dues,

the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.

2. CONTENTIONS OF OC

2.1 It is submitted that the OC is a Kota-based manufacturer of chemicals and chemical products, registered under the MSMED Act on 03.11.2015, while the CD is a Private Limited Company, engaged in the business of chemicals. The OC sold and supplied raw materials to the CD during the period between January, 2011 and December, 2018. The OC further submitted that it issued several invoices to the CD, the first one dated 10.04.2015, bearing No. 15 for Rs. 13,94,213/- and the last invoice dated 02.05.2019 for Rs. 94,400/-.

2.2 The OC submits that it had raised the invoices to the tune of Rs. 3,16,64,209/-. Out of this, the CD has made payments of Rs. 2,04,46,631/- during the period from 2015 to 2019. However, the amount of Rs. 1,12,17,578/- was still left unpaid towards the supply of raw materials to the CD. The CD did not raise any dispute over the quality or quantity of the supplied raw materials. The last payment made by the CD was on 30.04.2019 and, since then, it did not make any payment to the OC. To substantiate its contention, the OC relied on the Affidavit dated 17.01.2020 as well as its computation chart containing details of invoices raised, payment received from the CD and the interest calculated thereon as per the MSMED Act.

2.3 On account of failure of payment of aforesaid dues, the OC issued demand notice dated 15.11.2019 under Section 8 of the IBC to the CD for recovery

of Rs. 2,33,60,961/- including compound interest as per the MSMED Act.

Despite the receipt of demand notice on 02.12.2019 by the CD, it not only failed to give any reply but also did not make any payment towards settling the outstanding dues.

2.4 The OC has placed on record a statement of its bank account for the period from 01.11.2019 to 24.12.2019, showing that the CD has made part-payment of Rs. 50,000/- after issuance of the demand notice dated 15.11.2019.

2.5 The Ld. Counsel for the OC contended that the OC is also entitled to claim interest upon the amount raised through unpaid invoices as per Section 15 and 16 of the MSMED Act.

3. CONTENTIONS OF CD

3.1 On account of non-appearance of the CD on different occasions, its right to file reply was forfeited *vide* our order dated 13.10.2023, and the matter was listed for hearing on 27.10.2023. On that day, the Counsel for the CD submitted that reply was ready to be filed. It was then submitted by the Counsel for the CD that he proposed to file an application to recall our order dated 13.10.2023 along with reply. Hence it was listed to 22.11.2023 for further consideration of the matter. On 22.11.2023, the Counsel for the CD submitted that the matter was being settled with the OC and, hence, we allowed settlement as a last chance and listed on 15.12.2023 for reporting settlement. Since no settlement was forthcoming, we finally heard both the Counsel for the OC and the CD on 15.12.2023. There was no request from the Counsel for the CD to allow the CD to file reply or to recall our order dated

13.10.2023 forfeiting the right of the CD. However, after the parties were finally heard on 15.12.2023, and reserved for orders, we find that the CD filed a reply online along with the delay condonation application, praying for allowing its reply and condoning the delay on the ground of lack of acquaintance with the online filing system of this Tribunal but these applications are now reflected on DMS portal. The CD has not filed any application to recall our order dated 15.12.2023, reserving the matter for orders. In the circumstances, we are not inclined to take cognizance of the reply filed by the CD. However, without prejudice to the above, we propose to deal with the present Application on merits based on the submissions made by the Ld. Counsel for the OC and the CD.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard both the Ld. Counsel for the OC and the CD.

4.2 As far as the issue of limitation is concerned, we find that the invoices claimed by the OC dated back 2015 to 2019 while the present Application was filed on 20.02.2021. On perusal of the records, we do not find copy of any invoice produced by the OC in support of its claim of generating them except Annexure-H containing Computation of default prepared by the OC. The OC has also produced Annexure- C, containing particulars of invoices. The above have neither been authenticated nor acknowledged by the CD. Further, the OC has provided Annexure-G containing interest rates notified by the Reserve Bank of India. A demand notice under Section 8 of the IBC has been

issued to the CD dated 15.11.2019; however, no reply was received by it in spite of the same having been served on the CD.

4.3 The bank statement produced by the OC only suggests that it has not received any payment from the CD from 03.12.2019 to 19.12.2019. The OC has not produced any ledger or annual financial statement which could have thrown light into the alleged debt or default committed by the CD. The only documents produced by the OC in order to prove debt and default is its own computation of claims and the demand notice dated 15.11.2019 which are insufficient for this Adjudicatory Authority to determine the maintainability of the present Application. As per the law laid down by Hon'ble NCLAT, Chennai in *M/s. SFO Technologies Pvt. Ltd. Vs. M/s. Vanu India Pvt. Ltd.*, [IA No. 1106/2022 in Company Appeal (AT) (CH) (Ins.) No. 436/2022], Section 9 Application is not maintainable in the absence of strict proof of debt and default. This issue is held against the OC.

4.4 Since the OC did not produce any invoice on record, it is difficult to ascertain the veracity of its claims and upon perusal of its computation of claims, we find that all the invoices were raised during the period from 10.05.2015 to 31.12.2017. There is no evidence to suggest whether the alleged debt has been acknowledged by the CD. The bank account statement produced by the OC indicates receipt of Rs. 50,000/- from the CD 15.11.2019. However, in the absence of any purchase order or invoice, we cannot presume that the amount was in relation to any debt or liability as alleged by the OC. In the circumstances, we hold that the law of limitation has come into play since the present Application is filed beyond the limitation period of three years from

the date of alleged default as per the invoices. Thus, the issue of limitation is decided against the OC.

4.5 In short, the OC has not succeeded in proving existence of any operational debt due and payable to it by the CD. Initiation of CIRP is a serious matter and it has severe consequences on a corporate entity. It is not to be allowed in a case which lacks any proof of debt and default committed by the CD. In view of the above position, this Application fails as it does not satisfy the necessary requirements for admission under Section 9 of the IBC.

ORDER

This Application bearing C.P. (IB) No. 95/MB/2022 under Section 9 of the IBC, filed by Mittal Polymers, the OC, for initiating CIRP in respect of Suvarna Additives Private Limited, the CD is **rejected**.

We make it clear that any observations made in this Order shall not be construed as expressing opinion on merits. The OC's rights, if any, available as per law before any judicial/quasi-judicial forum shall not be prejudiced on the grounds of rejection of the present Application. No orders as to costs. Ordered accordingly.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)

Sd/-
K. R. SAJI KUMAR
MEMBER (JUDICIAL)

//Tanmay Jain//