



**IN THE NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH, COURT NO. II
KOLKATA**

Company Petition (IB) No. 122 of 2024

***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:

Visen Industries Limited

... Operation Creditor

Versus

Peekay Agencies Private Limited

... Corporate Debtor

Date of Pronouncement: 11th of November 2024

CORAM:

SMT. BIDISHA BANERJEE, MEMBER (JUDICIAL)

SHRI. D. ARVIND, MEMBER (TECHNICAL)

APPEARANCE:

Mr. Rishav Banerjee, Adv.]	For Operational Creditor
Mr. Sayak Ranjan Ganguly, Adv.		
Ms. Srijani Ghosh, Adv.		
Ms. Indrani Majumdar, Adv.		

Mr. Shaunak Mitra, Adv.]	For Corporate Debtor
Ms. Shreya Choudhary, Adv.		

ORDER

Per: D. Arvind, Member (Technical):

- 1.** The Court congregated through hybrid mode.
- 2.** Heard Ld. Counsels for the parties.
- 3.** This petition has been filed by **Visen Industries Limited** (hereinafter referred as “**Applicant/Operational Creditor/OC**”) for seeking admission of **Peekay Agencies Private Limited** (hereinafter

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referred as **“Respondent/Corporate Debtor/CD”**) into the Corporate Insolvency Resolution Process (CIRP) under Section 9 of Insolvency and Bankruptcy Code, 2016.

Brief facts of the Case:

4. The applicant has claimed that they have supplied goods to the corporate debtor from 04.06.2023 to 13.08.2023 and raised 31 invoices totalling to Rs. 1,81,89,719/-. The details of supplies made, invoices wise has been mentioned in Sl. No. 4 of the application/petition in the form of a table.
5. It is the claim of the applicant that the corporate debtor has not paid a sum of Rs. 1,81,89,719/- and interest of Rs. 2,69,507/- totalling to Rs. 1,84,59,226/- till date. Subsequently, the OC has adjusted a sum of Rs. 55,05,657/- from the total outstanding payable by the CD for the value of goods purchased by OC from CD and therefore, the remaining sum of Rs. 1,29,53,569/- is still outstanding due and payable by the CD to OC as per OC and hence, this application under Section 9 of the IBC by the OC.

Ld. Counsel for Applicant:

6. Ld. Counsel for applicant submits relying on table annexed in Page No. 41 of this application that a sum of Rs. 1,29,53,569/- is due as on 31.03.2024. For ready reference the said table is reproduced as under:

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VISEN INDUSTRIES LIMITED BILLS DETAILS OF PEEKAY AGENCIES PVT. LTD.							Interest as on 15-Oct-23	
Date	Type	Invoice No.	Amount	Amount	Amount	Due Date	Days	Amount
04-06-2023	Invoice	TR-SI2324-0369	1,65,282.00		1,65,282.00	03-08-2023	73	5,950
20-06-2023	Invoice	SL-SI2324-1160	3,43,191.00		3,43,191.00	19-08-2023	57	9,647
20-06-2023	Invoice	SL-SI2324-1169	87,745.00		87,745.00	19-08-2023	57	2,466
22-06-2023	Invoice	SL-SI2324-1194	5,07,400.00		5,07,400.00	21-08-2023	55	13,762
22-06-2023	Invoice	SL-SI2324-1195	7,36,288.00		7,36,288.00	21-08-2023	55	19,971
22-06-2023	Invoice	SL-SI2324-1196	7,60,397.00		7,60,397.00	21-08-2023	55	20,624
24-06-2023	Invoice	SO-SI2324-0142	31,723.00		31,723.00	23-08-2023	53	829
24-06-2023	Invoice	SL-SI2324-1218	34,319.00		34,319.00	23-08-2023	53	897
26-06-2023	Invoice	SL-SI2324-1231	4,55,598.00		4,55,598.00	25-08-2023	51	11,459
26-06-2023	Invoice	SL-SI2324-1232	2,17,675.00		2,17,675.00	25-08-2023	51	5,475
28-06-2023	Invoice	SL-SI2324-1250	19,93,053.00	-1,13,185.00	18,79,868.00	27-08-2023	49	45,426
28-06-2023	Invoice	SL-SI2324-1254	1,71,596.00		1,71,596.00	27-08-2023	49	4,147
28-06-2023	Invoice	SL-SI2324-1257	78,659.00		78,659.00	27-08-2023	49	1,901
01-07-2023	Invoice	SL-SI2324-1278	1,71,596.00		1,71,596.00	30-08-2023	46	3,893
03-07-2023	Invoice	TR-SI2324-0541	53,283.00		53,283.00	01-09-2023	44	1,156
04-07-2023	Invoice	SL-SI2324-1303	66,821.00		66,821.00	02-09-2023	43	1,417
04-07-2023	Invoice	SL-SI2324-1310	17,90,539.00	-1,01,763.00	16,88,776.00	02-09-2023	43	35,811
04-07-2023	Invoice	SL-SI2324-1311	6,07,667.00		6,07,667.00	02-09-2023	43	12,886
05-07-2023	Invoice	SL-SI2324-1322	4,62,347.00		4,62,347.00	03-09-2023	42	9,576
14-07-2023	Invoice	SL-SI2324-1443	82,553.00		82,553.00	12-09-2023	33	1,343
14-07-2023	Invoice	SL-SI2324-1448	3,30,211.00		3,30,211.00	12-09-2023	33	5,374
15-07-2023	Invoice	SL-SI2324-1451	4,95,317.00		4,95,317.00	13-09-2023	32	7,817
18-07-2023	Invoice	SL-SI2324-1495	3,25,019.00		3,25,019.00	16-09-2023	29	4,648
19-07-2023	Invoice	SL-SI2324-1506	8,69,167.00		8,69,167.00	17-09-2023	28	12,002
02-08-2023	Invoice	SL-SI2324-1653	23,93,408.00	-1,36,030.00	22,57,378.00	01-10-2023	14	15,585
06-08-2023	Invoice	TR-SI2324-0775	41,601.00		41,601.00	05-10-2023	10	205
08-08-2023	Invoice	SL-SI2324-1723	20,71,712.00	-1,18,378.00	19,53,334.00	07-10-2023	8	7,706
08-08-2023	Invoice	SL-SI2324-1724	2,94,705.00		2,94,705.00	07-10-2023	8	1,163
08-08-2023	Invoice	SL-SI2324-1728	7,62,181.00		7,62,181.00	07-10-2023	8	3,007
13-08-2023	Invoice	SL-SI2324-1787	16,74,212.00		16,74,212.00	12-10-2023	3	2,477
13-08-2023	Invoice	SL-SI2324-1788	6,95,383.00	-95,533.00	5,99,850.00	12-10-2023	3	887
24-08-2023	JV	JV	-16,040.00		-16,040.00			
Total			1,87,54,608.00		1,81,89,719.00			2,69,507
Outstanding dues as on 15.10.2023								1,84,59,226
Less: Amount Adjusted as per JV dated 14.03.2024								-55,05,657
Total dues as on 31.03.2024								1,29,53,569

7. He brought to our notice, the notice issue under Section 8 of the IBC dated 18.10.2023 by OC to CD. He submits that despite receipt of demand notice, the CD disputed their liabilities by raising false contentions therein *vide* their letter dated 01.11.2023.
8. Ld. Counsel submits that the said letter has been replied by OC *vide* their letter dated 01.11.2023, denying the contentions raised by the CD. The CD *vide* its letter dated 02.03.2024 again raised false contentions to deny their rightful dues of the OC and hence, this application may be admitted and CIRP may be initiated against the corporate debtor.

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Ld. Counsel for respondent:


- 9.** Ld. Counsel for respondent submits that the corporate debtor belongs to Peekay group of companies which has got several group companies including **i)** Peekay Agencies Pvt. Ltd., **ii)** Bharat Mercantile Corporation, **iii)** Peekay Petrochem Pvt. Ltd. and **iv)** Multichemical Industries Pvt. Ltd.
- 10.** The operational creditor has taken loan from one of the sister-concern of the corporate debtor Multichemical Industries Pvt. Ltd. mentioned above for a sum of Rs. 75,00,000/- with interest at the rate of 12% per annum on 09.02.2021. It is pertinent to mention that Multichemical Industries Pvt. Ltd. has been issuing invoices for interest to the operational creditor and the operational creditor also paid the same to Multichemical Industries Pvt. Ltd. after deduction of TDS. He relies on the copy of the ledger, bank statements, interest invoices, Form 26AS evidencing the payment of interest.
- 11.** He also submits that Peekay Group of Companies being distributor of many companies have also supplied materials to the subsidiary of the operational creditor at Sharjah being Visen Polymers FZE, in the past four years continuously. A total sum of Rs. 48,06,696/- is due and payable to Peekay group for such supplies to the Sharjah entity of operational creditor, which is hundred percent subsidiary of OC. In fact, the CD has acknowledged that sums are due and payable to the OC in reference to the letter dated 25.08.2023, which captures the amount payable by corporate debtor to operational creditor, which is Rs. 1,81,89,719/- on account of goods supplied by OC to CD and also the amount payable by OC to CD on account of purchase of goods by OC from CD and the loan advanced by the sister-concern of CD to OC for a sum of Rs. 75,00,000/-.

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12. The acknowledgement of net due receivable from CD by OC has been acknowledged in the letter dated 25.08.2023, by OC, for a sum of Rs. 51,84,062/-. For the sake convenience the said letter is reproduced as under:

114 Announce G

 **VISEN INDUSTRIES LTD.**
501, Stanford, Plot No. 554, Junction of S.V. Road & Juhu Lane, Andheri (W), Mumbai - 400 058, India.
Tel: (022) 6844 3333 • Fax: (022) 6844 3344 • e-mail: accounts@visen.net • web: www.visen.net
CIN : U24100MH1985PLC037350

UNDER REGD AD

Date: 25-08-2023

To,
M/s. PEEKAY AGENCIES PVT LTD.
7/1, Lord Sinha Road,
5th flr, Room No.506
Kolkata - 700 071 (West Bengal)

Kind Attn: Mr. Pawan Kumar Goenka.

Dear Sir,

The net amount receivable by us as on date is 51,84,062/-. The details of the same are as given below.

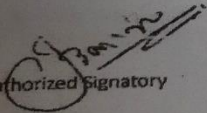
Amount receivable from you	= Rs.1,81,89,719/-
Less : amount payable to you	= Rs. 55,05,657/-
Less : Deposit lying with us	= Rs. 75,00,000/-
Net receivable	= Rs. 51,84,062/-

Please remit the balance payment of Rs.51,84,062/- immediately and share us UTR number.


Once the payment of Rs.51,84,062/- is settled we can exchange Rs.55,05,657/- and Rs.75,00,000/-


Thanking you.

Yours faithfully,
For VISEN INDUSTRIES LTD.


Authorized Signatory

An ISO 9001 : 2015 Company



PEEKAY AGENCIES PVT. LTD.

Director

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13. Since the confirmation issued by OC for net receivable by him has not captured the interest payable on the loan advanced, the CD has written a letter dated 01.09.2023, capturing the interest portion as well to arrive at the net due to the OC by the CD. The said letter is reproduced for the sake of convenience:

115 Annexure H

PEEKAY AGENCIES PVT. LTD.

REGD. OFFICE:
7/1, LORD SINHA ROAD, 'LORDS' 606
KOLKATA-700 071
PHONE: +91-33-4003-3936
FAX : +91-33-4003-3936
E-MAIL: dhakata@vsnl.in
CIN : U51420WB1901PTC031997

// UNDER REGD AD //

54/23-24 01/09/2023

M/s VISEN INDUSTRIES LTD. *cl*
501 STANFORD,
PLOT NO. : 554
SB ROAD,
ANDHERI (W)
MUMBAI : 400 058

Kind Attn. : Mr. Vijay Nair

Dear Sir,

**Sub. : Amount receivable and payable between Peekay Group and Visen Group –
India & Sharjah**

We refer to our telephonic discussion on several occasions with your Accounts Team exchange of mails and your letter dated 25/08/2023. You have mentioned the detail of amount receivable and payable as per your accounts.

In this connection we would like to mention as follows –

1) Amount receivable to you from us	: Rs. 1,81,89,719/-	<i>admitted</i>
2) Amount receivable by us from you (A)	: Rs. 55,05,657/-	✓
3) Our deposit amount (B) : Rs. 7500000.00		
<u>Interest</u> – April to June, 23 : Rs. 201946.00		
July, 2023 : Rs. 68794.00		
August, 2023 : Rs. 68794.00		
	: Rs. 78,39,534.00	
4) Our Invoice No. PA/EX/00016/2122 dated 11/06/2021 raised on UAE for supply of material (C)	: USD 58,720.80 (Approximately 48.45 lakhs INR)	

NOTARY
KOLKATA
Narendran Prasad Gupta
Regd. No. - 13923/2018
Valid till - 30-12-2028

PEEKAY AGENCIES PVT. LTD.
[Signature]
Director

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- 14.** Relying on this statement, the Ld. Counsel for CD submits that no amount is payable to the OC. It has been their practice for the past several years to adjust the dues of each other at group level instead of entity level and that is why letter dated 25.08.2023, the OC has clearly acknowledged the net debt after adjusting the amount payable to corporate debtor and its group entity. Therefore, this application has been filed with a mala fide intention to harass the CD and recover the sums due from the CD, when the OC himself has acknowledged the dues payable by him to the other entities of the CD.
- 15.** In fact, the OC has agreed and admitted that net due receivable as Rs. 51,84,062/- in his letter dated 25.08.2023. This letter, however, did not include the amount payable by OC to the CD on account of supply of goods made by CD to the Sharjah entity of the OC group to the tune of USD 58920. If this is taken into consideration, there is no amount due as on date by the CD to OC and hence, this application deserves to be dismissed by exemplary costs.

Analysis and Findings:

- 16.** The fact that the OC has supplied goods through 31 invoices amounting to Rs. 1,81,89,719/- has not been disputed. The fact that the OC has purchased goods worth of Rs. 55,05,657/- from the CD has also not been disputed. In fact the OC has made adjustment for that sum against the amount receivable by him against the 31 invoices and has calculated net amount due as Rs. 1,29,53,569/-. We do not see any agreement by the CD on interest except interest clause in the invoices. We have been consistently holding that mere mention in the invoice about the interest is not enough to recover interest from the CD. Therefore, we will focus only on the net

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principal amount due which is approximately Rs. 1.26 crore after excluding the interest.

- 17.** We have seen that it has been the practice of both the groups (group entities of CD) and group entities of OC to adjust entity wise dues at group level. This is evident from the letter of 25.08.2023 by CD mentioned in Para 12 of this Order.
- 18.** Therefore, we can conclude that it has been the practice and understanding of both the groups to settle their dues, not entity wise but at group level. If this is taken into consideration at group level, no due is payable by the CD to the OC. Even as per OC's admission in its letter dated 25.08.2023, the receivable is only Rs. 51,84,062/- which does not include the invoice raised by CD as the sister entity of the OC at Sharjah for sum of USD 58720, for supply of goods.
- 19.** If both the parties have chosen to settle their entities' dues to each other, at group level, the OC cannot unilaterally choose to claim one entity's due and make this application.
- 20.** Thus, **we find no merit in this petition and dismiss the same as not maintainable.**
- 21.** Certified copy of this order, if applied for with the Registry be supplied to the parties in compliance with all requisite formalities.

D. Arvind
Member (Technical)

Bidisha Banerjee
Member (Judicial)

Signed on this, the 11th day of November 2024.

PH[PS]