



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, COURT -V**

**C.P. (I.B) No.693 /MB/2021**

**Under Section 9** of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

*In the matter of*

**M/s. Identity Science Co. Ltd**

Having its registered address at 3106  
Yokohama Lankmark Tower,2-2-1  
Minatormiral Nishiku, Yokohama Kanagaw,  
Japan 220-8131

**...Operational Creditor/Petitioner**

*Vs*

**M/s Soanl Plasrub Industries Private Limited.**

Having its registered address at 404  
Rimsan Estate Premises Co. Op Society  
Chincholi Bunder Link Road, Malad(w),  
Mumbai 400 064

**...Corporate Debtor/Respondent**

**Order Dated:06.09.2024**

**Coram:**

Reeta Kohli

Madhu Sinha

Hon'ble Member (Judicial)

Hon'ble Member(Technical)



**Appearances: (Physical)**

For the Operational Creditor: PCA Pragya Navandar (VC)

For the Corporate Debtor: Adv. M. H. Syed (PH)

**ORDER**

***Per:Reeta Kohli, Hon'ble Member (Juidicial)***

1. This Company Petition is filed by **M/s. Identity Science Co. Ltd.** (hereinafter referred as “**Operational Creditor**”) seeking to initiate Corporate Insolvency Resolution Process (hereinafter referred as “**CIRP**”) against **M/s Sonal Plasrub Industries Private Limited.** (hereinafter referred as “**Corporate Debtor**”) by invoking the provisions of **Section 9** of the Insolvency and Bankruptcy code, 2016 (hereinafter called “**Code**”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for an Operational Debt of **Rs.1,12,37,646** (principal plus interest). Demand Notice dated 21.02.2020 was sent to the Corporate Debtor, however no reply was received leading to the filling of this petition.

**Brief facts:**

2. The present petition reveals that the Operational Creditor i.e. **Identity Science Co. Ltd** is a Company based in Japan. The Operational Creditor had entered into a continuous sales contracts with the Corporate Debtor between period of June 2018 to March 2019 with the Operational Creditor for supplying of the chemicals products 1-BROMO BUTANE(NBB) AND HYDRO BROMIC ACID 48%(HBr). Accordingly, the parties entered in a continuous sales contract dated 18.06.2018.



3. It is the case of the Operational Creditor that it had placed an order for chemical named 1-BROMO BUTANE(NBB) for 1,40,000kgs to be delivered at Shanghai-China (*Port of Discharge*) vide sale contract dated 18.06.2018 bearing contract No. SPIPL/ISCL/03/2018 having contractual period from July 2018 to January 2019. The said order was to be shipped in two different consignments, one containing 1,00,000kgs and the other containing 40,000 Kgs.
4. Further the Corporate Debtor successfully delivered the 1<sup>st</sup> order of 1,00,0000 kgs, but from said order 1622 kgs product was missing. It is the case of the Operational Creditor that it had to incur \$16,766 USD (equivalent to Rs.1,19,248.14) for the damage to the product in the 1<sup>st</sup> order and the for the said missing 1622kgs of product on behalf of the Corporate Debtor. The receipt of the said damage is dated 5.03.2019. Therefore, it is submitted by the OC that for the Sales Contract dated 18.06.2018, the date of default is 5.03.2019.
5. Further the OC placed order of 40,000 kgs by issuing a purchase order dated 17.06.2019. The Operational Creditor made 75% advance payment for the product and the balance 25% was to be paid against the scanned copy of Bill of Landing. It is the case of the Operational Creditor that the said order was never delivered to them even after 75% of advance being \$84,060 was paid to the Corporate Debtor as per their policy. The said chemical delivery was due on or before 31.07.2019 which was in accordance to the date of shipment specified in the Purchase Order dated 17.06.2019 and therefore the dated of default is considered as 01.08.2019.
6. It is the case of the Operational Creditor that, further vide Sales Contract Dated 26.03.2019, an order was placed of the product HYDRO BROMIC ACID 48% (HBr) for 2,00,000 Kgs and for the said order the Operational Creditor made the advance payment of 100% on 3.04.2019 as the Corporate



Debtor had changed their payment policy from the previous payment policy of giving an advance payment of 75% to now as 100%.

7. The Chemical HBr delivery of 40,000 kgs small sample was expected to be delivered on or before 30.04.2019. The Corporate Debtor delayed the delivery of the said order citing reasons like breaking down of the machinery and the said fact is accepted by the corporate debtor vide an email dated 12.06.2019. Hence the date of default is taken as 01.05.2019. However, till date the delivery of 40,000 Kgs of the product 1- BROMO BUTANE (NBB) and 2,00,000 Kgs of the product HYDRO BROMIC ACID 48% (HBr) has not been made nor has the advance paid been returned back to the Operational Creditor
8. On 21.02.2020, the Demand Notice in Form 3 & 4 as per IBC, 2016 was sent to the Corporate debtor. The Demand Notice was delivered to the Corporate Debtor on 27.02.2020 via courier of FedEx delivery. However, no reply was received from the Corporate Debtor to the said demand notice.
9. Hence the present petition was filed u/s 9 of the Insolvency and Bankruptcy Code, 2016 for realization of its debt amount of Rs.1,12,37,646/- by the Operational Creditor.
10. The Corporate Debtor in its reply states that the petition filed by the Operational Creditor is false vexatious, baseless and not maintainable in the eyes of Law, and the denies the contents of the petition and documents relied upon by the Operational Creditor.
11. Further the Corporate Debtor states that the Operational Creditor has not approached the Hon'ble Tribunal with clean hands and the Operational Creditor has suppressed certain facts and the Non-Disclosure of the Date of Default.



- 12.** In furtherance of the date of default the Operational Creditor has not disclosed the same correctly as mentioned in affidavit dated 03.01.2024 filled by the OC in pursuance to the order dated 12.12.2023 by this Hon'ble Tribunal wherein they were allowed to file the same and neither in section 8 notice and or in part IV of the petition, the Operational Creditor has filed fresh facts via affidavit dated 03.01.2024 which is not part of the petition. The Operational Creditor had not disclosed any reason for non- disclosure of the date of Default previously.
- 13.** The Corporate Debtor respectfully submits that the affidavit filed by the Operational Creditor is intended to fill the lacuna and is submitted with ulterior motives. It is further submitted that the affidavit, much like the initial petition, lacks documentary support for the claimed damages amounting to \$16,766. Neither the petition nor the affidavit contains any documents that substantiate the claim for damages. Specifically, there are no documents provided that indicate the date of default in relation to the claimed damages.
- 14.** The Corporate Debtor submits that the Operational Creditor's affidavit is inconsistent and contradictory. According to the affidavit, the dates of default are listed as 05.03.2019, 01.08.2019, and 01.05.2019. However, it also mentions payments made on 03.04.2019, and 24.06.2019. The corporate debtor points out that these payment dates contradict the default dates, suggesting that if payments were made, defaults could not have occurred as stated. This inconsistency, they argue, undermines the credibility of the affidavit and indicates that the claimed dates of default are false and frivolous.
- 15.** The Corporate Debtor submits that it has repeatedly requested details regarding the total loss and damages plus the insurance claim from the Operational Creditor. However, the Operational Creditor has failed to



disclose the amount received from the insurance company. Although the shipment was under CFR (Cost and Freight) terms, it is explicitly stated in the sales contract dated 26.03.2024 that insurance during the shipment of goods is at the risk of the buyer, i.e., Operational Creditor herein, Furthermore, the Operational Creditor has not disclosed any information regarding the insurance of the goods or the amount claimed from the insurance company. Without disclosing the insurance amount, the Operational Creditor has attempted to claim damages from the Corporate Debtor for an incident for which the Corporate Debtor is not at fault.

16. The Corporate Debtor asserts that the disputes with the Operational Creditor persist because the creditor is demanding payment that is not legally due or liable. The Corporate Debtor contends that the Operational Creditor's demand towards damages for payment under a CFR (Cost and Freight) shipment is illegal, as it lacks proper adjudication by the relevant authorities.
17. The Corporate Debtor submitted that the Operational creditor, by suppressing and disregarding the applicable law, filed a false affidavit before this Hon'ble Forum without substantiating its validity and applicability. The Operational Creditor failed to specify the legal provisions under which this affidavit was filed, nor did they indicate how it can be read in conjunction with the petition.
18. The Corporate Debtor asserts that the Operational Creditor did not file an appropriate application within the prescribed timeframe and attempted to remedy the oversight of not giving the date of default by submitting an affidavit after the expiration of the limitation period. The matter had progressed to the final argument stage, where the Operational creditor sought to address this deficiency during court proceedings.



However, the Corporate Debtor contends that this attempt to rectify the situation falls outside the permissible timeframe prescribed by law.

19. The corporate debtor submitted that the affidavit lacks merit and is objecting strongly to its consideration at this stage without proper application. They argue that accepting the affidavit for the date of default would be unjust and unequal, prejudicing their case. They request the rejection of the affidavit in the interest of justice and fairness.
20. The Corporate Debtor in its Written Submission submitted that they followed all necessary precautions and used UN Approved HDPE Plastic Drums for shipping, as per the CFR contract terms. They assert that damage during handling at the consignee's port does not make them liable, as CFR only entails cost and freight responsibility, not insurance. The petitioner's failure to disclose these facts before the Tribunal, renders their petition unsustainable under the Insolvency and Bankruptcy Code of 2016.
21. The Corporate Debtor agreed to supply more goods to the petitioner but faced issues when the petitioner demanded adjustment for disputed amounts without providing details of losses covered by insurance. The petitioner also deducted damages from payments to the Corporate Debtor, impacting their business. Despite difficulties, the Corporate Debtor agreed to accept 100% advance payment but couldn't fulfill orders at reduced rates due to raw material shortages and increased prices, which they communicated to the Operational Creditor's office vide email dated 06.06.2019.
22. The Corporate Debtor asserts that the petitioner is unjustly attempting to deduct losses without providing any evidence or reasons for doing so. Additionally, the petitioner has failed to disclose insurance details and the amount received from insurance claims, which is required under



CFR shipment terms. This lack of transparency suggests dishonesty and malicious intent on the part of the Operational Creditor.

- 23.** The Corporate Debtor contends that despite agreeing to refund the advance amount, the Petitioner resorted to threats of severe repercussions, including the seizure of the Corporate Debtor's factory through mortgage. Moreover, the Petitioner employed improper language and threatened to pursue damages that are rightfully the Operational Creditor's responsibility under the CFR shipment terms.
- 24.** The Corporate Debtor further submits that they did not receive the purported notice dated 21.02.2020. The Operational Creditor presented a tracking report allegedly in the names of S. Sruti Pureza and P. Patade, individuals unknown to the Corporate Debtor's office. Consequently, the Corporate Debtor refutes having been served with the demand notice, disputing the Operational Creditor's claim of service before this Hon'ble Tribunal. The Corporate Debtor contends that the Operational Creditor's filing is false and frivolous, as essential facts were suppressed. No notice was dispatched through official postal channels; rather, it was sent via a private courier, with no accompanying receipt exhibited. Such manipulations cannot be ignored. Moreover, the Corporate Debtor denies the entirety of the Petition and its contentions outright, declaring them meritless. The claimed amount remains disputed prior to the issuance of any notice, rendering the Operational Creditor's action unwarranted and lacking merit. The Corporate Debtor demands strict proof thereof from the Petitioner.
- 25.** The Corporate Debtor argues that they have a history of supplying goods to the Operational Creditor, demonstrating their willingness to maintain a business relationship. They assert that despite difficulties such as transportation damage and production slowdowns due to government





notices on pollution, they have communicated these issues to the Operational Creditor. Additionally, Corporate Debtor emphasize their company's capacity to pay dues, with a substantial turnover and a workforce of over 300 employees. Corporate Debtor claim that the petitioner's threats of taking over their factory are unwarranted, and assert that the Operational Creditor has not presented all relevant facts to the Hon'ble Tribunal. Thus, Corporate Debtor states that the Operational Creditor's Petition under section 9 of the Insolvency and Bankruptcy Code is not justified.

- 26.** The Corporate Debtor contends that the Operational Creditor filed a false Petition by suppressing key facts. Corporate Debtor stated that the Operational Creditor failed to disclose that the goods were ordered under CFR terms, making the Operational Creditor liable for transport. Additionally, the disputed amount i.e.\$ 16766/- doesn't fall under the Insolvency & Bankruptcy Code 2016, as no goods were supplied, and no invoices were issued and as per its own case the amount towards damages without substantiated validation do not fall within the purview of IBC.
- 27.** The Corporate Debtor in its written submission denied the claimed amount, stating that since the Operational Creditor hasn't filed a petition for a genuine claim, the matter is disputed. They argue that the claim lacks merit. Additionally, the Operational Creditor overestimated the dollar exchange rate to bring the case under this Hon'ble Tribunal's jurisdiction.
- 28.** The Corporate Debtor argues that the Insolvency Code is intended for Corporate entities facing financial stress to seek revival through restructuring, not for debt recovery. Corporate Debtor emphasize that the procedure under this code differs significantly from a civil recovery suit. The Corporate Debtor asserts that they are not under any financial stress and stopped payment due to disputes over damaged goods, which were the petitioner's liability. They highlighted their ongoing business operations



with over 300 employees and regular growth. The Corporate Debtor requests reliance on their balance sheet as evidence.

29. The Corporate Debtor argues that they have consistently supplied goods without objection in the past, demonstrating their reliability. However, they have contended that due to increased raw material prices, they are unable to continue supplying at the current rate.
30. The Corporate Debtor asserts that goods weren't supplied due to a dispute but is willing to settle the amount owed, pending details of damaged goods and insurance reimbursement. Corporate Debtor emphasize their ability to pay and highlight their significant contribution as an employer, sustaining many livelihoods. Corporate Debtor stress that their financial capability isn't in question.
31. The Corporate Debtor submitted that they deny owing any debt, interest, or legal costs as mentioned in the prayer clause of the petition. Corporate Debtor stated that the Petition lacks merit according to the law and should be dismissed. Additionally, Corporate Debtor request compensatory costs for having to defend against the petition

### **Findings/Conclusion**

32. We have heard the Ld. Counsels for the parties and perused the documents placed on record. It is established that the OC, had several contracts with the Corporate Debtor to supply chemical products between June 2018 and March 2019. Disputes arose over missing quantities, non-deliveries, and damages. The Operational Creditor issued a demand notice, but the Corporate Debtor did not respond and contented that they never received the demand notice. Consequently, Operational Creditor filed the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016. The Corporate Debtor contested the petition, citing various issues and



ongoing disputes. The disagreements between Operational Creditor and Corporate Debtor were already happening before the demand notice was issued. These disputes included missing quantities, non-deliveries, and who was responsible for damages establishing pre-existing disputes between the parties.

- 33.** It is observed by the Tribunal that the dates of default mentioned by Operational Creditor are inconsistent with their payment dates. They claimed defaults on 05.03.2019, 01.08.2019, and 01.05.2019, but payments were made on 03.04.2019 and 24.06.2019. These contradictions raise doubts about the accuracy of Operational Creditors's claims and suggest that the dates might have been adjusted to fit the petition.
- 34.** It is pertinent to note that the outstanding summary mentions damages for a sum of \$16,766 without any supporting documents for the alleged claim by way of damages due to any reason of breach of terms and condition of PO by the Corporate Debtor. The Operational Creditor has not filed any documents regarding breach committed by the Corporate Debtor due to which the alleged damages occurred and insurance not received even after mentioning for the same in the emails exchange taken place between the parties before the issuance of the Demand Notice by the Operational Creditor. The said mail is reproduced as under



From: Manish Purecha <manish@purechagroup.com>  
Sent: Thursday, June 6, 2019 3:07 PM  
To: sitaram@id-s.co.jp; saka@id-s.co.jp  
Cc: 'Rajan Dalvi'  
Subject: RE: NBB 40MT and HBr 40MT =Important/Urgent=

Dear Sitaram san,  
I don't understand this.. You can agree to 75% terms, but why do you need details and address of MDs..

We are not working for first time neither payment is being done first time. And if you have no trust even after we making deliveries to you, then its ok that we do not work.

We will deliver your 40 MT HBr in June and complete business with you..

We have not been given any clarity of details on the USD 17,000 that you claim from us... We do not know if this is the quantum of loss caused to you. But we trust you and even after making loss accept to adjust this claim.. We do not know if you have claimed insurance also for this and still asking for the claim from us. Still we do not ask for such details from you and do not show distrust.

This lack of transparency weakens Operational Creditor's claim for damages from Corporate Debtor since any insurance recovery should offset the claimed damages. It is evident from the above that Corporate Debtor has asked for details of total loss and insurance claim but the Operational Creditor has failed to disclose the amount received from insurance company. All consignments were of CFR (means cost and freight) and under CFR the marine insurance for shipping goods are to be borne by the Operational Creditor herein, that the marine insurance protect against the loss, damages and or destruction of Goods. It was not CIF (Cost Insurance and Freight). The goods were shipped under CFR it only includes cost of goods and freight, the corporate debtor fulfilled this condition, hence no complaint for this can be entertained for whatsoever nature. Even otherwise claim under IBC can only be filed with respect to debt amount which stands crystallized. The damages being claimed have



also neither been adjudicated nor crystallized. The amount paid under CFR agreement cannot be said to be damages which can be claimed as this amount was the responsibility of the Operational Creditor itself. Hence the petition under IBC claim of damages is not maintainable.

**35.** The Tribunal further observed that Operational Creditor's affidavit, which was meant to address gaps in the original petition, lacked necessary supporting documents like the payment receipts claimed to be done in advance. This suggests an attempt to fix deficiencies in the initial petition improperly, indicating that the original filing was incomplete and unsupported.

**36.** Further the Bench observes that the Petition is incomplete as per section 9(3)(b) of IBC Code. No affidavit has been filed to the effect of the same by the OC. This is a prerequisite for filing a petition under Section 9 of IBC. The section is reproduced as under -

*Sec 9(3)(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt.*

**37.** Thus, the Tribunal found that there were ongoing disputes between the Operational Creditor and the Corporate Debtor prior to the issuance of the demand notice. These disputes involved issues such as missing quantities, non-deliveries, and responsibility for damages, which indicate that the claim was not undisputed as required under the IBC. The Tribunal observed inconsistencies in the default dates mentioned by the Operational Creditor, which raised doubts about the accuracy and credibility of their claims. Payments made on dates after the alleged defaults further complicate the matter, suggesting potential manipulation of dates to fit the petition.

**38.** Further the Operational Creditor failed to provide necessary documentation to substantiate its claims, particularly regarding the



damages claimed. The absence of documents related to the breach of contract and the lack of transparency in insurance claims further weaken the Operational Creditor 's position.

39. The Tribunal found that the petition was incomplete as it did not comply with Section 9(3)(b) of the IBC. The Operational Creditor did not file an affidavit stating that no notice of dispute was given by the Corporate Debtor regarding the unpaid operational debt, which is a mandatory requirement for a petition under Section 9 of the IBC.
40. The affidavit submitted by the Operational Creditor was also found lacking, as it did not include crucial supporting documents, which indicates that the original petition was improperly filed and incomplete.
41. Further it is to be taken into consideration that the Corporate Debtor is a solvent company and that a company which is solvent and has the ability to pay its debts cannot be dragged into CIRP. The rationale is that the insolvency process is meant for companies that are in financial distress and cannot meet their financial obligations, not for solvent companies with disputed claims. The Bench has placed their reliance on **M/s. S.S. Engineers vs. Hindustan Petroleum Corporation Limited (HPCL)**" [Company Appeal (AT) (Insolvency) No. 138 of 2017] wherein it was cleared that IBC is not a tool for recovering disputed debts and that the intention behind the IBC is to resolve insolvency, not to penalize solvent companies.
42. The present petition is not maintainable as the claim amount is below the threshold limit of Rs. 1 crore, and the claim amount are the damages which the Operational Creditor has failed to justify. therefore, the petition is liable to be dismissed.



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**43.** Hence it is observed by the Tribunal that the petition under Section 9 of the IBC is incomplete and unsupported. Therefore, the petition is dismissed due to the presence of pre-existing disputes, inconsistencies in the claims, lack of necessary documentation, and failure to meet the procedural requirements under the IBC.

**SD/-**  
**MADHU SINHA**  
**MEMBER (TECHNICAL)**  
/Aakansha/

**SD/-**  
**REETA KOHLI**  
**MEMBER (JUDICIAL)**