

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-IV

IB-825/(ND)/2020

Section: 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:

Atishey Jain
(Legal Heir of Lt. Sh. Kamal Kumar Jain,
Proprietor of Parash Nath Paper Udyog)

...Operational Creditor/Applicant

Versus

Saroaha Printing and Packaging Private Limited

...Corporate Debtor/Respondent

Order Delivered on: 15.09.2022

Coram:

SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)
DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

ORDER

PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

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2. The applicant, Mr. Atishey Jain is legal heir of Lt. Sh. kamal kumar jain who was a proprietor of Parash Nath Paper Udyog. Parash Nath Paper Udyog is a well-established wholesaler and trader of high-quality Duplex Board and Folding Box Board. Lt. Sh. Kamal Kumar Jain was dealing with the Corporate Debtor since 1993. Back than Corporate Debtor approached him to supply Duplex board and folding box board and in view of the same the firm was regularly supplying the said material to the Corporate Debtor since 1993.
3. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:
 - a. The Operational creditor had been a regular supplier of the material to the corporate debtor since 1993, wherein, the agreement was made between the parties that the payment to be made within 30 days from the date of raising the invoices failing which the Corporate Debtor shall be liable for the interest at 18% p.a.
 - b. The Operational Creditor submitted that they use to regularly supply the materials to the Corporate Debtor to which they would make lump sum payments for the goods supplied.
 - c. The Operational Creditor further stated that since year 2014, the quantum of the orders placed upon the firm by the Corporate Debtor for the supply of the goods/products got increased. However, the Corporate Debtor started defaulting to make timely payments against the bill/invoices raised against the said supply, despite due acknowledgement of the said bills.
 - d. The Operational Creditor submits that the firm raised various invoices from 01.04.2017 to 01.09.2018 against the supply of goods/products and

the same was paid by the Corporate Debtor only after the expiry of 30 days from the due date.

e. The Operational Creditor further submits that they had supplied goods/products to the Corporate Debtor from 01.09.2018 to 20.02.2020 and in this regard various invoices of total amounting Rs. 3,09,03,217/- was raised and which still remains due. And the last payment made by the Corporate Debtor of Rs. 2,00,000/- on 21.02.2020.

f. The Operational Creditor stated that the Corporate Debtor had issued 6 cheques dated 19.09.2019 of Rs. 10,00,000/- each in favour of Lt. Sh. Kamal Kumar Jain which was dishonoured on presentation. With this regard, the Operational Creditor filed the complaint under Section 138 of the Negotiable Instrument Act, 1881 before the Hon'ble Chief Metropolitan Magistrate Patiala House Court, New Delhi and the same is still pending for the disposal.

g. The Operational Creditor also stated through his petition that Sh. Kamal Kumar Jain had expired on 10.04.2020 after the issuance of the demand notice dated 21.03.2020 through his legal counsel.

h. The Operational Creditor sent a Demand Notice dated 21.03.2020 demanding payment of an unpaid operational debt i.e. Rs. 3,65,76,512.26/- as per provisions under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

4. The Corporate Debtor has not filed reply despite effective service of notice and several opportunities provided by this Adjudicating Authority. Hence, the present petition is processed Ex-parte vide order dated 06.09.2022.

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5. We have heard the arguments and perused the documents which are placed on record. We observe that the present petition filed seeking initiation of the CIRP under Section 9 of the Code is governed by Article 137 of the Limitation Act and is, therefore 3 years from the date when the 'Right to Apply' accrues i.e., failure to clear the dues.
6. With respect to the issue of limitation, we find that the present petition filed under Section 9 of the Code, 2016 qualifies the test of limitation since the last payment of Rs. 2,00,000/- was made on 21.02.2020 against the total amount and the present petition was filed before this Authority on 30.05.2020. Thus, the present petition has been filed within limitation in terms of Section 19 of the Limitation Act.
7. In order to initiate the CIRP against a Corporate Debtor on an Application filed by the Operational Creditor, it must primarily qualify the threshold limit of Rs. 1 Crore. It is pertinent to mention here that the Notification regarding the enhancement of minimum amount of default to one crore for the purpose of Section 4 was issued by the Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the Corporate Debtor and filing of the petition was after that i.e. 30.05.2020, since any notification issued by the Government are generally Prospective in nature unless specifically expressed, hence the notification is applicable to the present case. Hence, the instant petition satisfies the criteria under Section 9 of the Code, 2016.
8. On perusal of the petition, we are of the considered view that the parties had been dealing with each other for the supply of duplex board and folding box board since 1993. On behalf of the applicant i.e., Mr. Atishay Jain being

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legal heir of Lt. Sh. Kamal Kumar Jain proprietor of Parash Nath Paper Udyog it is submitted that goods/products were supplied to the Corporate Debtor from 01.09.2018 to 20.02.2020 and several invoices were raised which remained unpaid till date. It is observed that 6 cheques amounting Rs. 10,00,000/- each were given in favour of the Lt. Sh. Kamal Kumar Jain by Corporate Debtor. However, the same were dishonoured, consequent to which criminal proceedings are pending qua bouncing of the cheques. In the present matter it is been stated that the invoices raised from 01.09.2018 to 20.02.2020 amounting Rs. 3,09,03,217/- pertaining to the supply of goods and against the invoices raised the last payment of Rs.2,00,000/- on 21.02.2020 was received from the Corporate Debtor. After which Lt. Sh. Kamal Kumar Jain had issued demand notice on 21.03.2020 demanding payment of Rs.3,65,76,512.26/- along with the interest but the said amount was not paid.

9. We are of the considered view that the facts submitted by the applicant are duly supported by the documents annexed with the petition and the amount of Rs. 3,09,03,217/- was due along with 18% interest p.a. However, the above stated facts remain un-rebutted on behalf of the respondent and the right to file the reply was also closed vide order dated 04.01.2021.

10. In view of the aforementioned facts and reasons, this Tribunal is satisfied that there is an outstanding operational debt as well as there is default by the corporate debtor. Considering these facts and circumstances, the nature of the Debt is an 'Operational Debt' as defined under section 5 (21) of the Definitions under The Code. And also there is a "Default" as defined under section 3 (12) of The Code on the part of the Debtor. And also that there was

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default on the part of the respondent in pursuance of invoices raised on behalf of the applicant. Accordingly, the present application stands Admitted in terms of Section 9(5) of the Code and CIRP is hereby ordered to be initiated against the respondent Corporate Debtor, forthwith.

11. The operational creditor has proposed the name of an Interim Resolution Professional therefore this bench appoints Mr. Ajit Kumar as Interim Resolution Professional having registration number IBBI/IPA-003/IP-N00062/2017-18/10548 with email - id: cmaajitjha@gmail.com who has submitted the acceptance of the appointment as the interim resolution professional and signed as a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration also been filled by him that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. A valid AoA must be filed by IRP within 3 days of this order.

12. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Ajit Kumar to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

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13. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

“(a)The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b)Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c)Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d)The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”

(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period.”

14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

15. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is

further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

16. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.
Consign the file to the record room.

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(DR. BINOD KUMAR SINHA)

MEMBER (T)

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(DHARMINDER SINGH)

MEMBER (J)