

IN THE NATIONAL COMPANY LAW TRIBUNAL**NEW DELHI (COURT NO. IV)****Company Petition No. IB-1281/ND/2019**

(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:**M/S V.K JAIN & SONS****...APPLICANT/OPERATIONAL CREDITOR****VERSUS****M/S THREE LEAVES BOOKS INTERNATIONAL PVT. LTD.****...RESPONDENT/ CORPORATE DEBTOR**

ORDER DELIVERED ON: 27.04.2021

CORAM:**DR. DEEPTI MUKESH****HON'BLE MEMBER (JUDICIAL)****MS. SUMITA PURKAYASTHA****HON'BLE MEMBER (TECHNICAL)****For the Applicant : Mr. P. Bhattacharjee, Adv****For the Respondent :None**

MEMO OF PARTIES**M/S V.K JAIN & SONS**

Through its Prtners

Smt. Mahima Jain

4286/3 Ground Floor Ansari Road, Daryaganj

New Delhi 110092

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

M/S THREE LEAVES BOOKS INTERNATIONAL PVT. LTD.

Through its Directors

Registered office at:

37 Defence Enclave Vikas Marg

New Delhi 110092

Also at:

E-1/16, Near Balram House

Daryaganj New Delhi 110002

...RESPONDENT/ CORPORATE DEBTOR

ORDER**AS PER SUMITA PURKAYASTHA (MEMBER TECHNICAL)**

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by M/S V.K JAIN & SONS. (for brevity 'Applicant') through its partners Smt. Mahima Jain (authorized vide Special Power of Attorney dated 08.05.2019) with a prayer to initiate the Corporate Insolvency process against M/S THREE LEAVES BOOKS INTERNATIONAL PVT. LTD (for brevity 'Corporate Debtor').
2. The Applicant M/S V.K JAIN & SONS, claimed to be the Operational Creditor, is a Partnership firm, with the Registration number being 1578 of 2017 of Registrar of Firms Delhi, having its registered office at 4286/3 Ground Floor Ansari Road, Daryaganj New Delhi 110092.
3. The Respondent M/S THREE LEAVES BOOKS INTERNATIONAL PVT. LTD is a company incorporated on 19.07.2014 under the Companies Act, 2013 having its registered office at 37 Defence Enclave Vikas Marg New Delhi 110092 and Branch office at 19 MGM, Tower, Ansari Road, Drayaganj, Delhi 110002 and CIN U22110DL2014PTC269124 is involved in Publishing of financial, technical, artistic, legal and marketing activities, among others.

4. The Applicant herein the Operational creditor had supplied printing paper to the Corporate Debtor for the business purpose of the Corporate Debtor. The Corporate Debtor had been procuring goods from the Applicant since 29.12.2017. The material was delivered to the Corporate Debtor at various events within the stipulated time along with the invoices which have been duly acknowledged by the Corporate Debtor. The details of the invoices are:

Amount	Invoice Number	Invoice date
Rs. 7,09,045/-	GST 0222/2017-2018	29.12.2017
Rs. 1,80,204/-	GST-0266/2017-2018	16.01.2018
Rs. 4,16,415/-	GST-0334/2017-2018	21.02.2018
Rs. 2,20,313/-	GST-0335/2017-2018	21.02.2018
Rs. 6,43,024/0	GST-0336/2017-2018	21.02.2018
Rs.3,94,891/-	GST-0352/2017-2018	26.02.2018
Rs.34,286/-	GST-0361/2017-2018	03.03.2018
Rs. 87,203/-	GST-0362/2017-2018	03.03.2018
TOTAL AGGREGATE Rs. 26,35,381/-		

5. The Corporate Debtor had issued various cheques dated 01.03.2018, 05.03.2018, 20.03.2018, 12.04.2018, 13.04.2018, 17.04.2018, 20.04.2018, 21.04.2018, 24.04.2018, 25.04.2018, 26.04.2018, 27.04.2018, 28.04.2018, 30.04.2018, in lieu of payment of the Operational Debt, however all the cheques got dishonored and the Bank memo stating ***"Funds Insufficient"*** has been placed on record. Pursuant to this the Applicant served a notice to the Corporate Debtor dated 19.06.2018 under Section 138 of the Negotiable Instruments Act, 1881. It is submitted by the Applicant that after various follow ups the Corporate Debtor made a payment of Rs.2,20,313/- on 20.07.2018.

6. As per the averments mentioned in the application the Corporate Debtor failed to make payment therefore, a Demand Notice under section 8 of the Code, dated 30.03.2019 was issued at the registered office of the Corporate Debtor vide speed post which was returned with a remark *"no such person found"*. However, an E-mail dated 02.04.2019 was sent at the ID available at the Master Data of the Corporate Debtor thereby calling upon the Corporate Debtor to make payment of the unpaid debt of Rs. 24,65,068/- (Excluding Interest). The Corporate Debtor did not reply to the Section 8 Demand Notice within 10 days, nor the payment was made.

7. The Applicant has therefore filed this Application under Section 9 as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate

their claim of Rs. 24,65,068/- (Excluding Interest). Further a notice was issued to the Corporate Debtor vide order dated 29.05.2019 of the Adjudicating Authority and the reply to the Section 9 application was filed by the Corporate Debtor as on 17.10.2019.

8. The Corporate Debtor in its reply to the Section 9 Application stated the application filed by the Operational Creditor is not maintainable as there is pre-existing dispute between the parties, much prior to the issuance of the demand notice under Section 8 of the code. The Corporate Debtor is not under any liability/obligation for the payment of the amount, as alleged by the Operational Creditor as the Corporate Debtor never acknowledged/admitted his liability regarding the printing paper supplied by the Operational Creditor. It is submitted by the Corporate Debtor that the Operational Creditor has not supplied the printing paper as per the order of the Corporate Debtor, hence if the printing paper was never supplied then how does the Operational Creditor become entitled to claim operational debt from the Corporate Debtor. The Corporate Debtor states that he has received the printing paper only of the value of Rs. 12,79,752/-, there is a massive variation of a sum of Rs. 14,26,0686 in the claimed amount i.e. Rs. 27,05,820/-, which was duly specified in the reply dated 26.06.2018, given by the corporate debtor to the notice dated 19.06.2018 u/s Section 138 of Negotiable Instruments Act, 1881.

9. The Corporate Debtor has also placed on record the reply dated 26.06.2018 to the notice sent under Section 138 Negotiable Instruments Act, 1881 which is annexed with the reply to the Section 9 application,

wherein the Corporate Debtor submitted that cheques as mentioned were issued in favour of the Operational Creditor, as an advance payment of the goods/printing paper which was to be supplied by Operational Creditor to the Corporate Debtor. Due to some reason Corporate Debtor could not fulfill the orders of his clients; consequently orders made to the Operational Creditor were cancelled. Therefore, the Corporate Debtor had asked the Operational Creditor to not en-cash the cheques, as there are insufficient funds in the bank account to honor such cheques. The Corporate Debtor alleges that the Operational Creditor with malafide intention to cause harassment and blackmail pursued to en-cash the cheques in the bank.

10. The Operational Creditor filed its rejoinder dated 04.10.2019 and stated that there is no pre-existence of dispute between the parties. The reply to the Demand Notice dated 30.03.2019 was never received. It is also submitted by the Operational Creditor that the Corporate Debtor has failed to produce any tracking report which could depict that the said reply dated 26.06.2018 to the notice under Section 138 of Negotiable Instruments Act, 1881, was ever delivered to the Operational Creditor. It is submitted that the Corporate Debtor had made a part payment of Rs. 2,20,313 vide Net Banking mode on 20.07.2018. The proof of payment is reflected in the bank statement of the Operational Creditor has been placed on record. It is further submitted that the above mentioned part payment was made prior to the alleged reply dated 26.06.2018 to the notice under Section 138 of Negotiable Instruments Act, 1881, which

supports the fact that the Corporate Debtor admitted and acknowledged its liability before denying it in the reply to the notice under Section 138 of Negotiable Instruments Act, 1881.

11. The date of default is 19.03.2018 that is the date of the last invoice issued which was unpaid, and the present application is filed on 20.05.2019. Hence the application is not time barred and filed within the period of limitation.
12. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
13. The Applicant has complied with the provision of Section 9(3)(b) of the Code, 2016.
14. The matter was listed for final hearing however, the Corporate Debtor did not appear before the Adjudicating Authority to defend its claim hence, the Applicant was heard. Having considered that facts and circumstances and the materials available on record, the Adjudicating Authority is of the view that since the Corporate Debtor made a part payment on 20.07.2018 prior to sending its reply dated 26.06.2018 to the notice under Section 138 of Negotiable Instruments Act, 1881, which supports the fact that the Corporate Debtor admitted and acknowledged its liability before denying it in the reply to the Section 138 of Negotiable Instruments Act, 1881.

15. Further in order to deal with issue in hand with respect to “**pre-existence of dispute**” as the alleged by the Corporate Debtor in the reply to the notice under Section 138 of Negotiable Instruments Act, 1881, We would like to refer to the judgment of the **Hon`ble NCLAT Sudhi Sachdeva Vs. APPL Industries Ltd. Company Appeal (AT) (Insolvency) No. 623 of 2018 dated 13.11.2018** wherein it was held that “ *In the present case, it is not in dispute that there is a debt payable to the Operational Creditor and default on the part of the Corporate Debtor. The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute.*”

16. We would like to draw conclusion as per the ratio laid down by the Hon`ble NCLAT therefore, the issue raised by the Corporate Debtor in the reply dated 26.06.2018 to the notice under Section 138 of Negotiable Instruments Act, 1881, with respect to the amount cannot be considered as a dispute. Even if we consider that the criminal complaint is pending under Section 138 of Negotiable Instruments Act, 1881, it actually amounts to admission of debt and not an existence of dispute as per the above mentioned Judgment by the Hon`ble NCLAT. Further the Corporate Debtor has admitted to have received the printing paper for the value of Rs. 12,79,752/- in its reply dated 26.06.2018 to the notice under Section 138 of Negotiable Instruments Act, 1881. therefore, it is a clear admission

of debt and this Adjudicating Authority does not have to indulge in the details or the quantum of debt if the debt proved is more than One Lakh and the default is shown to have occurred. Therefore, the Application is ***admitted*** and the commencement of the CIRP is ordered.

17. We hereby appoint the interim resolution professional (“IRP”), as proposed by the Applicant, Mr. Mukesh Kumar Grover, IBBI/IPA-001/IP-N00383/2017-2018/10640 mail id: mukesh@mjra.co.in Phone No. 9810331606. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

18. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

19. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

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

21. The Application CP-1281/ND/2019 is admitted in terms of above order.

Sd/-
Sumita Purkayastha
Member (T)

Sd/-
Dr. Deepti Mukesh
Member (J)