

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – I, CHENNAI**

**IBA/153/2020**

*(filed 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 **M/s. Sai Krupa Packaging Pvt. Ltd.**

**M/s. Sangeetha Traders Chennai Private Limited**

Reg. off: -

No.305, TTK Road,  
Alwarpet,  
Chennai – 600 018

*... Operational Creditor*

-Vs-

**M/s. Sai Krupa Packaging Private Limited**

Reg. Off: -

No.26, KPM Sapphire, 11<sup>th</sup> Avenues,  
Ashok Nagar,  
Chennai – 600 083

*...Corporate Debtor*

*Order Pronounced on 10<sup>th</sup> March 2021*

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)**

**ANIL KUMAR B, MEMBER (TECHNICAL)**

*For Operational Creditor : Aravind Subramaniam, Advocate*

*For Corporate Debtor : None present*

**ORDER**

**Per: R. VARADHARAJAN, MEMBER (JUDICIAL)**

1. Under Adjudication is an Application that has been filed  
by **M/s. Sangeetha Traders Chennai Private Limited**  
(hereinafter referred to as '*Operational Creditor*') under

Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Sai Krupa Packaging Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out the details about the Operational Creditor from which, it is evident that the Operational Creditor is a Private Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U21029TN1001OTC049434 which was incorporated on 19.08.2002 and that its Authorized Share capital is Rs.10,00,000/- and its paid up capital is Rs.10,00,000/-. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.26, KPM Sapphire, 11<sup>th</sup> Avenue, Ashok Nagar, Chennai – 600 083. Part-III of the Application shows that the Operational Creditor has not proposed any "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the IRP.

3. From Part-IV of the Application, it is seen that a sum of Rs.35,86,098/- is being claimed by the Operational Creditor as Operational Debt as against the Invoices raised for the period from 26.12.2014 till 29.07.2016. The present Application is filed before this Tribunal on 29.11.2019.

4. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has placed orders on the Operational Creditor for the supply of Kraft Paper and accordingly as and when the orders were placed, the Operational Creditor supplied the goods and raised invoices on the Corporate Debtor. It was submitted that the Operational Creditor has raised the Invoices against the Corporate Debtor for the period from 26.12.2014 till 29.07.2016 as follows;

S. No.	INVOICE NO.	DATE	AMOUNT (₹)
1	112	26.12.2014	4,69,757
2	113	22.07.2015	4,71,519
3	147	01.09.2015	4,66,675
4	161	29.09.2015	4,66,205
5	008	18.04.2016	4,64,884
6	015	10.05.2016	4,73,838
7	032	28.06.2016	2,76,171
8	034	05.07.2016	2,70,563
9	037	09.07.2016	4,68,935
10	040	19.07.2016	4,67,321
11	042	29.07.2016	4,62,447
<b>TOTAL</b>			<b>47,58,315</b>

5. It was submitted by the Learned Counsel for the Operational Creditor that the Operational Creditor is maintaining a running account in relation to the Corporate Debtor and the Corporate Debtor used to make part payments in acknowledgment of liability under invoices raised. However, it was submitted that several invoices remained unpaid and when the Operational Creditor issued a Legal notice dated 18.12.2017 claiming the outstanding, the Corporate Debtor issued a reply notice dated 21.12.2017, acknowledging the debt.

6. The Learned Counsel for the Operational Creditor submitted that a Demand Notice in Form 3 as stipulated under Section 8 of IBC, 2016 was issued to the Corporate Debtor on 10.09.2019 and the same was received by the Corporate Debtor on 09.10.2019 and the Operational Creditor has filed an Affidavit also as mandated under Section 9(3)(b) of IBC, 2016 before this Tribunal stating that after the receipt of the Demand Notice, the Corporate Debtor has neither replied to the same nor paid the outstanding dues to the Operational Creditor. Under such circumstances, the Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has committed default in the payment of the dues to the

Operational Creditor and hence prayed for the initiation of the CIRP in relation to the Corporate Debtor.

7. In relation to the Corporate Debtor it is seen from the records that the matter first came up for hearing on 20.03.2020 and due to Covid – 19 pandemic, the matter was posted for hearing on 14.09.2020. However, on the said date since there was no representation on behalf of the Corporate Debtor, this Tribunal directed the Operational Creditor to take private notice and also directed the Registry of this Tribunal to issue notice to the Corporate Debtor. It is seen from the records that the Operational Creditor has filed an Affidavit of Service before this Tribunal on 22.09.2020 and the notice which was sent to the Corporate Debtor was returned with an endorsement “Company Left without Instructions”. However, from the notice which was sent by the Registry of this Tribunal, it is seen that the same was delivered to the Corporate Debtor on 30.09.2020. Further, it is also seen that the address to which the notice which was sent to the Corporate Debtor also correlates with the Master Data as available on the website of MCA portal.

8. In this regard, it is relevant to refer to the decision of the Hon’ble NCLAT in the matter of **Shri Bijay Pratap Singh**

**–Vs- Unimax International and another** in *Company Appeal (AT) (Insolvency) No. 1273 of 2019*, wherein at para 37 it has held as follows;

"37. One of the essential features for consideration of an Application under Section 9 of I & B Code is service of notice. A mere perusal of the paragraph 11 of the Impugned Order passed by the Adjudicating Authority patently indicates that a perusal of the pleadings showed that the proper 'service' was effected on the registered office of the 2nd Respondent/ Corporate Debtor situated at D-410, Pocket 16, Sector VII, Rohini, New Delhi – 110085. Also, it was observed by the Adjudicating Authority that there was no change in the address of the 'Corporate Debtor' in the 'Ministry of Corporate Affairs Record' which also shows the same address. Even the Resolution passed by the 'Corporate Debtor' on 27.03.2019 had shown the same 'Registered Office' address. Therefore, the Adjudicating Authority had very rightly adverted to Section 27 of the General Clauses Act and Section 20 of the Companies Act, 2013 read with Rule 35 of the Companies (Incorporation) Rules, 2014 in and by which the 'service' is to be effected on the 'Registered Office' address and that process was carried out. Therefore, this Tribunal holds that it was 'Sufficient service' of the 'Demand Notice'. As such, the plea taken on behalf of the Appellant that there was no service affected upon the 'Corporate Debtor' is not acceded to by this Tribunal. The other plea taken that there was no service by hand or electronic mail service to the 'Corporate Debtor' relegates to the background and it pales into insignificance because of the fact that failure/omission to effect service by hand or electronic mail service is not fatal to the instant case."

9. Further, the Hon'ble NCLAT in the matter of **Ashok Agarwal –Vs- Amitex Polymers Private Limited** passed in *Company Appeal (AT) (Insolvency) No.608 of 2020* dated 5<sup>th</sup> February 2021, in para 35 has held as follows;

“35. In view of the fact that service of notice under section 8 of the ‘The Insolvency and Bankruptcy Code 2016’, Respondent/Company at its official e-mail ID as available in the web site portal is a valid service, it is held by this Tribunal to be a valid and proper service upon the Respondent/Corporate Debtor, in the eye of law.

10. In the said circumstances as per the decision of the Hon’ble NCLAT, the service effected by the Operational Creditor has to be considered as to be ‘Deemed service’. Further, taking into consideration the aforementioned fact, the Tribunal vide its order dated 02.02.2021 proceeded with the matter in the absence of the Corporate Debtor and the matter was heard and reserved for orders in the absence of the Corporate Debtor on 18.02.2021.

11. As to the facts of the case, it is seen that the last invoice as raised by the Operational Creditor was on 29.07.2016 and the present Application was filed before this Tribunal on 29.11.2019. It is seen from the records that to the Legal notice issued by the Operational Creditor demanding the outstanding to be paid, the Corporate Debtor has replied to the Counsel for the Operational Creditor on 21.12.2017 as follows;

“My client therefore, denies the allegation that they have to pay a sum of Rs.41,38,821/- together with interest at the rate of 24% p.a. is absolutely false. My client, informs your client that the outstanding sum of Rs.33,23,921/-

will be paid as expressly as possible. If, in spite of this notice, if your client continue to take any hasty action, my client will defend the same suitably at your client's costs and consequences."

12. The Madras High Court in the matter of **D. Thiruvengadam -Vs- Sivarajan & Anr** in A.S. No. 195 of 2009 dated 25.04.2012, while dealing with the issue as to whether the notice of Advocate acknowledging a debt can be considered as a valid acknowledgment, has held as follows;

17. IN A.C.A.GANAPATHI MUDALIAR V. ARUMUGATHAMMAL (DIED) [1997 (III)CTC 445], this Court observed under section 25(3) of the Contract Act, that even a barred debt is a good consideration. Merely because the right to enforce through a Court of law is barred, that does not follow that the debt itself has been extinguished.

18. The learned counsel also placed reliance upon the decision of the Hon'ble Supreme Court in SALIL DUTTA v. T.M. AND M.C.PRIVATE LTD. [(1993) 2 SCC 185], wherein Their Lordships have held that the Advocate is the agent of the party. His acts and statements, made within the limits of authority given to him, are the acts and statements of the principal i.e. The party who engaged him.

19. When the principles and guideline set out in the above decision are followed, it has to be necessarily held that the Advocate is an agent of the party and when acts on behalf of his party, his acts would bind the party also and in such view of the matter for all practical purposes of section 25(3) of the Contract Act, an Advocate is an agent of his client.

20. In a Division Bench decision in KAMTA v. RANI JADURAJ KUNWARI [ A.I.R. 1931 ALLAHABAD 398], it is held that Sections 19 and 21 of the Limitation Act do not contemplate that the authority to be given to the agent must in every case be an express authority and that admission by a pleader in a petition made in course of his business is binding as an acknowledgment so as to give



fresh starting point irrespective of whether the pleader represents majors, or guardian for minors.

21. In view of the above said illuminating judicial pronouncements, this Court is of the considered view that an Advocate is an Agent for his client and in so far as the acknowledgement in Ex.A2 is concerned, it is a valid acknowledgement of promise to repay the time barred debt and the said promise is legally qualified. It is further added that P.W.2 has not acted beyond the authority given to him by the first defendant and the acknowledgement is very well valid in the eye of law.

22. In the light of the above said observations, following the principle laid down by the Hon'ble Apex Court, it is held that the Suit is in time and it is also found that the judgment of the trial Court does not suffer from any infirmity legally or factually, which deserves to be confirmed and accordingly, confirmed. The appellant/defendant is not entitled for any relief in this Appeal. The Appeal has to fail and the point are answered accordingly.

13. Thus, from the reply to the Legal notice dated 21.12.2017, under instructions from the Corporate Debtor, the Advocate on behalf of the Corporate Debtor has stated that as per his instructions, the outstanding amount is a sum of Rs.33,23,921/- which will be paid as expressly as possible and hence, in view of the Judgment referred *supra*, the same amounts to acknowledgment of debt as per Section 18 and 19 of the Limitation Act, 1963. Hence, for the purpose of limitation, if the extended period of acknowledgment is to be reckoned as 21.12.2017, then the present Application falls well within the period of limitation.

14. Also, it is evident from the documents placed in the typed set in support of the claim being made by the Operational Creditor that the Corporate Debtor had admitted its claim to the tune of Rs.33,23,921/- and there is no dispute in relation to the same.

15. Thus the Operational Creditor has proved the 'Operational debt' and 'default' on the part of the Corporate Debtor and in the absence of any objection being raised by the Corporate Debtor, we are of the considered view that the Corporate Debtor has committed 'default' in the repayment of the 'Operational debt' to the Operational Creditor and in the said circumstances we are constrained to initiate the CIRP in relation to the Corporate Debtor.

16. Further in relation to the 'Pecuniary Jurisdiction' even though the 'Threshold Limit' has been raised to Rs.1 Crore as and from 24.03.2020 by virtue of a Notification issued under Section 4 of IBC, 2016, as regards the present Application, it is seen that the default has arisen well before the Notification effected in increasing the threshold limit from Rs.1 lakh to Rs.1 Crore as on and from 24.03.2020 and the petition has been filed prior to the said date and as such this Tribunal has

got the 'Pecuniary Jurisdiction' to entertain this Petition, as filed by the Operational Creditor. Under the said circumstances, this Tribunal is left with no other option that to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

17. Thus, taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition, as filed by the Operational Creditor, is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between January – June 2021 appoints **Mr. Ajay S Jain** with Registration No. *IBBI/IPA-001/IP-P01684/2019-2020/12631* (Registered email id:- *ajaypagariya@gmail.com*) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application

being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- 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.

*Explanation.*.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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, shall not be suspended or terminated 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 or a similar grant or right during moratorium period;

18. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

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

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
- (b) a surety in a contract of guarantee to a corporate debtor.

19. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub-Section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

20. The Operational Creditor is directed to pay a sum of **Rs.2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India

(Insolvency Resolution Process for Corporate Persons)  
Regulations, 2016.

21. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-Sd-  
**ANIL KUMAR B**  
MEMBER (TECHNICAL)

-Sd-  
**R. VARADHARAJAN**  
MEMBER (JUDICIAL)

*Raymond*