



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

Company Petition (IB) No. 48/KB/2019

An Application 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:

Tirupati Commercial

... Applicant/ Operational Creditor.

Verses

Nayek Paper Industries Limited

... Respondent/ Corporate Debtor.

Date of Pronouncement: 21st November 2024.

CORAM:

SMT. BIDISHA BANERJEE, HON'BLE MEMBER (JUDICIAL)

SHRI D. ARVIND, HON'BLE MEMBER (TECHNICAL)

Appearance:

For Applicant:

Mr. Rishabh Karnani, Adv.

Mr. Sandip Shoraria, Adv.

For Respondent:

Mr. Vikram Wadehra, Adv.

ORDER

Per: Bidisha Banerjee, Member (Judicial)

- 1.** This Court is congregated through hybrid mode.
- 2.** Heard the Learned Counsels for both parties.

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3. This instant application is preferred under Section 9 of the Insolvency and Bankruptcy Code, 2016, for brevity “IBC” by the **Tirupati Commercials**, hereinafter referred to as the **“Applicant”/ “Operational Creditor” or “OC”** against **Nayek Paper Industries Private Limited**, hereinafter referred to as **“Respondent” / “Corporate Debtor” or “CD”** seeking direction from this Adjudicating Authority to initiate Corporate Insolvency Resolution Process, (for brevity “CIRP”) in respect of the Corporate Debtor.

4. Factual Matrix:

The total amount claimed to be in default is **Rs. 80,18,014/-** out of which the Principal Debt due is Rs. 76,36,204/- from 18.07.2018 on which interest calculated @ 24% per annum up to 03.10.2018 comes to Rs. 3,81,810/-. The threshold of one lakhs as was applicable would apply.

5. Contentions of the Applicant:

- 5.1 The Learned Counsel for the applicant submits that the Operational Creditor is a registered partnership firm within the meaning of the Indian Partnership Act, 1932 and is engaged inter alia in the business of manufacturing and supply of wastepaper.
- 5.2 It is submitted that the Corporate Debtor regularly ordered wastepaper from the Operational Creditor, who supplied it based on these orders. Payments were made on an ad hoc basis, and both parties maintained a continuous running account, with payments adjusted on a first-in, first-out basis.
- 5.3 It is contended that after adjusting all ad hoc payments, invoices for wastepaper supplied between November 4, 2017, and July 18, 2018,

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totalling Rs. 76,36,204/-, remained outstanding and payable by the Corporate Debtor.

- 5.4** On October 3, 2018, the Operational Creditor issued a demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016, to the Corporate Debtor for the outstanding amounts. The notice was duly received by the Corporate Debtor, with a copy demand notice appearing on pages 255-259 of the CP.
- 5.5** It is further submitted that the Corporate Debtor received the demand notice on October 3, 2018, but did not respond it neither disputed the claim, or took any action to repay the amount due.
- 5.6** It is contended vide Part IV of the CP, that a total debt of Rs. 80,18,014/- is due comprising of Rs. 76,36,204/- in principal and Rs. 3,81,810/- in interest at 24% per annum, with the first default date being July 18, 2018.
- 5.7** It is submitted that after filing the CP, the Corporate Debtor proposed to settle by paying off Rs. 60,00,000/- within six months. Based on this, the Operational Creditor agreed to execute a Memorandum of Settlement (MOS).
- 5.8** On February 14, 2022, a Memorandum of Settlement (MOS) was signed, requiring the Corporate Debtor to pay Rs. 60,00,000/- in full settlement within six months, in monthly instalments of Rs. 10,00,000/- A copy of the MOS dated 14th February 2022 is annexed and is marked as Annexure B.
- 5.9** It is further submitted as per the MOS, the Operational Creditor sought withdrawal of the CP with liberty to revive the same CP if settlement fails. Accordingly, on February 17, 2022, this Adjudicating

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Authority disposed of the CP, incorporating the MOS terms in its order and granted the Operational Creditor the liberty to revive the CP if the settlement terms were not fulfilled. The prevailing threshold limit then was Rs. 1 Lakh a copy of the order dated February 17, 2022, forms Annexure C.

- 5.10** It is submitted that the Corporate Debtor paid only Rs. 20,00,000/- in two instalments and has thus failed to settle the full due amount of Rs. 60,00,000/- within six months as per the MOS dated February 14, 2022, breaching its terms.
- 5.11** It is contended that the Clause 4 of the MOS allows revival of the claim if the Corporate Debtor breaches the terms. The Operational Creditor filed a Restoration Application (RST.A IBC/1KB/2024) to revive same the CP, which was allowed by this Adjudicating Authority on April 4, 2024, restoring the CP to its original file and position and number a copy of the order dated April 4, 2024 is annexed and is marked as Annexure D.
- 5.12** It is further submitted that the CP was adjourned multiple times based on the Corporate Debtor's assurances to settle the balance, but those were empty promises. The Corporate Debtor eventually defaulted in paying failed to pay the remaining amounts.
- 5.13** It is contended that the Corporate Debtor has virtually admitted the Operational Creditor's claims by entering into a settlement agreement (MOS dated February 14, 2022). The claims are therefore undisputed, as confirmed by the terms of the MOS and the Adjudicating Authority's order on February 17, 2022. The default in payment of settlement amount is not controverted. As such the CP deserves to be admitted.

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6. The learned counsel for the respondent was present during the hearing. By an order dated 27th September 2024, the parties were requested to file their written notes of arguments within one week or report any settlement reached between them. However, till date no written notes of arguments have been filed by the Corporate Debtor (CD). Hence the pleadings are not controverted or denied by the CD.

7. We have noted and duly considered the rival contentions and perused records.

8. Analysis and Findings

8.1 In the present petition, we find that the amount claimed to be in default is Rs 80,18,014/- out of which the principal value of claim is Rs. 76,36,204/- and interest thereon computed by the Applicant at the rate of 24% p.a. comes to Rs. 3,81,810/-.

8.2 The CP was filed in 2018 when the prevailing threshold was Rs 1 Lakh.

8.3 The CP was disposed of recording settlement on February 14, 2022, with liberty to get it revived in the event settlement failed.

8.4 Emboldened by the liberty the Operational Creditor has filed this Restoration Application (RST.A IBC/1KB/2024) to revive the same CP of 2019, which was allowed by the Adjudicating Authority on April 4, 2024.

8.5 From a bare perusal of the materials available on record it transpires that the 'Operational Creditor'/ 'Applicant' had sent a demand notice dated 31.10.2018 to the 'Corporate Debtor' under Section 8 of the

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Insolvency and Bankruptcy Code, 2016 for payment of outstanding dues worth Rs. Rs 80,18,014/-.

- 8.6** The present Application was filed before the 28.12.2018 when the Pecuniary jurisdiction was Rs. 1 lakh rupees for Application under Section 9 of the Code, therefore present application meets the pecuniary threshold limit of Rs. 1 lakh, in terms of Section 4 of the Code.
- 8.7** We observe that this demand notice dated October 3, 2018, under Section 8 was served to the Opposite party and was accordingly received by the Corporate Debtor.
- 8.8** From the records placed before this Adjudicating Authority, it transpires that the Corporate Debtor did not reply to the said notice nor did the corporate debtor in any manner whatsoever disputed the amount claimed to be in default by the Operational creditor in the demand notice.
- 8.9** It is trite, axiomatic and settled law that once the OC delivers a demand notice of unpaid operational debt, the CD shall bring to the notice of the OC regarding any payment of unpaid operational debt in terms of S.8 (2) (b) or existence of dispute between the parties as per S.8(2)(a) within a period of 10 days of the receipt of notice or copy of invoice, which is not done.
- 8.10** The dictum laid down in **Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd., (2018) 1 SCC 353** that has also been followed by Hon'ble NCLAT in catena of judgments is that the existence of the dispute must be pre-existing i.e., it must exist before the receipt of the demand notice or invoice. In the absence of any document or claim about existence of a dispute between the parties or the record of the

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pendency of a suit or arbitration proceeding filed before the receipt of the demand notice, the application cannot be rejected under section 9 and is bound to be admitted.

8.11 In the present case, we have noted that the CD has neither given the reply to the Section 8 Demand notice nor filed any Reply Affidavit to this Section 9 Application.

9. Having regard to the conspectus of facts of the present case and the judgements cited (supra), we are of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant, which has also been acknowledged by the Respondent and thus, the mandatory requirements as prescribed under Section 9(5) of the Code, 2016 are satisfied.

10. In the light of the enumerations supra, the application bearing **C.P. (IB) No. 48/KB/2019**, and the evidence placed on record and the discussion hereinabove, we **allow** this application filed under **Section 9 of I&B Code**, and accordingly, we order the initiation of **Corporate Insolvency Resolution Process (CIRP)** in respect of the Corporate Debtor by the following **Orders**:

- i.** The Application filed by the **Tirupati Commercial (Operational Creditor)**, under **Section 9** of the Insolvency & Bankruptcy Code, 2016, is hereby, **admitted** for initiating the **Corporate Insolvency Resolution Process** in respect of **Nayek Paper Industries Limited (Corporate Debtor)**.
- ii.** As a consequence of this Application being admitted in terms of Section 9 of the I&B Code, moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the

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Respondent/(CD) as per clauses (a) to (d) of Section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come into force.

iii. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016, prohibits the following, as:

- 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 asset 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 (54 of 2002);*
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.*

[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 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, 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]

iv. 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.

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- v. The provisions of sub-section (1) of the Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vi. The Applicant has not proposed any name as the “IRP”. Hence, we appoint **“Mr. Anil Kumar Dubey”**, Address: MERIDIAN SPLENDORA FLAT-4F ,9A UMAKANT SEN LANE ,BIRPARA ,Kolkata, West Bengal ,700030: Registration no. IBBI/IPA-002/IP-NO1187/2022-2023/14249, Email id anil@mandaassociates.in , Contact: +91 9883039240 as the **Interim Resolution Professional (IRP)** of the Corporate Debtor, by invoking the provision under Section 16 (3) (a) of the I&B Code, 2016 to carry out the functions as per the I&B Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the I&B Code.
- vii. In pursuance of Section 13 (2) of the Code, we direct the IRP or the RP, as the case shall cause a public announcement immediately with regard to the admission of this application under Section 7 of the Code and **call for the submission of claims** under Section 15 of the Code. The public announcement referred to in Clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016, shall be made immediately. The expression immediately means within three days as clarified by Explanation to Regulation 6 (1) of

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

- viii.** During the CIRP period, the management of affairs of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- ix.** The Interim Resolution Professional is also free to take police assistance to take full charge of the Corporate Debtor, its assets and its documents without any delay, and this Court hereby directs the concerned **Police Authorities and/or the Officer-in-Charge of Local Police Station(s)** to render all assistance as may be required by the Interim Resolution Professional in this regard.
- x.** The IRP or the RP, shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- xi.** The Financial Creditors shall be liable to pay to IRP a sum of **Rs. 3,00,000/-** (Rupees Three Lakh Only) as payment of his fees as advance, as per Regulation 33(3) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, which amount shall be adjusted at the time of final payment. The expenses relating to the CIRP are subject to the approval of the Committee of Creditors (CoC).

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- xii.** In terms of sections 9(5)(i) of the Code, the **Registry of this Adjudicating Authority** is hereby directed to communicate this Order to the Financial Creditor, the Corporate Debtor and the Interim Resolution Professional by Speed Post and through email immediately, and in any case, not later than two days from the date of this Order.
- xiii.** Additionally, the **Registry of this Adjudicating Authority** shall serve a copy of this Order upon the Insolvency and Bankruptcy Board of India (IBBI) for their record and also upon the Registrar of Companies (ROC), West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- xiv.** The Resolution Professional shall conduct CIRP in time-bound manner as per Regulation 40A of IBBI (Insolvency Resolution Process for Corporate Persons) Regulation, 2016.
- xv.** The IRP/RP shall be liable to submit the periodical report including the minutes of the CoC of the Corporate Debtor, with regard to the progress of the CIRP in respect of the Corporate Debtor to this Adjudicating Authority time to time.
- xvi.** The order of moratorium shall cease to have effect as per Section 14(4) of the I&B Code.
- 11.** Urgent certified copy of this order, if applied for with the Registry, be supplied to the parties, subject to compliance with all requisite formalities.

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- 12.** Post the matter on 24/ 12 /2024 for filing the Periodical Progress Report by the IRP/RP.

**D. Arvind
Member (Technical)**

**Bidisha Banerjee
Member (Judicial)**

This Order is signed on the 21st Day of November 2024.

Tiwari, V. [LRA]