

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority
under the Insolvency and Bankruptcy Code, 2016)**

CP (IB) No.288/Chd/Pb/2018

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016**

In the matter of:

Silvertoan Papers Limited,
Having its registered office at C-107,
Ground Floor Shop No.4 DDA Flats West Gorakh Park,
Shahdara Delhi- 110032

...Petitioner-Operational Creditor

Versus

BBF Home Care Products Limited,
Having its registered office at Village Khasi Kalan,
Tajpur Road, Ludhiana- 141011

...Respondent-Corporate Debtor

Judgment delivered on 18.02.2019

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner :- Mr. Nahush Jain, Advocate

For the Respondent :- Ex-parte

Per: R.P.Nagrath, Member (Judicial)

JUDGMENT (Oral)

This petition has been filed by M/s Silvertoan Papers Limited, as operational creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the '**Code**') for initiating Insolvency Resolution Process against the respondent-corporate debtor.



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The application has been filed in Form 5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the '**Rules**'). The petitioner has filed the application through Mr. Archit Jain, authorized representative of the company in whose favour the petitioner-operational creditor has passed the Resolution dated 17.11.2017, Annexure A-3, for initiating the Insolvency Resolution Process against the respondent-corporate debtor. Mr. Archit Jain, has been authorized to file the petition, sign, verify the pleadings and to do all the necessary acts in the progress of the case. There is also an affidavit of Mr. Archit Jain in support of the contents of the application.

2. The respondent-corporate debtor is a company incorporated under the Companies Act, 1956 with authorized share capital of ₹5,00,00,000/- and paid up capital of ₹2,92,68,400/-. It has its registered office at Ludhiana in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure A-2.

3. The facts of the case, briefly stated, are that the petitioner-operational creditor is in the business of manufacturing and dealing of all kind of paper including fly ash and chemically treated paper and pulp of all kind including drinking straws. The parties entered into the commercial dealings in the year 2008 and the petitioner supplied the goods worth ₹26,23,564/- in all. The respondent-corporate debtor issued a debit note of ₹2,22,307/-. The respondent-corporate debtor paid only an amount of ₹16,70,566/-, but after few months, it stopped making the payments to the petitioner. The



outstanding amount against the respondent-corporate debtor was ₹25,20,884/-, which includes ₹7,30,961/- as the principal amount. The invoices under which the goods were sold to the respondent are from 02.11.2008 to 22.11.2008, copies of which are at Annexure A-4.

4. Without referring to any other document, suffice it would be to refer to the judgment of the Civil Court, Muzaffarnagar, in **OS No. 1605 of 2012**, titled as **Silverton Paper Ltd. Versus M/s BBF Home Care Ltd. and Another**. The decree was passed by the Civil Court on 23.01.2016, copy of which is at Annexure A-6, for recovery of an amount of ₹10,44,888/- with costs. The interest has also been granted by the Civil Court @ 6% per annum in case the decretal amount is not paid within two months.

5. The learned counsel for the petitioner submits that the petitioner has also filed copy of the ledger account of the respondent being maintained by the petitioner, but it is not required to be discussed as the amount in default is claimed on the basis of decree of Civil Court.

6. The petitioner sent a demand notice dated 14.05.2018, Annexure A-11 (Colly) under Section 8 of the Code in Forms 3 and 4, claiming the amount due towards the default with the required particulars. Copy of the decree of the Civil Court, copy of the invoices, the ledger account and GRs were also sent the respondent. The notice was sent by speed post to the respondent-corporate debtor as per postal receipt dated 17.05.2018. as at Page 178 of the paper book. The notice is said to have been sent to the respondent as well as the Directors of the respondent-corporate debtor. The notice was delivered to the respondent-corporate debtor on 28.05.2018, as



per the tracking report of the Postal Department as at Page 180 of the paper book. The notice is also said to have been delivered at two other addressess, for which the tracking reports have been filed. The petitioner also filed the affidavit of the Authorized Representative of the petitioner, stating therein that the demand notice had been duly served upon the respondent-corporate debtor and its Directors.

7. The learned counsel submits that the petitioner has also filed an affidavit as at Page 11 of the paper book stating therein that no notice was given by the corporate debtor relating to the dispute of unpaid operational debt to comply with the requirement of Section 9(3)(b) of the Code.

8. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted.

9. The petitioner filed the affidavit of service, vide Diary No.4327 dated 09.11.2018 along with the postal receipts of dispatching the notice to the respondent on 15.10.2018 and copy of e-mail dated 21.10.2018, by which the notice along with copy of the paper book was sent. It is stated in the affidavit that the postal article containing the notice has been returned with the report, purportedly made by the Postal Employee that the premise is lying closed. It is also stated that copy of the notice was sent at the e-mail address of the respondent-corporate debtor, as available on the master data of the respondent-corporate debtor, which has not bounced back. Learned counsel for the petitioner submits that the address of the respondent-corporate debtor on the postal envelope containing the notice was mentioned as per the address mentioned in the master data of the respondent-corporate



debtor and at the same address the demand notice was served. Therefore, service having been effected by proper mode i.e. service by e-mail at the e-mail address as mentioned in the master data, the respondent is considered duly served. When the matter was listed on 20.11.2018, it was noticed in the order that there was no representation from the respondent. That is how the respondent-corporate debtor is ex-parte.

10. We have heard the learned counsel for the petitioner and perused the records quite carefully.

11. The learned counsel for the petitioner contends that earlier also the petitioner had filed an application under Section 9 of the Code, which was registered as CP(IB) No.25/Chd/Hry/2018, but since the amount in default mentioned in that application was as per the invoices and ledger account, despite there being a Civil Court decree, the said petition was withdrawn with liberty to the petitioner to file fresh petition on the same cause of action. Copy of order dated 11.05.2018 passed by this Tribunal, granting the aforesaid liberty is at Annexure A-13.

12. The learned counsel for the petitioner has further contended that in the earlier petition there was a representation from the respondent and that the respondent had filed a reply to the petition without challenging the merits of the claim, but raising certain technical issues. We find that those aspects need not be gone into as the earlier petition was disposed of with direction to file fresh petition on the same cause of action.

13. The learned counsel for the petitioner however, submits that in the reply filed to the earlier petition, the respondent did raise a plea that the

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Civil Court decree was being challenged. The learned counsel for the petitioner further submits that an application has also been filed before the Civil Court for setting-aside the ex-parte decree, but no stay of the decree has been granted by the Civil Court.

14. We have perused the application in Form 5, which is complete in all respects. The petitioner-operational creditor has filed this petition in prescribed form after expiry of 10 days of service of demand notice and thereby, complying with the requirement of sub-sections (1) and (2) of Section 9 of the Code. The petitioner has also complied with various requirements of sub-clauses of sub-section (3) of Section 9 of the Code. The bank statement issued by Union Bank of India, where the petitioner is maintaining its account is also filed and there is also a certificate from the bank, Annexure A-7, to the effect that no credits have been received from the respondent in the account of the petitioner from March 2014 till 20.11.2017.

15. The petitioner being an operational creditor is not obliged to propose the name of Resolution Professional to be appointed as Interim Resolution Professional, so the appointment in case of admission of petition, can be made in terms of sub-section (3)(a) of Section 16 of the Code.

16. All the ingredients of clause (i) of sub-section (5) of Section 9 of the Code stand fulfilled as the application is found to be complete in all respects.

17. In view of the above, the instant petition under Section 9 of the Code is admitted. The matter be now posted on 22.02.2019 for passing of



formal order of declaration of moratorium and appointment of Interim Resolution Professional.

A copy of this order be communicated to both the parties.

—sd—

(Pradeep R. Sethi)
Member (Technical)

February 18, 2019
Mohit Kumar




sd—

(Justice R.P. Nagrath)
Member (Judicial)

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