

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH
KOLKATA**

C.P (IB) No.2038/KB/2019

In the matter of

An application under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,2016.

And

In the matter of:

Unitech Paper Mills Private Limited , having its registered office at 53A, Rafi Ahmed Kidwai Road, Kolkata, West Bengal,Pin- 700016.

... Operational Creditor

Versus

In the matter of:

Kumar Propack Private Limited, CIN: U21099JH2016PTC009350, having its registered office at Duplex-92, Vith Phase, Vijaya Heritage Uliyan, Kadma Jamshedpur, Purba Singhbhum, Jharkhand .

...Corporate Debtor

Date of hearing :20/06/2022

Order Pronounced on : 13/07/2022

Coram:

Mr. Rohit Kapoor, Member (Judicial)

Mr. Harish Chander Suri, Member (Technical)

Counsels appeared through Video Conference

For Operational Creditor : Mr. Shiv Shankar Banerjee, Adv.
Mr. Arijita Ghosh, Adv.
Mr. Sk. Selim Malik, Adv.

For Corporate Debtor : Mr. Abhishek Sikdar, Adv.

ORDER

Per: Harish Chander Suri, Member (Technical)

1. The Court is convened by video conference today.
2. This petition under 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has been filed by **Unitech Paper Mills Private Limited**, through its Director namely Sailesh Gupta, vide Board Resolution dated 12/08/2019 (Annexure-I) (hereinafter referred as the Operational Creditor), seeking initiation of corporate insolvency resolution process in respect of **Kumar Propack Private Limited, CIN: U21099JH2016PTC009350**, having its registered office at Duplex-92, VIth Phase, Vijaya Heritage Uliyan, Kadma, Jamshedpur, Purba Singhbhum, Jharkhand (hereinafter referred as the Corporate Debtor).
3. It is submitted in the petition that the Operational Creditor is inter alia engaged in the business of manufacturing and selling Kraft Paper and agreed to supply Kraft Paper to the Corporate Debtor when it approached the Operational Creditor on mutually agreed terms and conditions.
4. It is submitted that pursuant to several discussions between the Corporate Debtor and the Operational Creditor, latter started supplying Kraft Paper to the Corporate Debtors and good business relationship existed

between them till February, 2018. That pursuant to the request of the Corporate Debtor, one consignment of Kraft paper of 1.191 Metric Tonnes against an Invoice bearing No. G1183/17-18 dated 19.01.2018 for an amount of Rs.40,098/- was delivered to the Corporate Debtor. Thereafter, a second consignment of Kraft Paper of 17.864/-Metric Tonnes against an invoice bearing no. G-1305/2017-18 dated 03/02/2018 for an amount of Rs.6,18,635/- was also delivered to the Corporate Debtor. The aforesaid consignments were duly accepted on behalf of the Corporate Debtor. The payment against the aforesaid invoices were due on 26.01.2018 and 10.02.2018 respectively.

5. It is submitted that against the supply of Kraft Paper under the aforesaid invoices, the Corporate Debtor has not made any payment either in instalments or at all and the entire amount due against the aforesaid invoices dated 19.01.2018 and 03.02.2018 remain unpaid till date. It is submitted that on behalf of the Operational Creditor repeated requests were made to the Corporate Debtor to clear the dues to the tune of Rs.6,58,733/- against supply of goods but the Corporate Debtor did not pay heed to such requests of the Operational Creditor and till this date has not paid the outstanding amount of Rs. 6,58,733/-.All such requests were made by the Operational Creditor personally, sometimes through messengers and over telephone.

6. It is submitted that thereafter, on or about 15.09.2018, the Corporate Debtor issued a fresh purchase order vide an e-mail of even date, to the Operational Creditor requiring the latter to supply further consignment of Kraft Paper. The Operational Creditor vide an email dated 15.09.2018 replied to such email of the Corporate Debtor stating that no further orders can be considered till outstanding dues were cleared.

7. It is submitted that thereafter, the Corporate Debtor to pay the outstanding amount of Rs.6,58,733/- but the Corporate Debtor paid no heed

to such requests, the Corporate Debtor has, till date, avoided to pay the said sum of money. On 31.08.2019, the Operational Creditor issued a demand notice to the Corporate Debtor in terms of the Insolvency and Bankruptcy Code, 2016 for payment of the unpaid operational debt. The said notice was sent through speed post on 11.09.2019 and was duly received by the Corporate Debtor on 13.09.2019.

8. It is submitted by the Operational Creditor that after receiving the said demand notice under the Insolvency and Bankruptcy Code, 2016, the Corporate Debtor has a reply dated 26.09.2019 through its Advocate making certain false and frivolous allegations therein raising claims about the alleged inferior quality of goods received under the aforesaid invoices . However, from the correspondence between the Operational Creditor and Corporate Debtor, it will clearly show that such claims of the Corporate Debtor are baseless and the Corporate Debtor has infact utilized the goods supplied by the Operational Creditor against the aforesaid invoices that have remained unpaid till date. It is stated that the Corporate Debtor had, further, placed new orders with the Operational Creditor for supply of goods as explained in the preceding paragraphs upon being satisfied with the quality of goods as supplied by the Operational Creditor against the aforesaid invoices.

9. It is submitted that even receiving the said demand under the Insolvency and Bankruptcy Code, 2016, the Corporate Debtor has failed to bring to the notice of the Operational Creditor either(a) the existence of any dispute and record of the pendency of any suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute or (b) the payment of the unpaid operational debt and accordingly, the applicant was left with no other option than to file the present application for initiating a corporate insolvency resolution process.

10. The Operational Creditor has further submitted that a total sum of **Rs.8,66,234/-** (Rupees Eight Lakh Sixty Six Thousand Two Hundred Thirty

Four only) is due which is inclusive of Principal amount of Rs. 6,58733/- plus interest @ 18% p.a..

11. It is further submitted that the date of default committed by the Corporate Debtor in payment of outstanding debt is **10/02/2018**.

12. The Operational Creditor has placed on record the following documents in support of its claim, which are as under:-

- i. Certified Copy of Board Resolution dated 12.08.2019- Annexure-I.
- ii. Master Data of Corporate Debtor –Annexure-II,
- iii. Affidavit in support of this application-Annexure-III,
- iv. Copy of Tax Invoices bearing No. G1183/17-18 dated 19th January, 2018 and Invoice No. G- 1305/2017-18 dated 3rd February, 2018, and corresponding challans and way bills with respect to goods supplied by Operational Creditor- Annexure-IV.
- v. Copy of email dated 15.09.2018 of the Corporate Debtor and Operational Creditor's reply to the same vide email dated 15.09.2018.-Annexure-V.
- vi. Copy of emails dated 6/10/2018, 01/12/2018, 26/03/2019, 30/03/2019, 06/05/2019.- Annexure-VI.
- vii. Table showing computation of interest and overdue amount- Annexure-VII.
- viii. Copy of Demand Notice dated 31/08/2019 in prescribed Form 3 and Form 4 under the IBC, 2016 along with postal receipts acknowledgement due card and track record downloaded from the official website of Indian postal services. –Annexure-VIII.
- ix. Copy of the Advocate's reply issued under the instructions of the Corporate Debtor dated 26/09/2019 along with the envelope- Annexure-IX.
- x. Bank Statement of Operational Creditor for the relevant period- Annexure-X,

- xi. A copy of the bank draft No. 147732 dated 23/10/2019 drawn on Citibank- Annexure-XI,
- xii. Affidavit affirmed by the applicant under section 9(3)(a), (B), (c) of the IB Code, 2016.-Annexure-XII

13. On being served with the notice of the court, the Corporate Debtor has filed its reply affidavit.

14. **In reply to the petition**, the Corporate Debtor filed reply affidavit through one of the Directors namely Mr. Prantik Kumar. It is submitted that present petition is full of suppression of true and correct facts.

15. It is submitted that the corporate debtor is involved in the business of supply of manufacturing and supplying various types of flute corrugated cartons etc. On the other side the operational creditor is involved in the business of manufacturing and selling of kraft papers.

16. It is further submitted corporate debtor for the purpose of supplying cartons to various customers has placed order for the supply for the supply of kraft papers to the operational creditor. The kraft paper that was ordered for was customized and the operational creditor has duly received the said purchase orders knowingly fully of the requirements has accepted the said purchase orders.

17. It is submitted that the operational creditor despite of having the knowledge that the Kraft papers would be certain specifications has made supplies of the goods of inferior quality. The corporate Debtor immediately on receiving goods not conforming to the standard and quality that was asked for has immediately informed to the creditor informing them of inferior quality goods. The creditor was assured that the goods supplied were of the required guidelines and is of superior quality and will have no complains.

18. It is submitted that the corporate debtor based on the assurance of the operational creditor made cartons of the said kraft papers supplied and when they started to make supply of cartons to various of its clients started receiving complaints about poor quality products as because the material form which the cartons were made was complained of to be of inferior quality and was below standard.

19. It is submitted that the corporate debtor who has been doing business with high repute was getting bad names in the market for supply of inferior quality goods to its customers. There were several customers' complaints and the debtor received emails complaining of the inferior quality goods. The operational creditor has been informed of the quality of the goods supplied but was reluctant to make changes to the goods supplied to the corporate debtor.

20. It is submitted that the corporate debtor states and submits that there are WhatsApp conversation to show that the operational creditor has accepted the liability that inferior quality goods has been supplied to the corporate debtor and has been accepted to given discount on the goods supplied. The corporate debtor craves leave to produce the conversation as and when required. The corporate debtor due to the poor quality of goods supplied by the operational creditor suffered losses in the business. Not only the corporate debtor suffered losses in the business but also had to face bad reputation from various clients.

21. **During the Course of arguments, the Ld. Counsel appearing for the Corporate Creditor** submitted that it had lodged his complaint with the Operational Creditor for supplying goods of inferior quality and, therefore, it was specifically pointed out by various communications placed on record that the goods supplied were of poor quality and that the Operational would have to issue credit note.

22. Even during the course of arguments, Ld. Counsel for the Corporate Debtor submitted that the Corporate Debtor is liable to pay only Rs.2,00,000/- instead of **Rs.8,66,234/-** as demanded by the Operational Creditor. It was stated that the Operational Creditor has suffered loss of business due to the poor quality of goods supplied. He further submitted that only a sum of Rs.2,00,000/- is due and payable to the Operational Creditor. The Corporate Debtor had informed the Operational Creditor from time to time about this. Even before the receipt of notice from the Operational Creditor under Section 8 of the Code.

23. On the other hand, the Ld. Counsel for the Operational Creditor submitted that there is no pre-existing dispute and the Corporate Debtor has consumed all the goods and thereafter, unilaterally reduced the consideration. According to the Ld. Counsel after consuming the goods, one cannot be allowed to unilaterally reduce the consideration because it was a contract between the Operational Creditor and the Corporate Debtor, which was duly acted upon. Ld. Counsel for the Operational Creditor submitted that if the Corporate Debtor had raised this issue before consumption of the goods, it was within its right to do so. The Corporate Debtor even could have returned the goods but once the goods have been consumed no such issue of quality could be entertained.

24. In the present case, the Corporate Debtor has raised this issue of poor quality only after consuming the goods. The Contract between the parties was executed and adjudicated upon, therefore, in the light of the provisions of the Contract Act, the Corporate Debtor could not be allowed to do so.

25. We have gone through the petition and reply and after hearing Ld. Counsel for the parties, we are of the view that the Corporate Debtor has acknowledged its liability but is ready to make payment of only Rs.2,00,000/- instead of Rs.8,66,234/- being claimed by the Operational Creditor. The liability is duly admitted by the Corporate Debtor. On the second issue, the

argument advanced by the Operational Creditor is quite justified and we accept the same.

26. In view of the aforesaid submissions of the parties, the petition deserved to be admitted.

27. The petition is otherwise complete in all respects.

28. We, therefore, pass the following orders:-

ORDERS

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The I.R.P. shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
 - 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 Securitisation 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 the possession of the corporate debtor.

- v) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.

- vi) 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.

- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

- viii) 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 the 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.

- ix) The Operational Creditor has not proposed name of any Insolvency Resolution Professional. Therefore, as per the provisions of Section 16(3) (a) of the IBC, so, we appoint **Ms. Rashmi Agarwalla, IRP** having Reg. No. **IBBI/IPA-001/IP-P-01461/2018-2019/12281** email ID. rashmivika10@yahoo.co.in. to act as Interim Resolution Professional (IRP). He shall file Form-2, and that no disciplinary proceedings are pending against him with the Board.
- x) **Ms. Rashmi Agarwalla**, is hereby appointed as Interim Resolution Professional for ascertaining the particulars of creditors and convening a Committee of Creditors for evolving a resolution plan subject to production of written consent within one week from the date of receipt of this order.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xii) The Operational Creditor/Applicant is directed to deposit **Rs.1,00,000/- (Rupees One Lac only)** with the IRP appointed hereinabove within **three** days from this order. IRP can claim the preliminary expenses and fees subject to the approval by the CoC and after constitution of CoC.

29. Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the I.R.P. and the jurisdictional Registrar of Companies by Speed Post as well as through email.

30. List the matter on **26/08/2022** for filing of **Progress Report**.

31. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.

(Harish Chander Suri)
Member (Technical)

(Rohit Kapoor)
Member (Judicial)

Order signed on this, the 13th day of July, 2022

PJ