

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1

CP(IB) 827/9/NCLT/AHM/2019

Coram: MADAN BHALCHANDRA GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 22.03.2021

Name of the Company:

Shree Printwell offset Pvt Ltd
V/s
Decomica Ltd

Section:

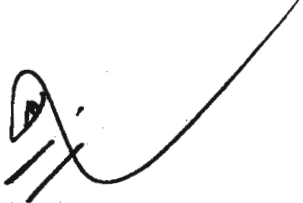
9 of the Insolvency & Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 22nd day of March, 2021



**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) 827/9/NCLT/AHM/2019

[Application for initiation of Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the matter of:

M/s. Shree Printwell Offset Pvt. Ltd.

Having address at:

G 14-16, Ravi Estate,
Nr. Torrent Power Substation,
BRTS Road Dudheswar,
Ahmedabad-380004

.....Operational Creditor.

Versus

M/s. Deco Mica Ltd.

Having address at:

306, 3rd Floor, Iscon Mall,
Star Bazar Building, Jodhpur Char Rasta,
Ahmedabad-380015

.....Corporate Debtor.

Order Reserved on: 16.03.2021
Order Pronounced on: 22.03.2021



**Coram: MADAN B. GOSAVI, MEMBER (J)
VIRENDRA KUMAR GUPTA, MEMBER (T)**

Appearance:

For Operational Creditor: Learned Counsel Mr. Gaurav Mehta
For Corporate Debtor : Learned Counsel Mr. Aditya J Pandya

ORDER

[Per: VIRENDRA KUMAR GUPTA, MEMBER (T)]

1. This application has been filed by Operational Creditor, namely, M/s. Shree Printwell Offset Pvt. Ltd. under Section 9 of Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IBC, 2016**") for initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") against the Corporate Debtor, namely, M/s Deco Mica Ltd. The amount in dispute has been claimed at 14,57,267/- (Rupees Fourteen Lac Fifty Seven Thousand Two Hundred and Sixty Seven Only) plus interest thereon.

Facts in Brief

2. The facts, in brief, are that the Operational Creditor supplied the goods to the Corporate Debtor in 2016. First invoice was raised on 06.02.2016 and the last invoice had been raised on 09.05.2016. The date of default as mentioned in Form-5 is 16.05.2016.

Submissions of Operational Creditor

3. Learned Counsel for the Operational Creditor appeared and submitted that notice of demand under Section 8 of IBC, 2016 had been delivered to the Corporate Debtor on



03.10.2019. Our attention was also drawn to various documentary evidences such as tax invoices, delivery challans and other e-mails written by the Operational Creditor to Corporate Debtor. No reply was filed to such e-mails; hence, it was to be assumed that claims made by Operational Creditor had been accepted.

Submissions of Corporate Debtor

4. The Learned Counsel for the Corporate Debtor appeared and submitted that the notice under Section 8 of IBC, 2016 was neither submitted in Form-3 and nor Operational Creditor enclosed copies of invoice, hence, for this reason only, application was liable to be dismissed. Another plea was taken that the debt was barred by limitation as the last invoice was of 9.5.2016 and even as per the date mentioned by the Operational Creditor in Form-5, default occurred on 16.05.2016 whereas this application had been filed in November, 2016 after three years period of limitation. It was also claimed that there were pre-existing disputes as two letters were written by the Corporate Debtor on 15.03.2016 and 10.04.2016 regarding qualities etc. It was claimed that the interest was demanded,



though, there was no agreement for such interest liability. It was also claimed that no Board Resolution of the other authority was produced to show that the application was authorized by management of the Operational Creditor. Thus, on these grounds, it was pleaded that the application was liable to be dismissed.

Submissions of Operational Creditor in Rejoinder

5. In the rejoinder, Learned Counsel for the Operational Creditor submitted that the notice of demand was submitted which, in sum and substance, contained all the particulars which were required in the requisite format, though, format was different; hence, this cannot be treated as plea being so fundamental as to discard this application. It was also claimed that all the requisite documents as per rules had been submitted. It was also claimed that the demand request was lastly made on 02.05.2017 through e-mail, hence, it cannot be said that the debt was barred by limitation. As regard to two letters dated 15.03.2016 and 10.04.2016, it was submitted that these letters were never sent and delivered to the applicant, hence, same cannot be treated as valid basis for the plea of



existence of a dispute prior to issue of notice of demand under 8 of IBC, 2016. As regard to interest part was concerned, the same was mentioned in the notice itself; hence, there was no substance in the plea of the Corporate Debtor once the notice had been accepted.

6. Learned Counsel for the Operational Creditor also relied on the judgment of NCLT Mumbai Bench in the case of *TJSB Sahakari Bank Ltd v/s M/s. Unimetal Castings Ltd.* [CP (IB)-3622/I&BP/MB/2018] for the proposition that a debt which is claimed before barred by limitation can be proceeded if the same appears in the Books of Account /Balance Sheet of the Corporate Debtor.
7. It was also claimed that even reply to demand notice under Section 8 of IBC, 2016 was not made, hence, for this reason also this application was liable to be admitted.

Our Conclusion

8. We have considered the submissions made by both the sides and material on record. It is not in dispute that last supply has been made in May, 2016 and invoice for the same has been raised on 09.05.2016. The application has been filed on 20.11.2019. It has been claimed by the



Corporate Debtor that this application was liable to be dismissed on the ground of limitation itself as there is no acknowledgement by the Corporate Debtor from the date of such invoice till the filing of application under Section 9 by the Operational Creditor. In this regard, we have gone through all the e-mails which have been attached by the applicant whereby the applicant has requested for payments from time to time. In one such e-mail dated 25.03.2017, we noted a categorical assertion made by the Operational Creditor that if no reply is received by Operational Creditor within eight days from the date of such e-mail then it will be assumed that Corporate Debtor had accepted the balance shown in the attachment which depicted the balance outstanding as per Books of Account of the Operational Creditor. The said e-mail dated 25.03.2017 is reproduced as under:

From: *Madhusudan collection @ pintwellindia.com*

Subject: *Confirmation Of Account statement FY. 16 to17*

Date: *25 March 2017 at 2:42 PM*

To: *vishal@heritagesurfaces.com*

Cc: *dwipal@printwellindia.com*

harshad@printwellindia.com

bhavesh@printwellindia.com

Resp. Sir,

Confirmation Of Account statement FY. 16 to17

Deco mica Pvt Ltd.



Given Attachment is the Detail Your Account as standing in My/Our Books of Accounts For the above mentioned period.

Please Note that if no reply is received from you within a eight.

It will be assumed that you have accepted the balance show attachment.

Regards,

Madhusudan patel & Rakesh shah

(M) 9099925034 (M) 9979903993

Account Department,

email: collection@printwellindia.com

9. This e-mail has been written after number of e-mails remained un-replied. Thus, on the face of it, we are of the view that Corporate Debtor intentionally did not reply which forced the operational creditor to write this e-mail in this manner. Thus, this, in our view, amounts to acknowledgement of debt as the same has not been refuted by the Corporate Debtor within the period so specified in the said e-mail.

10. As far as question of pre-existing dispute is concerned, the Corporate Debtor has failed to show that such letters had actually been issued and delivered to the Operational Creditor. Thus, no credibility of such letters exists in law. Having held so, now, we take note of the fact that the Corporate Debtor has not replied the notice issued under



Section 8 of IBC, 2016 and for this reason alone, this application is liable to be admitted particularly when no reasonable cause has been shown even during the course of hearing as to why such reply was not given. In this regard, we consider it pertinent to reproduce the findings of NCLT, Ahmedabad Court-1 in the case of *Raghuvir Buildcon Private Limited vs. Ketan Construction Limited* in CP(IB) C.P. (I.B.) No.57/9/NCLT/AHM/2019 vide order dated 10.08.2020 wherein in para 25 it was held as under:

25. This factual situation, however, leads to another dimension. In the case of operational debt, the proceedings for initiation of CIRP u/s 9 are materially different from proceedings u/s 7 of IBC, 2016 as in the case of claims of Operational Creditor delivery of notice of demand u/s 8 of IBC, 2016 to the Corporate Debtor before filing of application is a must. It is an incurable defect. Thus, an application filed u/s 9 of IBC, 2016 without delivery of notice of demand u/s 8 of IBC, 2016 on the Corporate Debtor then such application is liable to be rejected at the very outset. . The Petitioner/Applicant cannot be allowed to serve such notice after the filing of application u/s 9 under any circumstances. Correspondingly, the Corporate Debtor is under an obligation as per provisions of Section 8(2) r.w. Section 8(2)(a) of IBC, 2016 to reply to such notice of Operational Creditor within a period of 10 days from the date of receipt of such notice. It is also an incurable defect. Both the parties have to be kept at par. Thus, in our view,



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just an application u/s 9 is liable to be rejected without delivery of notice u/s 8 prior to filing of such application and correspondingly an application in the absence of notice of dispute/existence of dispute being brought to the notice of the operational creditor within a period of 10 days by the corporate debtor is liable to be admitted and corporate debtor cannot be allowed to raise the issue of pre-existing dispute later on because having regard to the drastic consequences of initiation of CIRP against the Corporate Debtor, such mechanism has been provided which not only gives a window /opportunity to the Corporate Debtor to establish fact of bona fide dispute but also to settle the matter before an application u/s 9 is filled but also saves Corporate Debtor from stripping off with the management of the company. Law is absolutely clear in this regard and, therefore, corporate debtor on subsequent stage cannot take shelter even of Rule 11 of NCLT Rules, 2016. We are further of the view that if the requirement of reply to notice u/s 8 within the stipulated time is waived then provisions of Section 9(5)(ii)(c) r.w. Section 8(2) would become redundant. In this regard, we draw strength from the observations of the Hon'ble Supreme Court in the case of Mobilox Innovations Private Limited vs. Kirusa Software Private Limited wherein the Court has held that time lines prescribed under the Act are sacrosanct and must be adhered to. The relevant findings of the Hon'ble Supreme Court in para 24, 25, 26, 27 are reproduced hereunder:

24. *The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such*



unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). **Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)).** What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing i.e. it must exist before the receipt of the demand notice or invoice, as the case may be. In case the unpaid operational debt has been repaid, the corporate debtor shall within a period of the self-same 10 days send an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor or send an attested copy of the record that the operational creditor has encashed a cheque or otherwise received payment from the corporate debtor (Section 8(2)(b)). **It is only if, after the expiry of the period of the said 10 days, the operational creditor does not either receive payment from the corporate debtor or notice of dispute, that the operational creditor may trigger the insolvency process by filing an application before the adjudicating authority under Sections 9(1) and 9(2).** This application is to be filed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 in Form 5, accompanied with documents and records that are required under the said form. Under Rule 6(2), the applicant is to dispatch by



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registered post or speed post, a copy of the application to the registered office of the corporate debtor. Under Section 9(3), along with the application, the statutory requirement is to furnish a copy of the invoice or demand notice, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt and a copy of the certificate from the financial institution maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor. Apart from this information, the other information required under Form 5 is also to be given. Once this is done, the adjudicating authority may either admit the application or reject it. If the application made under sub-section (2) is incomplete, the adjudicating authority, under the proviso to sub-section 5, may give a notice to the applicant to rectify defects within 7 days of the receipt of the notice from the adjudicating authority to make the application complete. Once this is done, and the adjudicating authority finds that either there is no repayment of the unpaid operational debt after the invoice (Section 9(5)(i)(b)) or the invoice or notice of payment to the corporate debtor has been delivered by the operational creditor (Section 9(5)(i)(c)), **or that no notice of dispute has been received by the operational creditor from the corporate debtor** or that there is no record of such dispute in the information utility (Section 9(5)(i)(d)), or that there is no disciplinary proceeding pending against any resolution professional proposed by the operational creditor (Section 9(5)(i)(e)), it shall admit the application within 14 days of the receipt of the application, after which the corporate insolvency resolution process gets triggered. On the other hand, the adjudicating authority shall, within 14 days of the receipt of an application by the operational creditor, reject such application if the application is



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incomplete and has not been completed within the period of 7 days granted by the proviso (Section 9(5)(ii)(a)). It may also reject the application where there has been repayment of the operational debt (Section 9(5)(ii)(b)), **or the creditor has not delivered the invoice or notice for payment to the corporate debtor (Section 9(5)(ii)(c))**. It may also reject the application if the notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility (Section 9(5)(ii)(d)). **Section 9(5)(ii)(d) refers to the notice of an existing dispute that has so been received, as it must be read with Section 8(2)(a)**. Also, if any disciplinary proceeding is pending against any proposed resolution professional, the application may be rejected (Section 9(5)(ii)(e)).

25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine: (i) Whether there is an operational debt as defined exceeding Rs.1 lakh? (See Section 4 of the Act) (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute? If any one of the aforesaid conditions is lacking, the application would have to be rejected. **Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.**

26. Another thing of importance is the timelines within which the insolvency resolution process is to



be triggered. The corporate debtor is given 10 days from the date of receipt of demand notice or copy of invoice to either point out that a dispute exists between the parties or that he has since repaid the unpaid operational debt. If neither exists, then an application once filed has to be disposed of by the adjudicating authority within 14 days of its receipt, either by admitting it or rejecting it. An appeal can then be filed to the Appellate Tribunal under Section 61 of the Act within 30 days of the order of the Adjudicating Authority with an extension of 15 further days and no more.

*27. Section 64 of the Code mandates that where these timelines are not adhered to, either by the Tribunal or by the Appellate Tribunal, they shall record reasons for not doing so within the period so specified and extend the period so specified for another period not exceeding 10 days. Even in appeals to the Supreme Court from the Appellate Tribunal under Section 62, 45 days time is given from the date of receipt of the order of the Appellate Tribunal in which an appeal to the Supreme Court is to be made, with a further grace period not exceeding 15 days. The strict adherence of these timelines is of essence to both the triggering process and the insolvency resolution process. **As we have seen, one of the principal reasons why the Code was enacted was because liquidation proceedings went on interminably, thereby damaging the interests of all stakeholders, except a recalcitrant management which would continue to hold on to the company without paying its debts. Both the Tribunal and the Appellate Tribunal will do well to keep in mind this principal objective sought to be achieved by the Code and will strictly adhere to the time frame within which they are to decide***



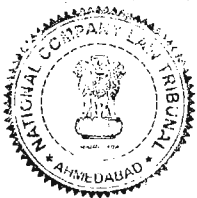
matters under the Code.

Further, findings of Hon'ble Supreme Court in the case of *Innoventive Industries Ltd. Vs. ICICI Bank and Ors* held in para 29 are reproduced as under:

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

Thereafter, Hon'ble Supreme Court in the case of *Swiss Ribbons Pvt. Ltd. and Ors. vs. Union of India and Ors* held as under:

24. A financial creditor may trigger the Code either by itself or jointly with other financial creditors or such persons as may be notified by the Central Government when a default occurs. The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the corporate debtor, making it clear that once triggered, the resolution process under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the corporate debtor. Under Section 7(4), the Adjudicating Authority shall, within the prescribed



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*period, ascertain the existence of a default on the basis of evidence furnished by the financial creditor; and under Section 7(5), the Adjudicating Authority has to be satisfied that a default has occurred, when it may, by order, admit the application, or dismiss the application if such default has not occurred. On the other hand, under Sections 8 and 9, an operational creditor may, on the occurrence of a default, deliver a demand notice which **must then be replied to within the specified period**. What is important is that at this stage, if an application is filed before the Adjudicating Authority for initiating the corporate insolvency resolution process, the corporate debtor can prove that the debt is disputed. When the debt is so disputed, such application would be rejected.*

Thus, the Hon'ble Supreme Court has reiterated time and again that adherence to the time line of 10 days for reply to demand notice is a must. Thus, any reply beyond the period of 10 days will not save the Corporate Debtor from the consequences as mentioned in Section 9(5)(ii)(c) of IBC, 2016.

11. The name of IRP has not been proposed which is not mandatory in case of an application filed under Section 9 of IBC, 2016. Hence, we shall appoint an IRP from the list approved by IBBI. The petition is otherwise complete and defect free.

12. In view of the above discussion, we admit this application and order as under:



ORDER

1. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(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;*

(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.*

2. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of



the Insolvency & Bankruptcy Code, 2016, as the case may be.

3. The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoints **Mr. Mr. Ashish Anantray Shah** having **Registration No: IBBI/IPA-002/IP-N00214/2017-18/10666** and having **Email Address: ashish@ravics.com** to act as an IRP under Section 13(1) (c) of the CODE.
4. The IRP shall perform all his functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate. IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
5. This Adjudicating Authority directs the IRP to



make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the CODE.

6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs. 50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.
8. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional



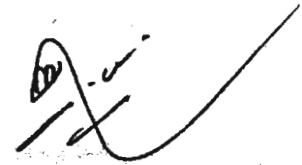
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and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.

13. Accordingly, CP (IB) No. 827/9/NCLT/AHM/2019 is allowed.



**(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)**



**(MADAN B. GOSAVI)
MEMBER (JUDICIAL)**

Signed on this, the 22nd March, 2021.

Rajeev Sen/Stenographer




Certified to be True Copy of the Original

Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad
24/03/21