IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)

CP No. IB- 648/ND/2020

[*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:

Rajesh Gupta
Sole proprietor of M/s Ujjwal Packaging
F-448, RIICO Industrial Area, Bhiwadi, Rajasthan-301019
Through Legal Representatives;

i. Teena Mittal,
ii. Arushi Mittal
iii. Ankit Mittal

...........Operational Creditor

Versus

Aditya Interseas Private Limited
CIN No. U51399DL2001PTC11094
C 9/9824 Vasant Kunj, New Delhi-110070

..........Corporate Debtor

ORDER PRONOUNCED ON: 11.04.2022.

CORAM:

SH. SHRI DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)

SMT. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)

11/4/22

ORDER

PER: SHRI DHARMINDER SINGH, MEMBER- JUDICIAL

1. This is an application filed by deceased Mr. Rajesh Gupta, through its Legal Representatives Teena Mittal, Arushi Mittal and Ankit Mittal, the applicant/operational creditor seeking initiation of CIRP against the Respondent company/Corporate Debtor (for brevity Corporate Debtor) M/s Aditya Interseas Private Limited, under Section 9 of Code 2016 for the alleged default on the part of the Corporate Debtor having an outstanding balance of Rs. 18,67,216/- on account of supply of goods to the corporate debtor.
2. It is pertinent to mention here that deceased Mr. Rajesh Gupta died after filing of the present application his legal heirs had filed an application for substitution of name of the applicants bearing IA 3227/ND/2021. The IA 3227/ND/2021 was allowed by this Tribunal vide order dated 29.07.2021.
3. The details of transactions leading to the filing of this petition as averred by the applicant are as follows:-
    a. The applicant is engaged in the business of Thermocol trading and supplied goods as per the orders placed by the Corporate Debtor in the name of his sole proprietorship concern "Ujjawal Packaging. The applicant raised invoices accordingly. The applicant submits that a running account was kept for the series of transactions from 01.04.2018 to 10.05.2019.

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b. As per part-IV of the application an amount of Rs. 18,67,216/- including interest is still due and outstanding to be paid by the corporate debtor for the invoices raised between 04.12.2018 to 26.02.2019.

c. The applicant issued Demand Notice u/s 8 of the Code on 05.09.2019 duly served at the registered office of the corporate debtor and to other known address of the Corporate Debtor. The applicant has filed an affidavit under Section 9 (3) (b) stating that no payment or notice of dispute has been received by applicant after service of demand Notice.

4. The respondent has filed its reply raising following objections:

a) Since the present application is filed by legal heirs of the deceased Sh. Rajesh Gupta proprietor of M/d Ujjwal packaging, the present application is not maintainable.

b) It is the case of the applicant that after death of sole proprietor, the proprietorship concern stand dissolved unless taken over by the legal heirs and in the present matter Ujjawal Packaging was never taken over by the legal heirs. The records of GST number clearly show that Ujjawal Packaging is still in the name of deceased proprietor.

c) It is submitted that since the legal heirs are not covered under Section 5 (20) of IBC and Section 3 (23) of IBC, the present application is not maintainable.

d) The respondent raised objection regarding defect in Demand Notice as the applicant has not annexed the list of the unpaid invoices and any other annexures alongwith the invoices.

e) The corporate debtor also raised objection that the applicant has not mentioned a specific date of default in the application and in absence of one fixed date of default mentioned in Part-IV of the application, the application is liable to be dismissed.

f) The respondent also raised objection regarding pre-existing dispute between the parties. The respondent has relied upon the email dated 25.12.2018 sent to applicant specifying defects in goods supplied by the applicant and it is stated that the said defects were never rectified by the applicant.

5. The applicant has filed rejoinder to the reply of the corporate debtor and submitted as follows:

a) It is submitted that as per succession laws the right of legal claim passed onto the successors of the deceased and there is no law regarding dissolution of sole proprietorship concern as the sole proprietorship is not a legal entity.

b) An appropriate application has already filed by the legal heirs for substitutions of names and the same was allowed by this Tribunal vide order dated 29.07.2021.

c) Further, it is stated that non-transfer of GST is no evidence of proprietorship not being continued. It is stated that the

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business of the operational creditor Ujjawal Packaging is being continued by the legal heirs.

d) The applicant further stated that there is no compulsion on the operational creditor to attach the unpaid invoices with the Demand Notice in Form-3 as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

e) The applicant also submitted that the last payment was made by corporate debtor on 10.05.2019; therefore, the date of default in respect of unpaid operational debt is 10.05.2019.

f) The applicant the issue raised by corporate debtor on 25.12.2018 was immediately resolved and goods were supplied to the corporate debtor even after the said email till 26.02.2019. The applicant also submitted that after 25.12.2018 there are various email communications between the parties in which the corporate debtor assured to make payment to the applicant.

6. We have heard the arguments and thoroughly perused the case records. The corporate debtor has raised objection that the Demand Notice sent by the applicant is defective as copies of invoices were not attached with the Demand Notice. In this regard it is seen that the invoices were duly received by the respondent which is evident from sign and seal of the company on the copies of the invoices. Since, the

respondent had already knowledge about the invoices, the objection is not tenable.

7. So far as the question of maintainability of application on behalf of sole proprietorship is concerned. The present application has been filed by Shri Rajesh Gupta being sole proprietorship of M/s Ujjwal Packaging. Apparently, the petition has not been filed on behalf of M/s Ujjwal Packaging rather the same has been filed by Shri Rajesh Gupta. Hence, the same is maintainable. In this regard reference can also be made to the judgment passed in the matter of ***Neeta Saha Vs. Ram Niwas Gupta & Anr. CA (AT) (Ins.) No/ 321/2020 declared on 25.02.2022.*** Therefore, there is no force in the contention raised on behalf of the Learned Counsel for the respondent that the present application is not maintainable. Further, the objection has also been raised by the Learned Counsel for the respondent qua the maintainability of the present application on behalf of legal heirs also after the death of Shri Rajesh Gupta. In this regard, it is to be mentioned that an application i.e. IA No. 3227/2021 was filed on behalf of the legal heirs of Shri Rajesh Gupta, which was allowed by this Tribunal vide order dated 29th July 2021. The said order was never challenged, therefore, the said objection is also not sustainable.

8. Now, it has to be seen whether there was any existence of dispute prior to the filing of the present petition. Apparently, the goods were being received till 26th February 2019 and the respondent made part

payment on 10th May 2019. The amount due does not pertains to the year 2018, rather the same was due qua subsequent invoices. In this regard reliance can be placed on citation ***Mobilox Innovative Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353*** the Hon'ble Supreme Court observed:

> *"It is clear, therefore that once the Operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility . It is clear that such notice must bring to the notice of operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which required further investigation and that the "dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence.It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster."*

9. Hence, the dispute must be genuine and vague allegations would not serve the purpose as levelled in the present matter. Although, one consignment was defective, but the same was prior to 26th February 2019 and the intimation qua defective articles was sent on December 2018. The said issue was already stand resolved between the parties. Accordingly after that, the respondent kept on placing orders and also

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received the goods. Even, part payment was made on 10th May 2019. Therefore, it could not be said that there was any pre-existing dispute between the parties. Accordingly, the said objection raised on behalf of Learned Counsel for the respondent also stand rejected.

10. In view of the above said discussion, this Tribunal is of affirm view that the payment with respect to invoices raised on behalf of petitioner were not made by the respondent, accordingly, the present petition stands admitted.

11. The applicant has proposed the name of Mr. Dharm Vir Gupta, Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-001/IP-P-01492/2018-19/12342 and email id.dvgupta@hotmail.com. Mr. Dharm Vir Gupta has given its written consent in required Form-2 which is attached with the application. Therefore, this bench appoints Mr. Dharm Vir Gupta, as the Insolvency Resolution Professional of the corporate debtor.

12. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Dharm Vir Gupta to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of

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Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

13. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

14. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

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11/4/22

[SUMITA PURKAYASTHA]
MEMBER (T)

[DHARMINDER SINGH]
MEMBER (J)