

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH – II

Company Petition (IB) No. 806/ND/2020

In the matter of:

The Insolvency and Bankruptcy Code, 2016

AND

In the matter of:

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

AND

In the matter of:

OMNI DISTRIBUTORS

J-30A, Upper Anand Parbat Industrial Area,

District: Central Delhi, New Delhi-110005

Email: omnidistributors1@yahoo.com

Phone: +91-9810209292

...Applicant/Operational Creditor

VERSUS

M/S COMPACK ENTERPRISE INDIA PRIVATE LIMITED

(CIN-U74899DL1995PTC070122),

B 71 G T Karnal Road Indl. Area,

New Delhi-110033

Email ID: compackindia@gmail.com

...Respondent/Corporate Debtor

ORDER RESERVED ON: 05.04.2022

ORDER DELIVERED ON: 01.06.2022

CORAM:

Sh. Abni Ranjan Kumar Sinha, Hon'ble Member (Judicial)

Sh. L. N. Gupta, Hon'ble Member (Technical)

For Operational Creditor : Mr. Ajay Verma, Sr. Adv.,
Adv. Ishaan Verma, Adv. Armaan Verma

For Corporate Debtor : Adv. Rajesh Banati



ORDER

AS PER: SH. ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)

1. The present petition is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 by the Applicant/ operational creditor, i.e. "**Omni Distributors**" for initiation of Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor Company "**M/s. Compack Enterprise India Pvt. Ltd.**".
2. The Operational creditor is a partnership firm registered under the provisions of Partnership Act, 1932.
3. The Corporate Debtor is a private limited company incorporated under the provisions of the Companies Act, 1956.
4. Brief Facts of the case are as follows:
 - i. That the Operational creditor is running its business under the name and style of M/s Omni Distributors. Various orders were placed by the Corporate Debtor. Following the telephonic conversations, various categories of Metalized Polyester Films, Thermal Lamination Films were supplied to the Corporate Debtor on various dates and accordingly, the Operational Creditor has raised various invoices between 02.02.2019 and 19.04.2019.
 - ii. That due to default in payment by the Corporate Debtor, the Operational Creditor had sent the Demand Notice in Form 3 under section 8 of the Insolvency and Bankruptcy Code, 2016 read with rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for demanding payment of total Debt amounting to Rs. 34,72,606/- (including interest @24 p.a. Rs. 5,90,477/-) at the registered office of the Corporate Debtor and at home and registered address of directors of the Corporate Debtor namely Mr. Anil Gosain, Mr. Kulbhushan Gosain, and ex-directors of the Corporate Debtor namely Mr. Nishank Gosain and



Mrs. Poonam Gosain on 29.01.2020, which were delivered successfully at all addresses on 30.01.2020.

- iii. That the Operational Creditor has also served the Demand Notice along with all annexures via Electronic Mail available in MCA records upon the Corporate Debtor on 04.02.2020 at 03:40 PM.
- iv. That the Operational Creditor has received the reply to the demand notice dated 11.02.2020 on 18.02.2020 from the Corporate Debtor in terms of the provisions of the section 8(2) of the Insolvency and Bankruptcy Code, 2016.

5. The total amount of debt due and payable is of Rs. 34,72,606/- (being principal amount of Rs. 28,82,129/- and applicable interest payment @ 24% per annum of Rs. 5,90,477/-). The debt becomes due on various dates as per the invoices raised by the Operational Creditor to the Corporate Debtor. The last date of raising the invoice was 19.04.2019. Therefore, the date from which such debt fell due i.e. 19.07.2019 i.e. 91st day from the date of last invoice.

6. The respondent in its reply dated 19.01.2021 has submitted:

- i. That the statement of accounts filed by the applicant with the Petition do not reflect all the entries. The statement of accounts maintained by the Respondent for the period 01.04.2017 to 10.02.2020 clearly depicts all the entries i.e. the invoices raised by the applicant on the Respondent, payments made by the Respondent to the applicant from time to time and the credit note issued by the applicant to the Respondent. The statements of account maintained by the Respondent in the ordinary course of business clearly reflect that **an amount of Rs. 4,35,189/- is due and payable by the Respondent to the applicant.**
- ii. That the Respondent along with reply dated 11 .02.2020 had sent cheque no. 700262 dated 11.02.2020 for Rs. 4,35,189/- in favour of the applicant. The said cheque was drawn on the Punjab National Bank, Model Town-III, Delhi-110009.
- iii. That after almost one month of the receipt of reply dated 11 .02.2020 from the Respondent, the applicant vide letter dated



13.03.2020 sent back the cheque no. 700262 dated 11.02.2020 of Rs. 4,35,189/- to the Respondent. The applicant in its letter dated 13.03.2020 has not denied any of the facts mentioned by the Respondent in their reply dated 11 .02.2020.

- iv. That after receiving the letter dated 13.03.2020 from the applicant on 17.03.2020, the Respondent vide letter dated 19.03.2020 sent back the cheque no. 700262 dated 11.02.2020 for Rs. 4,35, 189/- to the applicant.
- v. That as per law, if a notice is sent by more than one mode, then for the purpose of limitation, the date of receipt of last mode of notice is to be taken into consideration. As admitted by the applicant that the demand notice along with all annexures was served on the Respondent via mail dated 04.02.2020. Therefore, the reply dated 11.02.2020 to demand notice was then sent within ten days.
- vi. That vide mail dated 29.06.2019, the Respondent has categorically pointed out that the Respondent has received serious complaint from the market, in respect of cartons, manufactured by the Respondent from the films supplied by the applicant to the Respondent. In this regard, the Respondent had requested the applicant to visit their office on 01.07.2019.
- vii. That on 01.07.2019 when the applicant had visited the office of the Respondent, the Respondent handed over 10 numbers of defective samples of cartons to the applicant and requested the applicant to act urgently. However, when the applicant did not revert back, the Respondent vide letter dated 15.07.2019 once again requested the applicant to look into the problem. When nothing transpired from the side of the applicant, the Respondent sent one more mail dated 20.07.2019 to the applicant. Thereafter, the applicant vide mail dated 22.07.2019 informed the Respondent that the applicant would be visiting the office of the Respondent on 25.07.2019. Finally, on 25.07.2019, the applicant visited the office of the Respondent and inspected the defective



cartons and accordingly, joint minutes of meeting was recorded and signed by both the parties wherein inter-alia the applicant had admitted that total value of rejected cartons is Rs. 48,93,880/- and the applicant agreed to share 50% of total rejection of material worth Rs. 48,93,880/-, which comes to Rs. 24,46,940/-.

- viii. That after signing the joint minutes of meeting dated 25.07.2019, the applicant had agreed to issue credit note for an amount of Rs. 24,46,940/- towards rejected material. Accordingly, the applicant on 28.07.2019, issued the credit note no. CRN/1920/025 dated 28.07.2019 for Rs. 24,46,940/-. Despite the fact, the applicant issued the credit note dated 28.07.2019 for Rs. 24,46,940/- in favour of the Respondent, the applicant has failed to reflect the same in the statement of accounts maintained by the applicant.
 - ix. That there is existence of dispute between the applicant and the Respondent.
7. The Applicant in its rejoinder dated 04.02.2021 has submitted that:
- i. Corporate Debtor committed the act of forgery with illicit intention in order to attain financial gain.
 - ii. the corporate debtor used counterfeit letter heads of the Operational creditor. The Operational creditor never communicated via Gmail transitions, as annexed by the corporate debtor, such transitions are fabricating by the corporate debtor.
 - iii. the Corporate Debtor has made forged entry of credit note no. CRV/1920/025 for amounting to Rs. 24,46,940/- on 28.07.2019 in its Ledger Account.
 - iv. Operational Creditor have issued only 19 credit notes to its purchasers in whole financial year 2019-20 then issuing of credit note no. 25 to the Corporate debtor on 28.07.2019 is hoax statements made by the Corporate Debtor.
 - v. after receiving Demand Notice on 30/01/2020 Corporate Debtor intentionally to create chaos sent the cheque amounting to Rs. 4,35,189/- but the same was returned to the Corporate Debtor

vide rebuttal to the reply of Demand Notice on 16th March 2020 but Corporate Debtor again sent the cheque to the Operational Creditor on 21.03.2020 (after filling of this application), which Operational Creditor has not deposited for clearance as yet and ready to send back to the Corporate debtor.

- vi. the Applicant referred to the Judgement of the Hon'ble Supreme Court in the matter of Mobilox Innovations Private Ltd. vs. Kirusa Software pvt. Ltd. and the judgement of Hon'ble NCLT, Ahmedabad Bench in the matter of Reghuvir Buildcon Private Limited vs. Ketan Construction Limited.
- vii. the Operational Creditor have issued only 19 credit notes in whole financial year 2019-2020, to its various purchaser on various dates as under:

Sr. No.	Purchaser Party	Date	Amount (Rs.)
1.	Azure Press Private Limited	05.06.2019	48,057
2.	Sanat Printers	06.06.2019	57,906
3.	Manohar Filaments Pvt. Ltd.	06.06.2019	959
4.	Samrat Offset (P) Ltd.	02.07.2019	14,283
5.	Sanat Printers	02.07.2019	76,367
6.	Allied Enterprises	04.07.2019	50,107
7.	Paper Dreams (P) Ltd. – Bhiwari	18.07.2019	68,037
8.	Prem Industries Unit –II	23.07.2019	2,662
9.	H.B.D. Packaging (P) Ltd. – Noida	12.08.2019	26,584
10.	Platinum Print Pack	12.08.2019	1,166
11.	Solar Print O Pack	23.08.2019	24,637
12.	Miracle Print Pack Pvt. Ltd.	23.08.2019	15,576
13.	A & A Labels	06.09.2019	39,104
14.	Ingenious Appliances and Packaging Pvt. Ltd.	07.09.2019	4,934
15.	Thomson Press (India) Ltd.- Delhi	12.10.2019	36,837
16.	H.T. Media Limited	09.12.2019	3,383

17.	Manohar Filaments Pvt. Ltd.	14.12.2019	408
18.	Sagar Colour Pac (P) Ltd.	13.01.2020	1,12,640
19.	A & A Labels	21.01.2020	19,288
	Total		6,02,935

- viii. as per above tabular data, no credit note entry pertaining to issuance to the Corporate Debtor is reflected.
- ix. Operational Creditor has also audited its accounts from Independent Chartered Accountant for the Financial Year 2019-2020 and as per the Audited Balance Sheet, the same amount as of the outstanding invoices amounting to Rs 28, 82,129/- is also reflecting at sr. no. 27 in the list of Sundry Debtors of the Audited Balance Sheet of the Operational Creditor for the Financial Year ended as on 31.03.2020.
- x. The Corporate Debtor has never raised any kind of dispute prior to the sending of Demand Notice.
8. That the applicant has filed the written submissions, the scanned copy of which; is reproduced below:



**WRITTEN SUBMISSIONS ON BEHALF OF
OPERATIONAL CREDITOR/APPLICANT**

- I. Reply of Corporate Debtor cannot be considered as it was Served Beyond the Period prescribed in Section 8(2), IBC**
1. Corporate Debtor's Response/Reply to the Demand Notice cannot be considered as it was not in compliance of Section 8(2) of the IBC.
 2. Corporate Debtor was duly served with the Demand Notice dated 29.1.20 on 30.1.2020 (Annexure A-5 to the Application at p. 113-122). Corporate Debtor was to submit its Reply to the Applicant latest by 10.02.2020. However, admittedly, Corporate Debtor sent its Reply purportedly dated 11.02.2020 on 14.02.2020 which was received by Applicant on 18.02.2020 (p. 239/256). Corporate Debtor falsely claimed it received the Demand Notice on 04.02.2020.
-- Totem Media Solutions (P.) Ltd. v. Respondent: V2 Retail Ltd.
MANU/NC/9569/2020; [NCLT (ND) Bench] ¶¶ 16, 17, 19

-- Mobilox Innovations (P) Ltd. v. Kirusa Software (P) Ltd.
(2018) 1 SCC 353 ¶¶ 35, 36
 3. Once Operational Creditor served the Demand Notice through Speed Post on 30.1.20, any service by email was irrelevant and in any case limitation starts from the date of receipt through first service.
Ashok Kumar v. Purshottam Lal Verma
233 (2016) DLT 761 (DB) ¶¶ 11, 12
Therefore, Corporate Debtor failed to comply with Section 8(2) of IBC, 2016, and in the eyes of law there is no Reply before this Hon. Tribunal.
 4. Since there is no reply/defense of Corporate Debtor in the eyes of law, the Application merits to be admitted inasmuch as Operational Creditor has established:



- i. there is a debt;
- ii. which is of more than Rs. 1 lakh;
- iii. for which Demand Notice dated 29.1.2020 was served on Corporate Debtor as per law on 30.1.2020;
- iv. still Corporate Debtor did not pay the same as per law;
- v. the debt is due and payable.

II. Documents relied upon by Corporate Debtor cannot be looked at

1. Operational Creditor clearly informed Corporate Debtor on 11.3.2020 that its Reply to the Demand Notice mailed on 14.2.2020 and received on 18.2.20 was beyond time (**Annexure A-11 to the Application, p. 236**). Nevertheless, Operational Creditor as a manifestation of its *bona fides* still disclosed the same and the documents along with it as **Annexure A-12 to Application, p. 238-257**.

2. The document at p. 253, i.e., alleged Minutes of Meeting held on 25.07.2019, and other documents were not the documents of Operational Creditor but forged documents by Corporate Debtor which being part of the Reply to the Demand Notice cannot be looked at.

III. Without prejudice, Corporate Debtor has played fraud and polluted the stream of justice by relying on forged and fabricated documents

1. Respondent's purported defense is a sham based on a fraud relying on forged and fabricated documents. This Tribunal cannot permit Corporate Debtor to pollute the stream of justice. Insofar as the alleged documents of Corporate Debtor are concerned:

- i. Letterheads used by Corporate Debtor in support of its Reply are fraudulent/forged and fabricated – Applicant has never used the said letterheads as is evident from contemporaneous documents filed as **Annexure – 1 to the Rejoinder (p. 23A and 24)** by the Operational Creditor;
- ii. The alleged Credit Note No. CRN/1920/025 dated 28.07.2019 (**p. 254**) relied upon by Corporate Debtor is fraudulent/forged and fabricated.
 - a. Operational Creditor issued only 19 credit notes in the whole financial year 2019-20. The copies of the credit note ledger, GST returns and the copy of the Credit/Debit Notes downloaded from the GST portal and the Balance Sheet of Applicant are annexed as **Annexure A-2 to A-5 to the Rejoinder (p. 26 to 105)** as also the confirmation of the

- various buyers (**Annexure A-1 (coll'y) with Affidavit filed by Operational Creditor on 24.08.2021**).
- b. Operational Creditor did not even issue any Credit Note in the alleged format as forged by Corporate Debtor. (**Annexure A-1 (coll'y) with Affidavit filed by Operational Creditor on 24.08.2021**).
 - c. The fraud/forgery and fabrication is also evident from the fact that the forged Credit Note refers to the Minutes of Meeting dated "19-07-2019" whereas the forged Minutes of Meeting filed at p. 253 relate to the alleged meeting held on "25th July 2019".
 - d. It is also pertinent to mention that the signatures on the forged Minutes of Meeting dated 25.07.2019 (p. 253 of the **Application**) and the alleged Credit Note dated 28.07.2019 (p. 254 of the **Application**) have been lifted from the signature on behalf of Applicant from the Demand Notice.
- iii. The alleged emails relied upon by Corporate Debtor were never exchanged and are fraudulent/forged and fabricated.
- a. Throughout the recent about 6 years of the business between Operational Creditor and Corporate Debtor, the dealings between the parties were not *via* email.
 - b. Moreover, no certificate u/s 65(B) of the Evidence Act has not been filed by Corporate Debtor certifying the veracity of the alleged emails.
 - c. Also, there is no proof of delivery/service of alleged letters dated 01.07.2019 and 15.07.2019 (p.p 248 and 249 of the **Application**).
- iv. **Without prejudice, to satisfy its conscience, this Hon'ble Tribunal would be pleased to require Corporate Debtor to produce the originals of all documents before taking any decision, as was initially considered during the hearing.**
4. It is most pertinent to note that this is not the first instance that Corporate Debtor has apparently indulged in creating fraud/forged and fabricated documents and cheating. In fact, there were two police complaints against Corporate Debtor with the Economic Offences Wing of Delhi Police and an FIR in P.S. Paschim Vihar, by:
- i. Hukum Chand Shikhar Chand Jain Pvt. Ltd. *vide* D. No. D-8471

dated 29.11.2019;

- ii. Jitendra Impex Pvt. Ltd. *vide* D. No. D-8390 dated 22.11.2019.
- iii. Arvind Gupta, *vide* FIR No. 0253 dt. 7.6.2019 P.S. Paschim Vihar with similar allegations of forgery and fabrication against Corporate Debtor. (Copies attached)

In fact, in proceedings before this very Hon'ble Bench in IB-183/ND/2019, there were similar allegations against Corporate Debtor of having forged and fabricated credit notes. The Application was dismissed on other grounds, but in Company Appeal (AT) (Insolvency No. 1083 of 2019), NCLAT remitted the matter back to the Adjudicating Authority. Apparently, the Appeal in the Supreme Court is pending against Order of the NCLAT. However, that does not detract from the track record of Corporate Debtor/Corporate Debtor. (Copies attached)

5. This Hon'ble Tribunal has the requisite jurisdiction to consider these aspects and would be pleased to do so in the interests of justice.
-- *Embassy Property Developments (P) Ltd. V. St. of Karnataka*
(2020) 13 SCC 308

-- *Gursimran Singh Lamba v. Satkar Terminals Ltd.*
IB-597/ND/2018 dt. 3.9.2019

Accordingly, it is respectfully submitted that the Application be admitted and the reliefs prayed be granted.

9. That the respondent has also filed the written submission, the scanned copy of which is reproduced below:



WRITTEN SUBMISSIONS ON BEHALF OF THE CORPORATE DEBTOR

The Corporate Debtor above named most respectfully submits as under: -

1. That for the purpose of written submissions, the Corporate Debtor rely on the reply to the Application under section 9 of IBC 2016. The contents of the reply are not repeated herein for the sake of brevity. The Corporate Debtor also rely on documents from pages 239 to 255 of the Application /Petition under section 9 filed by the Operational Creditor.
2. The contention raised by the Ld. Counsel for the Operational Creditor that reply to the Demand Notice by the Corporate Debtor cannot be considered since it is sent after 10 days from the date of service of Notice. But the fact is that the Operational Creditor in para 6 on page 5 of the Application /Petition under section 9 filed by the Operational Creditor, pointed out that the Demand Notice along with annexures was sent to the Corporate Debtor through email 04.02.2020. Admittedly the Corporate Debtor sent the reply dated 11.02.2020 (page 239 of paper book) to the Demand Notice i.e. within 10 days. Moreover, as per the Judgment reported in 1984 (6) DRJ 47, if a Notice is sent by two modes, then the limitation for purpose of reply shall be calculated from the date it is received by the last mode.



3. That the Operational Creditor has not come to the Court with the clean hands and has in fact mis-led the Court by making following false and incorrect statements:

a) In para 8 on page 5, Operational Creditor stated that he has not received any payment after the Notice was sent under section 8 of IBC till the date of filing the present Application/Petition. But the fact is that along with reply to Demand Notice dated 11.02.2020 the Corporate Debtor sent the cheque no. 700262 dated 11.02.2020 for Rs. 4,35,189/- towards balance outstanding amount to the Operational Creditor. The Operational Creditor kept the aforesaid cheque with them for more than one month and then returned it to Corporate Debtor vide letter dated 13.03.2020 (page 236 of paper book), actually posted the letter on 16.03.2020 and thereafter filed the Application /Petition under section 9 on the same date i.e 16.03.2020, at the NCLT. It is important to mention here that no such averment about receiving the cheque was ever made by the Operational Creditor in the Application /Petition filed under section 9 of IBC 2016.

It is pertinent to mention here that the Corporate Debtor received back the cheque on 17.03.2020 and reposted it to Operational Creditor on 19.03.2020 (internal page 18 of reply to Application /Petition under section 9). The said letter along with the cheque was duly received by the Operational Creditor on 21.03.2020. Since then the cheque is lying with Operational Creditor. Now in Rejoinder, the Operational Creditor at page 8 says he is ready and willing to sent back the cheque to the Corporate Debtor. This act of Operational Creditor clearly shows the malafide mind with an only intention to get some orders of the Court.

b) That the Operational Creditor concealed another vital fact by not pointing out that the joint minutes of the meeting was recorded and signed by Operational Creditor and Corporate Debtor on 25.07.2019 (page 253 of paper book), with respect to the

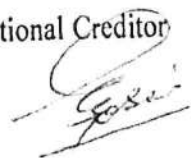
serious disputes pertaining to quality of material. In the said minutes of the meeting, the Operational Creditor admitted that total value of rejected cartons is Rs. 49,93,880/- and Operational Creditor agreed to share 50% of total rejection of material worth Rs. 48,93,880/- which comes to Rs. 24,46,940/-. Thereafter the Operational Creditor agreed to issue Credit Note of amount of Rs. 24,46,940/- towards rejected material and issued Credit Note dated 28.07.2019 for Rs. 24,46,940/- in favour of Corporate Debtor (page 254 of paper book). However, the Operational Creditor failed to reflect the same in the alleged statement of account maintained by them qua Corporate Debtor. That statement of account maintained by Corporate Debtor for the period 01.04.2017 till 10.02.2020 (internal page 13-17 of the Reply to the Application under section 9) qua Operational Creditor, clearly reflects only an amount of Rs. 4,35,189/- is due and payable, which the Corporate Debtor sent to Operational Creditor through cheque, which is still with the Operational Creditor. However, the Operational Creditor has not dealt with any of the contentions of the Corporate Debtor in the Application /Petition under section 9 IBC, though the copy of reply of Corporate Debtor to Demand Notice along with all the relevant documents was with Operational Creditor at the time of filing the Application /Petition under section 9 of IBC. Now in rejoinder the Operational Creditor says that the minutes of meeting is not on his letter head, the signatures on the minutes of meeting is not his, stamp on the minutes of the meeting is not his and Credit Note were never issued. These are nothing but an after thought on part of the Operational Creditor and filed the case with the only intention to blackmail the Corporate Debtor.

4. That it is pertinent to mention here that after issuing cheque for Rs. 4,35,189/- to Operational Creditor nothing is due and payable by the Corporate Debtor. Hence, the



Application /Petition under section 9 filed by the Operational Creditor is liable to be dismissed.

5. That it will not be out of place to mention here that there is existence of disputes between the Operational Creditor and the Corporate Debtor. Hence, the Application /Petition under section 9 filed by the Operational Creditor is not maintainable.
6. The Judgment (2020) 13 SCC 308, cited by Ld. Counsel for Operational Creditor is not at all applicable to the present proceedings since head note "B" of the aforesaid Judgment mentions section 65 of IBC. The said section 65 of IBC only deals of fraudulent proceedings which are initiated by Operational Creditor or IRP. Moreover, after framing the issues, Hon'ble Supreme Court dismissed the SLP.
7. That the Corporate Debtor rely on the following Judgments in support of their case:
 - a) Mobilox Innovations Private Limited Vs Kirusa Software Private Limited" reported in MANU/SC/1196/2017
 - b) Maan Aluminium Ltd Vs Nitya Electro Controls Pvt Ltd. (**Company Appeal No. 837 of 2020**) decided by Hon'ble National Company Law Appellate Tribunal (NCLAT) on 30.11.2011.The Corporate Debtor rely on para 8, 11 and 12 of the aforesaid Judgment.
8. In these facts and circumstances of the case, it is most respectfully submitted that the Hon'ble court may be pleased to dismiss the Application of the Operational Creditor with costs.



10. We have heard the Ld. Counsels appearing for the Applicant and the Respondent and also perused the averments made in the application, reply, rejoinder and written submissions filed on behalf of the parties.

11. The Ld. Counsel appearing for the Applicant has raised all the facts mentioned in the application, rejoinder and written submission. Ld. Counsel appearing for the Respondent has also raised all the facts mentioned in the reply and the written submissions filed on behalf of the Respondent. Hence, it is needless to repeat the same.

12. On perusal of the averments made in applications, reply, rejoinder and the written submissions filed on behalf of the parties, we observe that the Applicant in Part IV of the application has mentioned that the remaining balance of the outstanding invoices are of Rs. 28,82,129/-, plus interest at the rate of 24% per annum and the total amount due is of Rs. 50,90,477/-.

13. We further observe that the case of the Applicant is that they have raised the several invoices but has received the part payment only.

14. It is the further contented that although the Respondent in terms of the demand notice issued under Section 8(1) of the IBC, 2016, sent a reply to the demand notice but it was sent after the expiry of ten days from the date of receiving the notice through email.

15. Whereas, the contention of the Respondent is that since the Applicant had sent the demand notice through post as well as through email therefore, he sent the reply to the demand notice, within ten days from the date of receipt of the demand notice through email.

16. The further contention of the Applicant is that the ledger account and the credit notes sent by the Respondent are forged one and no meeting as alleged by the Respondent ever convened on 25.07.2019. It is further contended on behalf of the Applicant that the email relied upon by the Corporate Debtor were never exchanged and all these documents are forged



Corporate Debtor were never exchanged and all these documents are forged and fabricated. Further contention of the Applicant is that since no certificate as required under Section 65(B) of Evidence Act has been filed by the Corporate Debtor, therefore, these emails cannot be taken into consideration. It is further contended by the Applicant that the Respondent is in the habit of creating a false and fabricated documents.

17. On the other hand, Ld. Counsel appearing for the Respondent submitted that a dispute regarding the quality of goods was raised prior to the issuance of the demand notice. The Ld. Counsel appearing for the Respondent also referred to the page no. 247 to 251 of the paper book and submitted that the email exchanged between the parties show that the dispute regarding the quality of goods were raised and thereafter, a meeting was held between the parties on 25.07.2019, and it was agreed between the parties that the Operational Creditor to share 50% of total rejection of Rs. 48,93,880/-, i.e. Rs. 24,46,940/-. It is further contended on behalf of the Respondent that the Operational Creditor has agreed to issue a credit note of Rs. 24,46,940/-. The Ld. Counsel appearing for the Respondent has referred to the page no. 253 and 254 of the application to show that the credit note was issued. The Ld. Counsel for the Respondent further submitted that along with the reply to the demand notice a cheque of Rs. 4,35,189/-, was sent to the Operational Creditor, which was returned by the Operational Creditor after the expiry of period of one month.

18. In reply to this, the Ld. Counsel appearing for the Applicant submitted that the credit note produced by the Respondent is forged one and in support of this, the Applicant has placed reliance upon a copy of credit note placed at page no. 26 of the rejoinder and submitted that a credit note as referred to page no. 254 of the application and the credit note referred at page no. 26 of the rejoinder are in different form and in fact, the Applicant has been issuing the credit note in the format referred to page no. 26 of the rejoinder.



19. In terms of the submissions raised on behalf of the parties, at this juncture, we would like to refer the email exchanged between the two. The scanned copy of email exchanged between the two are reproduced below :

A handwritten mark, possibly a signature or initials, consisting of a vertical line with a diagonal stroke extending upwards and to the right.

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10/2023

Gmail - COMPLAINTS IN FILMS SUPPLIED

M Gmail

Compack India <compackindia@gmail.com>

COMPLAINTS IN FILMS SUPPLIED

1 message

Compack Enterprises India Pvt. Ltd. <compackindia@gmail.com>
To: OMNI DISTRIBUTORS <omnidistributors1@yahoo.com>

Sat, Jun 29, 2019 at 4:35 PM

Dear Mr. Jain,

We have received serious complaints from the market in the cartons made with film supplied by you.

Please visit our office on 1st July 2019 at 12:30pm to look into this.

Urgent and Important.

Regards,

Anil Gosain
Compack Enterprises India Pvt. Ltd.

FOR COMPACK ENTERPRISES INDIA PVT LTD
Anil Gosain
Director

FOR OMNI DISTRIBUTORS
Ashfaq
Authorized Signatory

(Certified True Copy)

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O/C

Head Office : B-36/7, G T Kamal Road,
Industrial Area, Delhi-110033
Regd. Office : B-71, G T Kamal Road,
Industrial Area, Delhi-110033
E-mail : compackindia@gmail.com
Phones : +91-11-27465969 / 27465970
CIN : U74899DL1995PTC070122

Dated : 1st July, 2019

To,
Omni Distributors
-30A, Upper Anand Parbat Industrial Area,
Central Delhi, New Delhi-110005.

Subject : Defective Samples

Dear Mr. Jain,

We have handed over 10 nos. defective samples to you today.

We have got these checked at our end and it is noticed that your film is defective resulting in color peeling and shrinkage in the cartons made with films supplied by you.

You are requested to please revert on this urgently as the complaint is very serious and large.

Please treat this as URGENT.

Regards,

Compack Enterprises India Pvt. Ltd.

Shil Gosain
Shil Gosain

For COMPACK ENTERPRISES INDIA PVT LTD
Shil Gosain
Director

For, Omni Distributors
Shil Gosain
Authorized Signatory

(Certified True Copy)

[Handwritten mark]

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O/C

Head Office : B-36/7, G.T. Karnal Road,
Industrial Area, Delhi - 110033
Regd. Office : B-71, G.T. Karnal Road,
Industrial Area, Delhi - 110033
E - mail : compackindia@gmail.com
Phones : + 91 - 11 - 27465969 / 27465970
CIN : U74890DL1995PTC070122

Dated : 15th July, 2019

To,
Omni Distributors
J-30A, Upper Anand Parbat Industrial Area,
Central Delhi, New Delhi-110005.

Subject : Complaints in Met. Poly Films

Dear Mr. Jain,

We have not heard anything from you after your visit to our place on 1st of July 2019.

Hope You understand the seriousness of the problem and revert on this immediately.

We look forward to receiving your reply on this immediately.

Regards,

Compack Enterprises India Pvt. Ltd.

Anil Gosain

For COMPACK ENTERPRISES INDIA PVT LTD

Director

For, Omni Distributors

Authorized Signatory

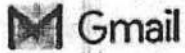
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7/10/2020

Gmail - Complaints in Met. Poly Films



Compack India <compackindia@gmail.com>

Complaints in Met. Poly Films

1 message

Compack Enterprises India Pvt. Ltd. <compackindia@gmail.com>
To: OMNI DISTRIBUTORS <omnidistributors1@yahoo.com>

Sat Jul 20, 2019 at 12:55 PM

Dear Mr. Jain,

We have not heard anything from you after your visit to our place on 1st July, 2019. Hope You understand the seriousness of the problem and revert on this immediately.

Regards,

Anil Gosain
Compack Enterprises India Pvt. Ltd

For COMPACK ENTERPRISES INDIA PVT LTD

Anil Gosain
Director

For, Omni Distributors
Anil Gosain
Authorized Signatory

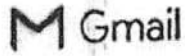
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7/10/2025

Gmail - COMPLAINTS IN FILMS SUPPLIED



Compack India <compackindia@gmail.com>

COMPLAINTS IN FILMS SUPPLIED

1 message

Mon, Jul 22, 2019 at 2:23 PM

OMNI DISTRIBUTORS <omnidistributors1@yahoo.com>
To: compackindia@gmail.com

Dear Mr. Anil ji,

We have checked the samples received on 1st July during our visit to your office and we have analysed these samples and there is a printing issue seen in these samples

We would like to visit you on 25th July to meet you on this and close it.

THANKS & REGARDS

FOR OMNI DISTRIBUTORS

AAKASH JAIN

For COMPACK ENTERPRISES

Director

For, Omni Distributors

(Certified True Copy)

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20. On perusal of the emails exchanged between the parties, it is seen that the Respondent has raised the dispute in respect of the quality of goods for the first time on 29.06.2019, thereafter on 01.07.2019, 15.07.2019 and 20.07.2019. A reminder was also sent to the Operational Creditor and finally on 22.07.2019, on behalf of the Operational Creditor Mr. Akash Jain, has sent the email and admitted that there is printing issue.

21. At this juncture, we would also like to refer to the contention of the Applicant. The Ld. Counsel appearing for the Applicant submitted that these emails are not exchanged between the parties but we notice that the Operational Creditor has not challenged that the email id referred to in the email are not the email id of the Operational Creditor.

22. Under such circumstances, we are unable to accept the contention of the Applicant that these emails have never been exchanged between the parties. Rather on the basis of these documents, we are of the considered view that prior to the issuance of demand notice on 28.01.2020, a dispute was raised by the Respondent regarding the quality of the goods.

23. At this juncture, we would also like to refer to the contention of the Respondent that after exchanging the emails regarding the quality of goods, a meeting was held between the parties on 25.07.2019, and it was agreed that both the parties will share the loss, at the rate of 50% of the total rejection and accordingly, a credit note of Rs. 24,46,940/-, was issued. Of course, the Ld. Counsel appearing for the Applicant has challenged the genuineness of the credit note as well as the minutes of the meeting held on 25.07.2019. Therefore, at this juncture, we would also like to refer to the minutes dated 25.07.2019 as well as the credit note issued by the Operational Creditor. The scanned copy of the same are reproduced below :



OMNI DISTRIBUTORS

DISTRIBUTORS OF : UFLEX LTD, MAX FILMS LTD, GARWARE FILMS & POLYPLEX LTD.
DEALS IN : BOPP FILMS, THERMAL FILMS, POLYESTER FILMS & ADHESIVES.

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Minutes Of Meeting held on 25th July 2019 at Compack Enterprises India Pvt. Ltd.

Subject : Defective Film supplied by Omni distributors
Present : Mr. Aakash Jain of Omni Distributors - J-30A, Upper Anand Parbat Industrial Area,
District : Central Delhi, New Delhi-110005.
Mr. Anil Gosain of Compack Enterprises India Pvt. Ltd. - B-71, G.T. Karnal Road,
Industrial Area, Delhi-110033

The following was discussed and agreed :

1. Omni Distributors have been supplying Met. Poly Films to Compack Enterprises India Pvt. Ltd.
2. Compack Enterprises India Pvt. Ltd. received serious complaints from the market in the cartons because of defective films supplied by Omni Distributors.
3. Due to defective film, very serious color peeling and shrinkage complaints received from the customer resulting in massive rejections.
4. Total rejected qty. on a/c of defective films supplied by Omni Distributors is as under :-

. Glucose D 125g	-	7.82 Lac
. Glucose C 125g	-	4.26 Lac
. Glucose D 1Kg	-	2.15 Lac
5. Total Value of these rejected cartons is Rs. 48,93,880.00
6. These defective cartons are physically seen and verified by Mr. Aakash Jain today.
7. Compack suffered a major set back in their business due to this very serious quality issue in the film supplied by Omni Distributors.
8. Mr. Aakash Jain agreed that their film is defective and they assured Compack that this will not happen again in future.
9. Mr. Aakash Jain agreed to share 50% of total rejection of Rs. 48,93,880.00 ie Rs. 24,46,940.00
10. Omni Distributors to issue a Credit Note of Rs. 24,46,940.00 towards the above rejections.

FOR, OMNI DISTRIBUTORS

Aakash Jain
Authorized Signatory

For COMPACK ENTERPRISES INDIA PVT LTD

Anil Gosain
Director

For COMPACK ENTERPRISES INDIA PVT LTD

Anil Gosain
Director

J-30A Upper Anand Parbat Industrial Area, Dist-Central Delhi, New Delhi-110005 Tel. : 28761780, 28764417, 28764177, 28761484, 28765383
E-mail : omni25@bol.net.in * info@omnidistributors.com * omnidistributors1@yahoo.com Website : www.omnidistributors.com

FOR, OMNI DISTRIBUTORS

Aakash Jain
Authorized Signatory

(Certified True Copy)

[Handwritten Signature]

Omni Distributors

DISTRIBUTORS OF : UFLEX LTD, MAX FILMS LTD, GARWARE FILMS & POLYPLEX LTD.
DEALS IN : BOPP FILMS, THERMAL FILMS, POLYESTER FILMS & ADHESIVES.

CREDIT NOTE

M/s Compack Enterprises India Pvt. Ltd.
B-71, G.T. Karnal Road,
Industrial Area,
Delhi-110033

CRN/1920/025
Dated: 28.07.2019

We have Credited your account by a sum of Rs. 24,46,940/- .

DESCRIPTION	AMOUNT (Rs.)
Being the amount credited towards full & final settlement of your claim due to defective films supplied by us as per MOM dated 19-07-2019.	24,46,940.00
Rs. Twenty four lacs forty six thousand nine hundred forty only.	

For, Omni Distributors

Ashfar
Authorized Signatory

For COMPACK ENTERPRISES INDIA PVT LTD

Sudai
Authorized Signatory

J-30A, Upper Anand Parbat Industrial Area, Dist-Central Delhi, New Delhi-110005. Tel : 28781780, 28764417, 28764177, 28751484, 28765363
E-mail : omni25@bol.net.in * info@omnidistributors.com * omnidistributors1@yahoo.com Website : www.omnidistributors.com

For, Omni Distributors

Ashfar
Authorized Signatory

(Certified True Copy)

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24. On perusal of these documents, we observe that these two documents have been signed by the same person, who sent the email dated 22.07.2019, on behalf of the Operational Creditor.

25. At this juncture, we would also like to refer to the contention of the Applicant. The Ld. Counsel appearing for the Applicant submitted that the signature appears on these two documents are copy paste from the demand notice, which was issued by the Operational Creditor. Therefore, we observe that the signature on the documents by the Authorised Representative of the Operational Creditor is not denied. Rather, the grounds taken by the Applicant is that this signature was lifted from the signature of the demand notice. Therefore, in our considered view the Applicant has itself raised the dispute regarding the genuineness of the documents and if any disputes regarding the signature and the forgery of the documents are raised by any person those would be decided only by Court having jurisdiction to decide the same.

26. So far as, Section 9 of the IBC, 2016 is concerned, it is the settled principal of law that the Adjudicating Authority is to consider the limited issue in terms of Section 9(5) of the IBC, 2016. For the better appreciation of the law, we would like to refer to the relevant provision of Section 9(5) of the IBC, 2016 and the same is reproduced below:

“Section 9. Application for initiation of corporate insolvency resolution process by operational creditor. –

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order–

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, -

(a) the application made under sub-section (2) is complete;

(b) there is no ³[payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;



(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if –

(a) the application made under sub-section (2) is incomplete;

(b) there has been ¹[payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub- clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority...”

27. On perusal of the provision refer to supra, it is seen that the Adjudicating Authority while considering the application under Section 9 of the IBC, 2016 is required to consider

(a) the application made under sub-section (2) is complete;

(b) there is no ³[payment] of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and




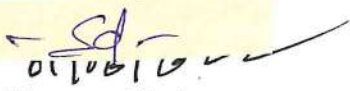
(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4).

28. In terms of the provision, when we consider the submission of the parties, we are of the considered view that the documents available on the record shows a dispute regarding the quality of goods raised prior to the issuance of demand notice. The Applicant has itself challenged the genuineness of the documents. Therefore, in our considered view, these are the issues which are to be decided only by the Competent Authority.

29. At this juncture, we would also like to mention that the Applicant has returned the cheque of Rs. 04,35,189/-, which according the corporate debtor is the balance amount, which shows that there is also dispute regarding the existence of the amount of debt. Under such circumstances, we have no option to reject the prayer of the Applicant to initiate the CIRP against the Respondent.

30. **Accordingly, the present Petition is Dismissed.**


(L. N. Gupta)
(Member Technical)


Abni Ranjan Kumar Sinha
(Member Judicial)