

**IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI**  
**COURT-III**

**Item No.01**  
IB-240/ND/2022

**IN THE MATTER OF**

OPJK Paper Company ..... Operational Creditor/Applicant

**Versus**

International Print-o-Pac Ltd. .... Corporate Debtor/Respondent

**SECTION**

**U/s 9 IBC code 2016**

**Order pronounced on: 31.07.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

Order pronounced in open court vide separate sheets.

IB-240/ND/2022 stands ***admitted.***

**SD/-**

**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**SD/-**

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**

**THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH**

**COURT- III**

**IB-240/ND/2022**

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016

**IN THE MATTER OF:**

**OPJK PAPER COMPANY**

**Through Mr. Bhavya Jain,**

**Managing Partner & Authorised Person**

**Registered Office: -**

**4718/21-A, Dayanand Road**

**Daryaganj, New Delhi - 110002**

*.....Operational Creditor*

**Versus**

**INTERNATIONAL PRINT-O-PAC LIMITED**

**Registered Office: -**

**B-206, Okhla Industrial Area**

**Phase – I, New Delhi – 110020**

*..... Corporate Debtor*

*Delivered on: - 31.07.2023*

**Coram:**

**Shri Bachu Venkat Balaram Das**

Hon'ble Member (Judicial)

**Shri Atul Chaturvedi**

Hon'ble Member (Technical)

**Appearances:**

Operational Creditor : Mr. Karan Gandhi, Advocate

Corporate Debtor : Mr. Swapnil Gupta and Mr. Sabhya Jain, Advocates

**ORDER**

**Per: ATUL CHATURVEDI, MEMBER (TECHNICAL)**

1. The instant application bearing IB-240/ND/2022 has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, OPJK Papers Company is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s International Print-o-Pack Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Applicant Company, OPJK Paper Company, through MR. Bhavya Jain, Managing Partner and Authorized Person 'Operational Creditor' is engaged in the business of dealing in paper products, stationery and other industrial goods. On the other hand International Print-O-Pac Limited 'Corporate Debtor' is engaged into business of commercial printing and publication printing services. The Corporate Debtor is maintaining business relationship for supply of paper of different specification for around 15 years and the Operational Creditor duly delivered the goods and raised invoices against it.

b) It is further submitted that, during the period from 03.12.2018 to 21.12.2019, a total of 25 transactions took place between the parties. The Corporate Debtor used to raise a purchase order upon the Operational Creditor from time to time and sometimes, the orders were received in emails. Further, it is submitted that out of the said 25 transactions, the Corporate Debtor paid the due payments towards 16 invoices. However, as on date, the payments towards the remaining 9 invoices stands due. The present Application is being preferred for amount pending against invoices dated 25.03.2019, 28.03.2019, 30.03.2019, 02.04.2019, 22.04.2019, 27.04.2019, 15.05.2019, 30.05.2019 and 17.12.2019. That Operational Creditor had been regularly following up with the Corporate Debtor over calls and emails for making the outstanding payment however no attentions were paid to the request of the Operational Creditor.

c) It is further averred that, the Operational Creditor herein issued a Demand Notice dated 03.08.2021 for Rs.1,38,34,509 (Rupees one Crore Thirty Eight Lakh Thirty Four Thousand Five Hundred Nine Only) to the Corporate Debtor under the provisions of section – 8 of the Insolvency and Bankruptcy Code, 2016 through speed post and email dated 06.08.2021 which was duly served upon the Corporate Debtor and the Corporate Debtor vide letter dated 17.08.2021 replied to the demand notice.

3. Per contra, Corporate debtor has raised following contentions:-

I. The Operational Creditor is not a registered partnership firm, and it cannot sue in its own name as a separate personality. It is further submitted by the Corporate Debtor that, having filed the present application through its managing partner and authorised person Mr. Bhavya Jain. The Operational Creditor has failed to show any proof of registration of the purported partnership firm so, it is barred by the virtue of Section - 69 of the Indian Partnership Act, 1932.

II. The Present Application filed under section – 9 of the code fails to pass the pecuniary threshold of Rs. 1 crore, and hence not maintainable. The Corporate Debtor further submitted that, the interest @ 24% p.a. for delayed payment has been calculated separately at the end and there was no mutually agreement between the parties that proves that interest on the delay was agreed upon and neither there is any interest charged in practice when delayed payments were made.

III. There are pre-existing disputes between the parties, which the Operational Creditor seeks to side-step by filing the instant Application under section – 9 of the code. It is further averred by the Corporate Debtor that, the existence of pre-existing dispute is evident from a series of emails sent by Corporate Debtor to the Operational Creditor.

4. We have heard the arguments advanced by the Ld. Counsel appearing for the Operational Creditor as well as for the Corporate Debtor and also perused the records.

5. The Operational Creditor's claim is based on the facts that the Applicant had supplied goods to the Corporate Debtor and 25 transactions took place between the Operational Creditor and the Corporate Debtor out of the said 25 transactions/invoices, the Corporate Debtor paid the due payments towards 16 invoices only. However, as on date, the payments towards the remaining 9 invoices stands due. It is stated by the Applicant that since the Corporate Debtor did not make the due payment of the Operational Debt, the Applicant had issued Demand Notice dated 03.08.2021 under section – 8 of IBC, 2016 served at the registered office of the Corporate Debtor. The Corporate Debtor vide letter dated 17.08.2021 also replied to the demand notice.

6. As regards to the first issue raised by the Corporate Debtor that, the Applicant has failed to show any proof of registration of the purported partnership firm and by the virtue of Section – 69 of the Indian Partnership Act, 1932 unregistered firms cannot file Section – 9 petition and on the basic of that this instant petition is not maintainable. It is pertinent at this stage to refer Section 69(2) of the Partnership Act provides as under:

*“Section 69(2) in The Indian Partnership Act, 1932*

*(2) No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm”*

Thus, on the bare reading of Section - 69 (2) it can be observed that, the word ‘suit’ is mentioned in the Section – 69 (2) of the Indian Partnership Act, 1932. The Application filed under section – 9 of IBC, 2016 are ‘proceedings’ not a ‘Suit’. So, we are of considered view that the bar in the said provision of the partnership act is only applicable on suits not on proceedings so, this instant petition is maintainable.

7. It is pertinent at this stage to refer to the decision of Hon’ble NCLAT, Delhi given in the matter of **Rourkela Steel Syndicate Vs Metistech Fabricators Pvt. Ltd. Company Appeal (AT)(Insolvency) No. 924 of 2022**. Wherein the Hon’ble NCLAT held that, an application under Section 9 of IBC cannot be said to be a suit. The relevant extract of the judgement are reproduced below for reference: -

(PARA – 6)

*An application under Section 9 of IBC cannot be said to be a suit and analogy of Hon’ble Supreme Court judgment in Hargovindbhai Dave’s case, supra, is fully applicable to the application filed under Section 9 IBC also. Further, also*

*it is well settled by the judgment of the Hon'ble Supreme Court in **B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019) Company Appeal (AT) (Insolvency) No. 924 of 2022 Page 4 of 4 11 SCC 633** that provision of Section 5 Limitation Act are also fully applicable in Section 7 & 9 IBC applications. Section 5 Limitation Act is not applicable in a suit which is also a clear indication that Application under Section 7 & 9 are not a suit.*

(PARA – 7)

The Judgments of Hon'ble Supreme Court relied by the Adjudicating Authority regarding bar of Section 69(2) is not attracted in the present case since the application under Section 9 cannot be treated as suit. We are thus of the view that the Adjudicating Authority has committed error in rejecting Section 9 Application on the ground that it is barred by 69(2) of the Partnership Act. We are thus in view that the order impugned cannot be sustained and deserves to be set aside.

8. The Corporate Debtor has raised the second issue on the pecuniary threshold of Rs. 1 crore and submitted that, the applicant has failed to prove that the amount of default is more than Rs. 1 crore as on principal amount of Rs. 89,15,441/- interest is claimed of Rs. 49,19,068/-. It is further, submitted that there was no mutual agreement between the parties that proves that interest on the delay was agreed upon. While perusing the records, we found the true copy of invoices wherein it is mentioned that interest of 24% p.a. will be charged on accounts of overdue of 20 days after the date of bills. These bills are acknowledged by the Corporate Debtor itself. In the light of the above findings we are of the considered view that, the total amount for maintainability of claim will include both principal debt as well as interest on delayed payment which was clearly stipulated in the invoices.

9. The Corporate Debtor raised the issue of a pre-existing dispute as its third defence and placed on record a series of e-mails. As regards the issue of pre-existing dispute, the statute uses the expression 'existence of a dispute'. The term 'dispute' has been defined in Black's Law Dictionary in the following manner: -

***"Dispute. A conflict or controversy; a conflict of claims or rights; an assertion of a right, claim, or demand on one side, met by contrary claims or allegations on the other".***

10. The term 'dispute' is also defined in Section – 5 (6) of IB Code, 2016 as under: -

*(6) "dispute" includes a suit or arbitration proceedings relating to-*

*(a) the existence of the amount of debt;*

*(b) the quality of goods or service; or*

*(c) the breach of a representation or warranty;*

In the present case, the Corporate Debtor has raised the issue of a pre-existing dispute and placed on record, a series of e-mails dated 20.11.2019, 04.12.2019 and 05.12.2019. The Corporate debtor in these above mentioned e-mails have failed to highlight issues of pre-existing dispute. While perusing these e-mails carefully we found that the Corporate Debtor has only requested the Operational Creditor to expedite the process of delivery. The extract of e-mail are reproduced below for reference: -

**Dear Sir,**

**Please find the attached file of Purchas order of Bilt magna print 88cm-reel 64 & 68 gsm for your ref. We are giving order as per each vehicle load 23mt.**

**New Order details (Immediate requirement)**

**BILT MAGNA PRINT 88CM-REEL /64 GSM QTY.-50 MT**

**BILT MAGNA PRINT 88CM-REEL/68 GSM QTY.-42 MT**

**Please dispatch urgently of old pending material today on top priority basis.**

11. Thus, in the light of the above findings we are of the considered view that, Corporate Debtor has failed to highlight the issue of 'pre-existing' dispute as the above mentioned e-mails sent by the Corporate Debtor to the Operational Creditor did not raise the issue of the existence of the amount of debt, neither the quality of goods/service nor the breach of a representation or warranty. We found that no evidence is placed on record which proves that there was a pre-existing dispute between the parties.

12. In the light of findings of the present petition, when we consider the submissions of the Operational Creditor for the claims towards the goods supplied to the Corporate debtor it appears to us that the same shall also fall within the ambit of the definition of operational debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. The averments of the applicant stating that there is a 'debt' which the corporate debtor was liable to pay but failed to do so have not been rebutted by the Corporate Debtor by placing suitable evidence. Therefore, this Adjudicating

Authority admit the Corporate Debtor into CIRP under the provisions of the Code.

13. The Operational Creditor has proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Sanjay Garg having Regn. No. IBBI/IPA-001/IP-P-01865/2019-20/12919 as IRP. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

14. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- 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's 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.
- e. The explanation below section - 14 (1) also stipulates "that notwithstanding anything contained in any other law for the time being in force, a licence,

permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period”.

15. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

16. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

17. The Operational Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor’s assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

18. The Operational Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further, Operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks’ time from the date

of this order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

19. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

**20. The application bearing IB – 240/(ND)/2022 is *admitted*.**

SD/-

**ATUL CHATURVEDI  
MEMBER (TECHNICAL)**

SD/-

**BACHU VENKAT BALARAM DAS  
MEMBER (JUDICIAL)**