



**NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI BENCH (COURT-II)**

**(IB)-550(ND)2020**

**IN THE MATTER OF:**

**Mr. Dalip Narinder Gupta**  
**S/o of Sh. Narinder Gupta**

Residing at :

B-4/142, Paschim Vihar,  
West Delhi - 110063

**Sole Proprietor of**  
**M/s. Gem International**

Registered Office at :

A-11, Naraina Industrial Area,  
Phase II, New Delhi - 110028

**...Applicant/Operational Creditor**

**VERSUS**

**M/s. M.K Printech Private Limited**

**Registered Office at :**

25, Eklavya Vihar, Rohini  
Delhi - 110085

**...Respondent/Corporate Debtor**

**Section: 9 of the IBC, 2016**

**Order Delivered on: 20.09.2022**

**CORAM:**

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

**SH. L.N. GUPTA, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

**For the Applicant** : Adv. Komal Mundhra, Adv. Saurabh Aggarwal  
**For the Respondent** : Adv. Abhay Gupta

(IB)-550/(ND)/2020

Mr. Dalip Narinder Gupta Vs. M/s. M.K. Printech Pvt. Ltd.



## ORDER

### PER SHRI L. N. GUPTA, MEMBER (T)

Mr. Dalip Narinder Gupta, Sole Proprietor of M/s. Gem International (for brevity the '**Applicant/Operational Creditor**') has filed the present Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity the '**IBC, 2016**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. M.K. Printech Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. M.K. Printech Private Limited is a Company incorporated on 26.09.2011 with CIN U22100DL2011 PTC225489 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at 25, Eklavya Vihar, Rohini, Delhi -110085, which is within the jurisdiction of this Tribunal. The Authorized Share Capital of the Respondent is Rs.3,00,00,000/- and Paid-up Share Capital is Rs.2,65,00,000/- as per the Master Data of the Respondent.

3. It is submitted by the Applicant that it had provided "Printing Inks and Adhesives (Hot metal adhesives) and such other products" to the Respondent. On the other hand, the Respondent is in the business of manufacturing paper and paper products, publishing, printing etc.



4. The Applicant has stated that it supplied Printing Inks to the Respondent between November, 2017 to June, 2018 vide 59 Tax Invoices aggregating to Rs.77,21,330/-. Later, the Respondent made "on account" payment of Rs.2,00,000/- on 16.04.2019, out of which, Rs.1,61,734/- was appropriated towards old dues, which do not form part of this Petition. The balance amount of Rs.38,266/- has been appropriated towards the invoice no. GI1917 dated 04.11.2017 claimed in this Petition. The Respondent did not make any payments after 16.04.2019. Hence, the Respondent has defaulted in payment of the balance amount of Rs.76,83,064/-. The particulars of the debt claimed and the date of default are given in the Part IV of the application (reproduced below) :

**PART - IV**

**PARTICULARS OF OPERATIONAL DEBT**

<p><b>1.</b></p>	<p><b>Total amount of debt, details of Transactions on account of which debts fell due, and the date from which such debt fell due</b></p>	<p>The Principal amount defaulted is Rs. 76,83,064/- (Rupees Seventy Six Lacs Eighty Three Thousand and Sixty Four Only).</p> <p>The Operational Creditor Mr. Dalip Narinder Gupta, Sole Proprietor of M/s. Gem International supplied "Printing Inks" to the Corporate Debtor, M/s. M.K. Printech Private Limited from his proprietary entity, M/s. Gem International, which is evidenced vide Fifty Nine different Tax Invoices (50 Invoices issued to Haryana Branch &amp; 9 Invoices issued to Delhi Branch of Corporate Debtor) issued to the Corporate Debtor by the Operational Creditor. Total amount of the Fifty Nine Invoices is Rs. 77,21,330/- (Rupees Seventy Seven Lacs Twenty One Thousand Three Hundred and Thirty</p>
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		<p>Only).</p> <p>Payment of Rs. 2, 00,000/- from Corporate Debtor was received on 16/04/2019 by Operational Creditor. Out of this payment Rs.1,61,734/- is apportioned / appropriated towards older dues, that is towards supplies/invoices prior to Invoice No. GI/1917 dated 04/11/2017, which do not form part of this Petition. The balance amount of Rs. 38,266/- is apportioned towards the Invoice No. GI/1917 dated 04/11/2017 claimed in this Petition.</p> <p>Hence, the Principal debt outstanding is Rs. 76,83,064/- (Rupees Seventy Six Lacs Eighty Three Thousand and Sixty Four Only).</p> <p>The terms and conditions of supply, as stated in the invoices, provides for charge of 18% p.a. interest on delayed payment of debt. Hence, the Operational Creditor has charged interest @ 18% interest p.a. on the delayed payment of debt, which is due and payable by the Corporate Debtor.</p> <p>Hence, the total unpaid debt amount against the Fifty Nine Invoices is Rs.1,02,22,639/- (Rupees One Crore Two Lacs Twenty Two Thousand Six Hundred and Thirty Nine Only) which includes Principal amount of Rs. 76,83,064/- (Rupees Seventy Six Lacs Eighty Three</p>
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		<p>Thousand and Sixty Four Only) plus interest amount of Rs.25,39,575/- (Rupees Twenty Five Lacs Thirty Nine Thousand Five Hundred and Seventy Five only) calculated @ 18% p.a. from the next day of the due date of the Invoice and details of the same is given in the "Statement of Calculation of Claim Amount" enclosed as "Annexure D".</p> <p>The Corporate Debtor has made no further payment after 16/04/2019 till date and hence has defaulted on the balance debt payment of Rs.1,02,22,639/- (Rupees One Crore Two Lacs Twenty Two Thousand Six Hundred and Thirty Nine Only) which remains unpaid. Hence the unpaid operational debt amount is 1,02,22,639/- (Rupees One Crore Two Lacs Twenty Two Thousand Six Hundred and Thirty Nine Only) which includes Principal amount of Rs. 76,83,064/- (Rupees Seventy Six Lacs Eighty Three Thousand and Sixty Four Only) plus interest amount of Rs.25,39,575/- (Rupees Twenty Five Lacs Thirty Nine Thousand Five Hundred and Seventy Five only) calculated @ 18% p.a. from the next day of the due date of the Invoice.</p> <p>The transaction details between Mr. Dalip Narinder Gupta (Operational Creditor).</p>
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		<p>Sole Proprietor of M/s. Gem International entered into from his above said proprietary entity and M/s. M.K. Printech Private Limited (Corporate Debtor) evidencing supply of goods is as per ANNEXURE "B".</p> <p>The Operational Creditor maintains separate ledger statements for sales made to Haryana &amp; Delhi Branch of Corporate Debtor. The above said 2 Ledger statements of the Corporate Debtor maintained in the books of Operational Creditor is annexed as ANNEXURE "F" (Colly).</p> <p>The Payment terms were "Immediate" from the respective date of Invoice and was stated in the Invoices. The due dates is properly stated and reported in the "Statement of Evaluation of Due Date of Debts" and is enclosed herein as mentioned in ANNEXURE "C". Date on which debt fell due for first Invoice no. GI/1917 dated 04/11/2017 was 04/11/2017 and the date on which debt fell due for last Invoice no. GI/1487 dated 20/06/2018 was 20/06/2018 and the details of respective due dates of debts are mentioned in ANNEXURE "C".</p> <p>Date from which the last invoice no. GI/1487 dated 20/06/2018 fell due was</p>
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		<p>20/06/2018.</p> <p>Date from which the total debt fell due is 20/06/2018.</p> <p>The Corporate Debtor has made last payment on 16/04/2019 "on account" basis towards the Invoices claimed in this Petition.</p>
2.	<p><b>Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form).</b></p>	<p>The total amount of default is Rs.1,02,22,639/- (Rupees One Crore Two Lacs Twenty Two Thousand Six Hundred and Thirty Nine Only), which includes Principal amount of Rs.76,83,064/- (Rupees Seventy Six Lacs Eighty Three Thousand and Sixty Four Only) plus interest amount of Rs.25,39,575/- (Rupees Twenty Five Lacs Thirty Nine Thousand Five Hundred and Seventy Five only) calculated @ 18% p.a. from the next day of the due date of the Invoice. The Operational Creditor reserves the right to claim further interest from the date of issue of Demand Notice until the date of receipt of payment.</p> <p>Working detailing the Calculation of Operational Debt and Claim is enclosed in ANNEXURE "D".</p>



5. From the perusal of Part IV of the Application, it is observed that the Applicant has claimed Rs.76,83,064/- as an unpaid operational debt plus interest. The Applicant has annexed invoices dating from 06.11.2017 to 20.06.2018.

6. It is stated by the Applicant that since the Respondent did not make the due payment of his operational debt, it had issued a Demand Notice dated 16.12.2019 under Section 8 of IBC, 2016 at the registered office of the Respondent, which was served vide Speed Post on 18.12.2019. The Tracking Report has been placed on record. The Applicant has filed the Affidavit under Section 9(3)(b) of IBC, 2016 of the application. Basing on the aforesaid facts, the Applicant has prayed for initiation of CIRP against the Respondent.

7. From the order dated 19.04.2022, it is seen that this Adjudicating Authority has directed the Applicant to file all the invoices & running account on the record. The order dated 19.04.2022 is reproduced below :

*“Ld. Counsel for the Respondent seeks adjournment on the ground that the main counsel is on his legs before the Hon'ble NCLAT. Heard, the arguments of the Applicant. While going through the reply of the Respondent, we notice that the Respondent in para 15(c) has averred that from the ledger account of the Applicant maintained by the answering Respondent for the period 05.04.2017 to 17.04.2019, it can be seen that payments to the tune of Rs.1.09 crore have been made on behalf of the Respondent to the Applicant. The Applicant is directed to place all the invoices and running account, on the record along with the statement agreed by both the parties of the payment made/received and the balance outstanding by filing an additional affidavit within 7 days. List on 13.05.2022.”*



8. In compliance of the aforesaid directions, the Applicant has filed the additional affidavit dated 31.05.2022 annexing therewith the invoices generated by it on the Respondent. Further, it is submitted by the Applicant that vide e-mails dated 13.08.2019 and 12.09.2019, the Respondent sent its Account Statements for the Financial Year 2018-2019 as maintained by it, which was duly signed and stamped by the Respondent. The Respondent duly admitted its liability/unpaid debt to the tune of Rs. 23,35,95/- and Rs.80,60,982/- with regard to the invoices sent to the Rohini Branch and Nathupur, Sonipat Branch of the Respondent respectively. Therefore, as per the own admission of the Respondent, its unpaid operational debt is a sum of Rs.1,03,96,934/- as on August-September, 2019.

9. On issuance of notice, the Respondent has filed its reply and written submissions and stated that the Applicant has preferred the present application against the provisions of the IBC 2016 and having no *locus standi* to approach this Adjudicating Authority. Further, the Respondent has stated the following :

- i) The Applicant has claimed interest on the principal amount, which is frivolous since the parties never agreed to the same.
- ii) There is a pre-existing dispute between the parties qua the alleged debt and interest. It is added that the pre-existing dispute with respect to debt in question was raised by the Respondent on multiple occasions.



iii) The Respondent had sent reply dated 26.12.2019 to the Demand Notice dated 16.12.2019.

iv) There was no written agreement between the parties as the goods were supplied on ad hoc basis. It is added that the payments were made from time to time and the Respondent never defaulted in making the payments.

v) The Applicant had given assurances and warranties towards the services and it failed to adhere all such representation, assurances, services and warranties as the product/inks supplied by the Applicant was sub-standard.

vi) The invoices annexed with the application are forged and fabricated. It is added that except for the invoices no. GI/2069 dated 11<sup>th</sup> November, 2017, annexed at Page 117 of the Application and GI/1487 dated 20<sup>th</sup> June, 2018, annexed at Page 173 of the Application qua which the payments have been made by the Respondent and rest of the invoices annexed with the Application are forged and fabricated at the behest of the Applicant for ulterior motives. However, all other invoices being annexed with the Application bears no such receiving/ stamp of the Respondent.

vii) Further, it is submitted that the fact of forgery of invoices so annexed with the Application is also ascertained from the fact that Applicant deliberately and intentionally have not filed E-Way Bills, so generated over the said invoices. It is submitted herein that in accordance with Rule 138 of GST Rules, every person, who causes movement of goods of INR 50,000/- or more, shall have to furnish information relating to the said goods electronically and generate the E-Way Bill for such movement. Claim shown in the captioned Application is not in existence and the Corporate Debtor is not liable



to pay the same to the Operational Creditor. Rather, it is the Operational Creditor, which is liable to pay an amount of INR 49,22,586/- towards reconciliation difference, amounts raised by the Clients against the Corporate Debtor owing and attributable to inferior and defective goods being supplied by the Operational Creditor and debit notes raised against the Operational Creditor, cost incurred and also damages arising out of breach of representation made on behalf of the Operational Creditor.

viii) Accordingly, it is submitted that the present application has been filed for the purpose of recovery and not seeking resolution of the Respondent.

10. The Applicant has filed its Rejoinder annexing the E-Way Bills dating from 10.04.2018 to 26.05.2018. In addition, the Applicant has stated in its rejoinder that :

- i) The Respondent has availed the benefit of GST input tax credit on the said invoices.
- ii) The Respondent has not served the reply to the demand notice dated 16.12.2019 to the Applicant.
- iii) There is no dispute existing between the parties.
- iv) The Respondent is not in a position to repay its liability.
- v) The invoices raised by the Applicant clearly stipulated the interest clause on delayed payment therefore it has claimed interest.
- vi) The Respondent has admitted that it has received the goods on ad hoc basis.



vii) Despite allegations of substandard quality of goods, the Respondent has continuously purchased goods from the Applicant.

viii) The debit notes relied by the Respondent do not indicate the purpose for it was issued.

11. On perusing the documents and written submissions placed on record and hearing submissions of both the parties, this Bench observes that the Applicant has averred in its Affidavit under Section 9(3)(b) of IBC, 2016 that it has not received any notice of dispute. Per Contra, the Respondent has annexed the notice of dispute dated 26.12.2019 in its reply. The Applicant has again reiterated in its Rejoinder that it did not receive any notice of dispute.

12. When we peruse the reply of the Respondent, we notice that it has annexed courier receipt (page no. 32) as the dispatch proof. However, it has not annexed any tracking report along with the dispatch proof. Hence, the Respondent has failed to establish that the Notice of dispute/ Reply to the Demand Notice was actually delivered to the Applicant.

13. Further, it is contended by the Respondent that there is a pre-existing dispute between the parties regarding 'sub-standard quality of goods. However, when we peruse the reply of the Respondent, we find no mail or letter or any other communication placed on record, which could substantiate that there was any dispute raised by the respondent prior to



the issuance of demand notice. Hence, this objection does not merit consideration.

14. It is also alleged by the Respondent that invoices annexed with the application are forged and fabricated. Further, there are no GST E-Way Bills annexed by the applicant. When we peruse the Rejoinder, we observe that the Applicant has placed on record the E-Way Bills generated by the Applicant towards the sale of goods to the Respondent and uploading details of invoices in its GST returns.

15. It is further contended by the Respondent that it had issued debit notes on account of poor quality of goods. We observe that the defence of the Respondent is contrary to its own statement, by which it had contended that the invoices annexed in the application are forged ones. In our view, there cannot be any debit note in the absence of receipt of genuine invoices.

16. From perusal of the material available on record, we are of the considered view that the Operational Creditor has established the default on the part of Respondent in payments of the operational debt. The Petition filed under Section 9 fulfills all the requirements of law. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC, 2016. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the IBC, 2016.** As a necessary consequence of the moratorium in terms of Section 14(1) (a), (b), (c) & (d),



the following prohibitions are imposed, which must be followed by all and sundry:

- “(a) The institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent 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 Respondent.”


17. Since there is no IRP proposed by the Operational Creditor, this Bench appoints Mr. Anish Kumar Sanghi (IBBI Registration No. IBBI/IPA-001/IP-P01796/2019-2020/12786, E-mail: anish.sanghi@gmail.com) as an IRP of the Respondent with immediate effect from the panel of the IPs recommended by IBBI to this Adjudicating Authority and order that:

*“Mr. Anish Kumar Sanghi (E-mail: anish.sanghi@gmail.com) IBBI Registration No. IBBI/IPA-001/IP-P01796/2019-2020/12786, is directed to take charge of the CIRP of the Respondent with immediate effect. The IRP is directed to take the steps as mandated under the IBC specifically under Section 15, 17, 18, 20 and 21 of IBC, 2016.”*



18. The Operational Creditor is directed to deposit Rs.2,00,000/- (Two Lakh) only with the IRP to meet the immediate expenses. The amount, however, will be subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional and shall be paid back to the Operational Creditor.

19. A copy of this Order shall immediately be communicated to the Financial Creditor, the Respondent and the IRP mentioned above by the Court Officer/Registry of this Tribunal. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.

  
(L. N. GUPTA)  
MEMBER (T)

  
(DHARMINDER SINGH)  
MEMBER (J)