

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**  
*(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)*

**C.P. (IB) No.118/BB/2022**  
U/s.9 of I&B Code, 2016  
R/w Rule 6 of I&B (AAA) Rules, 2016

**Mr. A.N. Srinivasa Raje Urs**

*(Sole Proprietor of*

*M/s. Sri Krishna Enterprises)*

Ganesh Rice Mill Compound,

Behind KSRTC Bus Stand, Budhanagar,

Shimoga – 577 201.

... Petitioner/Operational Creditor

**Versus**

**M/s. Shreenidhi Papers Private Limited**

“Nayak Chambers”, 51,

Raj Nagar,

Hubli – 580 032

... Respondent/Corporate Debtor

**Order delivered on: 9<sup>th</sup> June, 2023**

**Coram:**

1. Hon’ble Justice (Retd.) T. Krishnavalli, Member (Judicial)

2. Hon’ble Shri Manoj Kumar Dubey, Member (Technical)

**Present:**

For the Petitioner : Ms. Geeta Lundwani along with  
Shri Rahul Agrawal, Shri Amay H. and  
Ms. Vishaka A., Advs.

For the Respondent : None

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

**1.** The instant Petition has been filed on 29.06.2021 u/s 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter as ‘IBC/Code’) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Mr. A.N. Srinivasa Raje Urs, Sole Proprietor of M/s. Sri Krishna

Enterprises (hereinafter as 'Petitioner/Operational Creditor') with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) in respect of M/s. Shreenidhi Papers Pvt. Ltd. (hereinafter as 'Respondent / Corporate Debtor') for defaulting an amount of Rs.1,77,58,868/- due and payable by the Corporate Debtor.

**2.** The Corporate Debtor – **M/s. Shreenidhi Papers Pvt. Ltd.**, is a Private Limited Company was incorporated on 15.11.2001 under the provisions of Companies Act, 1956 with CIN: U21099KA2001PTC029766. Its registered address at "Nayak Chambers", 51, Raj Nagar, Hubli, Karnataka-580032. Hence, the jurisdiction lies with this Adjudicating Authority.

**3.** Brief facts of the case as stated by the Petitioner are as under:

- (a) The Operational Creditor is one of the renowned dealer, supplier and wholesaler of waste paper products. It is stated that the Operational Creditor (OC) and Corporate Debtor (CD) are in business for a period of more than 4 years. The OC states that after delivering goods to the satisfaction of the CD, it raised necessary invoices in respect thereof.
- (b) Despite providing quality goods in a timely manner, the CD failed to honour the amount raised under the Invoices. Ledger Account of the CD for the period 01.04.2017 to 31.03.2020 maintained in the books of the OC reflects that the CD is still liable to pay Rs.1,77,58,868/-. The Date of default mentioned in Form No.5 is 15.10.2019.
- (c) While the CD has also admitted its debt obligation, which is evident from the confirmation of Accounts for the period 01.04.2019 to 26.12.2019 issued by the CD, bearing stamp and signature of the CD, wherein it has admitted its liability to the tune of Rs.1,77,58,739/-. In spite of various requests made to the CD to release the outstanding payment, the CD has not made any payment towards the said liability.
- (d) Therefore, the OC issued Demand Notice in Form 3 and Form 4 dated 24.11.2020 calling upon the CD to pay the outstanding unpaid amount.

The said Notice has been sent to the Registered Address of CD and CD received the Demand Notice on 05.12.2020.

- (e) It is further stated that even after the delivery of Demand Notice, no reply or any payments are received from the CD till date. Since the CD has failed in making the payment of outstanding amount, it can be construed that the CD has gone commercially insolvent to discharge its liability. Hence, this Petition.
- (f) In support of its case, the Petitioner *inter alia* filed the following:
- i. *Copy of Invoices;*
  - ii. *Copy of ledger account of the Corporate Debtor for the period 01.04.2017 to 31.03.2020 maintained in the books of the Operational Creditor;*
  - iii. *Copy of confirmation of Accounts received by the Corporate Debtor for the period 01.04.2019 to 26.12.2019;*
  - iv. *Demand Notice dated 24.11.2020;*
  - v. *Copy of Bank Account Statements.*

**4.** On 29.03.2023, the following order was passed:

*“...2. Pursuant to the order dated 01.03.2023, Ld. Counsel for the Petitioner submits that he has filed written arguments through e-filing and will be filing the physical copy in the Registry today. He further submits that notices were refused by the Respondent and seeks that the refusal of acceptance of notice be deemed to be served. It is seen that today also neither there is a representation on behalf of the Respondent nor any reply is filed in spite of granting various opportunities to the Respondent”.*

- 5.** In response to the notice issued on 21.07.2022 and served on the Respondent; Counsel for the Respondent attended on 15.09.2022 and sought time to file vakalath as well as reply which was granted. On 23.11.2022 the right to file reply was forfeited; since no objections were filed and no one attended for the Respondent on the next dates fixed for hearing; i.e. on 13.10.2022 and 23.11.2022. On subsequent listings on 23.12.2022, 07.02.2023 and 01.03.2023 also, there was no representation for the

Respondents. Therefore, since sufficient opportunities were granted to the Respondent, but the Respondent had failed to file their objections/reply, and failed to represent in the proceedings thereafter, the matter has been proceeded with against the Corporate Debtor on an ex-parte basis.

**6.** Vide Diary No.2041 dated 13.04.2023, the Petitioner filed its written submissions by *inter alia* further stating as under:

- (a) It is submitted that subsequent to sending of demand notice dated 24.11.2020 the CD have changed its address to Block No.11, Kerwad Village, Haliyal Taluk, Dandeli, Uttara Kannada. Again notice dated 08.09.2022 and 20.02.2023 intimating the ongoing IBC proceedings was sent to the current registered address at Dandeli and the notice was refused and returned. Also an email dated 09.09.2022 intimating the next date of hearing/ongoing IBC proceedings were sent to the email of CD which were bounced. The Hon'ble NCLT, New Delhi, in C.P.(IB)No.684/ ND/2019 observed that the notice was sent back with a remark "there is no person with this name" from the registered address of the Corporate Debtor but the email did not return or bounced. Considering that the notice was sent at the registered address of the Company as reflected in the MCA website and the remark 'there is no person with this name' shall not be considered as not served to defeat the very purpose of service. The Hon'ble Supreme Court in '*Madam and Co. V. Wazir Jaiwir Chand*' 1989 SCC 264 observed that even if it is returned, the same if sent on correct available address be treated as served under Section 27 of General Clause Act.
- (b) It is submitted that the CD has defaulted in payment of invoices ranging from 02.04.2017 and the last invoice is dated 15.10.2019. Hence, right to sue accrued on 02.4.2017. Further, the period of limitation extended from time to time in view of various acknowledgements, confirmations given by the Corporate Debtor.

- (c) The CD made last part payment on 14.10.2019. By virtue of Sec. 19 of the Limitation Act, the limitation period for filing the present application is extended by further three years from 14.10.2019. In this regard, the Petitioner relied upon the Judgment of Hon'ble NCLAT in *Atharva Auto Logistics Pvt. Ltd. vs. Intec Capital Ltd. & Anr. in Company Appeal (AT) (Insolvency) No.303 of 2022*. The Petitioner has also cited the exclusion period given by the Hon'ble Supreme Court in Suo Motu Writ Petition No.03 of 2020, wherein, the period from 15.03.2020 to 28.02.2022 has been excluded for the purposes of computing limitation period in respect of all judicial or quasi-judicial proceedings. The Petition is e-filed on 02.03.2021 i.e. very well before the expiry of limitation period.
- (d) The Petitioner has filed an Affidavit in compliance to the provision u/s 9(3)(b) of the Code to the effect that the CD has not replied to the Demand Notice.
- 7.** Heard Ms. Geeta Lundwani, Ld. Counsel for the Petitioner. None appeared for the Respondent.
- 8.** The Applicant has filed an affidavit under Section 9(3) (b) of IBC, 2016 dated 12.03.2019 affirming that no notice of dispute has been given by the Corporate Debtor relating to dispute of the unpaid operational debt nor towards the quality of goods which were supplied by the Operational Creditor.
- 9.** As per Form V in part IV of the Petition, the date of default in respect of CD is 15.10.2019. On perusal of the records it is seen that the CD has made its last payment on 14.10.2019, therefore, as per Section 19 of the Limitation Act, the limitation period for filing the present Application is extended by further 3 years from 14.10.2019. Further, the CD had acknowledged the outstanding debt to the Petitioner by sending the confirmation of Accounts for the period from 01.04.2019 to 28.12.2019, wherein it has admitted its liability to the tune of Rs.1,77,58,739/- as on 26.12.2019, which was duly

singed and stamped by the CD, the copy of which has been enclosed as Exhibit – ‘E’. Hence the debt is not time barred and the Application is filed within the period of limitation. The present Petition has been filed on 29.06.2021, therefore it is filed well within the period of limitation.

**10.** In view of the foregoing discussion, the present Application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. The present Application is liable to be admitted, in terms of Section 9(5)(i) of the IBC, 2016.

**11.** We have carefully considered the arguments of the respective Counsels and their pleadings. In view of the facts and circumstances discussed above, the present Petition being complete and having established the default in payment of the operational debt and for the default amount being above Rs.1,00,00,000/- (Rupees One Crore Only), the instant **Petition** is **admitted** in respect of **Respondent - M/s. Shreenidhi Papers Private Limited** u/s 9 of the I & B Code, 2016. Accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- i. 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;*
- ii. Transferring, encumbering, alienating or disposing off by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;*
- iii. 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

- iv. *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.*

*It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.*

*The provisions of sub-section (1) shall however, not apply to such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority, and to a surety in a contract of guarantee to a Corporate Debtor.*

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

- 12.** Since the Petitioner has not named the Insolvency Resolution Professional, this Adjudicating Authority from the list furnished by Insolvency and Bankruptcy Board of India, appoints Shri Girish Kambadaraya, IP with Reg.No.IBBI/IPA-003/IP-N000127/2017-2018/11403 as the IRP subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Respondent and specific consent is filed in Form-2 of IBBI (AAA) Rule, 2016 in relation to specifically the Respondent and the Operational Creditor herein and make disclosures as required under IBBI (IRP for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

- 13.** The Law Research Associate of this Adjudicating Authority has checked the credentials of Shri Girish Kambadaraya, and there is nothing adverse against him. Therefore, the Adjudicating Authority hereby appoints **Shri Girish**

**Kambadaraya**, IP, bearing Regn. No. IBBI/IPA-003/IP-N000127/2017-2018/ 11403 with his address at No.36, Chatura Homes, 2<sup>nd</sup> Main, Meenakshinagar, Near Krishna Kalyana Mantapa, Basaveshwaranagar, Bangalore, Karnataka, 560079 having Mobile: 9980695702 Email: [cmagirish999@gmail.com](mailto:cmagirish999@gmail.com), Interim Resolution Professional of the Corporate Debtor. The IRP is directed to take the steps as mandated under Sections 15, 17, 18, 20 and 21 of IBC, 2016.

- 14.** The Operational Creditor shall deposit a sum of **Rs.2,00,000/- (Rupees Two Lakhs Only)** with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
- 15.** The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Adjudicating Authority on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Adjudicating Authority every fortnight.
- 16.** A copy of the order shall be communicated to both the Parties. The learned Counsel for the Petitioner shall deliver a copy of this Order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this Order to the Interim Resolution Professional at his e-mail address forthwith.

**-Sd-**

**MANOJ KUMAR DUBEY  
MEMBER (TECHNICAL)**

**-Sd-**

**T. KRISHNAVALLI  
MEMBER (JUDICIAL)**