



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH-(Court-I)  
KOLKATA**

**CP (IB) No. 221/KB/2023**

*An application under section 9 of the Insolvency and Bankruptcy Code,  
2016 read with rule 6 of the Insolvency and Bankruptcy (Application to  
Adjudicating Authority) Rules, 2016.*

In the matter of:

**Apoorv Gupta, proprietor of M/s Panam Enterprises  
[PAN: AEDPG5666F]**

*...Operational Creditor*

*Versus*

**Saha Distributors Pvt. Ltd.  
[CIN: U51909WB2005PTC102678]**

*...Corporate Debtor*

**Date of Hearing: 12/06/2024**

**Date of pronouncing the order: 09/07/2024**

**Appearances (through hybrid mode):**

For the Operational Creditor : Mr. Shaunak Mitra, Advocate  
: Mr. P.P. Bishwal, Advocate  
: Ms. Suranjana Chatterjee, Advocate  
For the Corporate Debtor : Mr. Krishna Pada Pal, Advocate  
: Mr. K.Karmakar, Advocate

**Coram:**

**Bidisha Banerjee : Member (Judicial)**  
**Balraj Joshi : Member (Technical)**

**ORDER**

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(COURT-I)

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*Per Balraj Joshi, Member (Technical)*

1. This Court convened through hybrid mode.

***Brief facts of the case:***

2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Apoorv Gupta, sole proprietor of M/s Panam Enterprises (***“Operational Creditor”***), seeking to initiate Corporate Insolvency Resolution Process (***“CIRP”***) against Saha Distributors Private Limited (***“Corporate Debtor”***).
3. It is submitted in Part-II of the Petition that the authorised share capital of the Corporate Debtor is Rs.1,00,00,000 (Rupees One Crore Only) with paid up capital as Rs.1,00,00,000 (Rupees One Crore Only).
4. Part-IV of the Petition the details of operational debt for an amount of Rs.2,40,35,143/- (Rupees Two Crore Forty Lakh Thirty Five Thousand One Hundred Forty Three only) alongwith interest @ 24% per annum as on 10.03.2023.
5. The Corporate Debtor was incorporated on 8 April 2005, having CIN: U51909WB2005PTC102678, under the Companies Act, 1956. Its registered office is at 2, Jadu Nath Dey Road, Kolkata-700012, West Bengal. Therefore, this Bench has jurisdiction to deal with this petition.
6. The present petition was filed on 8 May 2023 before this Adjudicating Authority on the ground that the Corporate Debtor has defaulted to make a payment of a sum of Rs.2,40,35,143/- (Rupees Two Crore Forty Lakh Thirty Five Thousand One Hundred Forty Three only) alongwith interest @ 24% per as on 10.03.2023. The date on which the debt fell due is on 10.02.2021.

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7. The Operational Creditor had issued a Demand Notice under Section 8 of IBC, 2016 on 15.04.2022<sup>1</sup> to the Corporate Debtor and the same was replied to by a letter dated 02.06.2022<sup>2</sup>.

***Brief facts of the case:***

8. The Operational Creditor has been supplying sanitary goods to the Corporate Debtor from 22<sup>nd</sup> June, 2019 to 7<sup>th</sup> February, 2021 and the aggregate value for such supplies was Rs.9,23,19,590.54/- for which tax invoices were raised from time to time by the Operational Creditor. Such invoices mentioned that interest @ 24% per annum would be levied if there is delay in payments.
9. There was a running account between the parties as the Corporate Debtor made ad hoc payments amounting to a total of Rs.7,62,96,161.60/- till 10.02.2021 after which an outstanding amount of Rs. 1,60,23,428.94/- remained payable. However, after repeated reminders by the Operational Creditor, the Corporate Debtor did not make any payment.
10. The Operational Creditor thereby issued a notice dated 15.04.2022 under Section 8 of IBC, 2016 but no reply was received therefore the Operational Creditor once again issued a notice dated 21.05.2022 and asked the Corporate Debtor to pay the outstanding amount along with interest @ 24% per annum.
11. The Corporate Debtor thereafter issued two reply letters dated 02.06.2022 and claimed that there are no outstanding dues on its part. Following the same, the Operational Creditor once again issued a notice dated 03.02.2023 and asked the Corporate Debtor to furnish evidence so as to show that the entire dues were paid by the Corporate Debtor, but, instead of furnishing evidence, the Corporate Debtor once again replied

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<sup>1</sup> Annexure A-8 of the Petition

<sup>2</sup> Annexure A-10 of the Petition

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to the same and made false allegations that the entire dues had been paid. Therefore, the Operational Creditor had filed an application under Section 9 of IBC, 2016.

***Reply the Corporate Debtor:***

12. The Corporate Debtor contends that after receiving tax invoices, the payments were made in the bank account of M/s Panam Enterprises by RTGS/NEFT from its account maintained with AXIS Bank Ltd. to the account of the Operational Creditor in Tamiland Mercantile Bank, Vishwas Nagar, Delhi. However, in February 2021, the Operational Creditor asked one director of the Corporate Debtor to remit future payments to its another bank account maintained with Canara Bank, Pitampura Branch, Delhi.
13. It is contended that from 1<sup>st</sup> March, 2021 to 25<sup>th</sup> March, 2021, the Corporate Debtor made 5 (five) RTGS/NEFT payments amounting to a total of Rs. 1,60,23,428/- to the other account of the Operational Creditor i.e., Canara Bank, Pitampura Branch, Delhi. Hence, the Corporate Debtor claims that it has made entire payment to the Operational Creditor in both the accounts of the Operational Creditor.
14. It is contended that there was a confirmation of account dated 01.04.2021 between the Operational Creditor and the Corporate Debtor. The Corporate Debtor used to make payments within one or two months, therefore the claim of the Operational Creditor after one year is completely baseless and malafide.
15. In para 9(b) of the Reply Affidavit, it is mentioned that the Corporate Debtor made last payment on 25.03.2021 after which nothing remained due.
16. The Corporate Debtor contends that the Operational Creditor is not competent to file the instant application as because the business was

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between the Corporate Debtor and M/s Panam Enterprises and not between Apoorv Gupta (Operational Creditor) and the Corporate Debtor.

17. In para 1(z.1) it is contended that the business transaction between the Corporate Debtor and the Operational Creditor was started in 2019 through a middleman named Sushil Kumar Jain and the Corporate Debtor came to know that a raid was conducted by GST authorities in the office of the Operational Creditor sometime in February, 2021 and the account of the Operational Creditor was under scanner, therefore five payments were made in the other account of the Operational Creditor.

18. In para 10 of the Reply Affidavit, the Corporate Debtor states that the letters dated 20.06.2022 and 16.02.2023 issued by the Corporate Debtor construe as a Notice of Dispute, therefore the petition under Section 9 is not maintainable.

***Rejoinder by the Operational Creditor:***

19. The Operational Creditor states that it maintains only one account i.e., Tamiland Mercantile Bank, Vishwas Nagar, Delhi and no other account.

20. Further, the Corporate Debtor in its letter dated 26.03.2024<sup>3</sup> has admitted that it was some Sushil Kumar Jain of Dsons Sanitarywares Private Limited who had informed the Corporate Debtor that the Operational Creditor maintains a bank account with Canara Bank, Pitampura Branch, Delhi.

21. The Operational Creditor states that the bank statement of the Corporate Debtor for the period between 01.01.2021 to 25.03.2021 annexed in the Reply does not reflect any alleged amount that has been transferred to the bank account of the Operational Creditor. Further, from the balance

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<sup>3</sup> Annexure A of the Rejoinder

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confirmation annexed in the reply affidavit as R-2 it is clear that it is a manufactured document and is not signed by the Operational Creditor.

22. The Operational Creditor states that the Corporate Debtor did not make any payment from 01.03.2021 to 25.03.2021. The Operational Creditor had been following up with the Corporate Debtor regarding outstanding payments since 2021 till 2023 which will be evident from the WhatsApp conversations between them.<sup>4</sup>

23. The Operational Creditor denies that neither there was any middleman between the parties nor that his account was under scanner or there was any apprehension of his account being seized. Therefore, the claim of the Corporate Debtor that the entire outstanding dues have been paid is baseless, frivolous and not acceptable, therefore the present petition shall be admitted.

***Submissions of the Learned Counsel for the Operational Creditor***

24. The Ld. Counsel for the Operational Creditor submitted that the Corporate Debtor made payment lastly on 10.02.2021. It also submitted that even after asking for proof of payment of the outstanding amount of Rs.1,60,23,428.94/- the Corporate Debtor has not showed any proof regarding to such payment and has only made false and frivolous allegations against the Operational Creditor that the entire sum has been paid.

25. It was submitted that the Corporate Debtor has admitted :

*i.* that it received goods from the Operational Creditor

*ii.* its liability to make payment vide letter dated 02.06.2022 and Confirmation of Accounts at Pg.51-53 of the Reply.

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<sup>4</sup> Annexure-C of the Rejoinder

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*iii.*no instruction for change of bank account was given by the Operational Creditor in its letter dated 26.03.2024

*iv.*goods were supplied to the satisfaction of the Corporate Debtor and therefore there were no pre-existing disputes between the parties.

26. It was also submitted that the Operational Creditor has no connection with the alleged account at Canara Bank, Pitampura Branch, Delhi and that the Operational Creditor has only one account which is maintained with Tamiland Mercantile Bank, Vishwas Nagar, Delhi and the same is mentioned in each and every invoice.

27. The Ld. Counsel for the Operational Creditor further submitted that the Corporate Debtor in the reply affidavit has mentioned that the Operational Creditor informed about the other bank account whereas it had taken a contradictory stand in letter dated 26<sup>th</sup> March, 2024 where it has been alleged that one Sushil Kumar Jain informed about the said change.

28. Lastly it was submitted that it had been regularly following up with the Corporate Debtor via WhatsApp conversations regarding payment of the due amount but there was no reply or mention that the Corporate Debtor made full payment.

***Submissions of the Learned Counsel for the Corporate Debtor***

29. The Ld. Counsel for the Corporate Debtor submitted that the Operational Creditor is not the creditor as the business was between the Corporate Debtor and M/s Panam Enterprises. Further, the Operational Creditor did not serve a copy of the Section 9 Application prior to its filing by any mode. It was submitted that the present application was filed on May 8, 2023 and the Corporate Debtor received a copy on 08.01.2024 i.e., 8 (eight) months after its filing.



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30. It was submitted that the Corporate Debtor has replied to the notice dated 21.05.2022 on 02.06.2022 and had raised a dispute regarding the outstanding dues, therefore there was a pre-existing dispute between the parties.
31. The Ld. Counsel also submitted that after issuance of notice dated 21.05.2022, the Operational Creditor filed proceedings under Section 12A of the Commercial Courts Act, 2015 and by doing so, the Operational Creditor has lost its statutory right to file the present petition. The quantum of claim in the said application is exactly the same i.e., Rs.1,60,23,428.94/-
32. The Corporate Debtor had sent confirmation of accounts dated 01.04.2021 but the Operational Creditor did not raise any objection till the demand was raised in April-May, 2022. The Corporate Debtor by issuing a notice under 12A of the Commercial Courts Act, 2015 and a notice dated 03.02.2023 has waived his earlier demand notices.
33. It was submitted that the Corporate Debtor had knowingly mentioned incorrect office address of the Corporate Debtor in order to mislead the Tribunal.
34. The Ld. Counsel for the Corporate Debtor also submitted that during pendency of this petition Mr. Sushil Kumar Jain contacted the director of the Corporate Debtor and offered to settle the matter for which he came to the office of the Corporate Debtor alongwith his son and assured that the Corporate Debtor will not have to pay any further amount towards the outstanding dues. Also, the director of the Corporate Debtor came to know that the said account being Canara Bank, Pitampura Branch, Delhi belonged to one M/s Shyam Enterprises.
35. It was submitted that as Mr. Sushil Kumar Jain was not keeping his promises, the Corporate Debtor lodged Police Complaints dated

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08.04.2024 and 07.05.2024 against Sri Apoorv Gupta and nine others at Noapara Police Station Garulia Main Road under Various Sections namely Sections 403, 405, 415, 420, 463, 464, 467, 468, 470, 471, 477A and 34 of the I.P.C. Also, a writ petition was filed by the Corporate Debtor being WPA No 14451 of 2025 against Sri Apoorv Gupta and 9 (nine) others which is still pending. After receiving a copy of the writ petition the Noapara Police Station has registered FIR dated 25.05.2024 bearing No.78 of 2024 under section 420 and 406 of IPC against Sri Sushil Kumar Jain, Sri Rishav Jain, Branch Manager and Circle Officer of Canara Bank, Pitam Pura Branch, Delhi. M/s Shyam Enterprises Holder of Account No.1565201003963 at Canara Bank, Pitam Pura Branch, Delhi and four others. The account holder of M/s Shyam Enterprises is absconding. It has come to the knowledge of the Corporate Debtor that some of the accused persons including Shri Sushil Kumar Jain and his son Shri Rishob Jain has been granted anticipatory/ Transit bail under section 438 of Criminal Procedure Code in Connection with FIR No.78 of 2024 dated 25.05.2024 registered at Noapara Police Station under Section 420 and 406 of IPC.

36. It was lastly submitted that the present petition cannot be admitted as the notices dated 15.04.2022, 21.05.2022 and 25.07.2022 were issued in the name of M/s Panam Enterprises and not Mr, Apoorv Gupta.

***Analysis and Findings***

37. We have heard the Learned Counsel appearing for both the parties and perused the record.

38. The first issue raised by the Corporate Debtor is that the petition is not maintainable as it is filed by Mr. Apoorv Gupta on behalf of M/s Panam Enterprises. Noteworthy to mention that it is a settled law that a

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proprietor can file an application under Section 9 of IBC, 2016 on behalf of the proprietorship firm.<sup>5</sup>

39. The second issue raised by the Corporate Debtor is that the outstanding amount of Rs.1,60,23,428.94/- was paid by the Corporate Debtor in one bank account being Canara Bank, Pitampura Branch, Delhi. It is also admitted by the Corporate Debtor in the letter dated 26.03.2024, that one Sushil Kumar Jain who was the middleman between the Corporate Debtor and Operational Creditor had informed him about the change in account. However, the Corporate Debtor has not produced any proof to evidence that the said change of account was informed by the Operational Creditor, therefore we find the defence raised in the second issue is not stout and does not stand.

40. The third issue by the Corporate Debtor that in its reply to the demand letters issued by the Operational Creditor, it had disputed regarding the outstanding amount, therefore it shall amount to be a pre-existing dispute between the parties does not hold water in view of the admission by the Corporate Debtor that it made payment of remaining amount in the account being Canara Bank, Pitampura Branch, Delhi on being informed by the said Sushil Kumar Jain.

41. In the context of the contention that the Corporate Debtor that the Operational Creditor had initiated a proceeding under Section 12A of the Commercial Courts Act, 2015 against the Corporate Debtor, we refer to the judgment of the NCLAT, Chennai Bench in **Amar Vora v. City Union Bank Ltd & Anr.**<sup>6</sup> wherein it was held:

“8. The IBC, 2016 is a special enactment and is an act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individual in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship. As held by the Hon'ble

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<sup>5</sup> *Neeta Saha v. Ram Niwas Gupta 191(IBC)156/2020*

<sup>6</sup> *2022 SCC OnLine NCLAT 276*

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Supreme Court the aim and object of the Code is not for recovery of debts but for Resolution of Corporate Persons. In this regard Section 238 of I & B Code, 2016 deal with provisions of the Code to override other laws and the said provision reads as under:

*“The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”*

9. In view of the above provision of law the financial Creditor/Operational Creditor/Corporate Persons can file an application under Section 7, 9 & 10 of the I & B Code, 2016 before the respective Adjudicating Authorities even though in respect of same any proceeding pending before other forums on the ground that the provisions of I & B Code, 2016 is overriding effect of other laws and also due to the fact that the aim of IBC is more specific i.e. to resolve the insolvency of the Corporate Debtor which if left unattended, might lead to further degeneration of the businesses . In view of the aforesaid reasons the Appellant cannot take a stand that the proceedings are pending before DRT and PBPT and the application under Section 7 of the I & B Code, 2016 cannot be maintained does not merit. The application under Section 7 filed by the financial Creditor before the Adjudicating Authority is very well maintained. Accordingly, the point is answered against the Appellant.”


42. From the submissions made by the parties and the documents on record, we find that there is no pre-existing dispute between the parties and that there was an acknowledged debt which the Corporate Debtor had defaulted to repay. The petition is filed within limitation and therefore the petition is complete and is liable to be admitted.

43. In the light of the above facts and circumstances, it is, hereby ordered as follows:-

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- a. The application bearing **CP (IB) No. 221/KB/2023** filed by Apoorv Gupta, proprietor of M/s Panam Enterprises, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Saha Distributors Private Limited., the Corporate Debtor, is **admitted**.
- b. There shall be a moratorium under section 14 of the IBC.
- c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
- d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e. **Mr. Arun Poddar**, registration number IBBI/IPA-001/IP-P02237/2020-2021/13387, **email: [ca.arunpoddar@gmail.com](mailto:ca.arunpoddar@gmail.com)**, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

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- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. 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 (CoC).
- j. In terms of section 9(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

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k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

44. The IRP proposed by the Operational Creditor could not be appointed as the Authorisation for Assignment (AFA) of the said IRP was valid till 29<sup>th</sup> June, 2024.

45. **CP (IB) No. 221/KB/2023** to come up on **19.08.2024** for filing the periodical report.

46. A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

**(Balraj Joshi)**  
**Member (Technical)**

**(Bidisha Banerjee)**  
**Member (Judicial)**

This order is pronounced on 9<sup>th</sup> day of July, 2024.

*FA\_LRA*