

**IN THE NATIONAL COMPANY LAW TRIBUNAL,  
DIVISION BENCH – II, CHENNAI**

**CP/IB/130(CHE)/2021**

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w  
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating  
Authority) Rules, 2016)*

*In the matter of M/s. OHM Srinivasa Paper Boards Private Limited*

**M/s. Pathy Enterprises**

Rep by its Proprietrix – Mrs. Lakshmi,  
No. 4/299, 8<sup>th</sup> Street,  
Vengadesapuram, Kottivakkam,  
Chennai -400041.

*... Applicant / Operational Creditor*

-Vs-

**M/s. Ohm Srinivasa Paper Boards Private Limited,**

Rep by its Managing Director,  
Reg Office at:  
No. 631, Bye Pass Road,  
Thillai Nagar,  
Sattur – 626 203.

*... Respondent / Corporate Debtor*

*Order Pronounced on 04<sup>th</sup> November, 2022*

**CORAM:**

**DR. DEEPTI MUKESH, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor: T. Sri Krishna Bhagavt, Advocate  
Srenik S Jain, Advocate  
Moheet Rathore, Advocate  
A. Vikash, Advocate*

*For Corporate Debtor: A. Sam Arul Prasath, Advocate  
A.V. John, Advocate*

**ORDER**

**Per: DR. DEEPTI MUKESH, MEMBER (JUDICIAL)**

Under Adjudication is CP/IB/130(CHE)/2021 which has been  
filed by one **M/s. Pathy Enterprises** (hereinafter referred to as  
'Operational Creditor') under Section 9 of the Insolvency



&Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Ohm Srinivasa Paper Boards Private Limited** (hereinafter referred to as '**Corporate Debtor**').The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).It can be seen that the Affidavit verifying the application was sworn on 12.03.2021 and is filed with the Application.

2. From Part – I of the Application, the Operational Creditor is a proprietorship concern that filed the present Application through its Proprietrix Mrs.Lakshmi. The Operational Creditor has their business at No. 4/299, 8<sup>th</sup> Street, Vengadesapuram, Kottivakkam, Chennai – 600 041.From Part III of the application, it is seen that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal to appoint the same.

3. Part - II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a Private limited company incorporated under the Companies Act, 1956 on 29.03.2011 with CIN: U21020TN2011PTC079915. The registered office of the Corporate Debtor is situated at No. 631,



Bye Pass Road, Thillai Nagar, Sattur – 626 203. The Authorised Share Capital of the Corporate Debtor and Paid-up Share Capital is stated to be Rs.10,00,00,000/-.

4. From Part-IV of the Application, it is seen that a total sum of Rs.1,23,29,308/- (Rupees One Crore Twenty-Three Lakhs Twenty-Nine Thousand Three Hundred Eight Only) is being claimed by the Operational Creditor as the Operational Debt. Out of the said dues, a sum of Rs. 1,01,02,625/- is stated to be the Principal Debt and a sum of Rs. 22,26,683/- towards interest @ 24% p.a. The Operational Creditor states that as on 03.02.2020, which is the last date of invoice generated for the materials supplied to the Corporate Debtor, the total Principal Debt was Rs. 1,01,02,625/-. This date i.e. 03.02.2020, is construed as the dated of default. The Applicant has placed total 29 invoices against which the alleged default had taken place as "Annexure II-(1)" from page 18 - 46 along with the Application.

5. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt', which are extracted as follows;

- i. Unpaid Invoices
- ii. Bank Statement of accounts
- iii. Statement of Calculation



- iv. Memorandum of Undertaking
- v. Demand Notice dated 29.01.2021 along with proof of delivery and acknowledgement card
- vi. Master Data of the Corporate Debtor Company
- vii. List of Invoices from 12.10.2019 – 03.02.2020

6. The Operational Creditor is stated to be involved in supply of raw materials such as waste papers and pulp to the industries which reprocess that same into paper material. Accordingly, materials have been supplied to the Corporate Debtor by the Operational Creditor from 01.06.2018. It is further submitted that the accounts of the Corporate Debtor in the books of the Operational Creditor have been maintained on a running account basis and payments received have been adjusted to the total outstanding dues.

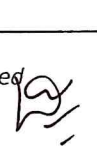

7. It is submitted that the parties have entered into an understanding by way of an MoU dated 28.12.2019 wherein the Corporate Debtor had acknowledged its liability to an extent of Rs.71,00,000/- and has further sought for additional supply of raw material worth Rs. 30,40,000/- from the Operational Creditor. The Corporate Debtor has in fact agreed to handover certain original documents of immovable properties owned by the Managing Director for settling the entire dues including the value of the additional supply under the MoU on or before 30<sup>th</sup> January, 2020, or



alternatively, convey certain immovable properties in favour of the Operational Creditor. The said MoU dated 28.12.2019 entered between the parties is annexed along with the Application at page 47 - 50.

8. It is submitted that Corporate Debtor having defaulted to settle its dues in terms of the above MoU had further entered into another MoU dated 10.09.2020 whereby the repayment terms as agreed between the parties were modified and the same were not complied by the Corporate Debtor. It is submitted that the Operational Creditor, having no other remedy, was constrained to issue the statutory demand notice dated 29.01.2021 to the Corporate Debtor and the same has been duly served on the Corporate Debtor as per the address reflected in the Master Data of the Corporate Debtor. The postal receipt and the acknowledgement card for the service are placed at page 16 and 17 of the Application. The Corporate Debtor however has chosen not to respond. Finally the present Application came to be filed on 19.02.2021 before this Tribunal.

9. In response to the Application, the Corporate Debtor has filed its reply dated 16.11.2021 wherein the objections were of two fold, the primary objection is that the Corporate Debtor has duly made payments in arrears to the Operational Creditor for all the invoices except for the supplies made in the last quarter of 2019 and

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January of 2020. Since these payments were made to the Operational Creditor, it is argued that the present Application is liable to be dismissed for want of pecuniary jurisdiction. The present claim of the Operational Creditor falls below the threshold set as per Section 4 of the Code.

10. Secondly, it is the case of the Corporate Debtor that by virtue of the MoU dated 28.12.2019 entered between the parties, the nature of debt has changed on a non-recourse basis, therefore the present Application is barred in terms of Section 5 (8) (e) of the Code. The learned counsel for the Corporate Debtor argues that the nature of the debt is converted from that of an operational debt into a financial debt.

11. The Operational Creditor has consistently taken a stand that a total sum of Rs.1,23,29,308/- comprising of principal amount of Rs. 1,01,02,625/- and interest component of Rs. 22,26,683/- at 24% is in default which is due and payable. On the other hand, the Corporate Debtor specifically objects to the claim of interest component as there was no agreement to that effect under the MoU.

12. The learned counsel for the Corporate Debtor refers to two entries in the ledger account filed by the Operational Creditor



which is placed at page 65 of the Application and is extracted below:

01.11.2019	Share of M	292	26.76	19,200.00	517.50		208,213.75		
			22.21				13,215.40		
			31.23				27,529.50		
			31.70				27,310.50		
			32.18				28,921.25		
							157,980.00		
01.11.2019	Share of M	249	8.87	25,000.00	1,171.25			500,000.00	
09.11.2019	Share of M							291,187.00	
09.11.2019	Share of M	297	32.94	2,250.00	237.50			414,807.00	
09.11.2019	Share of M	299	50.30	1,500.00	307.50			730,400.00	
09.11.2019	Share of M							1,100,000.00	
09.11.2019	Share of M	181	53.70	1,500.00	307.50			1,000,000.00	
09.11.2019	Share of M	110	118.00	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	114	11.29	7,200.00	360.00			1,000,000.00	
								1,000,000.00	
09.11.2019	Share of M							1,000,000.00	
09.11.2019	Share of M							1,000,000.00	
09.11.2019	Share of M	112	74.25	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	111	51.70	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M							1,000,000.00	
09.11.2019	Share of M	112	21.35	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M							1,000,000.00	
09.11.2019	Share of M	154	24.93	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	152	21.20	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	156	14.95	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	157	21.69	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	111	22.17	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	104	22.53	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	108	24.25	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	101	24.04	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	102	22.77	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	103	24.04	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	104	22.83	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	105	21.80	7,200.00	360.00			1,000,000.00	
09.11.2019	Share of M	106	23.07	7,200.00	360.00			1,000,000.00	

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13. It is submitted that a sum of Rs.3,00,000/- and Rs.25,00,000/- received at the behest of Corporate Debtor on 09.01.2020 and 02.02.2020 respectively, having reflected in the books of the Operational Creditor as above would reduce the dues payable from Rs.101,33,201/- to Rs.73,33,201/- and thereby does not meet the threshold as prescribed under Section 4 of the Code w.e.f. 24.03.2020.

14. Heard the submissions of both the parties and perused the pleadings and the documents on record. The objection of the Operational Creditor and the reliance on Section 5(8)(e) is

*[Handwritten signature]*



misplaced and has no relevance as this is a case of an admitted Operational Debt. The only objection which requires consideration is the question of threshold which is required to be met for admitting the present Application. From a perusal of the MoU(s) and ledger account filed by the Applicant, the following emerge:

S No.	Particulars	Amount (In Rupees)
1	Debt as on 28.12.2019 as per MoU	71,00,000/-
2	Value of supply made post the agreement	30,40,000/-
3	Sub-Total	1,01,40,000/-
4	Payment received post the dated agreement (25,00,000+3,00,000)	28,00,000/-
5	Outstanding as on date of filing the Application	<b>70,60,000/-</b>

Considering the categorical submission of the Corporate Debtor that the entries in the books of the Operational Creditor reduces the liability of the Corporate Debtor from **Rs. 1,01,40,000/-** to **Rs. 70,60,000/-**, we are of the view that the present application does not meet the statutory threshold of Rs.1,00,00,000/- and therefore fails.

15. Thus, by taking into consideration the discussed supra, *prima-facie* it is seen that the debt which is being claimed to be in default from the Corporate Debtor does not meet the threshold and







that therefore we are constrained to dismiss the present Application as not maintainable.

16. The Application is disposed of in terms of the above order. The copy of order be supplied to parties concerned.

-Sd-

**SAMEER KAKAR**  
MEMBER (TECHNICAL)

-Sd-

**DR. DEEPTI MUKESH**  
MEMBER (JUDICIAL)

*V.Shreekumar*