



**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD**

COURT - II

CP (IB) 184/NCLT/AHM/2022

[Application for initiation of Corporate Insolvency Resolution Process
under Section 9 of the Insolvency & Bankruptcy Code, 2016]

In the Matter of:

Aries Paper Company

Applicant/Operational Creditor

Versus

Saurashtra Specialities Private Limited

**Respondent/
Corporate Debtor**

Order Pronounced on: 31/10/2022

Coram:

**DR. DEEPTI MUKESH
MEMBER (JUDICIAL)
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)**



MEMO OF PARTIES

Aries Paper Company

303, Nakshatrea II, 150 Ft. Ring Road

Opp. K.K.V. Hall

Rajkot 360 005

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Applicant/Operational Creditor

Versus

Saurashtra Specialities Private Limited

Pattani Building, M.G. Road

Rajkot – 360 001

Gujarat State

...

Respondents/Corporate Debtor

Appearance:

For Applicant : Mr. Kunal Vaishnav, Advocate

For the Respondent : Mr. Meet Pansuriya, Advocate



ORDER

1. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') through Mr. Dimple Shah, partner of M/s. **Aries Paper Company** (for brevity 'Applicant') authorised vide authorisation letter dated 04.04.2022, with a prayer to initiate the Corporate Insolvency Resolution Process (CIRP) against **Saurashtra Specialities Private Limited** (for brevity 'Corporate Debtor').

2. The Applicant is a partnership firm registered on 18.10.2016 having registered office at 303, Nakshatrea II, 150 ft. Ring Road, Opp. K.K.V. Hall, Rajkot 360 005, Gujarat State. The applicant is engaged in the business supply of Kraft Papers.

3. The corporate debtor is a private limited company, incorporated under the provisions of Companies Act, 2013 on 19.07.2001 duly registered with Registrar of Companies, Ahmedabad, Gujarat State



with CIN: U24133GJ2001PTC039805, having registered office at Survey No. 196, National Highway No. 8-B, Navagam, Anandpar, Rajkot 360 003, Gujarat State. The authorised share capital of the corporate debtor is Rs. 2,01,00,000/- and paid up share capital is Rs. 2,00,12,000/-.

4. It is submitted by the applicant that during the period from February, 2018 to April 2022, the applicant had supplied Kraft Papers to the corporate debtor and had raised invoices for a total amount of Rs. 2,55,64,015.80, copies of which are annexed to the application. All invoices are unpaid and no amount is paid by the corporate debtor. Time period to pay the invoices were 30 days from the date of invoices, but, even after various reminders and requests through email, oral conversations and telephonic conversations with the corporate debtor it failed to make payment of the operational debt. As a result, total principal amount of Rs. 2,55,64,015.80 (Rupees two crores fifty-five lacs sixty-four thousand fifteen and paise eighty only) and interest thereon from 22.02.2018 till the date of filing the application is due and payable by the corporate debtor. The debt fell due in respect of different invoices on different dates between



22.02.2018 and 30.04.2022, as per the details annexed to the application.

5. It is further submitted by the applicant that on not receiving the outstanding despite sending numerous reminders through e-mail, telephonically and orally, the applicant was constrained to issue demand notice in Form 4 dated 12.04.2022 under Rule 5 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 8 of the Insolvency & Bankruptcy Code, 2016 which was duly served on the corporate debtor. The applicant has submitted copy of track consignment of Postal Department evidencing that the demand notice was delivered on 18.04.2022 at the registered address available at MCA portal. The corporate debtor has not replied to the demand notice.

6. Thereafter, the instant application under Section 9 of the Insolvency and Bankruptcy Code, 2016 was filed by the applicant on 27.06.2022.

7. The corporate debtor filed affidavit in reply stating that:



- The applicant has failed to produce the delivery challans for the said invoices. Without delivery challan there is no documentary evidence that the said goods have actually been delivered to the corporate debtor;
 - The default in repayment of each invoice is different subject matter and has a different cause of action. Therefore, a conjoint petition is not maintainable in the eyes of law;
 - Request for balance confirmation dated 21.09.2020 issued by the corporate debtor is only for routine verification and there is no other intention. Therefore, the said letter can in no sense be constituted to be an acknowledge of debt due on behalf of the corporate debtor.
8. None of the parties have filed written submissions.
9. As per part IV, Form 5 total amount of debt is Rs. 2,55,64,015.80 (Rupees two crores fifty-five lacs sixty-four thousand fifteen and paise eighty only) and interest thereon from 22.02.2018 till the date of filing the application. Further, the debt fell due in respect of different invoices on different dates between 22.02.2018 and



30.04.2022. The application is filed on 27.06.2022, which is within limitation and not barred by law.

10. Registered office of the corporate debtor is situated in Rajkot, Gujarat State and, therefore, this Tribunal has jurisdiction to entertain and try this application.

11. Heard submissions and perused the documents on record. The arguments of both sides are dealt with as under:

(a) The first objection raised by the corporate debtor is that the applicant has failed to produce the delivery challans for the said invoices. Without delivery challan there is no documentary evidence that the said goods have actually been delivered to the corporate debtor.

On perusal of the record it is seen that the applicant has annexed to the application copy of 73 distinct invoices which pertains to different transactions between the applicant and the corporate debtor. All the invoices invariably bear seal and signature of the corporate debtor with date on which the goods



were delivered. Thus, it is clear that the goods shown in each invoice were delivered at the factory site of the corporate debtor.

- (b) Second objection raised by the corporate debtor is that the default in repayment of each invoice is different subject matter and has a different cause of action. Therefore, a conjoint petition is not maintainable in the eyes of law.

The argument raised by the corporate debtor appears to be flimsy and such argument is not sustainable in the eyes of law as the total amount of debt and default are not contested.

- (c) Third objection raised by the corporate debtor is that request for balance confirmation dated 21.09.2020 issued by the corporate debtor is only for routine verification and there is no other intention. Therefore, the said letter can in no sense be constituted to be an acknowledgement of debt due on behalf of the corporate debtor.



The letter under reference is a document issued by the corporate debtor. The corporate debtor has not denied issuance of the said letter. Therefore, contents of such a document has to be considered on its face value and validity/authenticity of such document cannot be questioned. Once even in routine verification for accounts or any other purpose the confirmation of balance/dues is issued the same needs to be treated as admission of debt.

12. In light of the above discussions, it is evident that the debt is due and payable and default has occurred. The present application is admitted, in terms of section 9 (5) of IBC, 2016.

13. The applicant has proposed Mr. Ashish Shah as the Interim Resolution Professional (IRP). Therefore, we hereby appoint Mr. Ashish Shah having address at 402, Shaival Plaza, Near Gujarat College, Ellisbridge, Ahmedabad 380 006 with registration No. IBBI/IPA-002/IP-N002124/2017-18/10666 and having email ID ashish@ravices.com subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in

Form 2, along with disclosures as required under IBBI (Insolvency CP (IB) /184/NCLT/AHM/2022



Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record

14. We direct the Operational Creditor to deposit a sum of Rs. 2.00 lacs (Rupees two lacs only) with the Interim Resolution Professional, namely Mr. Ashish Shah to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

15. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14 (1) shall follow in relation to the Corporate debtor, prohibiting actions as per clauses (a) to (d) of Section 14 (1) of the Code. However, during the pendency of the moratorium



period, terms of Section 14(2) to 14(4) of the Code shall remain in force.

16. A copy of the order shall be communicated to the applicant, IRP and the corporate debtor. A copy of order along with complete copy of application be served to IRP by the applicant within 7 days of order.

In addition, a copy of the order shall also be forwarded to IBBI for its records and taking steps for updating the Master Data of the corporate debtor in MCA portal and the compliance report be forwarded to the Registrar, NCLT.

SD/-
AJAI DAS MEHROTRA
MEMBER (TECHNICAL)

SD/-
DR. DEEPTI MUKESH
MEMBER (JUDICIAL)

Nair/Abhishek, LRA