



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

**(IB)-944/(ND)/2020**

**IN THE MATTER OF:**

**Shakeel Ahmad**

Proprietor of M/s. Alisha Traders

**Registered office at :**

123/60, Saresh Bagh,  
Gadarian Purwa,  
Kanpur Nagar- 208012

**...Applicant/Operational Creditor**

**VERSUS**

**M/s Zuberi Fibres Private Limited**

**Registered office at :**

Flat No. 710, 7<sup>th</sup> Floor,  
Hemkund Chamber,  
89, Nehru Place,  
New Delhi- 110019

**...Respondent/Corporate Debtor**

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

**Order Delivered on : 03.11.2022**

**CORAM:**

**SH. BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (J)**

**SH. L. N. GUPTA, HON'BLE MEMBER (T)**

**PRESENT:**

**For the Applicant** : Adv. Dushyant Tiwari

**For the Respondent** : None



## ORDER

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

Mr. Shakeel Ahmad Proprietor of M/s. Alisha Traders (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 (for brevity 'the Rules') with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Zuberi Fibres Private Limited (for brevity, the '**Respondent**').

2. The Respondent namely, M/s. Zuberi Fibres Private Limited is a Company incorporated on 02.05.2003 with CIN U21093DL2003PTC 215938 under the provisions of the erstwhile Companies Act, 1956 having its registered Office at Flat No. 710, 7<sup>th</sup> Floor, Hemkund Chamber, 89, Nehru Place, New Delhi-110019, which is within the territorial jurisdiction of this Tribunal. That the Authorized Share Capital of the Corporate Debtor is Rs. 18,00,00,000/- and Paid-up Share Capital is Rs. 17,63,04,300/- as per the Master Data of the Respondent.

3. It is submitted that the Applicant M/s Alisha Traders is engaged in the business of purchase and sale of waste raddi papers and Respondent is engaged in the business of manufacturing fresh usable papers. The Applicant supplied raddi paper material to the



Respondent through various Invoices and the payments were made by the Respondent in lump-sum. Ledger accounts have been maintained by the both the parties and the figures carried forward in the ledger accounts maintained for the period of 2018-19 and 2019-20 corroborates with each other.

4. The Applicant submits that after adjusting all the payments received, a sum of Rs. 1,37,02,045.65 remained outstanding and payable by the Respondent against the 78 invoices raised from 03.10.2018 to 07.03.2020. The Applicant further states that the Respondent has issued confirmation of the outstanding balance as on 31.07.2019, which matches with the outstanding balance shown in the ledger account. The particulars of the Operational Debt claimed are mentioned in Part IV of the application, as reproduced below :

**PART – IV  
PARTICULARS OF CORPORATE DEBTOR**

<b>1.</b>	<b>TOTAL AMOUNT OF DEBT , DETAILS OF TRANSACTION ON ACCOUNT OF WHICH DEBT FELL DUE AND THE DATE FROM WHICH SUCH DEBT FELL DUE.</b>	<b>Rs.1,37,02,045.65/- (One crore thirty seven lac two thousand and forty five rupees sixty five paise) along with interest @ 18% from the date of Invoice till actual realization.</b>  M/s Alisha Traders Supplied Old Waste Raddi Paper Material for Pulping to M/s M/S Zuberi Fibres Pvt. Ltd. for the past five years through various Invoices, in respect to those transactions, a sum of Rs.1,37,02,045.65/- remained outstanding against the Invoices issued during the period 03.10.2018 to 07.03.2020 after adjusting all the payments received till date. (Copy of the Invoices attached).  The outstanding amount of debt fell due immediately after delivery of goods and consequently the last debt fell
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		due on the date of actual delivery of goods in respect to the Invoice dated 07.03.2020.
2.	AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED (ATTACH THE WORKINGS FOR COMPUTATION OF AMOUNT AND DAYS OF DEFAULT IN TABULAR FORM)	<p>Amount claimed to be in default :- Rs.1,37,02,045.65/- (One crore thirty seven lac two thousand and forty five rupees sixty five paise) along with interest @ 18% from the date of Invoice till actual realization.</p> <p>Corporate Debtor paid the amount in lump-sum to be adjusted against the current outstanding balance and hence the outstanding amount at the closing of the year has been carried forward in the next accounting year as would be clear from the ledger accounts. Outstanding amount has been the same in the ledger account of both the parties exchanged through electronic mode.</p> <p>The default occurred firstly on 04.10.2018 (on the next date of issuance of the Invoice) and lastly on 08.03.2020.</p> <p>Even otherwise the amount fell due on the date the goods stood delivered to the corporate debtor.</p>

5. From the perusal of the Part IV of the Application, it is observed that the Applicant has claimed the total outstanding amount of Rs. 1,37,02,045.65/- along with interest @18% from the date of invoices.

6. It is stated by the Applicant that a Demand Notice has been issued on 10.08.2020 under Section 8 of IBC 2016 at the registered office of the Respondent via speed post, which was delivered to the Respondent on 17.08.2020. The Applicant has further stated it has not received reply of the demand notice. The Applicant has filed the Affidavit under Section 9(3)(b) of 2016 stating that no notice of dispute has been received by it.



7. On issuance of notice, the Respondent has filed its reply affidavit dated 12.08.2022 and stated that -

7.1. There is existence of dispute. It is stated that the quantity of old waste raddi paper material allegedly provided by Applicant was subject to approval of quality by the Respondent Company and the payment was only made to the quantity which was duly approved by the Respondent Company. Thus, the transactions between the parties falls under the ambit of "existence of dispute" under Section 5(6) read with Section 8(2) of the Code.

7.2. The NCLT is not a debt recovery tribunal. As per the Ledger entries and Bank account statement maintained by the Respondent Company, out of all the transactions done till date, only Rs. 18,15,551/- is due, which is also not payable to the Petitioner on the account of defective material supplied and which is below the prescribed threshold limit. Hence the present captioned Petition is liable to be dismissed.

7.3. The Applicant has calculated interest @ 18% to bring the alleged amount due under the threshold limit for initiating CIRP proceedings, however, no interest on the delayed payment was stipulated in invoices. Further, the date of default as mentioned by the petition is uncertain.

8. The Applicant has filed the rejoinder to the reply affidavit on 07.10.2022 and stated that -

8.1. The old waste raddi material provided by Applicant was not subject to approval of quality by the Respondent Company and the



payment was only made to the quantity which was duly approved by the Respondent Company. Further, the process of preparing fresh Kraft Board & Paper from the used Kraft and Papers are done through a process where the quality of waste Kraft Paper or Kraft Board is not required or considered. Hence, there is no existence of dispute.

8.2. If at all there was any issue with the quality of waste raddi, the Respondent was supposed to issue Debit Note to the Operational Creditor, on or before the 30th September each year, but the same was never done. Furthermore, if at all the product was defective, the same was supposed to be returned back with the return note or receipts for loading of the alleged defective goods in trucks to the Operational Creditor but no such documents are produced by the Corporate Debtor.

8.3. The Invoices, Demand Notice, Bank Account of the Operational Creditor, Ledger Account issued by the Corporate Debtor to the Operational Creditor and even the Chartered Accountant's Certificate clearly shows that an amount of Rs. 1,37,02,045.65 is due on the Corporate Debtor and the same has not yet been paid by them.

9. As per the order dated 28.09.2022, the matter was fixed for arguments on 11.10.2022 and it was made clear that if the matter was not argued by either of the parties, it will be decided on the basis of the documents available on record in the DMS of this Adjudicating authority. On 11.10.2022, no one appeared on behalf of the Respondent even on



the repeat calls. Hence, the Respondent was proceeded ex-parte. Arguments of the Applicant were heard and Order was reserved.

10. After perusing the documents placed on record and hearing submissions, this Bench observes that the Respondent has raised an objection regarding quantity of old waste raddi paper material allegedly provided by Applicant being subject to approval of quality and the release of payment only against the quantity that was duly approved by the Respondent. At this juncture, we would, therefore, like to examine one of the invoices raised by the Applicant on the Respondent:

**Tax Invoice** *0-10-18* (TRIPPLICATE FOR SUPPLIER)

**ALISHA TRADERS**  
123/60, Suresh Bagh, Factory Area,  
Gandagan Purwa, Kanpur  
GSTIN/UIN: 09ADLPA5826G1ZY  
State Name : Uttar Pradesh, Code : 09  
Contact : 0512-2232491, 9336110040  
E-Mail : alishatraders16@gmail.com  
Consignee

**Zuberi Fibres Pvt Ltd.**  
CDF Complex Near Police Chowki,  
UPSIDC Industrial Area, Anoopshar Road  
Aligarh  
GSTIN/UIN : 09AAACZ2109A1ZT  
State Name : Uttar Pradesh, Code : 09

Buyer (if other than consignee)  
**Zuberi Fibres Pvt Ltd.**  
CDF Complex Near Police Chowki,  
UPSIDC Industrial Area, Anoopshar Road  
Aligarh  
GSTIN/UIN : 09AAACZ2109A1ZT  
State Name : Uttar Pradesh, Code : 09

Invoice No. **420** e-Way Bill No. **3-Oct-2018** Dated **3-Oct-2018**

Delivery Note **Mode/Terms of Payment**

Supplier's Ref. **Other Reference(s)**

Buyer's Order No. **Dated**

Despatch Document No. **Delivery Note Date**

Despatched through **Destination**

Bill of Lading/LR-RR No. **Kanpur to Aligarh**  
**Motor Vehicle No.**  
**Hr38w-7052**

Terms of Delivery

Sl No	Description of Goods	HSN/SAC	Quantity	Rate	per	Amount
1	Old Waste Raddi for Pulping	4707	7,955.000 Kg.	14.60	Kg.	1,16,143.00
						CGST 2,903.58 SGST 2,903.58
Total			7,955.000 Kg.			₹ 1,21,950.16 E. & O.E.

Amount Chargeable (in words)  
**INR One Lakh Twenty One Thousand Nine Hundred Fifty and Sixteen paise Only**

HSN/SAC	Taxable Value	Central Tax Rate	Central Tax Amount	State Tax Rate	State Tax Amount	Total Tax Amount
4707	1,16,143.00	2.50%	2,903.58	2.50%	2,903.58	5,807.16
Total			2,903.58		2,903.58	5,807.16

Tax Amount (in words) : **INR Five Thousand Eight Hundred Seven and Sixteen paise Only**

Company's VAT TIN : 09637800799  
Company's CST No. : 09637800799  
Buyer's VAT TIN : 09725202530

Declaration  
We declare that this invoice shows the actual price of the goods described and that all particulars are true and correct.

Company's Bank Details  
Bank Name : H.D.F.C Bank  
A/c No. : 02982560001561  
Branch & IFS Code : GOVIND NAGAR & HDFC0000298

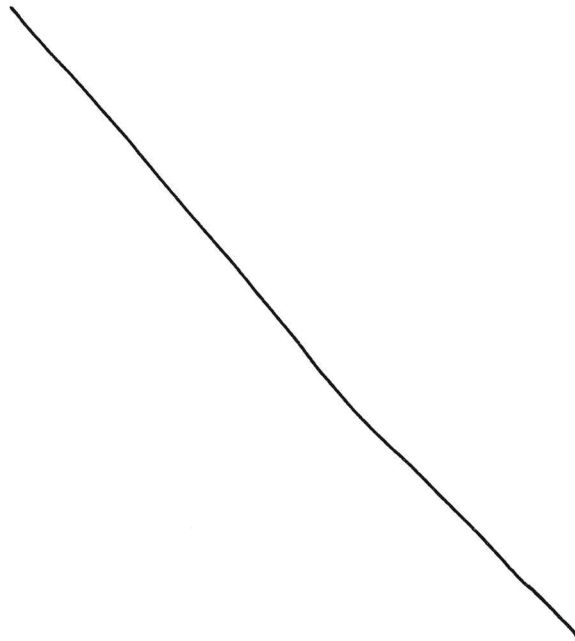
for ALISHA TRADERS  
*[Signature]*  
Authorized Signatory

This is a Computer Generated Invoice



11. On perusal of the abovesaid invoice, it is seen that there is no such condition in the invoice that the payment was to be made only against the quantity that is duly approved by the Respondent. We notice that the Respondent has not given reply/notice of dispute in response to the Section 8 Demand notice issued by the Applicant. Further, the respondent has failed to produce or file any document before this Authority to substantiate its contention that payment was subject to the quantity and quality of the goods approved by the Respondent. Therefore, this argument merits no consideration.

12. Another defense raised by the Respondent is that only an amount of Rs.18,15,551/- is due and outstanding, which is below the minimum threshold amount prescribed under IBC. In this context, it is pertinent to go through the Ledger Account of the Respondent Company annexed by the Applicant at page no.116, which is reproduced overleaf :





**Zuberi Fibres Private Limited- Aligarh**  
**UPSIDC INDUSTRIAL AREA ANOOP SHAHAR ROAD**  
**ALIGARH UTTAR PRADESH**  
**TIN No. 09726202530**  
**Alisha Traders**  
**Ledger Account**  
**123/60 Saresh Bagh, Factory Area,**  
**Gadarian Purwa, Kanpur**  
**1, April 2019 to 31, July 2019**

Date		Particulars	Veh Type	Veh. No.	Debit	Credit
01.04.2019	Dr	Opening Balance	--	--		13,817,663.59
23.04.2019	Dr	Raw material purchase	purchase	64		209146.88
27.04.2019	Cr	Local sale	GST Sale	ZJPL/19-20/147	376714	
28.04.2019	Dr	Raw material purchase	purchase	61		190093.00
28.04.2019	Dr	Raw material purchase	purchase	63		189197.00
14.05.2019	Cr	Local sale	GST Sale	ZJPL/19-20/236	412015	
17.05.2019	Cr	ZFPL-Delhi	Journal	623097-bulkneft	205305	
18.05.2019	Dr	Raw material purchase	purchase	98		216562.50
23.05.2019	Cr	ZFPL-Delhi	Journal	623116-bulkneft	183693	
27.05.2019	Cr	ZFPL-Delhi	Journal	623123-bulkneft	182780	
28.05.2019	Dr	Raw material purchase	purchase	128		214063.76
09.06.2019	Dr	Raw material purchase	purchase	169		93566.00
11.06.2019	Dr	Raw material purchase	purchase	171		88530.00
13.06.2019	Cr	ZFPL-Delhi	Journal	622986-bulkneft	195715	
14.06.2019	Dr	Raw material purchase	purchase	177		204624.00
16.06.2019	Dr	Raw material purchase	purchase	183		93870.00
18.06.2019	Dr	Raw material purchase	purchase	189		92095.50
19.06.2019	Dr	Raw material purchase	purchase	190		94539.38
20.06.2019	Dr	Raw material purchase	purchase	192		101806.69
23.06.2019	Dr	Raw material purchase	purchase	195		98234.19
23.06.2019	Dr	Raw material purchase	purchase	196		100327.50
24.06.2019	Dr	Raw material purchase	purchase	198		90037.50
25.06.2019	Cr	ZFPL-Delhi	Journal	623027-bulkneft	192837	
29.06.2019	Dr	Raw material purchase	purchase	218		220720.50
02.07.2019	Dr	Raw material purchase	purchase	221		209160.00
04.07.2019	Cr	Local sale	GST Sale	ZJPL/19-20/550	406594	
09.07.2019	Cr	ZFPL-Delhi	Journal	622677-bulkneft	83285	
12.07.2019	Cr	ZFPL-Delhi	Journal	622686-bulkneft	83757	
19.07.2019	Cr	ZFPL-Delhi	Journal	622705-bulkneft	194980	
23.07.2019	Cr	ZFPL-Delhi	Journal	622714-bulkneft	172881	
24.07.2019	Cr	ZFPL-Delhi	Journal	622719-bulkneft	88834	
26.07.2019	Cr	ZFPL-Delhi	Journal	622734-bulkneft	92986	
29.07.2019	Cr	ZFPL-Delhi	Journal	622739-bulkneft	86440	
31.07.2019	Cr	ZFPL-Delhi	Journal	622545-bulkneft	82967	
					3,041,783.00	16,325,299.98
		Closing balance				13,283,516.98
04.07.2019	Cr	Local sale	GST Sale			4,06,594.00
31.07.2019		Closing balance				18,690,110.98



13. From the perusal of the above ledger account, it is clear that as on 31.07.2019, the Respondent was liable to pay an amount of Rs.1,32,83,516.98/- and the same is closely corroborated by the ledger account of the Applicant at page 111 of the Application. Per Contra, the Respondent has failed to produce any evidence to substantiate its contention that only an amount of Rs. 18,15,551 was pending and due. Therefore, we do not find any force in the contention of the Respondent.

14. Thus, in the absence of any actual pre-existing dispute raised by the respondent and lack of any evidence in support of its contentions, we are of the considered view that the alleged dispute raised by the respondent is patently moonshine and afterthought. Hence, we do not find the alleged dispute to be genuine.

15. In the given facts and circumstances, we conclude that the Operational Creditor has established the default on the part of Corporate Debtor in payment of the operational debt. The present petition filed under Section 9 is complete and fulfills all the requirements of law. **Therefore, the petition is admitted in terms of Section 9(5) of the IBC. Accordingly, the CIRP is initiated and moratorium is declared in terms of Section 14 of the Code.** 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 corporate debtor 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 corporate debtor 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 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;
  - (d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.”


16. Since there is no IRP proposed by the Operational Creditor, therefore, this Bench appoints Mr. Devinder Kumar having IBBI Registration No. IBBI/IPA-002/IP-N00482/2017-2018/11380, Email ID <devjp310505@yahoo.com> and Mob No.9810557501 from the panel of IPs recommended by IBBI to this Adjudicating Authority, subject to the condition that there is no disciplinary proceeding pending against the said IRP. The Adjudicating Authority further orders that:

*“Mr. Devinder Kumar, IRP (Email ID- devjp310505@yahoo.com) having registration No. IBBI/IPA-002/IP-N00482/2017-2018/11380, is directed to take charge of the CIRP of the Respondent with immediate effect. Further, the IRP is directed to take steps under section 15, 17, 18, 20 and 21 of the IBC, 2016.”*



17. 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.

18. A copy of this Order shall be communicated to the Operational 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 IBBI for their records.

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**(L. N. GUPTA)**  
**MEMBER (T)**

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**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (J)**