

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-VI**

**IB-2916/(ND)/2019**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

**M/s HIMANSHU PAPER PVT. LTD.**

Registered office at:  
House No. 107, Ground Floor,  
Villag Chilla, Mayur Vihar, Phase-1,  
New Delhi- 110091

*... Operational Creditor/Applicant*

Versus

**M/s KAGAZ PRINT N PACK INDIA PVT. LTD.**

Registered office at:  
D-18, 1<sup>st</sup> Floor, Saraswati Garden,  
New Delhi- 110015

Also, at:  
Plot No. 9B, 9C, Phase-1,  
RIICO Ind. Area, Neemrana,  
Distt. Alwar, Rajasthan- 310705

*...Corporate Debtor/Respondent*

**Coram:**

**SH. P.S.N. PRASAD,**  
**Hon'ble Member (Judicial)**

**SH. RAHUL BHATNAGAR,**  
**Hon'ble Member (Technical)**

**Appearance:**

For Operational Creditor: Mr. Tarun Aggarwal, Advocate.

For Corporate Debtor: Mr. Kamal Ahuja and Mr. Chetan Tripathi, Advocates.

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M/s Himanshu Paper Pvt. Ltd. vs M/s Kagaz Print N Pack Pvt. Ltd.

**ORDER**

**Per P.S.N. PRASAD, Member (Judicial)**

**Date: 23.02.2022**

1. This is an application filed by the Operational Creditor, 'M/s Himanshu Paper Pvt. Ltd.', through its Authorized Representative Mr. Bhuvnesh Kumar Aggarwal seeking to initiate Corporate Insolvency Resolution Process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") against the Corporate Debtor, 'M/s Kagaz Print N Pack India Pvt. Ltd.' for the alleged default on the part of the Corporate Debtor in clearing the debt of Rs. 81,93,330/- (Rupees Eighty-One Lac Ninety-Three Thousand Three Hundred Thirty Only), as alleged by the Operational Creditor, towards the goods provided. The details of transactions leading to the filing of this application as averred by the Operational Creditor are as follows:

- i. That the Operational Creditor is in the business of trading of Kraft Paper Reels and the Corporate Debtor used to give purchase orders to the Operational Creditor for purchase of the Kraft Paper Reels. The Operational Creditor submitted that the Corporate Debtor used to give purchase orders from their official email address i.e., [sukul.kagaz@gmail.com](mailto:sukul.kagaz@gmail.com) and as per the specification of the Purchase order operational creditor used to supply goods through manufacturer.
- ii. It was submitted that the Operational Creditor is not manufacturer of Kraft Paper reels and that the Corporate Debtor

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used to give purchase orders to the Operational Creditor, thereafter Operational Creditor forwarded these orders to the manufacturer company as per the direction provided by the Corporate Debtor to Operational Creditor for specific manufacturer company, then that manufacturer company supplied material directly to the Corporate Debtor. That in this transaction as per the direction, instruction & demand by the Corporate Debtor, Operational Creditor supplied material to the Corporate Debtor through manufacturer companies such as Genus Paper & Boards Ltd., Ved Cellulose Ltd., Genus Paper Products Ltd., Janki News Print Ltd., Disha Industries Pvt. Ltd., Suchi Paper Mills Ltd. & Siddheshwari Industries Pvt. Ltd.

- iii. The Operational Creditor submitted that the Corporate Debtor had purchased Kraft Paper reels in the financial year 2013-2014, 2014-2015, 2015-2016, 2016-2017 for a total consideration of Rs.1,25,08,755/- (Rupees One Crore Twenty Five Lac, Eight Thousand Seven Hundred Fifty Five) and, that Corporate Debtor gave direction to the Operational Creditor to supply the Kraft Paper Reels to his sister concern i.e. Rashmi Printer and as per the direction of Corporate Debtor, the Operational Creditor had supplied Kraft Paper in the F.Y.2013-2014 for Rs.31,02,752/- (Rupees Thirty One Lac Two Thousand Seven Hundred Fifty Two Only) through manufacturer company. That total supplied material since F.Y. 2013-2014 till F.Y. 2016-2017 was Rs.1,56,11,507/- (Rupees One Crore Fifty-Six Lac

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Eleven Thousand Five Hundred Seven). The Operational Creditor further stated that the Corporate Debtor had previous balance for the F.Y.2012-2013 of Rs.57,70,834/-. The total supply of material since 2012-2013 till 2018-2019 was Rs. 2,13,82,341/- (Rupees Two Crore Thirteen Lac Eighty-Two Thousand Three Hundred Forty One).

- iv. That the Corporate Debtor has taken Kraft Paper reels from the Operational Creditor through manufacturer company by way of Letter of Credit (L.C.) issued to manufacturer's Banks by the Corporate Debtor's Bank. That the charges for Letter of Credit (L.C.) had been paid by the manufacturer company to their bank and thereafter the Operational Creditor had paid the Letter of credit charges to the manufacturer company as per running account maintained by both the companies i.e., Operational Creditor & Manufacturer company and the charges of Letter of credit (L.C.) had been paid by Corporate Debtor to the Operational Creditor. The Operational Creditor further submitted that the Corporate Debtor has not paid balance amount for the account of Nimrana/Bahadurgarh and without L.C., Therefore, now at present the account of the Corporate Debtor is debited with Rs. 81,93,330/-.
- v. Further, it was submitted that the Corporate Debtor handed over cheques to the Operational Creditor in respect of liability towards Kagaz Print N Pack Pvt. Ltd. and Rashmi Printers in the name of Operational Creditor. That all the cheques when

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presented got dishonored. Thereafter, the Corporate Debtor provided new cheques to the Operational Creditor towards his liability but all cheques when presented again got dishonored. That the Operational Creditor filed criminal complaint u/s 138 of N.I. Act against the Corporate Debtor and the same is pending before the Karkardooma Courts, Delhi.

- vi. That on 26.07.2019 the Operational Creditor issued the statutory Demand Notice under section 8 of IBC, 2016 upon the Corporate Debtor demanding the payment of Rs. 81,93,330/- which was duly served upon the Corporate Debtor. It was further submitted that the Corporate Debtor vide its reply dated 06.08.2019 raised dispute regarding the claimed Outstanding debt and further stated that only amount of Rs. 31,23,929/- remains outstanding for which the corporate debtor intended to settle the matter by offering an amount of Rs. 30,00,000/-. However, the operational creditor denied the offer.

2. Consequent to the notice issued by this Tribunal the Corporate Debtor filed its reply affidavit submitting the following:

- a. That the Corporate Debtor in year 2016 and 2017 issued various Purchase orders dated 12.04.2016, 26.08.2016, 03.12.2016, 02.05.2017 and 22.05.2017 for supply of material to the Operational Creditor and the Corporate Debtor made purchase order wise payments to the Operational Creditor.



- b. The Corporate Debtor submitted that he further reconciled his account after issuing of the notice of dispute and found that payments to the tune of Rs. 20,91,526/- has already been made in favor of Operational Creditor through its bank account.
- c. The Corporate Debtor submitted that against the total debt of Rs. 29,12,815/-, the Corporate Debtor has already made payment of amount of Rs. 20,91,526/- and further submitted that the Corporate Debtor owes a payment of Rs. 8,21,289/- to the Operational Creditor and rest of the invoices upon which the Operational Creditor relied upon are time barred or had been paid by the Corporate Debtor.
- d. It was submitted that the Operational Creditor has misrepresented before the Tribunal by annexing invoices amounting to total amount of Rs. 1,36,65,410/- as they have been either already paid or are barred by the Limitation. The corporate debtor further stated that the attached invoices bearing no. 131, 462, 177, 222, 272, 983, 325, 1598, 1699, 1768, 970, 3039, 3141, 3466, 3655 ,0042, 0392, 1665, 3188, 3399 cannot be taken into consideration for computation of amount due and payable.
- e. The Corporate Debtor further submitted that it is the case of Operational Creditor that it did not supply the goods to the Corporate Debtor directly as the Corporate Debtor placed purchased orders to operational creditor and operational creditor supplied Kraft reels through various manufacturers



that is third parties. However, the corporate debtor submitted that the operational creditor has not annexed the Authority letters for procuring amount due in many invoices annexed in the Application claimed to be unpaid. That the definition of the claim as mentioned in the IBC 2016 under section 3 (6) as under:

*(6) "claim" means—*

*(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;*

*(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;*

- f. The Corporate Debtor submitted that that the claim must either have a right to payment or a right to remedy for breach of contract. In the present case the operational creditor does not have right to payment against the invoices in which he does not have authority to claim payment from corporate debtor on behalf of third parties. Hence, the invoices wherein the operational creditor does not have authority to collect payment on behalf of third parties cannot be deemed fit to be admitted in computation of "debt" due and payable against the answering Respondent under the Insolvency and Bankruptcy Code.
- g. The Corporate Debtor further submitted that the operational debt is not owed to the Operational Creditor as the operational creditor has not supplied goods or services to the Corporate Debtor. Further, the invoices bearing number 0042 and 0392

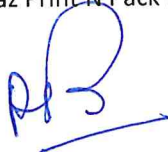
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amounting to Rs. 5,53,403/- and Rs. 5,09,581/- are issued to M/s Rashmi Printers, which is a separate entity from the Corporate Debtor, therefore corporate debtor cannot be held liable to pay liability of M/s Rashmi Printers.

3. We have heard the arguments advanced by the Learned Counsels for both the parties and perused the documents filed, the Operational Creditor herein has prayed for the initiation of Corporate Insolvency Resolution Process against the Corporate Debtor for the outstanding debt of Rs. 81,93,330/-. The Statutory Demand Notice dated 26.07.2019 under section 8 of IBC, 2016 has been sent by the Operational Creditor to the Corporate Debtor. The Corporate Debtor replied to the Demand Notice by way of letter dated 06.08.2019 and raised pre-existence of dispute in respect of proceedings under section 138 of Negotiable Instruments Act, 1889.
4. Firstly, the corporate debtor has contended that the present application is barred by limitation as the invoices attached with the application are prior to January, 2015. However, the applicant along with the application has annexed the ledger account maintained between the operational creditor and corporate debtor from 01.04.2013 to 30.11.2017 substantiating that the parties had a continuous running account and business relationship. Along with that the operational creditor submitted that the last sale invoice sent to the corporate debtor was on 15.09.2017 and as submitted by the corporate debtor in its reply that the last payment was made to the

operational creditor on 23.01.2018. The above said facts clearly establish that both the parties were maintaining a running account in lieu of which invoices were being raised and part payment had been made and as the petition has been filed on 07.11.2019, hence it is well within the limitation period.

5. The Corporate Debtor in the present case contended that the goods supplied by the Operational Creditor were through various third-party manufacturers therefore, the Operational Creditor does not have right to payment or a right to remedy for breach of contract and the operational creditor does not have right to payment against the invoices in which he does not have authority to claim payment from Corporate Debtor on behalf of third parties. However, the Operational creditor in the present application annexed the 'Payment Authority Letters' duly authorizing Operational Creditor to receive payment on behalf of third-party manufacturers from Corporate Debtor.
6. It is pertinent to mention that the corporate debtor in its reply submitted that he reconciled his account after being issued notice of dispute, however no such documentary proof regarding any dispute regarding accounts reconciliation or with regard to material supplied has been annexed with the reply affidavit.
7. It is further pertinent to mention that the corporate debtor in its reply to the Section 8 demand notice has stated that during the course of hearing of complaint filed by operational creditor under section 138 of

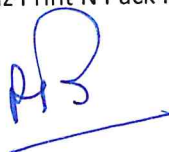


N.I. Act, the corporate debtor offered an amount of Rs. 30,00,000/- towards final settlement.

8. In the light of the above said facts and after giving careful consideration to the entire matter, hearing the arguments of the Learned Counsel for the Operational Creditor as well as the Learned Counsel for the Corporate Debtor and upon appreciation of the documents placed on record to substantiate their respective claims, this Adjudicating Authority is of the view that there is an operational debt which is due from the corporate debtor and the corporate debtor has defaulted in making payment of the amount due and along with that, in the absence of any preexistence of dispute, this tribunal **admits** this application and **initiates CIRP** on the Corporate Debtor with immediate effect.
9. This Adjudicating Authority, hereby appoints Mr. Aishwarya Mohan Gahrana, (Email -aishwaryam\_gahrana@yahoo.com), Reg. No: IBBI/IPA-002/IP-N00135/2017-2018/10351 to act as Insolvency Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
10. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

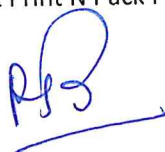


11. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
12. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flow from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:
- “(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.*
13. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the



*license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.*

14. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.
15. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty



to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

16. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.



**(SH. RAHUL BHATNAGAR)**  
**MEMBER (TECHNICAL)**



**(SH. P.S.N. PRASAD)**  
**MEMBER (JUDICIAL)**

RDS