

IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI

COURT-VI

**Item No. 217
IB-2834/ND/2019**

IN THE MATTER OF:

M/s. Stiff Packaging Pvt. Ltd.

...PETITIONER

Vs.

M/s. Omar International Pvt. Ltd.

...RESPONDENT

Section

Under Section 9 of IBC

Order delivered on 28.02.2020

Coram:

**SHRI. ABNI RANJAN KUMAR SINHA, HON'BLE MEMBER (JUDICIAL)
SHRI S.K. MOHAPATRA, HON'BLE MEMBER (TECHNICAL)**

For the Petitioner/Op.-Creditor/F.C. :Ms. Anu Kadian, C.S.

For the Respondent/ Corporate-debtor :

ORDER

Per ABNI RANJAN KUMAR SINHA (Member Judicial)

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, praying therein to initiate the CIRP against the corporate-debtor. The facts mentioned in short:
2. That, the above named Operational Creditor is a Company incorporated under the erstwhile Companies Act, 1956, having its registered office mentioned in the title above and has been into the business of providing and Manufacturing all types of assorted corrugated boxes and cartons.
3. That, the Corporate Debtor is a company incorporated under the erstwhile Companies Act, 1956 having its registered office

mentioned in the title above and is a leading meat producing and exporting company in India.

4. That, the Operational Creditor is a MSME company and has been making mark in manufacturing of all types of assorted corrugated boxes and cartons for more than 3 decade
5. That the Corporate Debtor had purchased many types of assorted corrugated boxes and cartons from the Operational Creditor for the packaging consumption of the Corporate Debtor.
6. That the Operational Creditor had raised various Invoices to the Corporate Debtor having immediate payment terms from the date of Invoice.
7. That the Corporate Debtor failed to make the payment of the outstanding Invoices that were raised to them.
8. That the Operational Creditor has done numerous follow-ups both verbatim, via personal visits to the offices of the Corporate Debtor and Finance with regards to the payment of Outstanding Invoices but did not get any relief.
9. That the Corporate Debtor defaulted in making the payment of the said debt due to the operational creditor. In view of the products purchased of the Operational Creditor and in absence of any dispute regarding quality, unpaid invoices and non-payment/default in payment of the said Outstanding Amount, it is clear that the Corporate Debtor is unable to discharge its debts consequently has become Commercially Insolvent.



10. That this Demand notice is being issued to the Corporate Debtor under the provisions of Insolvency and Bankruptcy Act 2016 read with rules and regulations thereof.

Invoice No.	Invoice Date	Invoice Value	Date on which the debt for this invoice Fell due
SPPL/17-18/0054	16.11.2017	2,56,592	15.01.2018
SPPL/17-18/0060	24.11.2017	2,70,088	23.01.2018
SPPL/17-18/0067	01.12.2017	2,40,296	30.01.2018
SPPL/17-18/0069	09.12.2017	2,46,232	07.02.2018
	Total	10,13,208/-	

11. That, Applicant/Operational Creditor issued a Demand Notice to the Respondent dated 30th July, 2019 for the payment of amount in default

12. That the Demand Notice dated July 30, 2019 was delivered to the Registered Office of the Corporate Debtor through Speed Post (Tracking No. ED305333207IN) on 05/08/2019, Speed Post (Tracking No.ED3053332151IN) on 03/08/2019 and through DTDC Courier (Consignment No. Z25821153) on 03/08/2019.

13. That there is no notice given by the Corporate Debtor relating to a dispute of the unpaid operational debt as on the date of signing of this application.
14. Accordingly, the Applicant has filed this Application under Section 9 of THE INSOLVENCY AND BANKRUPTCY CODE 2016 to initiate CORPORATE INSOLVENCY RESOLUTION PROCESS.
15. That the amount claimed under this application in INR. 5,70,831.00.
16. We have heard the learned counsel appearing on behalf of the applicant. The counsel appearing on behalf of the applicant has submitted that the demand notice was delivered upon the respondent on 03.08.2019, but no reply was received by the operational-creditor from the corporate-debtor. She further submitted even the copy of the application was sent to the corporate-debtor, but when the corporate-debtor fails to appear then vide order dated 07.02.2020, the proceeding was posted for ex parte hearing. She further submitted that the applicant has also proposed the name of the IRP Mr. Naveen Kumar Jain and the written consent of the IRP has also enclosed which is at Page No. 32-33 of the application so CIRP may be initiated against the corporate-debtor.
17. Considering the submissions made on behalf of the applicant and from the perusal of the averment made in the application, we find that the operational-creditor has claimed the defaulted amount on the basis of the invoices raised by the operational-



creditor which are from page No. 45 to 48 and which was duly acknowledged by the corporate-debtor. We further find that the first invoice dated 16.11.2017, 24.11.2017, 01.12.2017 and 09.12.2017 and the total amount of defaulted as per the averment made in Part IV of the application is Rs. **4,50,000/-** apart from the interest at the rate of 18 per cent from the date of default. We further find that the demand notice was also delivered upon the corporate-debtor, but corporate-debtor has failed to raise the dispute. Therefore, at this stage we would refer Section 8 and 9 of the Insolvency and Bankruptcy Code, 2016 and same are quoted below.

An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed.

(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor -

(a) Existence of a dispute, 1[if any, or] record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;

(b) The 2[payment] of unpaid operational debt-



(i) By sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or

(ii) By sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

Explanation. – For the purposes of this section, a “demand notice” means a notice served by an operational creditor to the corporate debtor demanding 3[payment] operational debt in respect of which the default has occurred.”

Section9: Application for initiation of corporate insolvency resolution process by operational creditor. –

1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.

(2) The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.

(3) The operational creditor shall, along with the application furnish-



(c) The invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) No notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) There is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) Reject the application and communicate such decision to the operational creditor and the corporate debtor, if -

(a) The application made under sub-section (2) is incomplete;

(b) There has been 1[payment] of the unpaid operational debt;

(c) The creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) Notice of dispute has been received by the operational creditor or

There is a record of dispute in the information utility; or

(e) Any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the Adjudicating Authority.



(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5) of this section.

18. From the perusal of the aforesaid provision, we find that the corporate-debtor after the receipt of the demand notice is required to raise the dispute within ten days from the receipt of demand notice or show the documents that the payment of the unpaid operational-debt has already been made. And if the corporate-debtor fails to raise the ‘existence of disputes’ and documents showing the payment of operational-debt then the operational-creditor has right to an application under Section 9 of the Insolvency and Bankruptcy, Code, 2016.

19. In the light of the aforesaid provisions, when we shall consider the case in hand then we find that in this case no reply to the demand notice was sent by the corporate-debtor. Therefore, we are of the considered view that corporate-debtor has failed to raise any ‘existence of disputes’ and show that the operational-debt raised by the operational-creditor has already been paid. So under such circumstances we have no option, but to pass the order under Section 9(5) (i) if the application is complete and from the perusal of the application we find that the application is complete and there is no payment of unpaid operational-debt and no notice of dispute has been raised by the operational-creditor or there is no record of dispute in the information utility and the operational-

creditor has also proposed the name of the IRP against whom there is no disciplinary proceedings pending and the defaulted amount is more than one lac. So, considering these facts, we have no option to admit the application. Accordingly, we hereby admit the application and initiate the CIRP against the corporate-debtor.

20. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

“(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.



- (2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.”

21. The interim resolution professional (“IRP”) proposed by the Applicant is **Mr. Naveen Kumar Jain (Email - insolvencyprofessional@rediffmail.com)** and is being confirmed by this Adjudicating Authority. 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.

22. Operational Creditor is directed to deposit the fee of Rs. 2,00,000/- to meet the immediate expenses of the IRP within two weeks. The same shall be fully accountable by the IRP and shall be reimbursed by the CoC, to the Operational Creditor to be recovered as CIR costs.



23. Registry is directed to communicate the order with the IRP as well both the parties.

— Sd —

(S.K. Mohapatra)
Member (T)

— Sd —

(Abni Ranjan Kumar Sinha)
Member (J)

Meenu