



**IN THE NATIONAL COMPANY LAW TRIBUNAL,
KOLKATA BENCH (COURT- II)
KOLKATA**

C.P. (IB)/390(KB)2021

A petition under Section 9 of the Insolvency and Bankruptcy Code 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of:

Print Sales Private Limited, a company incorporated under the Companies Act 2013, having CIN: U21012WB2019PTC229955 and having its registered office at 54 E Matheswartala Road Kolkata-700046, in the state of West Bengal.

..... .. Operational Creditor

-Versus-

Anderson Printing House Private Limited, a company incorporated under the Companies Act 1956, the CIN: U22219WB1991PTC050561 and having its registered office at Anderson House EN - 11, Sector - V Saltlake City Kolkata West Bengal 700091.

..... Corporate Debtor

Date of Hearing: 12.10.2022

Date of Pronouncement of the order: 07.11.2022

Coram:

Shri Rohit Kapoor, Member (Judicial)

Shri Balraj Joshi, Member (Technical)

Appearances (via video conferencing/ physical):

- | | |
|---------------------------|----------------------------|
| 1. Mr. Ratul Das, Adv. |] For Operational Creditor |
| 2. Ms. Sutapa Mitra, Adv. |] |



- | | |
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| 1. Ms. Aparajita Rao,Adv. |] For Corporate Debtor |
| 2. Mr.Sanwal Tibrewal,Adv. |] |
| 3. Ms.Ankana Basu,Adv. |] |

ORDER

Rohit Kapoor, Member (Judicial):

1. This court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “the Code”) by **Print Sales Private Limited** (“Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Anderson Printing House Pvt Limited** (“Corporate Debtor”).
3. The Corporate Debtor is a private limited company incorporated on January 3, 1991. The authorized share-capital of the company is ₹1,25,00,000/- and the paid-up share- capital of the company is ₹1,09,57,500/-.
4. The Total amount claimed by the Operational Creditor is ₹1,04,81,991/- as on 24.09.2021, including interest of ₹13,42,558/-. The debt was running and continuous, default started from the date on which the amount of ₹50 lakh became due and the entire debt lastly fell due on 20.11.2021 being 15 days from the demand notice dated 21.10.2021 delivered on 05.11.2021.
5. It is submitted that Part –I of this petition contains particulars of the Operational Creditor. Part-II of this petition contains particulars of the Corporate Debtor.
6. Part –IV of the Petition contains details Operational debt for an amount of Rs.1,04,81,991/-(Rupees One Crore Four Lakhs Eighty One thousand Nine Hundred Ninety One Only) along with interest @ 18% per annum.
7. The Operational Creditor has relied on the various documents in support of its claims, including:



- a) Copy of Master Data of the Corporate Debtor are enclosed herewith marked with Annexure 'C'.
- b) Ledger statement of the Corporate Debtor in the books of Operational Creditor is enclosed herewith marked with Annexure 'E'
- c) Copy of the Bank statement for the period 01.01.2021 to 31.08.2021 are enclosed herewith marked with Annexure 'F'.
- d) Demand Notice under section 8 of Insolvency and Bankruptcy Code 2016 dated 21.10.2021 marked with Annexure 'G'.
- e) Invoice which are due and payable duly accepted by the Corporate Debtor without any dispute or demur marked with Annexure 'H'.
- f) Purchase order issued by the Corporate Debtor in respect of supplies made marked with Annexure 'I'.
- g) Affidavit under section 9 (3) (b) of the Code by Mr. Rishi Vidhawan dated 07.12.2021.

8. *Submissions on behalf of the operational Creditor:*

8.1 The case of the Operational Creditor is that it a supplier of print media and printer spares. The Operational Creditor was incorporated in the year 2019 with an intent to take over the business from the proprietorship concern of the promoters of the Operational Creditor named 'Print Sales Company'.

8.2 The Operational Creditor and the Corporate Debtor have been dealing with each other for more than 15 years, earlier with Print Sales Company (the proprietorship concern) and then after takeover of business, by the Operation Creditor i.e., Print Sales Private Limited. The Operational Creditor, pursuant to purchase orders placed by the Corporate Debtor, has been supplying various printer related materials to the Corporate Debtor , who are in the business



of product designing and printing. The said goods were accepted by the Corporate Debtor without any dispute or demur.

- 8.3 The invoices for the said supplies were due and payable within 120 days of dispatch. The Corporate Debtor was further liable to pay interest @ 18% for delay beyond 30 days of supply.
- 8.4 In or around January 2021, the Corporate Debtor approached the Operational Creditor requesting for revision of the credit facility citing to financial difficulty led by COVID pandemic. At the request of the Corporate Debtor the Operational Creditor agreed to grant a fixed credit facility of ₹50 lakh to the Corporate Debtor. It was agreed that the Corporate Debtor will pay any amount over and above the granted credit of ₹50 lakh against the supply of the Goods regularly.
- 8.5 It was further agreed that the Corporate Debtor will ensure that dues do not reach beyond the agreed amount of ₹50 lakh. It was further agreed that the said dues would attract an interest@ 18% p.a. It was further agreed that the Corporate Debtor will liquidate the entire dues within 15 days of demand by the Operation Creditor if Corporate Debtor fails to maintain his commitment of maintaining maximum dues of ₹50 lakh.
- 8.6 The supplies continued on the basis of the revised terms and the payment were more or less regular. During September 2021, the business of the Corporate Debtor increased to pre Covid levels but the Corporate Debtor did not pay toward any invoices as agreed. On regular follow up by the Operational Creditor, the Corporate Debtor assured that payments will be made in due course. In good faith and considering the business relationship of more than 15 years, the Operational Creditor continued to supply goods. However, despite assurance the Corporate Debtor failed to pay the dues as per the terms stipulated.



8.7 In terms of section 8 of the Code, demand notice was issued by the Operational Creditor on 21.10.2021 which was delivered to the Corporate Debtor on 05.11.2021. The said Notice is still unanswered and no payment has been received during the period.

9. *Submissions on behalf of the Corporate Debtor:*

9.1 The Corporate Debtor has claimed that the instant petition is neither maintainable since it has not been filed in proper form and is liable to be dismissed.

9.2 Further, the said petition is not maintainable in as much as there is no operational debt due or payable to the Corporate Debtor.

9.3 Moreover, the said petition has been filed without any basis and this Adjudicating Authority does not have the jurisdiction to entertain the alleged claims of the Operational Creditor.

9.4 Moreover, the Operational Creditor has failed to substantiate its claims and the alleged operational debt is based on surmises and conjecture without necessary documents or records.

9.5 Further, it is denied that a sum of Rs. 1,04,81,991/- or any part thereof fell due or payable by the Corporate Debtor to the Operational Creditor, as alleged or at all. The amounts due and payable as alleged by the Operational Creditor relates to transactions prior to its incorporation. The Operational Creditor is put to strict proof regarding the alleged dues and outstanding claimed in the said application.

9.6 The Operational Creditor is further put to strict proof regarding its incorporation and takeover of the proprietorship concern namely, Print Sales Company. It is denied that Corporate Debtor has dealing with the Operational Creditor for more than 15 years or that purchase orders were raised by the Corporate Debtor for supply printer related material or that any goods were supplied by the operational creditor or accepted by the Corporate Debtor, as alleged or at all. It is denied



that the alleged invoices were due or payable within 120 days of dispatch or that the Corporate Debtor was liable to pay interest beyond the period of 30 days of supply, as alleged or at all.

9.7 It is denied that the Operational Creditor could have provided any credit facility. The Operational Creditor is put to strict proof of any permission or license under the Bengal Money Lenders Act, 1940 to provide credit facility to the third parties has been incorporated in the year 2019. It is further denied that the Corporate Debtor was liable to make payment in terms of any credit facility or that any interest could have accrued on the Corporate Debtor, as alleged or at all.

9.8 The Operational Creditor has made wrongful deductions against the supplies made by the Corporate Debtor allegedly on account of interest applicable in terms of the amount advanced for printer supplies. It is denied that the Corporate Debtor had given any assurance that dues would not reach beyond ₹50 Lakh or that any interest would be attracted or that the Corporate Debtor would liquidate the entire dues within 15 days or that there was any assurance to make payments in due course, as alleged or at all. It is denied that the Corporate Debtor failed to pay dues or that there were stipulated terms.

10. *Rejoinder on behalf of the Operational Creditor:*

10.1 It is submitted that the Operational Creditor had supplied goods to the Corporate Debtor in terms of the purchase orders and the same has been used by the Corporate Debtor without any demur. Further, a debit note was issued to the Corporate Debtor for certain goods that were mistakenly supplied in excess and the same has been consumed by the Corporate Debtor. Accordingly, the Corporate Debtor is liable to pay a sum of Rs. 1,04,81,991/- failing which this



Adjudicating Authority should direct initiation of corporate insolvency resolution process against the Corporate Debtor.

10.2 It is denied that the amounts forming part of the operational debt is prior to the date of incorporation of the Operational Creditor. It is denied that the any permission or license under the Bengal Money Lenders Act, 1940 is required for the Operational Creditor or that payments have been claimed in respect of any credit facility or on account of interest. The Corporate debtor is deliberately attempting to dispute the claims of the Operational Creditor on account of goods sold and delivered for which invoices have been raised and the goods have been consumed forming part of operational debt and not part of any financial debt or question of requirement license under Bengal Money lender's Act does not arise.

11. Analysis and Findings:

- 11.1 We have heard the Ld. Counsel on behalf of the Operational Creditor and the Ld. Counsel on behalf of the Corporate Debtor and perused the record.
- 11.2 Before filing of this application under section 9 before this Adjudicating Authority on 10th February 2022, a Demand Notice dated **21/10/2021** under section 8 of the Code was sent to the Corporate Debtor, which is at page 246-251 (Annexure-G) along with Tracking Report of notice having been served upon the Corporate Debtor and this notice is still unanswered and no payment has been received during the period.
- 11.3 On being served with the notice of the court, the Corporate Debtor has filed its Reply Affidavit through one of its Directors, namely, Nand Kishore Kajari. However, on 12th October 2022, the Ld. Counsel appearing for the Corporate Debtor stated its inability in repaying the due amount because of adverse financial circumstances.



- 11.4 In view of the statement made by the Ld. Counsel for the Corporate Debtor, we have considered the application filed by the Operational Creditor.
- 11.5 It is noted that the Operational Creditor has not set out a concrete date of default in the petition. It is mentioned in Part IV of Form 5 that the default started from the date the amount above ₹50 Lakh became due and the entire debt lastly fell due on 20.11.2021, being 15 days from the delivery of demand notice.
- 11.6 It is further noted that the Demand Notice dated **21/10/2021** has been produced on record without its annexures being the invoices, the purchase order, the agreement for the revised terms of supply of goods.
- 11.7 However, the invoices and the purchase orders have been attached to the petition as separate annexures being Annexure H and Annexure I. The invoices produced in record range from 11.01.2020 to 18.09.2021. The account statements of the Operational Creditor also reflects that no payments have been made within the period ranging between 01.01.2021 and 31.08.2021. Further, the said Demand Notice had not been replied to, as can be confirmed by the Affidavit under section 9(3)(b) provided in pages 414 and 415 of the petition. Even the reply to the petition contains bare and evasive denials of the Operational Creditor's claims, unsupported by any proof. Coupled with the fact that the Ld. Counsel of the Corporate Debtor, in course of the arguments, admitted to its inability to pay the debt due from it to the Operational Creditor, this Adjudicating Authority is satisfied regarding the insolvency of the Corporate Debtor and inclined to condone the technical error regarding the date of default.
- 11.8 Suffice is to say that there is debt due and there is a default on the part of the Corporate Debtor, as made clear by the record and the acknowledgement of debt by the Corporate Debtor.



- 11.9 The amount claimed is above the threshold limit of Rupees One Crore applicable at the point of time of filing of this petition. Therefore, this petition is complete in all respects.
- 11.10 The Demand Notice u/s 8 of IBC as mentioned was duly served by the Corporate Debtor but no reply has been given by the Corporate Debtor.
- 11.11 In these circumstances, we admit this petition and order initiation of CIRP against the Corporate Debtor and we, therefore, pass the following orders:-
- i) The application bearing **CP (IB) No. 390/KB/2021** filed by **Print Sales Pvt. Ltd.** (Operational Creditor), under section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Anderson Printing House Pvt. Ltd.** , CIN: U22219WB1991PTC050561, the Corporate Debtor, is **admitted.**
 - ii) There shall be a moratorium under section 14 of the IBC.
 - iii) The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
 - iv) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
 - v) **Mr. Uttam Tekriwal**, registration number **IBBI/IPA-001/IP-P02192/2020-21/13365**, email: **ip.uttamtekriwal@gmail.com** is hereby appointed as Interim Resolution Professional (IRP) of



the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.

- vi) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow.
- vii) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
- viii) The Operational Creditor shall initially deposit a sum of ₹1,00,000/- (Rupees One Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC). Further, the Fees of the IRP will be subject to the approval of the COC in accordance with Notification No. IBBI/2022-23/GN/REG091 dated 13.09.2022, issued by the Insolvency and Bankruptcy Board of India, as published in the in the Official Gazette.
- ix) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the



Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.

- x) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.

12. **CP (IB) No. 390/KB/2021** to come up on **22.12.2022** for filing the progress report.
13. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Balraj Joshi
Member (Technical)

Rohit Kapoor
Member (Judicial)

Signed on this, the 7th day of November, 2022

PJ (Steno)/SM(LRA)