



IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT – II)

Item No. 204
(IB)-20/ND/2024

IN THE MATTER OF:

Kanodia Technoplast Limited

A-54, Wazirpur Industrial Area,
New Delhi-110052

**... Applicant/
Operational Creditor**

Versus

K.Y. Tobacco Works Private Limited

C-42-A/2, U/G/F Pro No. C-42,
Main Road, Kanti Nagar, Delhi-110051

**... Respondent/
Corporate Debtor**

Under Section: 9 of IBC, 2016

Order delivered on 11.06.2024

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. SUBRATA KUMAR DASH, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Sumesh Dhawan, Adv. Vatsala Kak, Adv.
Shaurya Shyam

For the Respondent : None

Hearing Through: VC and Physical (Hybrid) Mode

ORAL ORDER

As can be seen from Part-IV of the application, the corporate debtor defaulted to pay an amount of INR 6,62,98,195/- to the operational creditor. The dates of default as mentioned in Part-IV (2) of the application are 29.01.2022, 19.05.2023, 21.09.2023 & 03.10.2023. Part-IV of the application reads thus:-



Part-IV

PARTICULARS OF OPERATIONAL DEBT	
1.	<p>Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due</p> <p>INR 6,62,98,195/- (Rupees Six Crores Sixty two Lakhs Ninety Eight Thousand, one hundred ninety five Only)</p> <p>Date from which such debt fell due: December, 2021 to March 2023</p> <p>Details of Transaction</p> <p>(i) Kanodia Technoplast Ltd. (Operational Creditor) is a Ltd. Company selling goods, specifically Aluminium Foil backed with Printed Paper coating and Printed Plastic Laminate in Pouch Form to K.Y. Tobacco Works Pvt. Ltd. (Corporate Debtor) for the last several years.</p> <p>The Operational creditor was maintaining a running ledger account of the Corporate Debtor on FIFO basis.</p> <p>During the F.Y. 2021-22 aforesaid goods were supplied by Operational Creditor to the Corporate Debtor from its Delhi Unit as well as from its Sonipat Unit and Closing balance recoverable from Corporate Debtor was Rs. 12,58,63,948/-. In the financial year 2022-23, there was a opening debit balance of Rs. 12,58,63,948/- in the name of Corporate Debtor as per books of accounts of Operational Creditor. Thereafter, between 01.04.2022 to 31.03.2023, the operational creditor raised 57 invoices amounting to 4,54,73,548/- from Sonipat Unit. During the same financial year, the Operational Creditor received Rs. 10,50,00,000/-</p>



from the Corporate Debtor towards Goods supplied by Sonipat (Haryana) Unit of the Operational Creditor. Further a sum of Rs. 39,301/- was credited as TDS on the goods supplied to the Corporate Debtor during FY 2022-23. No disputes were ever raised by the corporate debtor regarding quality or delivery of goods. Hence, total outstanding financial debt is Rs. **6,62,98,195/-** as per running ledger account of Sonipat Unit maintained by the operational creditor. During the F.Y. 2022-23, the Operational Creditor supplied goods amounting to Rs. 69,30,789/- to Corporate Debtor from its Delhi Unit against which complete Payment of Rs. 69,30,789/- was received on 27.03.2023. Similarly, during the FY 22-23, the Operational creditor supplied goods from its Sambalpur Unit of the Corporate Debtor amounting to Rs. 71,25,507/- to the Corporate Debtor and the payment of Rs. 71,25,507/- including TDS was duly received by the Operational Creditor. Similarly during the F.Y. 2023-24 the Operational Creditor supplied goods amounting to Rs. 4,77,900/- to the Corporate Debtor from its Delhi Unit against which complete Payment of Rs. 4,77,900/- was received on 11.05.2023, therefore, the entire payment for the Invoices / Bills under the Delhi Unit has been received by



Operational Creditor.

Therefore a sum of Rs. 6,62,98,195/- remains outstanding as on 31.03.2023 towards the Sonipat Account of Operational Creditor Copy of Ledger Account of the Corporate Debtor for the F.Y. 2021-22, 2022-23 and 2023-24 in the books of Operational Creditor is enclosed as **ANNEXURE: A-4(Colly).**

Further summary of the running Ledger Account maintained by the Operational Creditor for the F.Y. 2022-23 of the Sonipat Unit is annexed herewith as **ANNEXURE: A-5.**

(ii)The Operational Creditor wrote various letters including letters dated 15.11.2022, 15.12.2022, 11.02.2023, 01.03.2023, 16.03.2023, 18.05.2023 and 19.06.2023 to the corporate debtor for the payment of the outstanding amounts. Copy of the various letters written by the operational creditor to the corporate debtor are annexed herewith as **ANNEXURE: A-6 (Colly).** In reply to the abovesaid letters, a few letters dated 18.11.2022, 12.01.2023, 16.03.2023 and 15.05.2023 received by the operational creditor from the corporate debtor are annexed herewith as **ANNEXURE: A-7 (Colly).**

Pertinently, the Corporate Debtor vide the Response Letters dated 18.11.2022, 12.01.2023, 16.03.2023 its liability of unpaid dues towards the Operational Creditors. Furthermore, despite the fact of a prior admission of its liabilities, the Corporate Debtor



vide its Reply Letter dated 15.05.2023 raised a misleading and sham ground of non-regular supply of goods from the Operational Creditor. It is further pertinent to mention herein that the aforesaid sham ground was wholly unsubstantiated and without any basis.

Furthermore, the ledger accounts of the Operational Creditor for the F.Y. 2022-23 and F.Y. 2023-24 maintained by the corporate debtor were duly confirmed and provided to the Operational Creditor by the Corporate Debtor. Vide the confirmed ledger account of Sonipat Unit for the F.Y. 2022-23 and F.Y. 2023-24 provided to operational creditor by the corporate debtor, the corporate debtor has acknowledged the abovesaid outstanding dues i.e. **Rs.6,62,98,195/-**. Copy of the duly confirmed ledger accounts of Sonipat Unit for the F.Y. 2022-23 and F.Y. 2023-24 provided by the corporate debtor to the operational creditor is annexed herewith as **ANNEXURE: A-8 (Colly)**.

(iii)The Statutory Demand **Notice dated 21.09.2023** as required under Section 8(1) of the IBC, 2016 was issued by the operational Creditor to the Corporate Debtor at the registered office of the corporate debtor by Speed Post vide No. ED438672758 IN. Additionally, the said demand notice was also sent to the



Corporate Debtor vide email at its email address kytobaccoworks@gmail.com provided at MCA website on 21.09.2023 itself. The demand notice was also delivered by Speed Post on 22.09.2023 at the registered office of the corporate debtor and the demand notice sent by the email was delivered to the corporate debtor at its MCA email address on 21.09.2023 itself. The true copy of the Demand Notice dated 21.09.2023 alongwith all invoices raised between December ,2021 and March ,2023 including e-way Bills is annexed herewith as **ANNEXURE: A-9 (Colly)**.

The email sent by Operational Creditor to the corporate debtor in respect of delivery of demand notice at its registered office and copies of the speed post receipt and tracking report evidencing the dispatch of Demand Notice and service of the same at premises of the Corporate Debtor is annexed herewith as **ANNEXURE: A-10**.

(iii)As per section 8(2) of the IBC, the Corporate Debtor shall, within a period of 10 days of the receipt of the Demand Notice, bring to the notice of the Operational Creditor existence of dispute, if any, or record of pendency of the suit or the arbitration proceedings. However, no objection



		<p>dispute/ reply have been received till date from the Corporate Debtor, despite the fact that Corporate Debtor has received the said notice.</p> <p>(iv)It is submitted the Operational Creditor has complied with all the mandatory provisions of Section 9 of the IBC. Further, the Operational Creditor submits that the Corporate Debtor has not brought to its notice existence of any dispute within 10 days of service of Demand Notice U/s 8(2) of IBC. That the Operational Creditor has duly paid the GST upon the invoices as espoused in the present Petition. Copy of the GSTR – 1 and GSTR – 3B have been annexed herewith and marked as ANNEXURE A-13 (COLLY).</p> <p>That the Bank Certificate issued under Form 5A under Section 9(3)(C) of the Code depicting the total amount of credit from the Corporate Debtor in the Bank Accounts of the Operational Creditor has been annexed herewith and marked as ANNEXURE A-14 (COLLY).</p>
2.	<p>Amount claimed to be in default and the date on which the default occurred (attach the workings for computation of amount and dates of default in tabular form)</p>	<p>INR 6,62,98,195/- (Rupees Six Crores, Sixty two Lakhs, Ninety Eight Thousand, one hundred ninety five Only)</p> <p>Date(s) of Default –</p> <ol style="list-style-type: none"> 29.01.2022 – Date on which the first default occurred for non-payment of Bill No. 6073 dated 29.12.2021. 19.05.2023 – Date on which the Corporate Debtor provided the Ledger Confirmation for an amount of Rs. 6,62,98,195/-.



	<p>3. 21.09.2023 – Date on which the Operational Creditor issued the Demand Notice under Form 3 in Rule 5 of the IBBI (Application to Adjudicating Authority) Rules, 2016.</p> <p>4. 03.10.2023 – Date on which the payment was due from the Corporate Debtor in terms of the 10 days’ time stipulated under the Demand Notice dated 21.09.2023.</p> <p>The dates on which the default occurred and workings for computation of amount and dates of default in tabular form is annexed herewith, inter alia, and marked as ANNEXURE: A-11.</p>
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2. In reply filed by the corporate debtor the liability to pay the defaulted amount has been accepted. Para 4 of the reply reads thus:-

“4. That PART-IV of the application is the details of the debts and defaulted debts, payments and default amount which are long-standing old debts. The details given thereunder clearly states that the Corporate debtor is regular in payment of invoices for the period 2021-22, 2022-23 and 2023-24. The following tables summarises the payments made against the debts:

Financial Year	Supplied made by the Operational Creditor from	Invoice amount (Rs)	Payment made by Corporate Debtor
2021-22		22,19,89,269/-	24,43,87,444/-
2022-23	Sonipat Unit	4,54,73,548/-	10,50,00,000/-
	Delhi Unit	69,30,789/-	69,30,789/-
		71,25,507/-	71,25,507/-
	TDS		39,301/-
	TOTAL	5,95,29,844/-	11,90,95,597/-
2023-24	Delhi Unit	4,77,900/-	4,77,900/-

The above table clearly states that in the financial year 2022-23, the Corporate Debtor has paid Rs. 10,50,00,000/- against the supplies (from Sonipat Unit) of Rs. 4,54,73,548/-, the full amount of Rs.



69,30,789/- against the supplies (from Delhi Unit) of Rs. 69,30,789/- and paid full amount of Rs 71,25,507/- against the supplies (from Sambalpur Unit) of Rs. 71,25,507/-. In addition, for the Operational year 2023-24, the Corporate Debtor has paid the full amount of Rs 4,77,900/- against the supplies (from Delhi Unit) of Rs. 4,77,900/- on 11.05.2023. The above details are drawn from the applicant's submissions which shows that the corporate debtor has made complete payments for the year 2021-22, 2022- 23 and 23-24. In addition, Corporate Debtor paid an additional sum of Rs. 5.95 crore in the financial year 2022-23 against the supplies during this period. The above details show the intention of the corporate debtor to pay off the debts of the Operational Creditor but presently, the financial status of the corporate debtor doesn't permit to pay the debts. Therefore, the debts in question pertain to prior to the COVID-19 period. After COVID-19, the business of the corporate debtor collapsed and could not be revived adequately to its pre-covid level. The corporate debtor and its management are trying to raise funds through strategic investors and to streamline the Operational of the corporate debtor.”

3. As can be seen from Sec. 9(5) of the IBC, 2016, the Adjudicating Authority shall within 14 days of the receipt of the application under Sec. 9 pass an order of admitting the application filed under Sec. 9(2) of the Code if:-
- a) the application made under sub-section (2) of Section 9 is complete;
 - b) there is no payment of unpaid operational debt;
 - c) the invoice or notice for repayment 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 proceedings pending against any Resolution Professional proposed under sub-section (4) of Section 9 of IBC, 2016.

4. The notice issued by the Applicant to CD under Section 8(1) of IBC, 2016 is placed on record as Annexure-9 to the application. The corporate debtor did not give any reply to the notice. Apparently, he has not alleged any dispute qua the amount defaulted to be paid far less any pre-existing dispute. Though the corporate debtor has specifically admitted the liability to repay the amount, but for our satisfaction, we called upon the Ld. Counsel for the Applicant to substantiate the plea of default, with reference to Section 3(12) of IBC, 2016 which reads thus:-

“3. Definitions.—

.....

(12) “default” means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be;”

5. Thus, the Ld. Counsel could draw our attention to the copies of the invoice issued by the Applicant demanding the payment, enclosed with the application as annexure with the demand notice, which is placed on record as Annexure-A9 to the application (Page Nos. 76-285). The affidavit in terms of the provisions of Section 9(3)(b) is placed on record at Page-29 of the application. To espouse the satisfaction of requirement of Section 9(3)(c) of IBC, 2016 i.e. the certificate from the financial institution maintaining the account of the operational creditor confirming that there is no payment of unpaid operational debt by the corporate debtor, Ms. Vatsala Kak, the Ld. Counsel for the



Applicant could draw our attention to Annexure-A14, which are certificates issued by the State Bank of India. One of the certificates issued by the financial institution (SBI) reads thus:-



ANNEXURE - 14

भारतीय स्टेट बैंक
STATE BANK OF INDIA

1579

Form 5A

[Under section 9 (3) (c) of the Code]

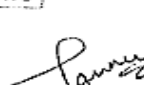
TO WHOMSOEVER IT MAY CONCERN

Based on a request of KANODIA TECHNOPLAST LIMITED, A-54 Wazirpur Industrial Area Delhi - 11005, having account bearing no. 32500019298 at State Bank of India, 2nd floor, 20/34 Pusa Road Karol Bagh, New Delhi - 110005, it is certified that the following amounts have credit in the last three years to this account on behalf of K Y TOBACCO WORKS PVT LTD., State Highway 10, Sason, Sambalpur, Odisha - 768200.

Date of Credit	Amount of Credit (Rs.)
12.10.2020	75,00,000
04.12.2020	25,00,000
04.01.2021	50,00,000
04.03.2021	30,00,000
04.05.2021	25,00,000
06.07.2021	1,00,00,000
04.08.2021	75,00,000
04.09.2021	78,20,514
04.10.2021	1,50,00,000
01.11.2021	90,59,471

Date : 22.11.2023

Place: Delhi


Signature
Tannu Kaur
Deputy Manager

6. Ld. Counsel for the Applicant could also draw our attention to a declaration given by the RP in the prescribed form i.e. Form-2 to the Adjudicating Authority Rules, 2016.

7. As can be seen from the concerned Form, the IP whose name is proposed by the Applicant to be appointed as RP has given a specific declaration that no



disciplinary proceedings are pending against him. The relevant excerpt of the declaration reads thus:-

“iv. Certify that there are no disciplinary proceedings pending against me with the Board or the Insolvency Professional Agency, “Indian Institute of Insolvency Professionals of ICAI” where I am a member;”

8. In view of the aforementioned, we are satisfied that the requirement of Section 9(3) & (5) of IBC, 2016 are satisfied. **Thus, we are left with no option but to admit the captioned application. Ordered accordingly. Resultantly, a declaration with respect to moratorium is made under Section 13 for the purposes referred to in Section 14 of the IBC, 2016.** As has been proposed by the Operational Creditor, Mr. Varun Vashisht is appointed as IRP, in terms of the provisions of Section 13(1)(c) read with Section 16(3)(a) of the IBC, 2016, having IBBI Registration No. IBBI/IPA-001/IP-P01919/2020-2021/13141, email id: cavarunvashisht@gmail.com. The Court Officer/Registrar of this Adjudicating Authority is directed to inform the IRP about confirmation of his appointment forthwith. The term of the Interim Resolution Professional shall continue till the date of appointment of the Resolution Professional under Section 22 of the IBC, 2016 or the development if any under Section 12A of the Code or otherwise, whichever is earlier. The IRP is directed to act in terms of the provisions 13(1)(b) and Section 13(2) read with Section 15 of the IBC, 2016 immediately. In other words, the IRP shall cause a public announcement of initiation of Corporate Insolvency Process qua the Corporate Debtor and call for submission of claim under Section 15 immediately. The public announcement shall contain the information



stipulated in Section 15(1) of the IBC, 2016. We are sanguine that the IRP shall act in due deference to the provisions of IBC, 2016, particularly Section 12, 15, 17, 18, 20 & 21 thereof as also Regulation 6, 6A, 12A, 13, 14, 16A and 17 of the IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016. It goes without saying that in the wake of the moratorium, there shall be prohibition of all the following: -

- (a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (b) Transferring, encumbering, alienating or disposing off 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.

9. Nevertheless, it is made clear that a license, permit, registration, quota, concession, clearance or similar grant or right (if any) given by the Central Government, State Government, Local Authority, Sectoral Regulator or any Authority constituted under any other law for the time being in force shall not be suspended or terminated qua the Corporate Debtor on the ground of Insolvency, subject to the conditions that there is no default in payment of



current dues arising for the use of continuation of the license, permit, registration, quota, concession, clearance or similar grant or right during the moratorium period. Besides, the supply of essential goods or services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period, except where the Corporate Debtor does not pay the dues arising from such supply during the moratorium period or any other explainable situation.

10. The Operational Creditor shall deposit an amount of Rs. 2,00,000/- with the IRP to enable him to meet the expenses to be incurred at the initial stage of the CIRP. The expenses shall be reimbursed by the Committee of Creditors, to the extent the same are ratified by it. The amount of expenses ratified by the Committee of Creditors shall be treated as CIRP cost. It goes without saying that in terms of Regulation 34 of IBBI (Insolvency Resolution Process for Corporate Person) Regulations, 2016, the CoC shall fix the expenses to be incurred by the IRP/ RP and the expenses shall constitute IRP cost.

11. A copy of this Order shall be communicated to the Operational Creditor, the Corporate Debtor and the IRP mentioned above by the Court Officer/Registry of this Adjudicating Authority. In addition, a copy of the Order shall also be forwarded by the Court Officer/Registry to the IBBI for their records.

Sd/-
(SUBRATA KUMAR DASH)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)

Ashima/Ruchita