

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH- IV**

**IB No.3455/ND/2019**

**IN THE MATTER OF:**

**M/s Woodpeckers India Pvt. Limited.**

**...APPLICANT / OPERATIONAL CREDITOR**

**VERSUS**

**M/s. MK Furncraft Private Limited**

**... RESPONDENT / CORPORATE DEBTOR**

**Under Section 9 of the Insolvency and Bankruptcy Code, 2016.**

**Order delivered on:16.02.2022.**

**CORAM:**

**MR. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**Per: SMT. SUMITA PURKAYASTHA, MEMBER (TECHNICAL)**

The present application is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by Woodpeckers India Private Limited, (hereinafter

“applicant”), with a prayer to initiate the Corporate Insolvency Resolution Process against M/s Furncraft Private Limited (hereinafter, Respondent).

2. As per averments made in the petition, the corporate debtor demanded various decorative wood items time to time from the operational creditor during 06.03.2009 to June, 2014. Further the applicant company raised invoices against the material supplied.
3. The applicant sent demand notice under Section 8 of the code on 27.11.2019 calling upon the corporate debtor to pay the total amount of Rs. 46,99,691/- .The applicant submits that the notice had been duly served on the corporate debtor via speed post. The Copy of demand notice along with postal receipts and the tracking reports has been annexed.
4. The applicant has filed an additional affidavit and submitted as follows:
  - a) The case of the applicant is that despite admission of liability to the extent of Rs. 46,99,691/- in the book of accounts, the corporate debtor has failed to make the payment.
  - b) It is submitted by the applicant that following factors are admitted:
    - a. Receipt of goods of the value.
    - b. Despite receipt of goods, no payment has been made till date.
    - c. Receipt of Demand Notice in terms of Form3 of IBC.



d. That the only defense of the corporate debtor is that of limitation:-  
In this respect, it is stated that the last payment of Rs. 1,50,000/- is made by the corporate debtor to the operational creditor on 19.07.2016 which is evident from the bank statement showing the last payment received on 19.07.2016

Further, the corporate debtor has also acknowledged the dues of the operational creditor in the Balance Sheet and the Auditor's report of the period ending on 31.03.2016

Copy of the Auditor's Report along with Balance sheet for the year ending 31.03.2016 has been placed on record.

e. It is furthermore submitted that the amount has been again acknowledged in the Balance sheet for the year ending 2017 which is evident from the extract of the balance sheet prepared and signed by all the Directors and Chartered Accountant of the corporate debtor, where the amount claimed by the operational creditor is reflected and admitted under the head and notes forming part of the financial statements.

Copy of the Auditor's Report along with Balance sheet for the year ending 31.03.2017 has been placed on record.

5. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:

- i. It is stated that there was no acknowledgement of the alleged debt.
- ii. It is submitted that as per applicant's own case the goods has been allegedly supplied by the operational creditor between the period



06.03.2009 till 21.06.2014. Thus, the period of limitation has been reckoned from the date of the alleged invoice, since the present case was instituted sometime after 11.12.2019 and any claim in respect of any transaction made prior to 11.12.2016 is time barred.

Furthermore, it is submitted that since neither any supply was admittedly made after 11.12.2016 nor any payment made after the said date, therefore the applicant claim is time barred.

6. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and additional affidavit filed by the parties.
7. The respondent corporate debtor's Balance Sheet is showing outstanding Balance as trade payables to the applicant. The same Balance Sheet for the F.Y ending 2016-2017 has been duly signed by the Directors of the Corporate Debtor. Therefore, the same will be treated as acknowledgment of debt, thus the period of limitation got extended as the corporate debtor acknowledged the trade payables in the Balance Sheets for the F.Y. ending 2015 -16 and 2016-17.
8. The applicant has placed sufficient documents to show that the debt is payable by the corporate debtor and there is no dispute pending between the parties.
9. In view of the aforesaid discussion, the corporate debtor has unable to prove any pre-existing dispute between the parties in respect of the operational debt and the operational debt since been acknowledged in the Balance Sheet for the two consecutive Financial Years 2015-16 and 2016-17 is not barred by limitation. Therefore, the present petition is admitted

initiating Corporate Insolvency Resolution Process in respect of Corporate Debtor.

10. The applicant has not proposed the name of an IRP, therefore, this bench appoints Mr. Hans Raj Bhogra, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-003/IP-N00389/2021-22/13940 and email id. [hansrajbhogra@gmail.com](mailto:hansrajbhogra@gmail.com). IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

11. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Hans Raj Bhogra to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

12. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting



as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.

13. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

SD/-

(SUMITA PURKAYASTHA)

MEMBER(T)

-Sd-

(DHAMINDER SINGH)

MEMBER (J)