

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.201
C.P.(IB)/225(AHM)2022

Proceedings under Section 9 IBC

IN THE MATTER OF:

Kalpataru Packaging Products Pvt Ltd
V/s
Orinet Newsprint Ltd

.....Applicant

.....Respondent

Order delivered on: 19/06/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in the open court, vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

CP(IB)/225(AHM)2022

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Kalpataru Packaging Products Private Limited

Registered office at:
D-3, Kunj Plaza Palace Road
Vadodara-390001
CIN:U21093GJ2010PTC060456

**Applicant/
Operational Creditor**

VERSUS

Orient Newsprint Limited

Registered office at:
201, Avdhesh House
S G Highway, Thaltej
Ahmedabad- 380054
CIN:U25209GJ198PLC004598

**Respondent/
Corporate Debtor**

**Order reserved on: 08.05.2023
Order pronounced on: 19.06.2023**

**Coram: Hon'ble Shammi Khan, Member (J)
Hon'ble Kaushalendra Kumar Singh, Member (T)**

Present:

For the Applicant: Ld. Adv. Mr. Aalay Shah
For the Respondent: Ex-parte

ORDER

1. This Application is filed on 03.05.2022 by **Kalpataru Packaging Products Private Limited** (Applicant/ Operational Creditor) through its director Mr. Dipesh Laddha, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of

the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an Operational Creditor for initiation of Corporate Insolvency Resolution Process (CIRP) against **Orient Newsprint Limited** (Respondent/ Corporate Debtor) for making default in payment of outstanding amount of Rs.1,09,18,260/- [(Rupees one crore nine lakhs eighteen thousand two hundred and sixty). The date of default is 01.04.2016.

2. Briefly, the facts of the case as mentioned in the Application and submitted by the applicant are that the applicant is engaged in the business of trading & supply of industrial oil, packaging & printing paper rolls, etc., and the respondent is registered under the Companies Act, 1956. According to the applicant, the respondent approached the applicant in 2016 to purchase industrial oil, printing & packaging paper rolls, etc. and the applicant has duly supplied the said items as per the demand in the month of March 2016 & April 2016, against which the applicant has timely issued invoices and the same was received by the respondent without any dispute. Subsequently, the respondent has acknowledged and accepted the debt through its letter dated 30.05.2020 stating that the company is facing financial crisis and sought time to repay the said outstanding amount.
3. The applicant also submitted that various letters were sent to the respondent requesting to pay the outstanding amount. However, despite repeated requests and reminders the respondent failed to pay the outstanding amount and did not ever raise any dispute with regard to the said outstanding amount. Subsequently, the applicant served a demand notice dated 30.03.2022 upon the

respondent under section 8 of the Code which was delivered to the respondent on 01.04.2022. However, the respondent has neither replied to the said demand notice nor made any payment towards outstanding dues and therefore, the applicant filed an application under section 9 of the Code. Further, the applicant has proposed the name of Interim Resolution Professional (IRP) Mr. Rahul Shah having registration No.IBBI/IPA-001/IP-P-02170/2020-2021/13367, carahulshah@gmail.com and the consent of the said IRP is also placed on record along with the application.

4. On issuance of the notice, the Respondent appeared and sought time to file Vakalatnama and reply. However, neither Vakalatnama nor reply was filed by the respondent. Therefore, this Adjudicating Authority vide order dated 19.10.2022 directed to proceed ex-parte against the respondent in the matter.
5. We have heard the learned counsel for the applicant and have perused the material available on record. It is noted that the applicant has supplied industrial oil, printing & packaging paper rolls, etc. as and when demanded by the respondent in the month of March, 2016 & April, 2016 for which the invoices were raised timely. It is also noted that the applicant has placed on record the invoices along with the delivery challans confirmed by the respondent which indicates that the said items were delivered to and accepted by the respondent. The applicant has in the present application claimed an amount of Rs.1,09,18,260/- and the date of default as mentioned in Part-IV of the application is 01.04.2016.

6. Further, the respondent has not replied to the demand notice dated 30.03.2022 issued U/s 8 of the Code by the applicant and pursuant to the filing of this application the respondent appeared and sought time from this Adjudicating Authority to file vakalatnama and to file a reply to the application. The time was granted by this Adjudicating Authority vide order dated 16.08.2022 to the respondent. However, the respondent even failed to file the same. Therefore, this Adjudicating Authority vide order dated 19.10.2022 directed to proceed ex-parte against the respondent.
7. It is further noted that the applicant has sent various reminders i.e. on 31.03.2018, 27.12.2018, 14.03.2020 & 18.02.2022 to the respondent requesting to pay the outstanding debt. However, the respondent has through its reply letter dated 25.04.2018 & 30.05.2020 admitted that their company is in financial crisis and further acknowledged the debt amounting to Rs.1,09,59,260/- in the said letter. Moreover, the respondent has in the said letter sought time to repay the said outstanding amount, which itself indicates the admission of debt as claimed by the applicant.
8. Considering the facts of the case it appears that the applicant has in the year 2016 supplied certain material to the respondent for which invoices were raised timely. Furthermore, the respondent has through its letter dated 25.04.2018 & 30.05.2020 admitted the default which resulted in the extension of limitation since the acknowledgment of debt within the prescribed period i.e. on 25.04.2018 leads to a new limitation period (i.e. till 24.03.2021) for the creditor. Moreover, the Hon'ble Supreme Court ***in Suo Moto WP (Civil) No. 3 of 2022 in Re: Cognizance for Extension of Limitation*** has extended the period of limitation w.e.f

15.03.2020 in view of the pandemic Covid-19. Therefore, the present application filed on 03.05.2022 is not barred by limitation and is well within the limitation period.

9. The claim of the applicant stands established as there is a default in payment of the amount due to the applicant and the same is also an admitted debt. The existing default amount is of more than **rupees one crore** which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. The application is otherwise defect-free & on record. Accordingly, the Application filed under section 9(2) of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent deserves to be admitted.

10. In view of the above, the respondent has defaulted in the payment of its debts. Accordingly, we admit this application and order as under:
 - (i) The application bearing **CP(IB)/225/(AHM)/2022** filed by **Kalpataru Packaging Products Private Limited** (Applicant/ Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Orient Newsprint Limited** (the Respondent/Operational Creditor) is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - (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 Securitisation 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.

(ii) The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iii) The Operational Creditor has proposed the name of Mr. Rahul Shah having registration No.IBBI/IPA-001/IP-P-02170/2020-2021/13367 to act as the IRP. His email id is carahulshah@gmail.com. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by Mr. Rahul Shah as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 9(4)

of the code. Therefore, this Adjudicating Authority hereby appoints Mr. **Rahul Shah** having registration No.IBBI/IPA-001/IP-P-02170/2020-2021/13367 to act as an IRP of the Respondent/Corporate Debtor under Section 13(1) (c) of the IBC, 2016.

- (iv) The IRP shall perform all his functions as contemplated, *inter-alia*, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
- (v) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.
- (vi) The IRP is expected to take full charge of the Respondent/CD's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

- (vii) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Respondent/Corporate Debtor.
- (viii) It is further directed that the supply of goods/services to the Corporate Debtor Company if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- (x) The Operational Creditor is directed to pay an advance of **Rs. 50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.
- (xi) The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of

the order.

11. Accordingly, **CP(IB) 225 of 2022** is allowed. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-

Kaushalendra Kumar Singh
Member (Technical)

-SD-

Shammi Khan
Member (Judicial)

Swati