



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI**

IB-422/(ND)/2023

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of -

INSIGHT PRINT COMMUNICATIONS PRIVATE LIMITED

Through its Authorized Representative
A/14, Synthofine Ind. Estate, Behind Virwani Ind. Estate,
Dindoshi, off Aarey Rd.,
Goregaon (E) Mumbai City MH 400063 IN
Email - paresh@insightwithin.com

...Applicant/Operational Creditor

Versus

CLOTHWARI PRINTING PRIVATE LIMITED

SFS F NO-11 C, Paschim Vihar
New Delhi DL 110087 IN
Email: Clothwariprinting@gmail.com

...Respondent/Corporate Debtor

CORAM:

SHRI. MAHENDRA KHANDELWAL, HON'BLE MEMBER (JUDICIAL)

SHRI. ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)



Appreance –

Counsel for the Petitioner

: Adv. Dhruvajit Saikia, Adv. Aniket
Kumar Parcha

Counsel for the Corporate Debtor

: Adv. Shashank Pathak

ORDER

PER – ATUL CHATURVEDI, MEMBER (TECHNICAL)

Date – 04.04.2025

1. The present application has been filed by the Petitioner i.e., **INSIGHT PRINT COMMUNICATIONS PRIVATE LIMITED** (hereinafter referred to as the Operational Creditor/OC) to initiate Corporate Insolvency Resolution Process (“CIRP”) in accordance with Section 9 of the Insolvency and Bankruptcy Code 2016 (“the Code”) against the Respondent i.e., CLOTHWARI PRINTING PRIVATE LIMITED (hereinafter referred to as the Corporate Debtor/CD).
2. The present application has been filed in light of the alleged default on the part of the Respondent in not clearing the debt of Rs. Rs. 3,07,44,284/- calculated till 28.09.2022 including pending amount of the unpaid invoices and corresponding interest accrued till the date of default as averred in part IV of the present application .



3. The particulars of transactions which are material for the adjudication of the present debt, as averred by the Applicant/Operational Creditor, have been briefly reiterated as under –

- i. The Respondent herein i.e., Clothwari Printing Private Limited bearing CIN - U74994DL2019PTC393504, has its registered office at SFS F NO-11 C, Paschim Vihar Delhi. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent corporate debtor under subsection (1) of Section 60 of the Code.
- ii. Corporate Debtor/Respondent issued a purchase order on 21.11.2019 having PO No. CPPL/PO/001/2019-20 with the Operational Creditor/applicant for purchase of Ario print Digital Textile printer with 16 keyocera heads amounting to Rs. 3,12,44,282/-.
- iii. Consequently, The Operational Creditor supplied the aforesaid said product and raised the corresponding invoice on 21.11.2019 for an amount of INR 3,12,44,282/-. The payment pertaining to the said invoice was delayed indefinitely.
- iv. Further, as per the terms and conditions mentioned in the Invoice dated 21.11.2019, the payment was to be made within 90 days from the date of purchase. The OC maintained a running account with the



CD and only one payment of Rs. 5,00,000/- was received from Corporate Debtor on 28.09.2022. Thereafter, the Corporate Debtor failed to make any payment/s to the Applicant towards the outstanding invoice.

- v. The date of default as per Purchase order is 19.02.2020 and as the last payment was received on 28.09.2022, consequently, 28.09.2022 is also a date of default.
 - vi. The Corporate Debtor defaulted in payment of the total debt Rs. 3,07,44,284/-. In view of the aforesaid default of payment in lieu of the material supplied, the Applicant issued a Demand Notice dated 08.12.2022, under Section 8 of the Code to the CD and the same was duly delivered to the CD's registered address on 20.12.2022. The Corporate Debtor gave its reply dated 10.02.2022 to the demand notice and raised certain objections without any substantive proof.
 - vii. Moreover, the objection mentioned in the reply dated 10.02.2022 was raised only after issuance of demand notice and no dispute was mentioned or raised prior to issuing the demand notice.
4. The Corporate Debtor has filed a corresponding counter affidavit to the application of the OC, the germane contentions as averred in the aforesaid counter affidavit, have been briefly reiterated as under -
- i. In the instant case under reply, the alleged amount as claimed by the Operational Creditor, to the tune of Rs.3,07,44,284/- is not due and



payable in accordance with the law as the alleged amount claimed is time barred in accordance with the provisions of the section 238A of the Code.

- ii. The Operational Creditor, vide its own admission in Part IV of the Petition has expressly stated that the amount claimed in default is against the invoice issued on 21.11.2019, which is time barred, as a period of more than three years stands lapsed from the last date of cause of action. Therefore, the alleged amount as claimed by the Applicant in the petition is time barred and the instant petition is not maintainable and tenable and is thereby liable to be dismissed.
- iii. The issue of limitation and claim of the Operational Creditor / Petitioner being barred by law of limitation has been duly raised by the Corporate Debtor in its reply dated 10.02.2023 of the Demand Notice duly annexed with the Petition. In the said reply, the Corporate Debtor has specifically disputed the payment of Rs.5,00,000/- towards the payment of invoice.
- iv. The respondent herein has relied upon the judicial precedent laid down by the Hon'ble Supreme Court in B.K. Educational Services Private Limited Vs. Parag Gupta and Associates, wherein it was held that limitation Act was applicable to applications filed under section 7 and 9 of IBC, and such applications would be barred in accordance with the aforesaid act. The respondent/CD has further contended that in this case the petition has been filed clearly after expiration of the period of 3 years from the date when the right to sue occurs, and thus, the instant



petition is legally untenable in the terms of the law laid down by the Hon'ble Apex Court in the aforesaid judicial precedent.

- v. Moreover, in the instant case as alleged by the Petitioner in their petition under reply the payment of Rs.5,00,000/- made on 28.09.2022 by the Corporate Debtor was not a payment made towards the printer machine. It is noteworthy, to state that as the printer machine i.e. "Arioprint Digital Textile Printer" was defective and not operational, the Petitioners had sent their engineering team to inspect it and on their request the printer cartridge (ink of the printer) of the Printer machine was changed which approximately costed Rs.5,00,000/-, the same finds mention in the purchase order dated 21.11.2019. The Corporate Debtor paid a sum of Rs.5,00,000/- for the printer cartridge (ink of the printer) to the Petitioner. The said payment of Rs.5,00,000/- was not in respect of the Invoice dated 21.11.2019.

5. The Operational Creditor has filed its rejoinder to the reply and the relevant contentions to the present dispute have been summarized as under -

- a. The present petition filed by Operation Creditor in respect of the 'due and payable' to Operational creditor is not barred by time in view of the Judgment passed in Suo Moto Writ Petition No. 3 of 2020 and also since, the last payment was received by Operation Creditor on payment of Rs. 5,00,000/- (Ref. Vol II Page 319 of the Petition) from Corporate Debtor on 28.09.2022.



- b. The present petition was filed by Operational Creditor on 21/06/2023. Therefore, as per Suo Moto Writ Petition 03 of 2020, in computing limitation period for this present section 9 application under Insolvency and Bankruptcy Code again the balance period of limitation remaining as on 15/03/2020, if any, shall become available with effect from 15/03/2021.
- c. Corporate Debtor issued purchase order on 21/11/2019 having PO No. CPPL/PO/001/2019-20 with the Operational Creditor for purchase of Ario print Digital Textile printer with 16 Keyocera heads amounting to Rs. 3,12,44,282/-. Against the Purchase Order, Operational Creditor had issued an Invoice Dated 21/11/2019 for an amount of Rs. 3,12,44,282/- . As per the payment terms mentioned in the purchase order dated 21/11/2019, “12.5% advance paid and balance after 90 days after commissioning of the printer” payment term was agreed by the Corporate Debtor, the ‘debt’ becomes ‘due and payable’ immediately after on issuance of Invoice and also after 90 days of the commissioning of the printer. The right of payment of liability of the payment arose immediately after invoice as well as 90 days thereafter as per prescribed law under Insolvency and Bankruptcy Code. 2016.
- d. In view of the above, Operational Creditor submits that the petition filed by Operational Creditor is well within the period of limitation and also as mentioned, the Operational Creditor had received Rs. 5,00,000/- (Ref. Vol II Page 319 of the Petition) from Corporate Debtor on 28.09.2022.



Therefore, it is respectfully submitted that the contention raised by the Corporate Debtor pertaining to limitation does not apply in this present section 9 application.

OBSERVATIONS AND FINDINGS

6. We have perused the documents filed by the Operational Creditor as well as Corporate Debtor and have heard the arguments made by the counsels appearing for both the parties.

7. Prior to adjudication of the present dispute, it is pertinent to refer to section 19 of the Limitation Act, 1963, wherein part payment against the debt has been deemed to be recognition of existence of the debt and the consequent computation of the period of limitation is initiated from the said date of part payment of the debt, the relevant section has been reiterated as under –

“19. Effect of payment on account of debt or of interest on legacy.—Where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment.



Explanation.—For the purposes of this section,—

(a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;

(b) “debt” does not include money payable under a decree or order of a court.”

8. From the aforesaid section of the limitation act, 1963, it can be clearly inferred that in the instance where a part payment has been made against the debt, the computation of the limitation period starts afresh from the date of the said part payment. In the present dispute, it has already been averred by the applicant/OC that part payment amounting to INR 5,00,000 was made against the total sum of 3,12,44,284/- on 28.09.2022 and the proof of payment for the same has been annexed with the present application, the receipt of payment has been reproduced as under for convenience -

28-09-2022	28-09-2022	RTGS-HDFCR52022092898892035-CHOLAMANDALAMINVESTMENT4884-67500000404884-HDFC0000240	RPC-NASIK			1,01,77,500.00	9,11,24,204.73 Cr
28-09-2022	28-09-2022	RTGS-HDFCR52022092898898486-CLOTHWARI PRINTING PRIVATE LIMITED-59208585678567-HDFC0000240	RPC-NASIK			5,00,000.00	9,16,24,204.73 Cr
28-09-2022	28-09-2022	NEFT-FBBT222711393181-SIRAJ DAILY-/FAST/-11020200026651-FDRL0009993	RPC MUMBAI			25,000.00	9,16,49,204.73 Cr
28-09-2022	28-09-2022	MMT/IMPS/227111005703/remark/ROYAL GRAP/Bandhan Bank li	PUNE			75,208.00	9,17,24,412.73 Cr
28-09-2022	28-09-2022	TRFR FROM:AD PRINT	NEW MARKET - BHOPAL			2,48,444.00	9,19,72,856.73 Cr
28-09-2022	28-09-2022	NEFT-SBIN122271744905-KATHIYAWAD GLOW SIGN-/ATTN//INB-00000038039683468-SBIN0002636	RPC MUMBAI			23,376.00	9,19,96,232.73 Cr
28-09-2022	28-09-2022	NEFT-SIBLN22271066163-RAMESHWARAM PRINTERS-/FAST/-047407300000070-SIBL0000474	RPC MUMBAI			21,417.00	9,20,17,649.73 Cr
28-09-2022	28-09-2022	NEFT-000670304104-MS V D POP DISPLAY LLP-/URGENT/-560361000114728-UBIN0907375	RPC MUMBAI			68,204.00	9,20,85,853.73 Cr
28-09-2022	28-09-2022	CAM/12061ORY/CASH DEP/28-09-22/7228	PUNE			19,500.00	9,21,05,353.73 Cr
28-09-2022	28-09-2022	CAM/12061ORY/CASH DEP/28-09-22/7230	PUNE			33,500.00	9,21,38,853.73 Cr
28-09-2022	28-09-2022	TRF/JAIN /002848/CI/27.09.2022	PUNE			6,018.00	9,21,44,871.73 Cr
28-09-2022	28-09-2022	CAM/12061ORY/CASH DEP/28-09-22/7233	PUNE			38,000.00	9,21,82,871.73 Cr
28-09-2022	28-09-2022	MMT/IMPS/227113188406/A Square idp/A SQUARE I/HDFC Bank	PUNE			47,200.00	9,22,30,071.73 Cr
28-09-2022	28-09-2022	CAM/12061ORY/CASH DEP/28-09-22/7235	PUNE			38,000.00	9,22,68,071.73 Cr
		Total :				0.00	1,53,06,259.00
							9,22,68,071.73

Certified True Copy

This is an authenticated intimation/statement. Customers are requested to immediately notify the bank in case of any discrepancy in the statement.

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9. While the said payments have not be disputed by the respondent herein, the respondent has contended that the said payments were made in lieu of repairs i.e., printer cartridges, made to the printer supplied by the OC in light of the fact that the printer supplied by the OC was non-functional and the said printer had not been in use. However, no substantive proof in pursuance of the same has been placed on record by the respondent/CD.
10. Moreover, under the garb of justifying the part payment made by the respondent/CD, the respondent has contended that there was a preexisting dispute pertaining to the efficacy of the printer supplied by the OC. However, the respondent has failed to place any correspondences on record to buttress the fact that the printer supplied by the OC was not in a functional state and that the respondent had made the applicant privy of the non-functional state of the said printer.
11. In conjunction with the aforesaid lack of material evidence to depict that the said payment was made in lieu of the printer cartridge (ink of the printer), it is pertinent to take note of the fact that the applicant herein has placed on record, substantive proof evidencing the fact that the respondent made a payment of INR 5,00,000 to the CD.
12. Consequently, it can be clearly inferred that the part payment was made against the debt owed to the applicant for the printer supplied, however no evidence



has been placed on record by the Operational Creditor to substantiate that the payment was specifically made for the Printer Cartridges. Thus, the computation of the limitation period of three years shall be computed from the date of the aforesaid part payment i.e., the payment dated 28.09.2022 amounting to INR 5,00,000.

13. Moreover, the Hon'ble Supreme Court in the Case of ***In Re: Cognizance for Extension of Limitation Suo Motu Writ Petition (C) No.3 Of 2020*** held that:

“5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

1. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the actual balance



period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

14. Therefore, it can be clearly concluded that the present application was filed within the apposite limitation period in accordance with Limitation Act, 1963 and is consequently not barred by the limitation.
15. Further, it is pertinent to note that the Hon’ble NCLAT in Jayprakash Vyas. Vs Prabhat Steel Traders Pvt. Ltd. & Anr, Company Appeal (AT) (Insolvency) No. 1238 of 2019, opined that -

“Thus, it is clear that when part payment is made before the expiration of the prescribed period of limitation by the person liable to pay the debt,



a fresh period of limitation shall be computed from the time when the payment was made.”

16. From the aforementioned excerpt it can be clearly inferred that the Hon’ble NCLAT has affirmed that, in the instance where part payment has been made against a certain debt, the limitation period in accordance with the Limitation Act, 1963 shall start afresh from the date of the said part payment, subject to the said part payment being made within prescribed period for payment of the debt.

17. The Hon’ble Supreme Court in the case of ***Mobilox Innovations Private Ltd vs Kirusa Software Private Ltd.*** held that:

“37. In our view a “genuine” dispute requires that:

- *the dispute be bona fide and truly exist in fact;*
- *the grounds for alleging the existence of a dispute are real and not spurious, hypothetical, illusory or misconceived.*

We consider that the various formulations referred to above can be helpful in determining whether there is a genuine dispute in a particular case, so long as the formulation used does not become a substitute for the words of the statute.”

18. With regard to the contention made by the respondent/CD that the printer supplied by the applicant/OC was not in a functional state, it is pertinent to



note that the respondent/CD has not placed on record any evidence to substantiate that the said printer was not in functional state and the applicant/OC was made privy of the same as held by the Hon'ble Supreme Court that existence of a dispute should be substantiated by a supporting evidence. This AA has incessantly stated that proceedings under the IBC, 2016 are summary in nature and consequently, this AA cannot delve into unsubstantiated claims pertaining to preexisting disputes.

19. From the aforesaid discussion it can be clearly inferred that two major grounds have been tendered by the respondent while seeking the dismissal of the present application, the aforesaid grounds have been summarized as under -
 - a. The present section 9 application being time barred in light of the date of invoice being 21.11.2019 and consequently, the same being barred by limitation.
 - b. There was a preexisting dispute between the Applicant/OC and the Respondent/OC pertaining to the printer supplied by the OC not being functional.

20. However, the said grounds have already been rejected by this AA owing to the reasons and the corresponding evidence delineated in the aforementioned discussion.



21. Consequently, this AA, in light of the arguments in conjunction with the corresponding evidence tendered by the OC/Applicant and the CD/Respondent, is satisfied that the debt exists in lieu of the printer supplied by the OC, and the default admittedly exists. Therefore, this AA is inclined to allow the present application.

22. In light of the above, this Adjudicating Authority **admits** the present application and declares a moratorium under Section 14 with immediate effect. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1)(a), (b), (c), (d) of the IBC, 2016. Thus, the following prohibitions are imposed: -
 - 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 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.



23. The applicant has, in Part – III of the present application, proposed the name of MR. DINESH GOPAL MUNDADA (IBBI/IPA-001/IP-P00286/2017-2018/10530) to act as the IRP in the present matter.

24. Consequently, this adjudicating authority appoints Mr. MR. DINESH GOPAL MUNDADA (IBBI/IPA-001/IP-P00286/2017-2018/10530) as Interim Resolution Professional to conduct the CIR process in this matter. While the consent from the Resolution Professional has been annexed with the present application, the AFA annexed (*PG – 37 of the present application*) with the present application is no longer valid. Therefore, the applicant herein is directed to file the valid AFA within 3 days from pronouncement of the present order.

25. During the CIRP period, the management of the Corporate Debtor shall vest in IRP/RP as per Section 17 of the IBC. The IRP is directed to make a public announcement in terms of Section 13(2) of the IBC immediately within 3 days from the date of this order as clarified by explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. The Petitioner (Operational Creditor) shall deposit a sum of Rs. 2,00,000/- with the IRP to meet the expenses arising out of public notice and inviting claim from the stakeholders. These expenses would be subject to approval of the CoC.



27. Registry is directed to provide a copy of order to the parties and also to the IBBI & RoC (NCT of Delhi and Haryana) to update the status of the Corporate Debtor as undergoing Corporate Insolvency Resolution Process.

28. The petition stands allowed in light of the aforesaid discussion.

29. No order as to costs.

-SD/-
(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

-SD/-
(MAHENDRA KHANDELWAL)
MEMBER (JUDICIAL)