

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

C.P. (I.B.) No. 587/9/NCLT/AHM/2018

In the matter of:

SGV FOILS PRIVATE LIMITED
Having Office at:
17/6, Mathura Road,
Faridabad, Haryana – 121007

..... Petitioner/Operational Creditor(OC)

Versus

JAY POLYPACK PRIVATE LIMITED
Having Office at:
B – 30, Amar Jyot Duplex,
Near Chanakya Puri Cross Road,
New Sama Road, Vadodara,
Gujarat - 390008

..... Respondent/Corporate Debtor(CD)

Order delivered on 27.05.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Harmish K. Shah, Advocate for the Petitioner/Operational Creditor.

None for the Respondent/Corporate Debtor

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor SGV Foils Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for

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initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor Company namely, Jay Polypack Private Limited.

2. The Petitioner Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) – U21000DL2012PTC232743. The registered office of the Petitioner is situated at 17/6, Mathura Road, Faridabad, Haryana-121007. The present petition is filed through Mr. Vikas Aggarwal, being director and authorised signatory of the Petitioner.

3. The Respondent Corporate Debtor, namely Jay Polypack Private Limited was incorporated on 10.12.2011 with CIN: U21014GJ2011PTC068153. The authorised share capital of the company is Rs. 1,00,00,000.00 (Rupees One Crore only) and the paid-up share capital is Rs.96,64,120.00 (Rupees Ninety Six Lakhs Sixty Four Thousand One Hundred Twenty Only). The registered office of the Corporate Debtor Company is situated at: B-30, Amar Jyot Duplex, Near Chanakya Puri Cross Road, New Sama Road, Vadodara Gujarat – 390 008.

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4. The Operational Creditor has submitted an amount claimed to be in default as on 31.07.2018 INR.7,84,735.00 (Rupees Seven Lakhs Eighty Four Thousand Seven Hundred Thirty Five Only) on account of Goods supplied. Whereas, INR.4,26,571.00 (Rupees Four Lakhs Twenty Six Thousand Five Hundred Seventy One Only) is due towards the interest charged upon the late payments @24% Per Annum in terms of express contractual condition present in purchase order & invoices. Hence, the total Operational debt due along with contractual interest charged, for the purpose of this Application culminates to INR.12,11,305.00 (Rupees Twelve Lakhs Eleven Thousand Three Hundred Five Only).

5. It is submitted that the Respondent Company had desired of purchasing of **induction ward** therefore the Respondent Company had approached the Applicant sometime in the year 2015 for the purpose of providing the same. The Respondent Company had issued purchase orders from time to time and induction was duly supplied by Petitioner in furtherance of said purchase orders. The goods supplied by the Petitioner Company were of very high standard and were to the satisfactory of the Respondent and it had never raised any major dispute in respect of the same.

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6. It is submitted that there has been a running account of the Respondent Corporate Debtor in the books of Petitioners. Purchase orders were issued by the Respondent Corporate Debtor from time to time and induction wad was duly supplied by Petitioner in furtherance of said purchase orders. Separate tax invoices were raised by the Petitioner for each delivery. The Respondent has made part payments in respect of said invoices and the first of said invoices as raised by Petitioner against the Corporate Debtor, is dated 11.12.2015 & for INR.1,12,254.00 and last invoice raised by the Petitioner against the supply of Operational goods to Respondent was dated 27.07.2016 for and amount of INR.2,93,817.00.
7. It is submitted that the no payment was received against said outstanding in the month of August to November. The Petitioner requested the Respondent number of times and therefore an amount of INR.2,00,000.00 was received (in 2 tranches of INR.1 Lakh each) in December 2017.
8. It is submitted that the Petitioner was continuously following the Respondent Corporate Debtor telephonically as well as through emails. It is stated that the Petitioner in this regard wrote an email dated

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08.03.2017 demanding the Outstanding Operational debt due from the Corporate Debtor. Thereafter a 2nd reminder email dated 27.04.2017 was sent to the Respondent demanding payment of Outstanding due of INR.8,59,734.00. The aforesaid demand raised vide said emails was never disputed by the Respondent.

9. It is submitted that part payment of INR.50,000 was received **in April 2017** and thereafter another payment of INR.50,000 was received in **June 2017**. The Petitioner submits that after adjusting the above receipts the total outstanding **comes to INR.8,09,734.00**

10. It is submitted that there was a break on payments by the Respondent for some 4 months. And finally on 28.11.2017 there was a meeting held with Mr. Vijay Doraprasad Nimmagadda, the Director of Corporate Debtor, at Proventus Ager India Private Limited, in Vadodara. Director of the Corporate Debtor unequivocally admitted the entire Outstanding liability of INR.8,09,734.00 and proposed to issue post-dated cheques of equivalent amount from one of its sister concern company Proventus Ager India Private Limited.

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11. It is submitted that following cheques were issued by Mr. Vijay Doraprasad Nimmagadda in favour of Petitioner on behalf of Corporate Debtor. The said Director is the Director of both the aforesaid companies belong to him. He is the Director & Banking Signatory in both the said Companies and have all the authority to issue the said post-dated cheques for liquidating of the entire outstanding of the Corporate Debtor.
12. It is submitted that the total outstanding as on said date was INR.8,09,734.00 and that the said Director issued the 5 cheques culminating to extent of INR.8,09,000.00 for liquidation of the entire debt. The details are as under:

Cheques No.	Date	Amount in INR.
188428	28.11.2017	25,000.00
188430	15.04.2018	2,00,000.00
188431	15.06.2018	2,00,000.00
188432	30.08.2018	2,00,000.00
188433	30.10.2018	1,84,000.00
TOTAL		8,09,000.00

13. It is submitted that the last payment of INR.25,000.00 was made on 16.12.2017. It was assured that the above cheques would never bounce and shall be duly honoured at the time of presentation. However, the aforesaid cheques were returned unpaired inspite of the assurance and thus the settlement failed. Thus the

debt fell due back from the date when the goods were supplied to the Respondent and the said invoices were raised. The details of the said invoices are mentioned herein under:

No.	Invoice No.	Invoice Date	Due Date	Outstanding Amount in INR.
1	411	23.06.2016	23.08.2016	1,19,169.00
2	472	06.07.2016	06.09.2016	83,653.00
3	479	08.07.2016	08.09.2016	1,50,653.00
4	535	18.07.2016	18.09.2016	1,37,442.00
5	588	27.07.2016	27.09.2016	2,93,817.00

14. It is submitted that the Petitioner has served Demand Notice through email on 27.03.2017 to Corporate Debtor. It is submitted that on 28.11.2017 the entire liability was admitted by the Director of Respondent and post-dated cheques liquidating the said liability were issued by the said Director.

15. It is submitted that the books of the Petitioner Company show the principal outstanding alongwith interest totalling of INR.12,11,305.00 due and payable by the Respondent Company. The Petitioner has submitted their Bank Statement which shows that no amount towards the outstanding invoices has been received. The CA Bhati Wadhwa & Co. confirms that no payment has been received after 16.12.2017.

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16. It is submitted that thereafter the Petitioner has issued the Demand Notice dated 09.05.2018 as required in Form 3 under the Insolvency and Bankruptcy Code, 2016. The Respondent has replied to the said notice on 15.06.2018.
17. In the facts and circumstances as set out hereinabove, it is clear that Respondent Company is unable to pay the outstanding operational debt which is due and payable arising in the usual and ordinary course of business and has become commercially insolvent. In such circumstances, it is just and equitable and in the interest of the justice that the Corporate Insolvency Resolution Process be initiated against the Respondent company.
18. In view of the above, it is clear that the Corporate-Debtor has defaulted in making payment and the **date of Default is 23.08.2016 to 27.09.2016.**
19. The Petition is filed on 30.08.2018 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for the unpaid Operational **Debt due and defaulted** of INR.12,11,305.00

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20. The case was taken up by this Adjudicating Authority on 30.11.2018; however, none appeared on behalf of the Corporate Debtor. The matter was adjourned to 09.01.2019 with directions to the Registry to serve the notice of date of hearing on the Respondent along with the copy of the order under acknowledgement. The matter was heard on 30.11.2018, 09.01.2019, 14.03.2019, 26.04.2019, 17.07.2019, 04.09.2019, 09.10.2019, 05.11.2019, 03.12.2019, 17.12.2019 & 18.12.2019. In spite of sufficient opportunities none appeared on the behalf of Respondent **in any hearing date.**

21. The matter was finally heard on 18.12.2019. During the arguments, the Learned Counsel for the Operational Creditor has submitted that the Petition may be admitted and an Interim Resolution Professional appointed in accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the petition may be admitted for initiating Corporate Insolvency Resolution Process as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.

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22. Further, the Operational Creditor **has not suggested** any name of an Interim Resolution Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

23. It is observed that –

23.1 The Application has been **filed on 30.08.2018** for **Operational debt due and defaulted amount is INR.12,11,305.00.**

23.2 Invoices are of 23.06.2016, 06.07.2016, 08.07.2016, 18.07.2016 & 27.07.2016.

23.3 **Date of default starts from 23.08.2016 to 27.09.2016;**

23.4 **No pre-existing dispute before the filing of this application is observed.**

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24. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **23, 23.1, 23.2, 23.3 & 23.4** this Adjudicating Authority is **satisfied that,**

- a) Existence of debt is above Rs. **One Lac;**
- b) **Debt is due and defaulted;**
- c) Default has started from on **23.08.2016 to 27.08.2016;**

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- d) Petition has been filed **within the limitation period as the date of default is 23.08.2016** and the petition has been filed on **30.08.2018 i.e. within three years of the default.**
- e) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor, and the application filed by the **Petitioner under Section 9 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Therefore, the **present IB petition is admitted on 27.05.2020 with the following Directions:**

25. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium for prohibiting all of the following, namely: -**

- I.(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 (54 of 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 supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- III. The provisions of sub-section (1) shall not apply to (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

26. The Petitioner/Operational Creditor **has not suggested** the name of any Interim Resolution Professional in the present Petition. Though it is **not mandatory** on the part of the Applicant **to propose** and Interim Resolution Professional when the application is filed under Section 9 of the IBC, 2016, but in that case, the adjudicating Authority shall appoint an Insolvency Professional from the panel prepared by the IBBI and meant for this Bench on admission of the application. But if it is observed that when an Operational Creditor does not suggest the name of any Interim Resolution

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Professional and the Interim Resolution Professional is appointed by the Adjudicating Authority from the panel of Insolvency and Bankruptcy Board of India available for NCLT, Ahmedabad, the dispute is arising for payment of Interim Resolution Professional fees, paper publication costs etc., in the first month of the Corporate Insolvency Resolution Process. This is more, when a Financial Creditor or other Operational Creditor is not there, CoC is not formed and the Operational Creditor filed the application is not able to bear the CIRP expenses.

27. Hence, this **Adjudicating Authority hereby appoints Shri Pradeep Kumar Kabra, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P01104/2017-2018/11790, Email ID - ippradeepkabra@gmail.com, Address: C/905, Ofira Building V.I.P Road, Bharthana, VesuSurat 395007, Gujarat, as an Interim Resolution Professional.**
- The IRP is advised to file declaration disclosure statement within two days with this Registry.**

The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating

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Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code. **The Interim Resolution Professional** shall perform all his functions contemplated, inter-alia, in Sections **15, 17, 18, 20 & 21 of the Code** and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all **the personnels connected with the Corporate Debtor, its promoters or any other persons associated with the management** of the Corporate Debtor are under legal obligation under **Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional** as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. **In case there is any violation**, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. **The Interim Resolution Professional shall be under duty to protect and preserve** the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by **Section 20 of the Code and perform all his function strictly in accordance with the provisions of the Code, Rules and Regulations.**

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28. An authentic copy of this order to be communicated by this Registry to the Operational Creditor, Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this CP(IB) No. 587/9/NCLT/AHM/2018 is admitted on 27.05.2020 with the above Observations and Directions.



**(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)**



**(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (J)**