

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**Company Petition No. IB-284/ND/2019**

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

**IN THE MATTER OF:**

**ARIHANT TECHNO PACK PRIVATE LIMITED**

**...Applicant/Operational Creditor**

**VERSUS**

**PRITISH GREENS AGRO PRIVATE LIMITED**

**...Respondent/ Corporate Debtor**

**Pronounced on: 03.05.2021**

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**MS. SUMITA PURKAYASTHA**

**HON'BLE MEMBER (Technical)**

**MEMO OF PARTIES**

**ARIHANT TECHNO PACK PRIVATE LIMITED**

**Registered office at** DSM-216, Second Floor

DLF Tower,15, Shivaji Marg, Najafgarh Road

New Delhi-110015

**...Applicant/Operational Creditor**

**VERSUS**

**PRITISH GREENS AGRO PRIVATE LIMITED**

**Registered office at** H No 3/92, Flat No 102,

Upper Ground Floor, Mahaveer Enclave

Near Kali Mandir Dwarka

Delhi-110045

**...Respondent/ Corporate Debtor**

**For the Applicant:** Mr. Atul Kumar, Adv.

**For the Respondent:---**

## **ORDER**

**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Arihant Techno Pack Private Limited through its account manager, Mr Girish Kumar who has been duly authorized vide board resolution dated 22.10.2018 (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against Pritish Greens Agro Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a private limited company incorporated under the provisions of Companies Act, 1956 on 09.03.2009, having CIN U74900DL2009PTC188317, inter-alia, involved in the business of manufacturing and trading of packaging materials. The applicant is having its registered office at DSM-216, Second Floor, DLF Tower, 15, Shivaji Marg, Najafgarh Road, New Delhi-110015.
3. The Corporate Debtor is a private limited company incorporated under the provisions of Companies Act, 1956 on 09.05.2012, having CIN U15400DL2012PTC235588, inter-alia, involved in the business of manufacturer of food products. The applicant is having its registered office at H No 3/92, Flat No 102, Upper Ground Floor, Mahaveer Enclave, Near Kali Mandir Dwarka, Delhi-110045.
4. The Applicant has stated that the corporate debtor placed an order in July 2016 for packaging films to be used for packing for tomato ketchup and snack sauce. The

applicant delivered the said material to the corporate debtor and had raised invoices from 20.07.2016 to 20.02.2017, total amounting to Rs 7,82,142/-

5. The applicant submits that the corporate debtor did not make the payment of the said invoices even after several reminders through emails dated 03.10.2016 & 30.12.2016. The applicant submits that the corporate debtor issued three cheques dated 20.09.2016 for Rs 3,42,765/-, dated 14.02.2017 for Rs 1,60,000/- and dated 17.02.2017 for Rs 1,60,015/- against total outstanding liability of Rs 7,82,142/-. All cheques were dishonored due to insufficient funds. The applicant submits that a case under section 138 of Negotiable Instruments Act had been filed in which the corporate debtor had not appeared till then.
6. The Applicant issued a demand notice dated 15.10.2018 in Form 3 under the provisions of section 8 of I&B Code, 2016 (Under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 calling upon the corporate debtor to pay the total outstanding amount of Rs. 7,82,142/-. The said notice was sent by Speed Post at the registered address of the corporate debtor as reflected in the master data, which is duly delivered to the Corporate Debtor. The tracking report is filed, which mentions 'Item Delivered' at the registered address as per master data. The Corporate Debtor has neither raised any dispute to the aforesaid notice nor made any payment towards the outstanding dues.
7. The Applicant filed present Application under section 9 of IBC, 2016 and served the copy of this application through email at the registered email address as reflected on the MCA website, which was duly delivered to the corporate debtor. The copy of the application was also duly served through speed post at its

registered address as reflected on the MCA website, which returned with a remark 'Addressee left without instructions'. Considering that the notice was sent at the registered address of the company as reflected in the MCA website and the remark 'Addressee left without instructions' shall not be considered as not served to defeat the very purpose of service because the same can be manipulated by the corporate debtor, as observed by the Hon'ble Apex Court in case of "*Madan And Co. V. Wazir Jaivir Chand*" 1989 SCC 264. The extracts from the said order is reproduced herein:

*"We are of opinion that the conclusion arrived at by the courts below is correct and should be upheld. It is true that the proviso to (i) of [section 11\(1\)](#) and the proviso to [section 12\(3\)](#) are intended for the protection of the tenant. Nevertheless it will be easy to see that too strict and literal a compliance of their language would be impractical and unworkable. The proviso insists that before any amount of rent can be said to be in arrears, a notice has to be served through posts. All that a landlord can do to comply with this provision is to post a prepaid registered letter (acknowledgement due or otherwise) containing the tenant's correct address. Once he does this and the letter is delivered to the post office, he has no control over it. It is then presumed to have been delivered to the addressee under [s. 27](#) of the General Clauses Act. Under the rules of the post office, the letter is to be delivered to the addressee or a person authorised by him. Such a person may either accept the letter or decline to accept it. In either case, there is no difficulty, for the acceptance or refusal can be treated as a service on, and receipt by, the addressee.*

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*“He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant.”*

Hence in the present case, since the section 8 notice was duly delivered through speed post at the same address with the report item delivered and thereafter the service of section 9 is returned with a remark ‘Addressee left without instructions.’ Hence it can be inferred that the service of section 9 is complete. Moreover, the email service is complete.

8. The Corporate Debtor has neither filed any reply nor appeared before the bench. The corporate debtor was proceeded ex-parte on 24.01.2020.
9. As per Form V, Part IV, the Corporate Debtor is liable to pay an outstanding sum of Rs. 7,82,142/- (Rupee Seven Lacs Eighty Two Thousand One Hundred And Forty Two Only) along with further interest @18% per annum with effect from 10.08.2016 of which the default has occurred on 10.08.2016.
10. The Applicant has filed an affidavit under section 9(3)(b) dated 11.01.2019 affirming that no notice of dispute has been given by the Corporate debtor relating to dispute of the unpaid operational debt.
11. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
12. The date of default as per Form V occurred on 10.08.2016, and the present application was filed on 01.02.2019, hence the debt is not time barred and the application is filed within the period of limitation.
13. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, which remain uncontroverted by the Corporate Debtor, establishing the default in payment of the operational debt beyond doubt. The present application is admitted, in terms of section 9 (5) of IBC, 2016.
14. Though the Applicant had proposed the name of IRP, the IRP had withdrawn its consent therefore the applicant requested the bench to appoint the IRP. Therefore, we appoint Mr. Sunder Khatri, with registration number IBBI/IPA-002/IP-N00437/2017-18/11191 (email – [sunder\\_khatri@yahoo.com](mailto:sunder_khatri@yahoo.com)) as the Interim

Resolution Professional subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate debtor and specific consent should be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

15. We direct the Operational Creditors to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Sunder Khatri 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.
16. 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.
17. 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 be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

**Sd/-**  
**(MS. SUMITA PURKAYASTHA)**  
**MEMBER (T)**

**Sd/-**  
**(DR. DEEPTI MUKESH)**  
**MEMBER (J)**

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(T), Smt. Sumita Purkayastha is not holding court today.

**(Asim Kumar Pal)**  
**COURT OFFICER**