IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-623/ND/2020

(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:

S.K. ENTERPRISES

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

TRIKALP LAMINATES PRIVATE LIMITED

...RESPONDENT/ CORPORATE DEBTOR

ORDER DELIVERED ON: 22.06.2021

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (JUDICIAL)

MS. SUMITA PURKAYASTHA

HON'BLE MEMBER (TECHNICAL)

For the Applicant : Mr. Amarjeet Singh Adv,

For the Respondent : None

MEMO OF PARTIES

S.K. ENTERPRISES

Registered office at:

Plot No. 253 Industrial Area Phase-I

Chandigarh 160002

...APPLICANT/OPERATIONAL CREDITOR

VERSUS

TRIKALP LAMINATES PRIVATE LIMITED

Registered office at:

H.No. 22 1ST Floor

Block F Pocket 22 Sector-3 Rohini

Delhi 110085

...RESPONDENT/ CORPORATE DEBTOR

ORDER

AS PER SUMITA PURKAYASTHA (MEMBER TECHNICAL)

1. The present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'code') read with Rules 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), 2016 (for brevity 'the Rules') by S.K. ENTERPRISES (for brevity 'Applicant') through Mr. Saurabh Kalra (Partner of the firm) with a

prayer to initiate the Corporate Insolvency process against Trikalp Laminates Private Limited (for brevity 'Corporate Debtor').

2. The Applicant S.K. Enterprises is a partnership firm with identification number 04ANSFS7316J1ZQ. The Applicant is engaged in the service of supplying various kinds of paper & board as well as other allied goods having its registered office at Plot No. 253 Industrial Area Phase-I Chandigarh 160002.

3. The Respondent Trikalp Laminates Private Limited is a company incorporated on 10.02.2017 under the Companies Act, 1956 having its registered office at H.No. 22 1st floor block F pocket 22 sector 3, Rohini, Delhi 110085 and CIN U20219DL2017PTC312696 and is engaged in Manufacture of products of wood, cork, straw and plaiting materials.

4. As per the averments made in the application, the Corporate Debtor had purchased goods from operational creditor by issuing the telephonically instruction to Operational Creditor & the same was supplied, further the said goods were received and accepted by the Corporate Debtor and there were no disputes at that time relating to the Quantity and Quality of goods but thereafter the corporate debtor had failed to make the payment outstanding dues Rs.22,67,134/- with respect to the outstanding invoices from 21st May 2018 to 21st January 2019 along with interest @36% per annum as per the invoice i.e. Rs 8,65,686/- .

5. The Applicant was constrained to issue demand notice dated 17.12.2019 under Section 8 of the Code read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, calling upon the Corporate Debtor to pay an amount of Rs.22,67,134/- with respect to the outstanding invoices from 21st May 2018 to 21st January 2019 along with interest @36% per annum as per the invoice i.e. Rs 8,65,686/- totaling to **Rs. 31,32,820/-** which is claimed by the Applicant from the Corporate Debtor. The notice was served upon the Corporate Debtor vide speed post and registered post as on 17.12.2019, at the Registered address reflected on the MCA website. The tracking Report reflects "ITEM DELIVERY CONFIRMED".

6. The Corporate Debtor has not issued any reply/letter against the issue of the Demand Notice dated 17.12.2019. The Operational Creditor has complied with the mandatory provisions of Section 9(3) (b) and (c) of the Code.

7. The Applicant has filed this application on 24.02.2020 as an Operational Creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate their claim of **Rs. 31,32,820/-** towards unpaid invoices for the goods supplied by the Operational Creditor.

8. Notice with respect to the application was issued to the Corporate Debtor vide order dated 03.03.2020 of the Adjudicating Authority. Further, it has been observed that neither a reply to the Demand Notice nor to Section 9 application was filed by the Corporate Debtor. The Corporate Debtor has never appeared before the Adjudicating Authority hence vide order dated 12.01.2021 the Corporate Debtor was proceeded ex-parte.

"Learned Counsel for the Applicant states that service affidavit has been filed and the Corporate Debtor is served through e-mail at the registered address mentioned in the MCA Master Data. The copy of e-mail is annexed to the service affidavit. The matter had appeared on 15.12.2020, when Corporate Debtor did not appear. Today also Corporate Debtor does not appear. Hence, Corporate Debtor is proceeded to Ex-Parte. Let copy of this order be served to the Corporate Debtor through all modes by the Learned Counsel for the Applicant. List for hearing on 10.02.2021"

9. The date of default is 21.01.2019 which is the date of the last invoice issued which was unpaid, and the present application is filed on 24.02.2020. Hence the application is not time barred and filed within the period of limitation.

10. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

11. Having considered the facts and circumstances and the material available on record, the Application filed by the Operational Creditor is complete in all respect. This authority is satisfied that an amount of Rs. 31,32,820/- towards unpaid invoices for the goods supplied by the Operational Creditor, is due and payable by the Corporate Debtor to the Operational Creditor, which it failed to pay. Therefore, the Application is ***admitted*** and the commencement of the CIRP is ordered.

12. Since the no name has been proposed hence, the Adjudicating Authority hereby appoints the interim resolution professional ("IRP"), Ms. Rukhsana Choudhary, IBBI/IPA-002/IP-P00761/2019-2019/12374 mail id: rukhsana@gmail.com Phone No. 9810437527. She shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.

13. A moratorium in terms of Section 14 of the Code is imposed forthwith in following terms:

"(a) the institution of suits or continuation of pending suits or proceedings against the Respondent 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 Respondent 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 Respondent in respect of its property including any action under the Securitization 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 Respondent.

(2) The supply of essential goods or services to the Respondent as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process."

14. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.

15. A copy of the order shall be communicated to the Applicant and the Corporate Debtor by the Registry. The said order shall be communicated to the IRP above named and intimate of the said appointment by the Registry. Applicant is also directed to provide a

copy of the complete paper book with copy of this order to the IRP. In addition, a copy of said order shall also be forwarded to IBBI for its records and to ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

16. The Application is allowed and disposed off in terms of above order.

Sd/-	Sd/-
Sumita Purkayastha	**Dr. Deepti Mukesh**
Member (T)	**Member (J)**