



IN THE NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
COURT - IV

ITEM No.105
IB/1105/ND/2020

IN THE MATTER OF:

Nirmal Trading Co. ...

Applicant

Versus

Printland Digital (India) Pvt Ltd. ...

Respondent

Order under Section 9 of IBC, 2016.

Order pronounced on 30.10.2023

CORAM:

MR. MANNI SANKARIAH SHANMUGA SUNDARAM,
HON'BLE MEMBER (JUDICIAL)

DR. BINOD KUMAR SINHA,
HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

Order pronounced in open Court vide separate sheets.

IB/1105/ND/2020 stands admitted.

Sd/-

DR. BINOD KUMAR SINHA
MEMBER (TECHNICAL)

Sd/-

MANNI SANKARIAH SHANMUGA SUNDARAM
MEMBER (JUDICIAL)



**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT-IV**

Company Petition No.(IB)-1105(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:

M/s. Nirmal Trading Company

.... Applicant/ Operational Creditor

Vs.

M/s. Printland Digital (India) Private Limited

.... Corporate Debtor

CORAM:

**SH. MANNI SANKARIAH SHANMUGA SUNDARAM, HON'BLE MEMBER
(JUDICIAL)**

DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

Date of Order: 30.10.2023

ORDER

PER: DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)

The instant application is filed by M/s. Nirmal Trading Company, through its proprietor Smt. Nirmal Kumari Kapoor (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process in respect of M/s. Printland Digital (India) Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate



Debtor') for defaulting the payment of Rs.1,67,51,847.12/- (Rupees One Crore Sixty Seven Lacs Fifty One Thousand Eight Hundred Forty Seven and One Two paise Only) which includes principal amount of Rs.1,29,98,847.12/- and interest amount @18% p.a. amounting Rs.37,53,691.50/- up to 31.12.2019 .

2. The Respondent Company M/s. Printland Digital (India) Private Limited having CIN: U22200DL2012PTC233592 incorporated under the provisions of the Companies Act, 1956 is having its registered office situated at G-9, Siddhartha Building, 96, Nehru Place, New Delhi - 110019. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having 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 sub-section (1) of Section 60 of the Code.

AVERMENTS BY THE APPLICANT

3. Succinctly stated facts of the present case as averred by the applicant are that the Corporate Debtor is engaged in the digital printing business related online photo printing, customized and personalize printing services. The Corporate Debtor after settling certain terms and conditions with respect to the rates, specification and quality of goods had placed purchase orders with the Applicant. The Applicant had continuously supplied the ordered materials against the purchase orders till 22.02.2019 and no issue regarding the quality, deficiency in materials were raised by the Corporate Debtor. Also, the last payment of Rs.4,07,512/- was made by the Corporate Debtor for the supply of material to the Corporate Debtor on 25.03.2019 and as many as 70 invoices issued between 31.08.2017 to 22.02.2019 stood unpaid.



4. The Applicant submitted that in accordance with the terms and conditions as stated in the invoices issued by the Applicant, '30 days' credit period was allowed to the Corporate Debtor to clear the payment of the outstanding invoices and further an interest rate of 18% p.a. on delayed period after the due date of payment was agreed between the applicant and the Corporate Debtor.
5. The Applicant had issued the Statutory Demand Notice dated 07.01.2020 under Section 8(1) of the Code, 2016 demanding the outstanding amount of Rs.1,67,51,847.12/- inclusive of an interest @ 18% p.a. calculated up to 31/12/2019. The Corporate Debtor on receipt of the Demand Notice dated 07.01.2020 had vide its reply dated 20.01.2020 claimed that the Statutory Demand Notice was highly exaggerated and false in order to escape its liability. Accordingly, the applicant prays for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor.

REPLY BY THE CORPORATE DEBTOR

6. The Corporate Debtor had filed its reply and submitted that the applicant had filed the present application under Section 9 of the Code, 2016 based on the forged documents created by the Applicant in collusion with one Mr. Kapil Kapoor and some employees/ex-employee(s) ('accused persons') of the Corporate Debtor. The Corporate Debtor submitted that the Applicant along with the accused persons replaced the old invoices with the new forged invoices containing incorrect and exaggerated entries i.e., entries for the goods/products which were never supplied to the Corporate Debtor.



7. The Corporate Debtor further submitted that there are numerous unlawful transactions done by the applicant and the accused persons in furtherance of their conspiracy, however, some of such unlawful transactions are explained below:-

- a) When the Operational Creditor sent its invoice no.1402 date 26.12.2015 the amount mentioned therein was INR 1,57,180/- (which was a sum total of three entries viz. INR 49,262/- INR 58656/- INR 49,262/-). The particulars of this invoice delivered at the office of the Debtor were duly recorded in the Inventory Register being maintained by the Corporate Debtor. However, later the Operational Creditor and other accused persons surreptitiously replaced this invoice with a new forged invoice bearing the same number and date but an exaggerated amount of INR 2,23,245/- was mentioned. Thus, like this numerous forged invoices have been raised and based upon such forged invoices a forged running ledger has been prepared by the Operational Creditor.
- b) The value of order no. 11025 was only INR 89,775/-, however against this small order a paper transaction of INR 2,39,386/- has been done by the Applicant in collusion with the Accused Persons which includes the previous employees of the Corporate Debtor. This goes to show the forged nature of the documents submitted by the Applicant with the petition before this Hon'ble Adjudicating Authority.

8. The Corporate Debtor submitted that the aforementioned instances are some of the numerous unlawful transactions done by the Applicant and the Corporate Debtor is in the process of digging out more details and documents to ascertain the total wrongful loss caused to the Corporate Debtor by Applicant. Also, the Corporate Debtor had filed a criminal complaint dated 15.09.2021 with Okhla Police Station, Delhi.



9. The Corporate Debtor further submitted that firstly, the Applicant had issued a notice dated 18.03.2019 (received on around 02.04.2019) u/s 8 IBC ('First Demand Notice') claiming that an amount of INR 1,35,44,526/- alleging that a certain set of invoices (bearing no.s 1906, 1931, 1947, 1952, 1955, 1958, 1962, 1964, 1965, 1967, 1970, 1972, 1974, 4, 5, 9, 11, 12, 17, 20, 25, 28, 30, 31, 34, 41, 50, 63, 66, 69, 75, 76, 81, 86, 88, 90, 96, 105, 114, 115, 133, 142, 160, 161, 177, 181, 185, 193, 194, 195, 196, 206, 210) were outstanding. The Corporate Debtor was in the process of verifying its audited balance sheet to ascertain the facts, however, soon thereafter, the Applicant issued another notice dated 11.04.2019 u/s 8 IBC ('Second Demand Notice') alleging that a certain set of invoices were outstanding. The Corporate Debtor disputed the alleged outstanding amount and gave a reply dated 24.04.2019 along with its annexure. In support of the dispute raised the Debtor also provided the audited balance sheet and the certificate from a practicing Company Secretary.
10. Furthermore, the applicant after a deafening silence of around 9 months, had issued another demand notice dated 07.01.2020 (Third Demand Notice) received on 10.01.2020 alleging that some other set of invoices, other than the ones mentioned in the First & Second Notice) are pending and claimed an amount of INR 1.67,51,847.12/- from the Respondent. The Corporate Debtor had sent a reply dated 20.01.2020, specifying that there is already a pre-existing dispute which was specifically mentioned in the reply dated 24.04.2019 and further in the Audited Balance Sheet for the year ending 31.03.2019, an amount of Rs.14,09,899/- was only due.



REJOINDER BY THE APPLICANT

11. The Applicant had submitted its rejoinder wherein the submissions of the Corporate Debtor are rebutted and it was submitted that the Corporate Debtor had brought up the concocted narrative of some invoices to escape its liability. The Applicant submitted that the Corporate Debtor had admitted its liability and acknowledges the outstanding debt towards the Applicant. Also, it was submitted that the statutory auditor of the Corporate Debtor had issued one letter dated 31.08.2017, wherein a total amount of Rs.1,49,71,565/- is shown as due and payable by the Corporate Debtor towards the Applicant.

ANALYSIS AND FINDING

12. We have heard the Ld. Counsels for the parties and perused the averments made in the application, reply and written submissions filed by the parties. The relevant documents annexed with the respective submissions have been perused.

13. The short point for our consideration is whether payment of operational debt above the threshold limit to the Operational Creditor/Respondent No.1 had become due and payable and whether pre-existing dispute is discernible or not. The Hon'ble Supreme Court judgement in **Mobilox Innovations Private Limited Vs Kirusa Software Private Limited [Civil Appeal No. 9405 of 2017 para 34]**, have categorically laid down what the Adjudicating Authority has to examine in an Application under Section 9, which is as follows:-

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)



- (ii) *Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and*
- (iii) *Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?*

If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

14. The contention of the Learned Counsel for the Corporate Debtor that the present invoices claimed in default are forged in collusion with the Applicant and Mr. Kapil Kapoor and some employees/ex-employee(s) ('accused persons') of the Corporate Debtor, in the absence of any communication filed evidencing any 'Pre-Existing Dispute', prior to the issuance of Statutory Demand Notice under Section 8(1) of the Code, 2016 cannot fall within the definition of dispute relevant to the subject matter of the instant case.
15. It is also important to mention that any investigation into the issues of fabrication/falsification of documents, invalid debit notes, directors having a conflict of interest after leaving the Corporate Debtor Company etc., as now raised by the Respondent/Corporate Debtor. It cannot be forgotten that the Proceedings in the Insolvency & Bankruptcy Code, 2016 are summary in Nature, and it is not adversarial in Character. This Adjudicating Authority is not a Civil Court, to decide about the conspiracy between Applicant and the employees of the Corporate Debtor or to delve into the exercise recalculating the entries, specifically when the invoices on record and relied by the Applicant bears the stamp of the Corporate



Debtor by way of an acknowledgement and also supported by the e-way bill(s). Accordingly, the contention regarding false and fabricated invoices is unsustainable.

16. Further from the records, we observe that applicant had issued first Demand Notice dated 18.03.2019 demanding an outstanding principal amount of Rs.1,35,44,526/- along with interest, Second Demand Notice dated 11.04.2019 demanding an outstanding principal amount of Rs.1,35,44,526/- plus interest of Rs.53,30,829/- and Third Demand Notice dated 07.01.2020 demanding an outstanding amount of Rs. Rs.1,29,98,847.12/- and interest amount @18% p.a. amounting Rs.37,53,691.50/- for the invoices related to the period 31.08.2017 to 22.02.2019
17. The Corporate Debtor had sent a reply dated 24.04.2019 to the First Demand Notice dated 18.03.2019 and Second Demand Notice dated 11.04.2019 and other Reply dated 07.01.2020 to the Third Demand Notice dated 07.01.2020, wherein Corporate Debtor had raised the dispute regarding the existence of Debt being claimed on account of Forged Invoices. Further, the Corporate Debtor had contended that the Corporate Debtor's reply dated 24.04.2019 to the First Demand Notice dated 18.03.2019 and Second Demand Notice dated 11.04.2019 squarely falls as a pre-existing dispute.
18. The Hon'ble NCLAT in case **Naresh Sevantilal Shah v. Malharshanti Enterprises [Company Appeal (AT)(Ins.)No. 415/2020; judgement dated 19.01.2021]** while adjudicating the issue, "Whether there was a pre-existing dispute between the parties and whether the pre-existence of dispute shall be seen from the date of the first demand notice dated 2nd



December 2017 or the second demand notice dated 23rd August, 2018” had held as follow:-

“In the light of the above observations and the records placed before us. We are of the view that there was no dispute existing prior to the first demand notice and only disputes raised prior to the first demand notice are relevant to determine its pre-existence and disputes raised thereafter are totally irrelevant for the same.”

19. In view of the aforesaid judgement referred, we are of the considered view that the cut off date for considering the existence of pre-existing dispute will be the date of issue of the First Demand Notice i.e., 18.03.2019. Accordingly, the reliance of the Corporate Debtor on its reply dated 24.04.2019 to the First Demand Notice dated 18.03.2019 and Second Demand Notice dated 11.04.2019 and further email correspondence(s) from 03.09.2021 to 13.09.2021 between the parties to prove the existence of pre-existing dispute cannot be accepted.
20. It is a settled proposition that under the Insolvency & Bankruptcy Code, 2016, the aspect of existence of Default, takes a prime seat, and the reason supposed to be projected by the concerned Party viz., forgery and fabrication of the invoices is of no avail unless supported by substantial evidence. The Hon'ble NCLT in case **Mr. Joseph Jayananda v. M/s. Navalmar (UK) Ltd & Others [Company Appeal (AT) (Ins.) No. 718/2020 ; 07.04.2021; para 8]** observed as follows :-

“8. Given the above discussion, we find that the Corporate Debtor owes a debt of more than Rupees One Lac, i.e. above the threshold limit, and it committed default in discharging the same. It also appears that there was no pre-existing dispute. The Corporate Debtor's main contention is that the amounts paid by the Operational Creditor and its financial statements do not match. It is not for the Adjudicating Authority to ascertain, investigate, or fix the exact amount of liability at the admission stage. After the admission of the petition, it is the duty of the



Resolution Professional to collate the claims and ascertain the liability.”

21. In the instant case, going by the aforesaid test of the ‘existence of dispute’ it is clear that the Appellant has not raised any plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. It is pertinent to mention that Corporate Debtor in its Reply to the present Application, apart from raising a bald denial has not filed any substantive material in support of its contentions. On the other hand, the Applicant has supported its case with reference to stamping of the invoices by the Corporate Debtor certifying the delivery as well as E-way bills for the same invoices. E –Way Bills are generated on E-Way Bill Portal of the GST Network for movement of goods from the supplier to the recipient and contains the details of supplier, recipient and the transporter including the Registration No. of the Vehicle. Under GST, Rules, the transporter is required to carry e-way bill when moving goods from one place to another for delivery. The E-Way Bill are to be generated mandatorily in respect of any invoice whose value exceeds Rs.50,000/-. The documents required for generation of e-way bill are :
1. Invoice/bill of supply/challan related to consignment of goods.
 2. Transporter’s ID and vehicle number
22. The E-way Bill is a unique document and is to be generated against single invoice. No E-way Bill can be generated for more than one invoice. The Corporate Debtor has disputed the authenticity of some of the invoices included in the instant application, however, they have not raised any dispute regarding the E-way Bills, which the applicant has submitted in support of its claim of debt and default.



23. As regards, instances of mismatch in the invoices and delivery challan etc., as raised by the Corporate Debtor in its reply dated 16.09.2021, it is observed that these invoices related to certain invoices of the year 2016, whereas the present application is in respect of non-payment of invoices generated during the years 2017, 2018 & 2019 only. Therefore, this contention cannot be sustained.
24. Thus, having regard to the conspectus of facts of the present case and the judgements cited (supra), this Adjudicating Authority is of the considered view that the corporate debtor is in default of payment of the outstanding operational debt owed to the applicant and the mandatory requirements as prescribed under Section 9(5)(i) of the Code, 2016 are satisfied. Therefore, the present company application **(C.P. No. (IB)-1105/(ND)/2020) stands admitted and the CIRP is hereby commenced against M/s. Printland Digital (India) Private Limited.**
25. The applicant in Part -III of the application has proposed the name of Mr., Mr. Ram Niwas Jalan having IBBI Reg no. IBBI/IPA-001/IP-P01404/2018-2019/12184 as the IRP. This Adjudicating Authority, on perusal of the IBBI Database, find that the proposed IRP Mr., Mr. Ram Niwas Jalan having IBBI Reg no. IBBI/IPA-001/IP-P01404/2018-2019/12184 is not holding a valid Authorisation for Assignment ('AFA'). Accordingly, this bench appoints Mr. Rajeev Dhingra having registration number IBBI/IPA-001/IP-01946/2019-2020/12970 and email id - dhingra_fca@yahoo.com as the Interim Resolution Professional of the corporate debtor from the Panel of Insolvency Professionals for the period July 1 – December 31, 2023 as forwarded by IBBI vide letter no. IP-12011/1/2020-IBBI dated 04.07.2023. The appointed IRP is directed to submit his consent in Form-2, valid AFA and disclosure about non-



initiation of any disciplinary proceedings against him, within five (5) days of pronouncement of this order.

26. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rajeev Dhingra 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.
27. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. 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 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 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 corporate debtor.
(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration,



quota, concessions, clearances or a similar grant or right during the moratorium period.

28. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government and the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

29. The Interim Resolution Professional shall perform all his functions as contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and carry out the 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 personnel connected with the Corporate Debtor, its promoters or any other person 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'.

30. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing a appropriate orders. 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 functions strictly in accordance with the provisions of the Code, Rules and Regulations.

31. 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 is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Accordingly, the instant application filed under Section 9 of the Code, 2016 **bearing C.P.(IB)/1105/2020 stands admitted.**

Sd/-

**(DR.BINOD KUMAR SINHA)
MEMBER (T)**

Sd/-

**(MANNI SANKARIAH SHANMUGA SUNDARAM)
MEMBER (J)**