IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.405
C.P.(IB)/165(AHM)2024

Proceedings under Section 9 IBC

IN THE MATTER OF:

S.N Global Minerals LLP ....**Applicant**
V/s
Aksa Paper Mills Pvt. Ltd ....**Respondent**

Order delivered on: 29/08/2024

Coram:
Mr. Shammi Khan, Hon'ble Member(J)
Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant	:	Mr. Ravi Pahwa, Adv.
For the Respondent	:	Mr. Atul Sharma, Adv.

ORDER
(Hybrid Mode)

Today, this case is listed for pronouncement of the order.

When the case was called for pronouncement, Ld. Counsel for the Respondent submitted that the settlement agreement has been arrived between the Respondent and the Applicant. However, Ld. Counsel for the Applicant sought indulgence to verify the same. Upon which, this Tribunal asked the Applicant to file a pursis if the settlement has been arrived for withdrawal of this petition and matter was deferred for second round. .

When the matter was again taken up in the second round, Ld. Counsel for the Respondent submits that he has uploaded the copy of the settlement through e-mode today, which is not reflecting on the DMS portal in the present case.

Further, Ld. Counsel for the Applicant submits that this order may be pronounced as the Applicant is not agreeable for settlement for withdrawal of this case.

Since, no pursis has been filed by the Applicant for withdrawal of this case for settlement. Therefore, we hereby pronounce the order in open court, vide separate sheet.

-sd-
SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-
SHAMMI KHAN
MEMBER (JUDICIAL)

SP

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
COURT-I, AHMEDABAD BENCH

CP (IB) No.165/AHM/2024

(An application 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. S.N. Global Minerals LLP
(ID No. ABB-9801)
Through its Partner
Having address at 501, 5th Floor,
Rajhans Montessa, Near Le Meridian Restaurant,
Dumas Road, Choryasi, Surat, Gujarat-395007.

...Applicant/Operational Creditor

VERSUS

M/s. Aksa Paper Mills Private Limited
(CIN: U21098GJ2017PTC098431)
Having Registered Office at
Survey No. 334/1, Plot No.315/6,
Morai Industrial Park, Village Moral,
N.H. No.48 Via Vapi, Vapi,
Gujarat, India-396191.

...Respondent/Corporate Debtor

Order Pronounced On: 29.08.2024

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)

APPEARANCE:

For the Applicant/OC : Mr. Ravi Pahwa, Advocate.

For the Respondent/CD : Mr. Atul Sharma, Advocate.

ORDER

1. The present application is filed on 02.05.2024 though e-mode by the Applicant- **M/s S.N. Global Minerals LLP** (hereinafter referred to as **'Operational Creditor'**) against the Respondent- **M/s Aksa Paper Mills Private Limited** (hereinafter referred to as **'Corporate Debtor'**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"IBC, 2016"**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **"IB (AAA) Rules, 2016"**) for initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as **"IRP"**) and declare the moratorium for having defaulted in payment of the operational debt of **Rs.2,93,23,806/-** including interest. The date of default as stated to be 29.01.2024 i.e. due date of the last invoice.

2. A perusal of Part-I of the Form-5 reveals that the Operational Creditor is a Limited Liability partnership firm formed and registered under The Limited Liability Partnership Act, 2008, having ID No. ABB-9801. This application is filed through its Partner by one **Mr. Vishal Navinchandra Suratwala** who has been authorised by the partners of the Operational Creditor though Authority Letter dated 30.04.2024 which is annexed at **Annexure-B.**

3. Perusal of Part-II of the Form-5 reveals that the Corporate Debtor is one M/s Aksa Paper Mills Private Limited, having CIN No. U21098GJ2017PTC098431. The Corporate Debtor was incorporated on 26.07.2017 under the provisions of Companies, Act, 2013, having registered office at Survey No. 334/1, Plot No.315/6, Morai Industrial Park, Village Moral, N.H. No.48 Via Vapi, Vapi, Gujarat–Pin 396191.

4. Perusal of Part-III of the Form-5 reveals that the Operational Creditor has named **Mr. Sunil Kumar Kabra**, having Registration No. IBBI/IPA-001/1P-P01011/2017-2018/11662, having address: Third Floor, Reegus Business Centre, New Citylight Road, Bharthan, Vesu, Surat, Gujarat, 395007 (e-mail: jlnusco@ mail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional **(IRP)**.

5. Perusal of Part-IV of the Form-5 reveals that total operational debt as claimed by the Operational Creditor is Rs.2,93,23,806/- consisting of Rs.2,69,38,653/- being principle and amount of Rs.20,91,027/- as interest @ 2.00% per month up-to 27.02.2024.

6. The Operational Creditor has placed the facts though this Petition in the following manner:-

(i) The Operational Creditor is a Limited Liability partnership firm formed and registered under The Limited Liability Partnership Act, 2008 having its principal place of business at Office No - 501, Rajhans Montesa, Dumas Road, Magdalla Surat, Gujarat, India 395007 engaged in the business of wholesale trade of coal, except of motor vehicles and motorcycles.

(ii) The Corporate Debtor is a private limited company engaged in the business of paper manufacturing who availed services of Operational Creditor for the supply of imported coal by placing 4 Purchase Orders dated 27.05.2023, 13.06.2023, 13.09.2023, 07.10.2023 on

Operational Creditor which are annexed with the Petition as **Annexure-G Colly.**

(iii) The Operational Creditor supplied proper quality of goods to the Corporate Debtor as per its requirement at its location within agreed time as evident from the Delivery Challans, Bilty/LR Receipts. After checking the quality of goods, the Corporate Debtor accepted the goods without any objection and consumed the same.

(iv) The Operational Creditor raised various invoices on the Corporate Debtor from 08.06.2023 to 31.10.2023 aggregating to Rs.2.69,38,653/-. Copy of the working computation is annexed with the Petition as **Annexure-D.** Copy of Delivery Challan, Bilty/ LR Receipts, E-way Bills, Tax Invoices raised by Operational Creditor on Corporate Debtor for the period from 08.06.2023 to 31.10.2023 and Goods Receipt are annexed with the Petition as **Annexure-H Colly.**

(v) The invoices have provision for late payment interest @2.00% per month. However, the invoices have remained unpaid and they are due and payable by the Corporate Debtor to Operational Creditor. Since the Corporate Debtor failed to pay the outstanding debt within time, the Operational Creditor is entitled to interest @ 2.00% per month. Accordingly, an amount of Rs.2,93,23,806/- (which includes Rs.2,69,38,653/-

towards principal amount of debt and Rs.20,91,027/- towards interest @2.00% till 27.2.2024) is due and payable by the Corporate Debtor to the Operational Creditor.

(vi) The ledger account of Corporate Debtor as maintained by Operational Creditor for the period from 01.04.2023 to 31.03.2024 reflect the outstanding amount as Rs.2,69,38,653/-. Copy of Ledger account of Corporate Debtor as maintained by Operational Creditor for the period from 01.04.2023 till 31.03.2024 are annexed with the Petition as **Annexure-I.**

(vii) The Operational Creditor issued Demand Notice dated 29.02.2024 in Form-3 and 4 to the Corporate Debtor calling upon Corporate Debtor to pay an amount of debt of Rs.2,93,23,806/- which was delivered through e-mail on 01.03.2024 as well as Registered Post on 04.03.2024. Copy of Demand Notice dated 29.02.2024 in Form-3 and Form-4 along-with delivery receipt evidencing service of demand notice on the Corporate Debtor are annexed with the Petition as **Annexure-J Colly.**

(viii) Though the above Demand Notice was duly served upon Corporate Debtor. However, the Corporate Debtor has till date neither replied nor paid the amount of debt. The debt fell due on the due date of each invoice. As per the purchase order, the payment terms were 90 days. The last invoice was raised on 31.10.2023. Accordingly, the date of default is taken as 29.01.2024 i.e. due date of the last invoice dated 31.10.2023 and thereafter, the default is continuing.

(ix) The Operational Creditor has also filed Bank Account Statement of relevant period through additional Affidavit on 31.05.2024 to establish that no payment qua the raised invoices received from the Corporate Debtor.

(x) The Operational Creditor has also filed affidavit with the Petition in terms of provisions of Section 9(3)(b) and 9(3)(c) of the Code and declared therein that Corporate Debtor was served Demand Notice dated 29.02.2024. However, no notice is given by the Corporate Debtor relating to a dispute of the unpaid operational debt within the time stipulated under the IB Code.

(xi) The Operational Creditor has also filed **Form-D** being record of debt and default issued by National E-Governance Services Limited (**"NeSL"**) in which date of default is reordered as 29.01.2024 with status "**Deemed to be Authenticated**". A copy of the same is annexed with the Petition as **Annexure-E.**

7. On issuance of the notice, the Corporate Debtor appeared though it's Counsel. However, despite giving sufficient opportunities, the Corporate Debtor failed to file any reply within stipulated period. Hence, vide order dated 02.08.2024 its right to file reply was closed.

8. We have heard the arguments of Ld. Counsel for the Operational Creditor, Ld. Counsel for the Corporate Debtor and perused the material available on record.

a. On perusal of the records, it is found that the Operational Creditor had supplied goods and services (imported coal) to the Corporate Debtor as per 4 Purchase Orders dated 27.05.2023, 13.06.2023, 13.09.2023, 07.10.2023. The aforesaid Purchase Orders are annexed with the Petition as **Annexure-G Colly**.

b. The Operational Creditor had raised various invoices from 08.06.2023 to 31.10.2023 aggregating to an amount of Rs.2,69,38,653/-. The goods sold or supplied by the Operational Creditor to the Corporate Debtor were duly received. The copies of the Delivery Challan, Bilty/ LR Receipts, E-way Bills, Tax Invoices are annexed with the Petition as **Annexure-H Colly.**

c. As per the invoices, the Corporate Debtor was required to pay the invoice within a period of 90 from the date of each invoice. The terms of the Invoices and goods were never disputed by the Corporate Debtor. Copy of the working computation is annexed with the Petition as **Annexure-D.**

d. The Corporate Debtor failed to pay the invoices as per terms stated therein within 90 days of each invoices and defaulted its repayment which is considered as a date of default against each invoice. Copy of Ledger Account of Corporate Debtor as maintained by Operational Creditor for the period from 01.04.2023 till 31.03.2024 is annexed with the Petition as **Annexure-I.**

e. Demand Notice dated 29.02.2024 U/s 8 of the IB Code, 2016 in terms of Rule-5 of I&B (AAA) Rules, 2016 was sent by the Operational Creditor which was delivered to the Corporate Debtor through e-mail on 01.03.2024 as well as Registered Post on 04.03.2024 and was never replied by the Corporate Debtor. Copy of Demand Notice dated 29.02.2024 in Form-3 and Form-4 along-with delivery receipt evidencing service of demand notice on the Corporate Debtor are annexed with the Petition as **Annexure-J Colly.**

f. Further, there is no communication from the side of the Corporate Debtor which speaks about any defect in the material. Hence, there is no pre-existing dispute exists in the matter in terms of Section 8(2)(a) of the

IB Code. Further, the Operational Creditor has filed affidavit u/s 9 (3)(b) of the IB Code.

g. The Operational Creditor has also filed Bank Account Statement of relevant period through additional Affidavit on 31.05.2024 to establish that no payment qua the raised invoices received from the Corporate Debtor.

h. The Operational Creditor has also filed Form-D, which is the Record of Default with National E-Governance Services Limited (**NeSL**) in terms of Regulation 20(1A) of IBBI (IU) Regulation, 2017. The date of Default is recorded as 29.01.2024 and the status of authentication is "Deemed to be authenticated". A copy of the same is annexed with the Petition as **Annexure-E.**

i. Further, despite giving sufficient opportunities, the Corporate Debtor neither filed any reply to the Petition nor raised any defence contrary to the pleadings during the course of oral arguments.

9. Hence, in over view, the present application is complete in terms of Section 9 of the IB Code. The debt claimed by the Operational Creditor falls within the purview of '**operational debt**' under the provision of the IB Code. The Operational

Creditor is entitled to claim its dues, establishing the default in payment of the Operational Debt beyond doubt. The outstanding Operational Debt is of more than rupees one crore, which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.

10. The Operational Creditor in Part-III of the Form-5 has proposed the name of the Interim Resolution Professional **('IRP') Mr. Sunil Kumar Kabra,** having registration No. IBBI/IPA-001/lP-P01011/2017-2018/11662. He has filed his written communication dated 25.04.2024 annexed with the Application at **Page 600/A 6000/B** as per the requirement of Rule 9(l) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration made by him that there are no disciplinary proceedings pending against him with the Board or in Indian Institute of Insolvency Professionals of ICAI. In addition, further necessary disclosures have been made by him as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of the Section 7(3)(b) of the code.

11. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

(i) The Respondent/Corporate Debtor **M/s Aksa Paper Mills Private Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.

(ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;*

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 provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.*

(iii) The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31 or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

(iv) However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.

(v) As proposed by the Operational Creditor, we appoint **Mr. Sunil Kumar Kabra** having Registration No. IBBI/IPA-001/IP-P01011/2017-2018/11662, having address: Third Floor, Reegus Business Centre, New Citylight Road, Bharthan, Vesu, Surat, Gujarat, 395007 (**e-mail:** jlnusco@ mail.com) under section 13 (1)(c) of the Code to act as Interim Resolution Professional **(IRP).** He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(vi) The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.

(vii) The IRP shall perform all his functions as contemplated, *inter-alia,* by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(viii) The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.

(ix) The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.

(x) The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.

(xi) We direct the Operational Creditor to pay IRP a sum of **Rs.2,00,000/- (Rupees Two Lakh Only)** in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.

(xii) The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

(xiii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

12. Accordingly, this Application **CP(IB)/165/AHM/2024** is admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**