

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**MUMBAI BENCH**

**CP (IB) 4510/MB/C-IV/2018**

Under Section 9 of the IBC, 2016

In the matter of

**Arihant Packers,**

A Hindu Undivided Family represented by its  
Karta, Mr. Vijay Tatiya.

...Operational Creditor

v/s

**Krushna Cotex Private Limited**

[CIN:U17200MH2007PTC169431]

...Corporate Debtor

**Order Delivered on: 21.11.2019**

**Coram:** Hon'ble Member (Judicial) : Mr. Rajasekhar V. K.

Hon'ble Member (Technical) : Mr. Ravikumar Duraisamy

For the Petitioner : Adv. Bhavika Deora.

For the Respondent : None Present

**ORDER**

**Per: Rajasekhar V. K., Member (Judicial)**

1. This is a Company Petition filed under section 9 of the Insolvency & Bankruptcy Code, 2016 (**IBC**) by **Arihant Packers**, owned by a Hindu undivided family (HUF) represented by its karta, Mr. Vijay Tatiya, seeking to initiate Corporate Insolvency Resolution Process (CIRP) against Krushna Cotex Private Limited ("the Corporate Debtor").
2. The Corporate Debtor is a company incorporated on 30.03.2007 under the Companies Act, 1956, as a private limited company with the Registrar of Companies, Maharashtra, Mumbai. Its Corporate Identity Number (CIN) is U17200MH2007PTC169431. Its registered office is at

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4-A, Vikas Centre 104, S. V. Road, Santa cruz (West), Mumbai 400054.  
Therefore, this Bench has jurisdiction to deal with the present petition.

3. The present petition was filed on 03.12.2018 before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 4,39,963.00 (Rupees four lakh thirty-nine thousand nine hundred and sixty-three only) (as stated in page 3 of the petition).
4. The Operational Creditor supplied Paper Corrugated Box, Folders, Ply Plain Pasted Cartons etc. to the Corporate Debtor.
5. The Purchase Orders under which supplies were made to the Corporate Debtor, the details of unpaid invoices and the amounts involved, are tabulated as follows:

<b>Sr. No.</b>	<b>Purchase Order and Ref. to page no.</b>	<b>Invoice No. and Ref. to page no.</b>	<b>Invoice date</b>	<b>Due date</b>	<b>Amount (Rs.)</b>
1	PKG/427 (page 81)	3950-16-17 (page 46)	18.11.2016	18.12.2016	2,534/-
2	PKG/483 (not placed on record)	3951-16-17 (page 50)	18.11.2016	18.12.2016	10,694/-

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3	PKG/464  (not placed on record)	4022-16-17  (page 47)	22.11.2016	22.12.2016	29,874/-
4	PKG/483  (not placed on record)	4023-16-17  (page 48)	22.11.2016	22.12.2016	31,584/-
5	PKG/483  (not placed on record)	4027-16-17  (page 49)	23.11.2016	23.12.2016	15,792/-
6	PKG/497  (page 82)	4028-16-17  (page 51)	23.11.2016	23.12.2016	15,287/-
7	PKG/528  (page 83)	4317-16-17  (page 52)	07.12.2016	06.01.2017	1,13,293/-
8	PKG/528  (page 83)	4344-16-17  (page 53)	08.12.2016	07.01.2017	14,056/-
9	PKG/567	4464-16-17	14.12.2016	13.01.2017	67,349/-

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	(page 84)	(page 54)			
10	PKG/576 (page 85)	4515-16-17 (page 55)	16.12.2016	15.01.2017	80,539/-
11	PKG/584 (page 86)	4520-16-17 (page 58)	16.12.2016	15.01.2017	2,275/-
12	PKG/584 (page 86)	4528-16-17 (page 57)	18.12.2016	17.01.2017	52,130/-
13	PKG/584 (page 86)	4683-16-17 (page 56)	26.12.2016	25.01.2017	4,556/-
		<b>Total</b>			<b>4,39,963/-</b>

The Invoices & Purchase Orders have been placed on record as at pp. 27-86 of the Petition.

6. The Operational Creditor had served a Demand Notice in Form 3 dated 17.07.2018 which has been delivered on 23.07.2018 to the Corporate Debtor (**Exhibit 'B'** to the petition at pp. 19-92) in terms of section 8 of the IBC along with Proof of service of Demand Notice (pp. 17-18). The petitioner further submits that as on the date of Demand Notice, the total outstanding was Rs.9,39,963/- (Rupees nine lakh thirty-nine thousand nine hundred and sixty-three only) for Invoices raised between period 21.09.2016 to 26.12.2016.

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7. In pursuance of Demand Notice the Corporate Debtor had made payment as follows:
- (i) on 24.07.2018 of Rs. 2,00,000/- (Rupees two lakhs only) and addressed email on 24.07.2018 to Operational Creditor stating therein NEFT payment of same and would make payment of Rs.2.00 Lakh between 20<sup>th</sup> to 30<sup>th</sup> of every month against the outstanding (**Exhibit 'C'** to the petition at pp. 93-94);
  - (ii) on 23.08.2019 of Rs. 2,00,000/- (Rupees two lakh only), leaving balance of Rs.5,39,963/-.
  - (iii) The Operational Creditor addressed a reminder letter dated 10.10.2018 to clear the balance outstanding amount. Pursuant thereto, The Corporate Debtor made payment of Rs. 1,00,000/- (Rupees one lakh only), leaving balance of Rs.4,39,963/-. The payments received after issue of Demand Notice were adjusted towards total outstanding amount and Current outstanding amount is Rs. 4,39,963.00 (Rupees four lakh thirty-nine thousand nine hundred and sixty-three only) which is remaining towards invoices between period 18.11.2016 to 26.12.2016, as detailed in the Table in para 5 Supra.
8. There was, however, no reply to the Demand Notice. Since the Corporate Debtor failed to make a payment, the Operational Creditor has filed this Petition on 03.12.2018 before this Adjudicating Authority.
9. The copy of the Petition was served on the Corporate Debtor on 29.11.2018. Necessary Proof of service in this regard have been placed on record at pp. 372A of the petition. The Corporate Debtor has not filed a reply to the Petition.

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10. As per section 9(3)(b) of the I&B Code, the Operational Creditor has stated on affidavit that in response to the Demand Notice the Corporate Debtor has neither made a payment towards the outstanding dues nor raised any dispute. Further, Operational Creditor states that there is no dispute in existence about the unpaid operational debt. This affidavit is placed at pp. 370-372 of the petition.
11. In compliance of Sec 9(3)(c) of the Insolvency and Bankruptcy Code, 2016, the Operational Creditor has submitted the Certificate dated 21.08.2018 from Karnataka Bank Ltd., certifying that no credit from the Corporate Debtor is deposited into the current account of the Operational Creditor. This certificate is placed at pp. 201-220 of the petition.
12. We have heard the Learned Counsel for the Operational Creditor and perused the record. The Corporate Debtor remained unrepresented throughout the proceedings.
13. The Operational Creditor has raised several invoices between period 21.09.2016 to 26.12.2016 amounting to Rs. 9,39,963.00/- (Rupees nine lakh thirty-nine thousand nine hundred and sixty-three only) for the supply of goods to the Corporate Debtor. Since the invoices remained unpaid, the Operational Creditor called upon the Corporate Debtor to make the payment. The payment received after Demand Notice was adjusted towards total outstanding amount, Current outstanding amount is Rs. 4,39,963.00 (Rupees four lakh thirty-nine thousand nine hundred and sixty-three only) which is remaining towards invoices between period 18.11.2016 to 26.12.2016.
14. There is no pre-existing dispute regarding the unpaid operational debt, being the principal amount of Rs. 4,39,963.00 (Rupees four lakh

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thirty-nine thousand nine hundred and sixty-three only). The invoices for the period of 18.11.2016 to 26.12.2016 were raised upon the Corporate Debtor on a running account basis, but the outstanding dues were not paid. Thus, the existence of debt and default is established.

15. The application made by the Operational Creditor is complete in all respects as required by law. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is more than minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, as the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority admits this petition and orders initiation of CIRP against the Corporate Debtor.
16. The Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter.
17. It is, accordingly, hereby ordered as follows: -
  - (a) The petition filed by **Arihant Packers**, a HUF represented by its karta, Mr. Vijay Tatiya, under section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the Corporate Debtor, i.e. **Krushna Cotex Private Limited [CIN: U17200MH2007PTC169431]**, is **admitted**.
  - (b) There shall be a moratorium under section 14 of the IBC, in regard to the following:
    - (i) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution

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of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (SARFAESI) Act, 2002;
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.
- (c) Notwithstanding the above, during the period of moratorium -
- (i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period;
  - (ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator.
- (d) The moratorium shall have effect from the date of this Order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of corporate debtor under section 33 of the IBC, as the case may be.

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- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) Since the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP) in the matter, the IRP shall be appointed by this Adjudicating Authority by a separate order. The fee payable to IRP or, as the case may be, the RP shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his/her functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC.
- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Operational Creditor shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) with the IRP to meet the expenses towards issue of public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
- (i) The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor by Speed Post and email immediately, and in any case, not later than two days from the date of this Order. A copy of this Order shall also be communicated to the IRP immediately such appointment.

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- (j) A copy of this Order be also sent to the Registrar of Companies, Maharashtra, Mumbai, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry **within seven days.**

**Sd/-**

**RAVIKUMAR DURAISAMY**  
**Member (Technical)**  
21.11.2019.

**Sd/-**

**RAJASEKHAR V.K.**  
**Member (Judicial)**