

THE NATIONAL COMPANY LAW TRIBUNAL
CUTTACK BENCH
CUTTACK

CP (IB) No. 44/CTB/2019

CORAM: 1. Ms. Sucharitha R. Member (J)
2. Shri Satya Ranjan Prasad, Member (T)

In the Matter of:

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;

-And-

In the Matter of:

M/S. HIRA WASTAGE SUPPLY CO., a sole proprietorship firm, registered under provisions of the Companies Act, 1956 and having its Registered Office situated at Jaunliapatty, P.O. – Telengabazar, P.S. – Purighat, Cuttack – 753 009, Odisha.

... .. **Operational Creditor/Applicant**

-Versus-

In the Matter of:

M/S. COS BOARD INDUSTRIES LIMITED, a private company limited by shares, registered under provisions of the Companies Act, 1956 and having its Registered Office situated at Jagatpur (New) Industrial Estate, Phase – II, Jagatpur, Cuttack – 754 021, Odisha.

... .. **Corporate Debtor/Respondent**

Sd/-

Sd/-



Counsels appeared for the Petitioner (s)

1. Mr. Saroj Kumar Sahoo, CS.

Date of pronouncement of Order: 16th day of December, 2019.

ORDER

Per: Ms. Sucharitha R. Member (J)

1. The applicant **M/s. Hira Wastage Supply Co.** is represented by Shri Deoki Nandan Joshi, Proprietor. This application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 for initiation of Corporate Insolvency Resolution Process of **M/s. COS Board Industries Ltd.**
2. The respondent **M/s. COS Board Industries Ltd.** is a private company limited by shares, registered under the provisions of the Companies Act, 1956, bearing **CIN: L21015OR1980PLC000916.**
3. The Registered Office of the Corporate Debtor is situated at Jagatpur (New) Industrial Estate, Phase – II, Jagatpur, Cuttack – 754 021, Odisha. Hence, this Adjudicating Authority has jurisdiction to entertain this petition.

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4. The petitioner submits that it was continuous accounts since, 1990. After 2018, the respondent failed to repay. The application was filed on 07.05.2019. Hence, the application is well within the period of limitation.
5. The applicant/Operational Creditor submits that they had supplied goods/raw materials (waste papers) to the Corporate Debtor. The total amount of debt in default as on 30th January, 2019 is sum of Rs. 2,10,98,091/- (Two Crore Ten Lakh Ninety-Eight Thousand Ninety-One). Out of which Rs. 2,04,83,583/- (Two Crore Four Lakh Eighty-Three Thousand Five Hundred Eighty-Three) is the unpaid principal amount and Rs. 6,14,508/- is the interest amount which has been circulated @ 18 % per annum. Hence, total outstanding principal amount Rs. 2,04,83,583/- (Two Crore Four Lakh Eighty-Three Thousand Five Hundred Eighty-Three) is due and payable to the Corporate Debtor. The Operational Creditor/applicant states that after the Corporate Debtor had issued a Cheque of Cosmos Bank, Hyderabad bearing No. 125646, dated 28.01.2019 of Rs. 2,04,83,583/- which was dishonoured on 30.01.2019.
6. Hence, the Operational Creditor issued a Demand Notice dated 5th April, 2019 under Section 8 of Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by speed post to the Corporate Debtor.

7. The Corporate Debtor has filed its reply. The Corporate Debtor states that the Operational Creditor is a proprietorship concern, hence, the proprietorship concern cannot sue and be sued in its own name. Hence, this application ought to be dismissed as not maintainable. Further, the Corporate Debtor denies that the sum of Rs. 2,10,98,091/- (Two Crore Ten Lakh Ninety-Eight Lakh Ninety-One Only) is due and payable as stated in the demand notice dated 05.04.2019. There is no amount due and payable to the Operational Creditor. The materials supplied were of inferior qualities, hence, the Corporate Debtor has raised various debits notes which was filed as “**Annexure Y**” along with the reply affidavit. Further, the Corporate Debtor submits that the blank cheque was given as security cheque, however, fraudulently, the Corporate Debtor has filled the same and deposited for clearance. Hence, cheque was dishonoured till date the Operational Creditor has not taken any proceeding under Section 138 of the Negotiable Instrument Act.

8. The Corporate Debtor filed reply in Registry. Thereafter, there was no representation on behalf of the Corporate Debtor. Corporate Debtor did not serve copy of the documents, reply on the Operational Creditor. However, the Operational Creditor has filed this rejoinder wherein the



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Operational Creditor submits that it is running account since, 1990. After 2018, the Corporate Debtor has failed to repay the amount and the debit note has filed along with reply are false and fabricated. The Operational Creditor never received any debit note till date. Further, all the invoices were issued, along with GST Challan. If the Corporate Debtor has issued debit note, the Corporate Debtor ought to give GST credits in favour of the Operational Creditor. However, the Corporate Debtor has not issued any GST credits to the Operational Creditor. This document filed along with the reply is totally false and fabricated. The Operational Creditor never received any debit note from the Corporate Debtor. The Operational Creditor submits that the Cheque amount of Rs. 2,04,83,583/- is dishonoured by the Corporate Debtor. Hence, the Operational Creditor has initiated Criminal Prosecution under Negotiable Instrument Act, against the Corporate Debtor and the same is pending on the file in JMFC CITY COURT, Cuttack.

9. We have perused the application, reply, documents, affidavits. The "Debt" and default are proved. In view of the same this application is **ADMITTED.**

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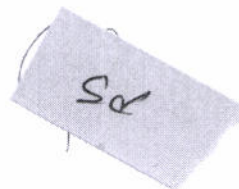
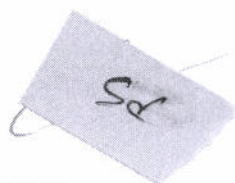
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ORDER

- (i) The application filed by the Operational Creditor under Section 8 and 9 of the Insolvency & Bankruptcy Code, 2016 is hereby admitted for initiating the Corporate Insolvency Resolution Process against **M/s. Cos Board Industries Limited.**
- (ii) Moratorium Order is passed for a public announcement as stated in Sec. 13 of the IBC, 2016. The moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Sec.15. The public announcement referred to in clause (b) of sub-section (1) of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- (iii) Moratorium under Sec.14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:
- 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 (54 of 2002);
- d) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.
- (iv) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.
- (v) 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.
- (vi) The order of moratorium shall commence from the date of admission till the completion of the Corporate Insolvency Resolution Process.



Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Sec.31 or passes an order for liquidation of corporate debtor under Sec.33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

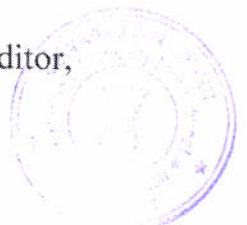
(vii) Necessary public announcement as per Sec.15 of the IBC, 2016 may be made by the Interim Resolution Professional upon receipt of the copy of this order.

(viii) **Mr. Umesh Chandra Sahoo** having **Registration No. IBBI/IPA-002/IP-N00621/2018-19/11855** and **E-mail Id.: info@nayadarshan.com** residence of Plot No-4, 2nd Floor, Snowdrop Apartment, Cuttack Road, Jharpada, Bhubaneswar, Odisha is appointed as Interim Resolution Professional registered with the ICSI Insolvency Professionals Agency, as Interim Resolution Professional for ascertaining the particulars of Creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

- (ix) We direct the Operational Creditor to deposit a sum of Rs. One Lakh with Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Debtor) Regulations, 2016. The needful shall be done within three days from the date of receipt of this Order by the Operational Creditor. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.
- (x) Directions are also issued to the ex-management to provide all documents in their possession and furnish every information in the knowledge within a period of one week from the date of admission of the petition to the IRP, otherwise coercive steps to follow.
- xi) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors.
- xii) Registry is hereby directed to communicate the order under Section 9 (5) (i) of the I.B. Code, 2016 to the Operational Creditor,

Sd

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Corporate Debtor and to the Interim Resolution Professional by Speed Post as well as through E-mail.

Interim Resolution Professional to file 1st Progress Report on **20.01.2020.**

List the matter on 20.01.2020.

Let the certified copy of the order be issued upon compliance with requisite formalities.

CERTIFIED TO BE TRUE COPY

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**Shri Satya Ranjan Prasad
Member (T)**

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**Ms. Sucharitha R.
Member(J)**



Signed on this, the 16th day of December, 2019.

*Agreed
16/12/2019*

**Deputy Registrar
National Company Law Tribunal
Cuttack Bench**

Kaushal_Steno