



NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH (COURT-II)

(IB)-699(ND)2020

IN THE MATTER OF:

Printofab

(Through its proprietor
Sh. Rajneesh Kumar Sharma)
Plot No. 390, Industrial Area,
Phase-9, SAS Nagar,
Mohali, Punjab

... Applicant/Operational Creditor

VERSUS

Gopish Pharma Limited

Registered Office at :
H-1455 DSIDC,
Industrial Complex,
Narela, Delhi – 110040

... Respondent

Section: 9 of the IBC, 2016

Order Delivered on: 25.04.2023

CORAM:

SH. ASHOK KUMAR BHARDWAJ, HON'BLE MEMBER (J)

SH. L. N. GUPTA, HON'BLE MEMBER (T)

PRESENT:

For the Applicant : Adv. Priyam Kamra
For the Respondent : Mr. Sahil Sethi, Ms. Ramya Aggarwal,
Mr. Samriddh Bindal



ORDER

PER: SHRI L. N. GUPTA, MEMBER (T)

M/s Printofab, through its proprietor Rajneesh Kumar Sharma (for brevity, **the ‘Applicant/ Operational Creditor’**) has filed the present petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity, **the ‘IBC, 2016’**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity ‘the Rules’) with a prayer to initiate the Corporate Insolvency Resolution Process against M/s. Gopish Pharma Limited and Others (for brevity, **the ‘Respondent’**).

2. The Respondent namely, M/s. Gopish Pharma Limited is a Company incorporated on 20.04.1995 with CIN U74899DL1995PL C067545 under the provisions of the Companies Act, 1956 having its registered office at H-1455 DSIDC, Industrial Complex, Narela, Delhi – 110040, which is within the territorial jurisdiction of this Bench. The Authorized Share Capital of the Respondent Company is Rs.75,00,000/- and Paid-up Share Capital is Rs.68,00,000/-, as per the Master Data of the Respondent Company.

3. It is submitted by the Applicant that it is the manufacturer and supplier of printed packaging material for packing and supplying medicines. The Respondent approached the Applicant for the purpose of buying the printed packaging material for packing and supplying



medicines in the year 2015. Since November 2015, the Respondent placed various orders from time to time and the Applicant regularly supplied the packaging material accordingly to the Respondent against valid retail invoices. The total business done with the Respondent between November 2015 and February 2017, is to the tune of Rs. 38,92,287/-, against which it has received a partial payment of Rs. 29,46,497- only. The last payment made by the Respondent was of a sum of Rs. 30,000/- only on 15.12.2017. Thus, the total debt due against the Respondent Company remains of Rs. 9,45,490/-.

4. The particulars of the Operational Debt claimed including the total amount of default and the date of default are mentioned in Part IV of the application, which is reproduced below:

**PART IV
PARTICULARS OF OPERATIONAL DEBT**

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|--|--|
| <p>1. TOTAL AMOUNT OF DEBT, DETAILS OF TRANSACTIONS ON ACCOUNT OF WHICH DEBT FELL DUE, AND THE DATE FROM WHICH SUCH DEBT FELL DUE:</p> | <p>That the Operational Creditor is the manufacturer and supplier of printed packaging material for packing and supplying medicines. The Corporate Debtor approached the Operational Creditor for the purpose of buying printed packaging material for packing and supplying medicines in the year 2015. That the Corporate Debtor since November 2015 have placed various orders from time to time and the Operational Creditor in return has been regularly supplying the packaging material as required against a valid retail invoice to the Corporate Debtor whereby the total business done with the Corporate</p> |
|--|--|

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[Signature]



Debtor from the period November 2015 to February 2017, the cost of the products supplied to Corporate Debtor came out to Rs. 38,92,287/-. The discharge of the total outstanding by the Corporate Debtor have only partially paid a sum of Rs. 29,46,497/-. The last payment by the Corporate Debtor was on 15.12.2017 for a sum of Rs. 30,000/-. The total debt due is Rs. 9,45,490/- (Nine Lakh Forty Five Thousand Four Hundred Ninety Only.) The debtor company, viz Operational Creditor have supplied to you packaging material as required against a valid retail invoice, which on receipt of the same has been duly acknowledged by Corporate Debtor. Since the Operational Creditor extended credit facility to the Corporate Debtor against the invoices raised from time to time, the Operational Creditor was maintaining a ledger account in the name of the Corporate Debtor in the usual course of business. If the Corporate Debtor disputes the existence or amount of unpaid operational debt, of Rs. 9,45,490/- than the same is admitted by the Corporate debtors vide email dated 19.09.2018 and further for the material supplied corresponding C-Forms have also been issued by the Corporate Debtors. A copy of the trailing mails between the Operational Creditor and the Corporate Debtors are attached herewith as Annexure-2 Colly.

A copy of the certified Ledger Account maintained by the Operational



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| | Creditor is annexed as Annexure-3 . A copy of the outstanding operational debt certified by the Chartered Accountant is annexed as Annexure-4 . A copy of the certificate issued by the Nationalised bank dated 08.11.2019 showing the liability of the Corporate Debtor is attached as Annexure A-5 . |
| 2. AMOUNT CLAIMED TO BE IN DEFAULT AND THE DATE ON WHICH THE DEFAULT OCCURRED | The total debt due is Rs. 9,45,490/- (Nine Lakh Forty Five Thousand Four Hundred Ninety Only.) and the Corporate Debtor have failed to clear the said outstanding dues since December, 2017 despite categorical admission as regards confirmation of balance as on 19.09.2018 and further for the material supplied corresponding C-Forms have also been issued by the Corporate Debtors. |

5. Thus, as per Part IV of the Application, the Applicant has claimed the amount of Rs. 9,45,490/- as an outstanding debt since December 2017. However, no specific date of default is mentioned by the Applicant.

6. From the records, it is observed that the applicant has sent a Demand Notice dated 14.10.2019 under Section 8 of IBC 2016 at the registered and branch office of the Respondent via speed post, however, the same could not be delivered. The Applicant has also sent the said Demand Notice, vide email dated 15.10.2019 to the email id's GOPISHARTWORK@GMAIL.COM and GOPISHPAHRAMALTD@gmail.com which are placed on Pages 87-92 of the Application. The Applicant had also filed Affidavit under Section 9(3)(b) of IBC, 2016 (Pages 94-95 of the Application).



7. On issuance of the notice, and also substituted service through publication in two newspapers on 22.06.2022, the Respondents neither appeared nor filed a reply. Accordingly, Respondents were proceeded ex-parte vide order dated 29.08.2022 of this Adjudicating Authority.

8. We have heard the submissions made by the Ld. Counsel appearing for the Applicant and perused the documents placed on record. As per the submissions of the Applicant, it is observed that Applicant had supplied printed packaging material to the Respondent against the retail invoices. The Applicant has also annexed the Ledger Account in respect of the Respondent, which also depicts that the material was supplied against retail invoices. The relevant extract of the Ledger is reproduced below:

Printofab
Plot No 390 INDUSTRIAL AREA PHASE 9
S.A.S.Nagar, Mohali

GOPISH PHARMA Ltd.
Ledger Account
Ropar Road, Near Dherowal Barrier
Vill. Behrampur
Tehsil. Nalagarh

1-Apr-2000 to 5-Oct-2019

| Date | Particulars | Voucher Type | Value | Gross Total | Sale CST 2% | Output CST 2% | Round Off | Freight & Cartage O/W | PNB C A/c 53722 | Discount | EXCESS & SHORT |
|-------------|--------------------|----------------|-----------|--------------|--------------|---------------|-----------|-----------------------|-----------------|----------|----------------|
| 03-Nov-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 45056.55 | 46758.00 Dr | 45056.55 Cr | 901.13 Cr | 0.32 Cr | 800.00 Cr | | | |
| 14-Nov-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 13409.00 | 14177.00 Dr | 13409.00 Cr | 268.18 Cr | 0.18 Dr | 500.00 Cr | | | |
| 16-Nov-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 13591.50 | 14363.00 Dr | 13591.50 Cr | 271.83 Cr | 0.33 Dr | 500.00 Cr | | | |
| 03-Dec-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 43066.25 | 44960.00 Dr | 43066.25 Cr | 861.37 Cr | 0.22 Dr | 1000.00 Cr | | | |
| 08-Dec-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 151422.10 | 154451.00 Dr | 151422.10 Cr | 3028.44 Cr | 0.46 Cr | | | | |
| 11-Dec-2015 | GOPISH PHARMA Ltd. | Receipt | | 43960.00 Cr | | | | | 43960.00 Dr | | |
| 12-Dec-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 99859.40 | 101857.00 Dr | 99859.40 Cr | 1997.19 Cr | 0.41 Cr | | | | |
| 15-Dec-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 44172.00 | 45055.00 Dr | 44172.00 Cr | 883.44 Cr | 0.44 Dr | | | | |
| 23-Dec-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 102508.00 | 104558.00 Dr | 102508.00 Cr | 2050.16 Cr | 0.16 Dr | | | | |
| 28-Dec-2015 | GOPISH PHARMA Ltd. | Retail Invoice | 108115.00 | 110277.00 Dr | 108115.00 Cr | 2162.30 Cr | 0.30 Dr | | | | |
| 12-Jan-2016 | GOPISH PHARMA Ltd. | Retail Invoice | 74902.75 | 76401.00 Dr | 74902.75 Cr | 1498.06 Cr | 0.19 Cr | | | | |
| 13-Jan-2016 | GOPISH PHARMA Ltd. | Retail Invoice | 46820.00 | 47756.00 Dr | 46820.00 Cr | 936.40 Cr | 0.40 Dr | | | | |
| 20-Jan-2016 | GOPISH PHARMA Ltd. | Retail Invoice | 9675.00 | 9969.00 Dr | 9675.00 Cr | 193.50 Cr | 0.50 Cr | | | | |
| 21-Jan-2016 | GOPISH PHARMA Ltd. | Retail Invoice | 59976.00 | 61176.00 Dr | 59976.00 Cr | 1199.52 Cr | 0.48 Cr | | | | |
| 02-Feb-2016 | GOPISH PHARMA Ltd. | Receipt | | 154451.00 Cr | | | | | 154451.00 Dr | | |
| 02-Feb-2016 | GOPISH PHARMA Ltd. | Receipt | | 45055.00 Cr | | | | | 45055.00 Dr | | |
| 08-Feb-2016 | GOPISH PHARMA Ltd. | Retail Invoice | 91359.00 | 93186.00 Dr | 91359.00 Cr | 1827.18 Cr | 0.18 Dr | | | | |
| 16-Feb-2016 | GOPISH PHARMA Ltd. | Retail Invoice | 48295.00 | 49261.00 Dr | 48295.00 Cr | 965.90 Cr | 0.10 Cr | | | | |
| 25-Feb-2016 | GOPISH PHARMA Ltd. | Retail Invoice | 67920.00 | 69278.00 Dr | 67920.00 Cr | 1358.40 Cr | 0.40 Dr | | | | |
| 02-Mar-2016 | GOPISH PHARMA Ltd. | Receipt | | 30000.00 Cr | | | | | 30000.00 Dr | | |
| 16-Mar-2016 | GOPISH PHARMA Ltd. | Receipt | | 101857.00 Cr | | | | | 101857.00 Dr | | |

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9. The aforesaid Ledger Account depicts that the Applicant is claiming its Operational Debt on the basis of the invoices. However, when we peruse the record before us, it is observed that neither the said invoices are annexed to the Application, nor were these sent along with the Demand Notice issued under Section 8 of IBC 2016 to the respondent.

10. At this juncture, we refer to the Judgement of Hon'ble NCLAT passed in the matter of **Neeraj Jain Vs Cloudwalker Streaming Technologies Private Limited in Company Appeal (AT) (Insolvency) No. 1354 of 2019**, wherein the following is held:

“45. It is important to mention that legislative provisions are made with a larger perspective to deal with all the eventualities that may arise in the implementation of the said provisions. Therefore, the use of the word “OR” in Section 8 cannot be interpreted as such, that the Insolvency and Bankruptcy Code has provided a choice or a discretion to an Operational Creditor, to provide an escape route from submission of the invoice, which can be treated as the most relevant document to prove the debt and amount in default.”

11. Further, this Adjudicating Authority also, in the matter of **Tudor India Pvt. Ltd Vs Servotech Power Systems Limited**, vide order dated 02.07.2021 has observed that:

29. Accordingly, we hold that in a situation where an Operational Debt arises out of the provision of goods and services and pursuant to that Invoices are raised, there is no illegality in choosing the Form 3 as provided in Rule 5(1)(a) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for sending the



Demand Notice provided that the Unpaid Invoices forming part of the transaction are annexed therewith. Hence, issuance of Demand Notice in Form 3 annexed with invoices by the Operational Creditor in the present case would be in order in terms of the Rules.

(Emphasis placed)

12. In the instant case, the alleged transactions were based on and involved invoices. However, the Applicant has failed to annex them with the Demand Notice in Form-3 sent by the Applicant to the Respondent, and therefore, in our considered view, the service of the demand notice was defective. Moreover, the Applicant has further failed to annex or place the said invoices on record with the application, and therefore, the alleged default is not conclusively proved by the Applicant.

13. **In view of the abovesaid findings, we have no other option but to dismiss the Application.**

14. However, nothing expressed in this order shall be construed as an opinion on the merits of the claim of the Applicant, and its right to agitate before any other forum shall not be prejudiced on account of the dismissal of the present Application.

Sd/-
(L. N. GUPTA)
MEMBER (T)

Sd/-
(ASHOK KUMAR BHARDWAJ)
MEMBER (J)