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**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH- I  
KOLKATA**

CP(IB) No. 2179/KB/2019

A petition 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:*

1. **Sunny Trading Co.,** Partnership Firm
2. Mr. Narendra Kumar Jalan, Partner
3. Mr. Sunil Jalan, Partner,

having address for correspondence at 2 B.D Saha Road, Kolkata- 700002, West Bengal

.....*Operational Creditor*

-Versus-

**Indian Pulp & Paper Private Limited,** a company incorporated under the Companies Act, 1956 and being a company within the meaning of Companies Act, 2013 and having Corporate Identification No-U221093WB2004PTC098305 and its registered office at 17, Brabourne Road, 2<sup>nd</sup> Floor, Kolkata-700001, in the State of West Bengal.

.... *Corporate Debtor*

**Date of Hearing : 18<sup>th</sup> July, 2022**

**Date of pronouncing the order: 22<sup>nd</sup> July, 2022**

**Coram:**

**Shri Rohit Kapoor, Member (Judicial)**

**Shri Balraj Joshi, Member (Technical)**

**Appearances (via video conferencing/ physical):**

For Operational Creditor : Mr. Shiv Shankar Banerjee, Advocate

Ms. Arijita Ghosh, Advocate

For Corporate Debtor : Ms. Manju Agarwal, Advocate

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Mr. Bajrang Manot, Advocate

**ORDER**

***Balraj Joshi, Member (Technical):***

1. This Court convened through hybrid mode.
2. This is a Company Petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (the Code) by **Sunny Trading Co., Mr. Narendra Kumar Jalan, Mr. Sunil Jalan** (Operational Creditors), seeking to initiate Corporate Insolvency Resolution Process (“CIRP”) against **Indian Pulp & Paper Private Limited** (“Corporate Debtor”).

***Submissions on behalf of the Operational Creditor:***

3. The case of the Operational Creditor is that pursuant to discussions between the parties, the Operational Creditor supplied to the Corporate Debtor goods being waste paper between the period from 07 December 2018 till 02 June 2019 against several invoices raised by it. Both the parties maintained a running account to which the Corporate Debtor made payments in installments till 12 July 2019.
4. The said goods were received by the Corporate Debtor against each such consignment and Quality Analysis Reports confirming the accepted quantity of goods were issues by it.
5. Due to the peculiar nature of the business, it was usual practice for the receiver of the waste paper to claim credit on account of small quantity of waste paper that cannot be used. As such, credit of ₹4,00,548/- was awarded to the Corporate Debtor by the Operational Creditor against a quantity of 34364 kgs of waste paper. All relevant invoices were raised after allowing such credit on account of 34364 kgs of rejected amount of waste paper.

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6. The total worth of goods supplied during the period between 07 December 2018 and 02 June 2019 was ₹1,12,64,048/- (Rupees One Crore Twelve Lakh Sixty- Four Thousand and Forty-Eight Only). The Corporate Debtor has paid a sum of ₹71,68,214/- (Rupees Seventy- One Lakh Sixty- Eight Thousand Two Hundred and Fourteen Only) against the said invoices and thereafter, the Corporate Debtor stopped making payments. As such, an outstanding amount of ₹40,95,834/- (Rupees Forty Lakh Ninety- Five Thousand Eight Hundred Thirty Four Only) remains unpaid by the Corporate Debtor till date.
7. The debt fell due on 13 July 2019. As on 24 November 2019, a total amount of ₹43,66,496/- (Rupees Forty-Three Lakh Sixty- Six Thousand and Four Hundred and Ninety Six Only) inclusive of interest @18% per annum from the due date remains payable by the Corporate Debtor.

***Submissions on behalf of the Corporate Debtor:***

8. It is argued by the Corporate Debtor that the goods supplied by the Operational creditor was of inferior, contaminated and sub-standard quality. As such, the paper manufactured therefrom was of inferior quality and the same was rejected by customers, causing huge irreparable loss to the Corporate Debtor.
9. The aforesaid fact was duly intimated to the Operational Creditor who agreed to take back the waste material and replace the same. However, the Operational Creditor failed to lift the same.
10. At all material times, the Corporate Debtor was ready and willing to return the said waste materials to the Operational Creditor as would be evident from the Corporate Debtor's letter dated 17 October 2019.
11. It is therefore denied and disputed that the Corporate Debtor is indebted to the Operational Creditor for a principal sum of ₹40,95,834/- along with

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interest applicable thereon @ 18% per annum, to be calculated from 13 July 2019 i.e. the day from which the corporate debtor stopped making payments to the credit of the operational creditor to the running account maintained by and between the operational creditor and the corporate debtor.

12. It is denied that against each such consignment, Quality Analysis Report confirming the accepted quantity of goods were duly issued by the Corporate Debtor. The goods arrived in truck and Quality Analysis Report is prepared from one of the bundles and cannot reflect the quality of entire material and the same becomes apparent only when the paper is manufactured. As such, the same cannot be the determining factor with regard to the quality of the goods.
13. It is denied by the Corporate Debtor that the amount of goods which could not be used by Corporate Debtor amounted to ₹4,00,548/- only. In fact, the quality of waste paper was such that approximately 50% of the goods was unfit for further processing and in fact the corporate debtor has made excess payment in comparison to the actual quantity of goods consumed. Despite repeated requests being made the operational creditor did not lift the material as a result large space at the factor premises remained occupied, waste paper became rotten and the stench coming out thereof become health hazard for the workers at the said factory. In the facts and circumstances, it is incorrect to allege that a sum of ₹40,95,8341/- is due and payable to the operational creditor as wrongfully alleged or at all. The operational creditor has also not disclosed the reason for granting credit of only ₹4,00,548/-.
14. In the said circumstances, nothing is due and payable by the corporate debtor to operational creditor, and as such, question of making payment of any interest also does not and/or cannot arise or at all.

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15. It is submitted that the Demand Notice dated 27 September, 2019 was duly replied to by corporate debtor by its letter dated 17 October, 2019 and Operational Creditor did not cause any reply refuting the allegations made therein which clearly goes to show that the claim of the Operational Creditor is unjust, mala fide and disputed one and therefore the Operational Creditor is not entitled to initiate any corporate insolvency resolution process against the Corporate Debtors and the proceedings so initiated is liable to be dismissed with exemplary costs.
16. It is denied that the Corporate Debtor is commercially insolvent and unable to meet its liabilities. It is denied that the corporate debtor is unable to service its admitted debts to its lawful operational creditors in the ordinary course or is unable to continue business in the foreseeable future as a going concern.

***Analysis and Findings:***

17. Heard the Ld. Counsel for the Operational Creditor and the Ld. Counsel for the Corporate Debtor and perused the records.
18. The Operational Creditor issued a demand notice in Form 3 under section 8 of the Code on 25 September 2019. The Corporate Debtor, in reply to the said demand notice, issued a letter dated 17 October 2019, whereby the Corporate Debtor raised dispute regarding the quality of the goods supplied.
19. In regard to disputes, section 8(2) of the Code provides that, upon receipt of the demand notice from the Operational Creditor under section 8(1) of the Code, the corporate debtor shall, within a period of ten days of the receipt of the said demand notice bring to the notice of the operational creditor, existence of a dispute, if any, or record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute.

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20. It is therefore clear that the dispute in order to be considered as a pre-existing dispute, must exist and be communicated by the Corporate Debtor before the demand notice is issued by the Operational Creditor.
21. Further, we would like to refer to the decision in the matter of *Innoventive Industries Ltd. Vs. ICICI Bank & Ors.* [MANU/SC/1063/2017] wherein the Hon'ble Supreme Court held that the corporate debtor, under Section 8(2) of the Code, can bring to the notice of the Operational Creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is **pre-existing** - i.e. before such notice or invoice was received by the Corporate Debtor. The moment there is existence of such a dispute, the Corporate Debtor gets out of the clutches of the Code. [Para 29].
22. In the instant case, the contention of quality and the resulting dispute has been initiated by the Corporate Debtor on 17 October 2019 in its reply to the Demand Notice and as such, the same cannot be termed as pre-existing dispute.
23. In light of the aforementioned facts and circumstances, this Adjudicating Authority is satisfied that a debt was due from the Corporate Debtor to the Operational Creditor and the Corporate Debtor has defaulted in the payment of the same.
24. The Operational Creditor had issued a demand notice dated 27 September 2019 in Form 3 under the Code, and has accordingly filed its affidavit under section 9(3)(a),(b), and (c). The petition therefore is complete in all respects.
1. It is, accordingly, hereby ordered as follows: -
- a) The application bearing **CP (IB) No. 2179/KB/2019** filed by **Sunny Trading Co., Mr. Narendra Kumar Jalan and Mr. Sunil Jalan** (Operational Creditors), under section 9 of the Code read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **Indian pulp & Paper Privaye**

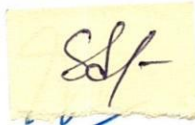
**Limited, CIN: U221093WB2004PTC098305** (the Corporate Debtor),  
is **admitted**.

- b) There shall be a moratorium under section 14 of the IBC.
- c) 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.
- d) Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- e) **Mr. Swarup Ghosh** registration number **IBBI/IPA-001/IP-P01010/2017-18/11661**, email: **swarupghosh@yahoo.co.in** is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. 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 functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, 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 one week from the date of receipt of this Order, in default of which coercive steps will follow.

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- g) The IRP/RP shall submit to this Adjudicating Authority periodical reports with regard to the progress of the CIRP in respect of the Corporate Debtor.
  - h) The Operational Creditor shall deposit a sum of ₹3,00,000/- (Rupees Three Lakh only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).
  - i) In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
  - j) Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, Kolkata by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
7. CP (IB) No. 2179/KB/2019 to come up on 30.09.2022 for filing the progress report.
8. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.



**Balraj Joshi**  
**Member (Technical)**



**Rohit Kapoor**  
**Member (Judicial)**

**Signed this the 22<sup>nd</sup> day of July, 2022**

SM[LRA]