



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

ITEM No.202 - C.P.(IB)/63(AHM)2024

Order under Section 9 of IBC, 2016

IN THE MATTER OF:

Pack World through its Proprietor Kamal Saraf
V/s
Classic Corrugations Pvt. Ltd.

.....Applicant

.....Respondent

Order delivered on 16/05/2024

Coram:

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

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for the pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

SEN



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

C.P.(IB)/63(AHM)2024

(Application for initiation of Corporate Insolvency Resolution Process U/s 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of

M/s. Pack World

Through its Proprietor Kamal Saraf
Having address at:
501, Gulmohar "B",
Royal Garden Bldng.
Vapi Daman Road, Chala Vapi.

... Applicant/Operational Creditor

VERSUS

Classic Corrugations Pvt. Ltd.

Having address at:
69, Soham Integrated Park,
Mahijada Bareja Road,
Off Kamod Dholka Highway,
Mahijada, Ahmedabad,
Gujarat-382425.

... Respondent/Corporate Debtor

Order Pronounced on 16.05.2024

CORAM :

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

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

APPEARANCE:

For Operational Creditor : Mr. Dhiren Dave, Advocate

For Corporate Debtor : Mr. Parth Saluja, Advocate



ORDER
(PER: BENCH)

1. **C.P.(IB)/63(AHM)2024** is an application filed in this Tribunal on 18.01.2024 under inward no. E159 by M/s. Pack World (“Applicant/Operational Creditor”) seeking commencement of the Corporate Insolvency Resolution Process (“**CIRP**”), appoint Interim Resolution Professional (“**IRP**”) and declare moratorium with respect to M/s. Classic Corrugations Pvt. Ltd., (“**Respondent/Corporate Debtor**”).
2. This application has been filed by M/s. Pack World through its proprietor Mr. Kamal Kumar Saraf. The Identification Number of Operational Creditor is given as PAN No. AFCPS0723D, having address at 501, Gulmohar “B”, Royal Garden Bldng, Vapi Daman Road, Chala Vapi.
3. Perusal of Form-II reveals that the Corporate Debtor - M/s. Classic Corrugations Pvt. Ltd., who was incorporated on 22.04.2011 under CIN: U21099GJ2011PTC065103.
4. The applicant has not named any IRP in the matter.



5. Perusal of Form-IV reveals that the total principal amount demanded is Rs.1,17,40,825/- and interest of Rs.65,05,902/- and the totally claimed amount is Rs.1,82,46,707/-.
6. It is stated that the Operational Creditor is maintaining Books of Accounts on a running account basis and the Corporate Debtor has also made payment to the Operational Creditor on a running account basis.
7. It is stated that the last payment was received on 26.12.2022 and accordingly the date of default is 26.12.2022.
8. It is stated that the Demand Notice dated 07.11.2023 was issued by the Advocate of the Applicant through courier as well as e-mail. However, it could not be delivered upon the Corporate Debtor through courier as the said courier was returned unclaimed. The email addressed to the Corporate Debtor is attached at page no. 10 of the application. The said email notice was replied by the Corporate Debtor on 18.11.2023 followed by a detailed reply on 27.11.2022.



9. The computation of default in tabular form and by way of ledger account of the Corporate Debtor is placed at Annexure-G and record of default registered with NeSL is attached as Annexure-I.

10. The list of documents relied upon by the Operational Creditor are as under:-
 - I. *Annexure-A Copy of Master Data of corporate debtor.*
 - II. *Annexure-B Copy of envelope returned by the courier.*
 - III. *Annexure-C Proof of dispatch and Proof of delivery of Demand Notice by email.*
 - IV. *Annexure-D Copy of Demand Notice without annexures.*
 - V. *Annexure-E Reply to demand notice by email.*
 - VI. *Annexure-F Copies of Invoices for goods supplied.*
 - VII. *Annexure-G Ledger account of Corporate Debtor in the books of Operational Creditor.*
 - VIII. *Annexure-H Proof of filing the application with IBBI.*
 - IX. *Annexure-I Form D for record of default registered with NeSL.*

11. Vide order dated 06.02.2024, Learned Counsel for the Applicant was directed to place on record the list/chart of invoices along with details of due date of each invoices as well as due amount. The said order was complied with by the Applicant through additional affidavit dated 05.03.2024. This Tribunal vide order dated 13.03.2024 issued notice to the Corporate Debtor. Pursuant to



which the Corporate Debtor has filed reply under diary no.D3612 dated 13.05.2024, to which a rejoinder was filed by the Operational Creditor under diary no. D3877 dated 08.05.2024.

12. Reply of the Corporate Debtor is affirmed by one Mr. Yogesh Todi, being Managing Director of the Respondent. The Corporate Debtor has raised the preliminary objection on the maintainability of the present CP on two counts which are as under:-

i. The name of the Operational Creditor is mentioned as “M/s. Pack World” through its proprietor Mr. Kamal Kumar Saraf. It is stated that in terms of the provisions of IBC, 2016 more particularly Section 3(23) a sole proprietorship concern is not a person under IBC, 2016. In view of the same, this petition is not maintainable.

ii. It is stated that the Identification Number of the Operational Creditor in Part-I at serial no. 2 a PAN is mentioned which reads as “PAN No. AFCPS0723D”. It appears that the said PAN



Number is that of Mr. Kamal Kumar Saraf in his individual capacity.

13. The Respondent thereafter attached the screenshot of the GST website which is placed at page no. 81 (Annexure-1) to demonstrate that no GST Number has been issued by the GST Department on the PAN Number mentioned in application. The CP has therefore been filed by M/s. Pack World with PAN Number of Mr. Kamal Kumar Saraf as its sole proprietor claiming to be an Operational Creditor of the Respondent giving PAN no. of Mr. Kamal Kumar Saraf (in his individual capacity).
14. The Corporate Debtor further points out that the invoices which have been attached to the application by the Applicant (at Annexure-F, on pages nos. 24 to 53) upon the Corporate Debtor appear that the Goods and Services Identification Number (“GSTIN”)/Unique Identification Number (“UIN”) mentioned in all such invoices is **“24AAIHK5004Q1Z1”** is that of ‘Mr. Kamal Kumar Saraf HUF’. The Respondent has, thereafter, attached the screenshot from GST Website evidencing the same and is annexed as Annexure-2.



15. It is stated that the said invoices have been raised against the goods provided pursuant to various purchase orders issued by the Respondent-Corporate Debtor on KK Saraf HUF/M/s. Pack World. Copy of the said purchase orders are annexed as Annexure-3.
16. It is stated that the GSTIN/UIN of the supplier as mentioned in the said purchase orders is also “24AAIHK5004Q1Z1”.
17. It is stated that the invoices relied upon by the Operational Creditor have in fact been raised by KK Saraf HUF and the present CP is filed by M/s. Pack World with PAN no. of the Operational Creditor Mr. Kamal Kumar Saraf in his individual capacity. In view of the above, it is stated by the Respondent that there is no jural relationship and the Respondent seeks dismissal of this petition.
18. In rejoinder, the Applicant states that:-
 - i. Mr. Kamal Kumar Saraf, as the Karta of Kamal Kumar Saraf-HUF and Proprietor of M/s. Pack World, has filed this petition, which is valid in law.



ii. It is an admitted fact that the Corporate Debtor had conducted business with M/s. Pack World. The Corporate Debtor attempted to evade its debts by resorting to false excuses.

19. We have heard the both sides and have perused the document on record. In view of the preliminary question of maintainability of the present petition, we are not delving upon other merits and demerits of the present application.

20. We have carefully gone through the various invoices attached along with the petition and also various purchase orders placed by the Respondent on the applicant which are annexed at Annexure-3 of reply from page nos. 83 to 94.

21. A perusal of invoices (from page nos. 24 to 53 of the application) reveals that the GSTIN/UIN No. is 24AAIHK5004Q1Z1 and perusal of purchase orders (from page nos. 83 to 94 of the reply) also reveals that that GSTIN/UIN No. of M/s. Pack World is 24AAIHK5004Q1Z1.



22. The Applicant has placed on record the NeSL record of default which is at page no. 60 to 65 of the application. The Unique Debt Identification Number is assigned by the NeSL as “AFCPS0723D_2122019” which is also PAN-based and appears to be that of Mr. Kamal Saraf.
23. The PAN Number of the Applicant stated in the application is “AFCPS0723D” which matches with the NeSL record of default. It is seen that for all the invoices raised as GSTIN/UIN and PAN Number are issued by Kamal Kumar Saraf HUF and not Mr. Kamal Kumar Saraf whereas the present application is filed by Mr. Kamal Kumar Safar as the Proprietor of M/s. Pack World.
24. Demand notice was issued on 07.11.2023 along with which the invoices were attached. The invoices attached were issued through same GSTIN/UIN Number as that of HUF.
25. This Tribunal also relies upon the earlier order of this Tribunal in C.P. (I.B) No. 854/9/NCLT/AHM/2019, more particularly, in para 13 which reproduced below:-



“13. On perusal of the identification it is clear that “person” must fall on the above category(s). In the case on hand, the petition is filed in the name of M/s. Shree Shakti Dyeing Works, a proprietary concern as operational creditor, who is not a “person” as per sub-section 23 of section 3 for the purpose of filing the application u/s. 9 of the I & B Code. Hence, on this ground itself the application is not maintainable.”

26. In view of the above findings that the PAN Number of the Applicant is not matching with the invoices and upon specific objections as have been raised by the Respondent which have been vaguely rebutted by the Applicant, we are of the view that the present application is not maintainable.
27. Accordingly, CP(IB)/65(AHM)2024 is hereby dismissed.
28. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)

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