

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

**CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER**

**SHRI RAJEEV MEHROTRA,
HON'BLE TECHNICAL MEMBER**

Rest. CP No. (IB)- 57/9/JPR/2020

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016, read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicatory Authority) Rules, 2016)

IN THE MATTER OF:

Mr. RAKESH SHARMA
(Sole proprietor, on behalf of M/s Rakesh Traders)
...Operational Creditor/Applicant

VERSUS

M/S COSMOPOLIS INTERIORS PRIVATE LIMITED

...Corporate Debtor/Respondent

MEMO OF PARTIES

Rest. CP No. (IB)- 57/9/JPR/2020

Mr. RAKESH SHARMA
**(Sole proprietor, on behalf of M/s Rakesh
Traders)**
R/o: Opp. Karol Mistan, Calgiri Road,
Malviya Nagar, Jaipur- 302017.

...Applicant

VERSUS

M/S COSMOPOLIS INTERIORS PVT. LTD.
CIN: U45201RJ2012PTC037603

R/o: Plot No. B-1/2B, C-Block, Ground Floor
 SDC Gateway, Kalidas Marg, Banipark,
 Jaipur- 302016.

...Respondent

For the Applicant : Gulshan Kumawat, Adv.
 Ritesh Kumawat, Adv.

For the Respondent : Harshal Tholia, Adv.

Order Pronounced On: 13.08.2024

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

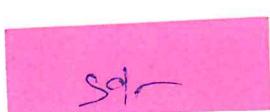
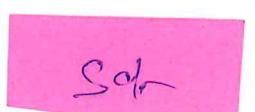
1. The present Application has been filed by *Mr. Rakesh Sharma (Sole proprietor of M/s Rakesh Traders)* ('Operational Creditor' / 'Applicant') seeking to initiate Corporate Insolvency Resolution Process ('CIRP') against *M/s Cosmopolis Interiors Private Limited* ('Corporate Debtor' / 'Respondent') under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC' / 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules').
2. The Applicant, *M/s Rakesh Traders*, is engaged in the business of supplying timber, plywood, wooden and moulding. The registered office of the Applicant is located at Opposite Karol Mistan, Calgiri Road, Malviya Nagar, Jaipur, Rajasthan. The Applicant has alleged default on the part of the Corporate Debtor for non-payment of operational dues amounting to Rs. 12,29,027/- (Rupees

Sd/-

Sd/-

Twelve Lakhs Twenty-Nine Thousand and Twenty-Seven Only) along with Interest @24% per annum as on date of actual payment/ realisation.

3. The Corporate Debtor, *M/s Cosmopolis Interiors Private Limited*, is a private limited company incorporated on 16.01.2012, having CIN: U45201RJ2012PTC037603, is registered with the Registrar of Companies, Jaipur. The Respondent has its office situated at Plot No. B-1/2B, C-Block, Ground Floor SDC Gateway, Kalidas Marg, Banipark, Jaipur- 302016. The Corporate Debtor has an Authorised Share Capital of Rs. 5,00,000/- (Rupees Five Lakh Only) and Paid-Up Share Capital of Rs. 1,00,000/- (Rupees One Lakh Only).
4. The details of the transactions leading to the filing of this Application as averred by the Applicant are as follows:
 - 4.1. The Corporate Debtor approached the Applicant for the supply of various types of woods, plywood, and several other goods that the Applicant deals in. An oral understanding was reached between the Applicant and the Corporate Debtor and pursuant to this understanding, the Corporate Debtor placed orders for various goods, which the Applicant duly fulfilled. Accordingly, the Applicant issued invoices to the Corporate Debtor for each supply.

4.2. It is submitted that, during the period from 19.06.2017 to 17.05.2018, the Applicant, in accordance with various purchase orders, sold and supplied goods/materials to the Corporate Debtor amounting to Rs. 30,65,928/- (Rupees Thirty Lakh Sixty-Five Thousand Nine Hundred Twenty-Eight Only). A total of 22 tax invoices were issued for these transactions. Copies of these tax invoices are being annexed as Annexure-5 (Colly.) of the Application.

4.3. Corporate Debtor has paid the amount of Rs. 18,36,901/- (Rupees Eighteen Lakh Thirty-Six Thousand Nine Hundred One Only) in numerous trenches but has failed to settle the remaining principal outstanding amount of Rs. 12,29,027/- (Rupees Twelve Lakh Twenty-Nine Thousand Twenty-Seven Only). This outstanding amount is still due. A copy of the statement of ledger account of the Corporate Debtor, as maintained in the books of the Applicant is being annexed as Annexure- 6 of the Application.

4.4. Further it is stated that, since February 2018, the Corporate Debtor has been irregular in making payments for the goods received. Despite these irregularities, the Applicant continued to supply goods to the Corporate Debtor until 17.05.2018, and has regularly requested the Corporate Debtor to make the outstanding payments and clear the dues.

Sd/-

Sd/-

4.5. Additionally, the Applicant submitted that the last payment of Rs. 2,50,000/- (Rupees Two Lakh Fifty Thousand Only) was received from the Corporate Debtor on 16.03.2018. Since then, no further payments have been made, leaving a principal amount of Rs. 12,29,027/- (Rupees Twelve Lakh Twenty-Nine Thousand Twenty-Seven Only) outstanding. Despite various requests and reminders, the Corporate Debtor has not settled the outstanding operational debt. Consequently, the Applicant issued a statutory Demand Notice dated 09.10.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016, to the Corporate Debtor. A copy of this Demand Notice is annexed as Annexure-8 (Colly.) of the Application

4.6. The relevant details as reflected in Part IV of the Application are as follows: -

Part IV

PARTICULARS OF OPERATIONAL DEBT

1. Total Amount of Debt, Details of Transactions on account of which debt fell due, And the Date from which such debt fell due.	Total Principal dues is Rs. 12,29,027/- (Rupees Twelve Lakhs Twenty-Nine Thousand and Twenty-Seven Only) along with interest @24% per annum as on date of actual payment/ realisation. Date from which such debt fell due- a statement depicting the details are stated
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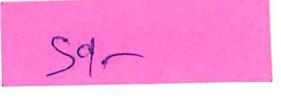
		out in the Worksheet annexed and marked as Worksheet-1 with the Application.
2.	Amount claimed to be in default and the date on which the default occurred (Attach the working for computation of amount and dates of default in tabular form)	<p>Amount claimed to be in default is Rs. 12,29,027/- (Rupees Twelve Lakhs Twenty-Nine Thousand and Twenty-Seven Only).</p> <p>Date of default: 11.06.2018</p> <p>A detailed statement depicting the computation of the operational debt along with the details of invoices raised by the Operational Creditor payment towards which are in default are stated out in the worksheet annexed and marked as Worksheet-2 with the Application.</p>

5. Consequent to the notice issued by this Adjudicating Authority, the Corporate Debtor filed its Reply *vide* Dairy No. 1055/2024 dated 26.04.2024, stating as follows:

5.1. The Respondent submitted that the Applicant and the Respondent had reached an oral settlement regarding the supply of goods/materials, with all discussions and agreements being made telephonically. In accordance with various purchase orders, goods were supplied to the Respondent, and invoices were issued by the Applicant. The Respondent has paid a total

amount of Rs. 18,36,901/- (Rupees Eighteen Lakh Thirty-Six Thousand Nine Hundred One Only) in multiple tranches for the goods supplied.

- 5.2. Further, the Respondent contended that the goods supplied were of inferior quality and defective. This resulted in delays and customer dissatisfaction, causing significant losses for the Respondent. The Respondent incurred costs related to customer returns, refunds, and replacements. Additionally, the poor quality of the goods damaged the Respondent's reputation, leading to a loss of customer trust and potential future business.
- 5.3. Additionally, it is submitted that the Respondent had to invest additional resources in inspecting, rectifying, or disposing of the faulty goods. This not only increased financial losses but also had long-term implications for the Respondent's business viability and competitiveness in the market.
- 5.4. Furthermore, the Respondent submitted that the Applicant failed to supply goods/materials within the stipulated time, leading to significant losses for the Respondent. This delay disrupted the Respondent's operations and commitments, creating a ripple effect on their ability to fulfil their own obligations and meet customer demands.
6. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Corporate Debtor is situated in the state of Rajasthan. Therefore, this Adjudicating Authority has the jurisdiction to



entertain this Application. Further, this matter is within the purview of the Laws of Limitation, as the default arose in 2018, and the Application was filed before this Adjudicating Authority in 2020. Hence, the period of three years after the default occurred had not been exhausted at the time of filing this Application.

7. Before we proceed with the facts of the present case, the statutory framework regarding the Application under Section 9 of the Code needs to be recapitulated. An application under Section 9 of the Code can only be filed after the delivery of a demand notice as provided under Section 8 of the Code. Section 8 of the Code requires the Operational Creditor, upon the occurrence of default, to deliver a Demand Notice for unpaid Operational Debt. Furthermore, Section 8(2) specifies that the Corporate Debtor must, within 10 days of receiving the Demand Notice, inform the Operational Creditor of any existing dispute.
8. Under Section 9(1), if Operational Creditor does not receive payment from the Corporate Debtor or notice of the dispute under Sub-section (2) of Section 8, may file an Application under Section 9(1) of the Code.

Section 9(1) is as follows:

"Section 9: Application for initiation of corporate insolvency resolution process by operational creditor:- (1) After the expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment under sub-section (1) of section 8, if the operational creditor does not receive payment from the corporate debtor or notice of the dispute under

Sd/-

Sd/-

sub-section (2) of section 8, the operational creditor may file an application before the Adjudicating Authority for initiating a corporate insolvency resolution process.”

Section 9(5)(ii) is as follows:

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under subsection (2), by an order—

(i)

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been [payment] of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days(i) of the date of receipt of such notice from the adjudicating Authority.”

9. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon’ble Supreme Court laid down the conditions precedent for triggering the CIRP under Section 9 of the Code. Para 34 is as follows: -

“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:

(i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)

Sd/-

Sd/-

- (ii) Whether the documentary evidence furnished with the Application shows that the aforesaid Debt is due and payable and has not yet been paid? and
- (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational Debt in relation to such dispute?

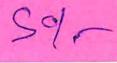
If any one of the aforesaid conditions is lacking, the Application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the Application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”

10. Therefore, to initiate the Corporate Insolvency Resolution Process (CIRP) in the present matter, then aforementioned conditions must be satisfied. In the present Application, it is an undisputed fact that the Operational Creditor had business relations with the Corporate Debtor, providing goods on a regular basis and issuing subsequent invoices. The Applicant has submitted 22 invoices amounting Rs. 30,65,928/- (Rupees Thirty Lakh Sixty-Five Thousand Nine Hundred Twenty-Eight Only) against which the Corporate Debtor has only made payment of Rs. 18,36,901/- (Rupees Eighteen Lakh Thirty-Six Thousand Nine Hundred One Only). Thus, it was alleged that the invoices amounting to Rs. 12,29,027/- (Rupees Twelve Lakh Twenty-Nine Thousand Twenty-Seven

Only) remain unpaid for the period from 19.06.2017 to 17.05.2018. These invoices have been verified against the Ledger account of the Corporate Debtor maintained with the Operational Creditor.

11. As per the provisions of the Code, an Operational Debt constitutes a claim in respect of the provision of goods or services arising under any law for the time being in force and Operational Creditor means a person to whom an operational debt is owed. In the current situation, it is evident that the Operational Creditor/Applicant would provide goods to the Corporate Debtor and raise invoices which were due and payable by the Corporate Debtor. Hence, the amount of unpaid dues against the invoices raised by the Applicant amounts to Operational Debt and the Applicant falls within the definition of Operational Creditor as envisaged under Section 5(20) of the Code.
12. It is seen that the last invoice was dated 17.05.2018, hence the date of default as mentioned is 11.06.2018. Subsequently, the Applicant issued a demand notice under Section 8 of the Code, dated 09.10.2019, demanding payment of Rs. 12,29,027/- (Rupees Twelve Lakh Twenty-Nine Thousand Twenty-Seven Only) plus interest. The Applicant has put on record all the invoices suggesting default. Therefore, there is a clear Operational Debt owed by the Corporate Debtor to the Applicant, which became due after the issuance of the demand notice.

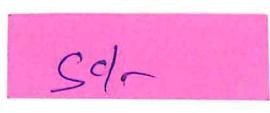
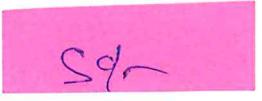
13. The Corporate Debtor, in its reply, has raised some disputes concerning the quality of goods and delays in delivery. However, there is no correspondence provided to substantiate these disputes. In addition, the demand notice which was sent in accordance with section 8 of the Code has not been responded by the Corporate Debtor. The defence of dispute taken by Respondent appears to be a moonshine defence. Therefore, these disputes cannot be classified as pre-existing dispute exists between the parties.
14. It has been well established that under Section 9 of the Code, to initiate CIRP proceedings, the Applicant must prove that the debt is due, has not been paid, and is undisputed. In this case, it has been demonstrated that the Corporate Debtor has failed to make payment of the amount specified in the statutory notice to date. Additionally, no correspondence has been provided that substantiates the Corporate Debtor's claims regarding the quality of goods and delivery delays. Thus, all conditions under Section 9 of the Insolvency and Bankruptcy Code (IBC) are satisfied. Therefore, we are inclined to initiate CIRP for the Corporate Debtor, as all requirements of Section 9 of the Code have been satisfied.
15. Under sub-section (4) of Section 9 of the Code, the Operational Creditor may propose the name of a Resolution Professional to be appointed as Interim Resolution Professional ('IRP'). In the instant case, the Operational Creditor



has proposed the name of *Mr. Sourabh Malpani*, bearing Registration No. IBBI/IPA-001/IP-P01265/2018-2019/12047 with the address Guru Kripa Plot No. 93, Neelkanth Colony, Queens Road, Jaipur – 302021 as the IRP in the present matter. The said IRP has filed his written consent to act as an interim resolution professional in Form – 2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016.

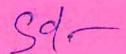
16. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20 and 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, and Rules and Regulations thereunder. It is directed to the Interim Resolution Professional /Resolution Professional to check the genuineness of the claim while admitting the operational dues of the Applicant.
17. Consequences of initiation of CIRP shall be inter-alia as follows:

- i) The IRP appointed by the Adjudicating Authority, *Mr. Sourabh Malpani*, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including issue of publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

- ii) Further, as a sequel of admission, moratorium as envisaged under Section 14 of the Code is invoked in relation to the Corporate Debtor which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code in relation to the Corporate Debtor.
- iii) The said IRP shall act strictly in accordance with the provisions of the Code and with a view to defray his expenses to be incurred and fees on account, the Applicant is directed to deposit a sum of Rs. 1,00,000/- (Rupees One Lakhs Only) within seven days from the date of this order. This amount shall be proportionately contributed and reimbursed to the Applicant upon formation of the Committee of Creditors. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

18. Accordingly, Rest. CP No. (IB)-57/9/JPR/2020 is admitted.
19. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the parties along with the IRP nominated herein.



**DEEP CHANDRA JOSHI,
JUDICIAL MEMBER**



**RAJEEV MEHROTRA,
TECHNICAL MEMBER**