

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT-I**

CP (IB) 4048/MB /2019

Under Section 9 of the Insolvency and Bankruptcy
Code, 2016.

In the matter of

M/s Tri-wall Pak Private Limited

CIN: [U28992KA2001PTC02390]

...Operational Creditor/Applicant

Versus

M/s Firefly Led Products Private Limited

CIN: [U31902MH2013PTC248325]

...Corporate Debtor/Respondent

Order Delivered on 28.08.2024

Coram:

Prabhat Kumar
Hon'ble Member (Technical)

Justice V.G Bisht, (Retd).
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor	:	Adv. Agam H. Maloo i/b Adv. Ameya Ranade
For the Corporate Debtor	:	None Present

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ORDER

Per: Justice Virendrasingh Gyansingh Bisht, Member (Judicial)

1. The instant application is filed by M/s Tri-wall Pak Private Limited. (hereinafter referred as '**Applicant**'/'**Operational Creditor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the **Code/IBC**') with a prayer to initiate Corporate Insolvency Resolution Process ("**CIRP**") against M/s Firefly Led Products Private Limited (hereinafter referred as '**Respondent**'/'**Corporate Debtor**') for non-payment of Operational Debt of Rs. **17,89,205.14/-** (Indian Rupees Seventeen Lakh Eighty Nine Thousand Two Hundred Five and Fourteen Paise Only), inclusive of interest payable on outstanding. The date of default, according to the most recent invoice TWP/2018-19/102, is October 02.10.2018. This invoice was issued by the Operational Creditor for the payment of the outstanding balance due from the Corporate Debtor. The terms specifying the date of default, as outlined in the present Petition by the Operational Creditor regarding the overdue invoice, are detailed below:

"The default occurred on the date of expiry of credit period of Sixty (60) days for each of the Invoice(s)".

2. The Registered office of the Financial Creditor is at Plot No.108,3rd Cross,4th Phase, Bommasandra Industrial Area, Bengaluru, Karnataka-560099.
3. The Registered office of the Corporate Debtor is Nirav No.6, Gaondevi Industrial Estate, Sativali Road,Vasai-East,Thane ,Maharashtra-401208. Therefore, this Bench has jurisdiction to entertain and decide the Petition.

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Submissions made by the Petitioner:

4. The Operational Creditor asserts that in 2017, the Corporate Debtor frequently placed purchase orders with them. Accordingly, the Operational Creditor supplied the requested goods. In response to these deliveries, the Operational Creditor issued various invoices. The details of these invoices are outlined as follows:

Invoice No.	Date	Amount (in Rs.)
TWP/2017-18/151	13.10.2017	4,48,207.20/-
TWP/2017-18/178	08.11.2017	18,289.60/-
TWP/2017-18/177	08.11.2017	2,36,034.40/-
TWP/2017-18/184	11.11.2017	9,072/-
TWP/2017-18/185	11.11.2017	74,776.80/-
TWP/2017-18/224	15.12.2017	1,36,192/-
TWP/2017-18/297	24.01.2018	62,176.80/-
TWP/2017-18/363	28.02.2018	1,23,536/-
TWP/2017-18/367	08.03.2018	1,10,017.60/-
TWP/2018-19/5	06.04.2018	2,60,724.80/-
TWP/2018-19/51	28.04.2018	1,15,472/-
TWP/2018-19/99	02.06.2018	1,03,208/-
TWP/2018-19/102	04.06.2018	1,09,872/-
	TOTAL =	18,07,579.20/-

7. The Operational Creditor submits that till date, the Corporate Debtor has paid Rs. 3,82,843.20 (Rupees Three Lakhs Eighty-Two Thousand Eight Hundred Forty-Three and Twenty Paise Only) against the invoices. This payment was adjusted in invoice number TWP/2017-18/151 on

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13.10.2017. An outstanding balance of Rs. 14,24,736 (Rupees Fourteen Lakhs Twenty-Four Thousand Seven Hundred Thirty-Six Only) remains unpaid. The Operational Creditor had granted a credit period of sixty (60) days for the invoice amounts.

8. The Operational Creditor reports that, despite numerous reminders, the Corporate Debtor has not settled the outstanding payments for the invoices. Additionally, the Corporate Debtor did not respond to any of the reminders sent via email. In November 2017, the Corporate Debtor issued two post-dated cheques—Nos. 001668 and 000964, dated 11.11.2017, and 18.11.2017, respectively, both drawn on HDFC Bank—for Rs. 5,75,349 and Rs. 3,00,000, as partial payment towards the dues. On November 23.11.2017, the Finance Head of the Corporate Debtor requested via email that the cheques not be presented until December 15.12.2017. The Corporate Debtor repeated this request on 24.11.2017. On 24.11.2017, the Applicant sought clarification from the Corporate Debtor regarding the delay in payment and the honoring of the cheques but received no satisfactory response. Consequently, the Operational Creditor presented the cheques to their bank, where they were dishonored due to "Payment stopped by drawer." Despite repeated assurances from the Corporate Debtor's directors to clear the outstanding dues and the Operational Creditor's decision not to pursue legal action, the Corporate Debtor has yet to settle the remaining balance.
9. The Operational Creditor asserts that the Corporate Debtor does not contest its obligation to pay the remaining dues on the invoices to date. Additionally, the issuance of the cheques and the assurances provided by the Corporate Debtor's Directors serve as an acknowledgment of the debt.
10. The Operational Creditor submits that they have issued a demand notice under section 8 of this code to the Corporate Debtor on 08.05.2019, but no reply whatsoever was received against the same.

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Further, the Corporate Debtor has stopped answering to the calls and communications by the Operational Creditor.

11. The Operational Creditor states that a demand notice under Section 8 of the Code was issued to the Corporate Debtor on 08.05.2019, but no response was received. Additionally, the Corporate Debtor has ceased all communication and has not answered any calls from the Operational Creditor.

Findings:

12. Heard learned Counsel for Petitioner and have duly perused the documents on record.
13. We note that the instant application is filed by TRI-WALL PAK PVT LTD on 15.11.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 with a prayer to initiate Corporate Insolvency Resolution Process (“**CIRP**”) against Firefly Led Products Pvt Ltd for nonpayment of Operational Debt of Rs. **17,89,205.14/-** (Indian Rupees Seventeen Lakh Eighty Nine Thousand Two Hundred Five and Fourteen Paise Only Only).
14. We note that this Bench vide order dated 16.12.2019, had directed Petitioner to serve notice on the Respondent by way of publication of Notice in two Newspapers. Business Standard and another in local vernacular language and file affidavit of service within Seven days from the service of notice.
15. Also, an Interlocutory Application was filed before us by a way of IA 1462/2023. Prayer for this application was for urgent hearing, from the perusal of records we find that this bench has directed to issue notice to the Respondent, intimating the next date of hearing and to place on record Compliance Report well before the adjourned date.

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16. On perusal of the record, it revealed that Corporate Debtor/Respondent did not appear. Therefore, this Bench heard the Counsel for Petitioner, and proceeded to dispose of this Petition in terms of such arguments and material already available on record.

17. The date of default, according to the most recent invoice TWP/2018-19/102 and the first invoice, is October 02.10.2018 and 8.11.2017 respectively. The date of default in the present Petition is stated as under :

“The default occurred on the date of expiry of credit period of Sixty (60) days for each of the Invoice(s)”.

18. It is trite law that the default date for each invoice is to be taken into consideration and limitation with reference to each date of default is to be ascertained for the purpose of Limitation aspect. Given below is various invoices are ascertained. Given below are the various invoices raised by the Operational Creditor:

Invoice No.	Date	Amount (in Rs.)
TWP/2017-18/151	13.10.2017	4,48,207.20/-
TWP/2017-18/178	08.11.2017	18,289.60/-
TWP/2017-18/177	08.11.2017	2,36,034.40/-
TWP/2017-18/184	11.11.2017	9,072/-
TWP/2017-18/185	11.11.2017	74,776.80/-
TWP/2017-18/224	15.12.2017	1,36,192/-
TWP/2017-18/297	24.01.2018	62,176.80/-
TWP/2017-18/363	28.02.2018	1,23,536/-
TWP/2017-18/367	08.03.2018	1,10,017.60/-

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TWP/2018-19/5	06.04.2018	2,60,724.80/-
TWP/2018-19/51	28.04.2018	1,15,472/-
TWP/2018-19/99	02.06.2018	1,03,208/-
TWP/2018-19/102	04.06.2018	1,09,872/-
	TOTAL =	18,07,579.20/-

25. The Operational Creditor submits that the Corporate Debtor has made a payment of Rs. 3,82,843.20 (Three Lakhs Eighty-Two Thousand Eight Hundred Forty-Three and Twenty Paise) towards the listed invoices. This payment was applied to invoice number TWP/2017-18/151 on October 13, 2017. However, an outstanding balance of Rs. 14,24,736 (Fourteen Lakhs Twenty-Four Thousand Seven Hundred Thirty-Six) is still due. The Operational Creditor had allowed a credit period of sixty days for these invoices.
26. The Operational Creditor reports that, despite multiple reminders, the Corporate Debtor has failed to clear the outstanding payments for the invoices and has not responded to any of the email reminders.
27. The Operational Creditor submits that the they have issued a demand notice under section 8 of this code to the Corporate Debtor on 08.05.2019, but no reply whatsoever was received against the same. The Corporate Debtor has neither filed any reply nor appeared before the Bench.
28. The application made by the Applicant is complete in all respects as required by law. It clearly shows that the Respondent is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of the IBC, at the relevant time. Therefore, the default stands established and there is no reason to deny the admission of the Petition. In view of this, this Adjudicating Authority

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admits this Petition and orders initiation of CIRP against the Corporate Debtor.

Order

- a. In the above circumstances the petition bearing **CP(IB) 4048/MB/C-I/2019** filed by M/s Tri-wall Pak Private Limited, the Operational Creditor, under section 9 of the IBC read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process (CIRP) against M/s Firefly Led Products Private Limited, the Corporate Debtor, is **Admitted**.
- b. This Bench hereby appoints Umesh Balaram Sonakar as the Interim Resolution Professional; Registration No:IBBI/IPA-001/IP-P-02619/2021-2022/14043, having email:rosonkar1603@gmail.com ;[Mobile](#) Number :-7874447169 ;Address at Flat No.10,Om Shanti Chs ,Plot No.8/10/12.Sector 11,Road No.4 New Panvel, Road No.4,Navi Mumbai,Maharashtra-410206 to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. There shall be a moratorium under section 14 of the IBC, in regard to the following:
- i. 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;
 - ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
 - iii. Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property

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including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor.

d. Notwithstanding the above, during the period of moratorium: -

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator;

e. 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 Code or passes an order for liquidation of Corporate Debtor under Section 33 of the Code, as the case may be.

f. 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.

g. The Operational Creditor shall deposit an amount of **Rs. Three Lakhs** 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).

h. During the CIRP Period, the management of the Corporate Debtor shall vest in the IRP or, as the case may be, the RP in terms of Section

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17 of the Code. 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.

- i. The Registry is directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email immediately, and in any case, not later than two days from the date of this Order.
- j. IRP is directed to send a copy of this Order to the Registrar of Companies, Maharashtra, Mumbai, 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.

Sd/-

PRABHAT KUMAR
Member (Technical)

Sd/-

JUSTICE V.G BISHT
Member (Judicial)