

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No.2 - **CP(IB) 251 of 2019**
With
ITEM No.3 - IA/123(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

Shah Paper Mills Ltd
V/s
Shree Rama Newsprint & Papers Ltd

.....Applicant

.....Respondent

Order delivered on: 18/10/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)
Mr. Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

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

-Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

**CP (IB) No. 251/NCLT/AHM/2019 with
IA No. 123/NCLT/AHM/2023**

CP (IB) No. 251 of 2019

[An application 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]

In the matter of:

M/s. Shah Paper Mills Ltd.

CIN:U21010MH1990PLC057464

Registered Office at:

209, 2nd Floor, ML Spaces,

Dashratlal Joshi Road,

Vile Parle (W), Mumbai-400056.

.....Operational Creditor

Versus

Shree Rama News Print & Papers Ltd.

CIN: L21010GJ1991PLC019432

Registered Office at:

Village Barbodhan taluka Olpad,

District- Surat, Gujarat-395005.

.....Corporate Debtor

IA No. 123 of 2023

[An Application under rule 11 of National Company Law Tribunal Rules, 2016]

In the matter of:

Shree Rama News Print & Papers Ltd.

CIN: L21010GJ1991PLC019432

Registered Office at:

Village Barbodhan taluka Olpad,

District- Surat, Gujarat-395005.

.....**Applicant**
(Ori. Corporate Debtor)

Versus

M/s. Shah Paper Mills Ltd.
CIN:U21010MH1990PLC057464

Registered Office at:
209, 2nd Floor, ML Spaces,
Dashratlal Joshi Road,
Vile Parle (W), Mumbai-400056.

.....**Respondent**
(Ori. Operational Creditor)

Order pronounced on: 18.10.2023

Coram: SHAMMI KHAN, MEMBER (Judicial)
KAUSHALENDRA KUMAR SINGH, MEMBER (Technical)

Appearance:

For the Applicant: Mr. Ravi Pahwa, Adv. a/w. Ms. Pragati Bansal, Adv.
For the Respondent: Mr. Kamil Lokhandwala, Adv. a/w Ms. Uma Acharya,
Adv. & Mr. Mihir Kakade, Adv.

ORDER

1. The Present Application has been filed on 28.03.2019 by **M/s. Shah Paper Mills Ltd.** (hereinafter referred to as “the Applicant/Operational Creditor”) against the **M/s. Shree Rama Newsprint & Papers Ltd.** (hereinafter referred to as “the Respondent/Corporate Debtor”) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution

Professional (hereinafter referred to as “**IRP**”) and declare the moratorium for making default in payment of outstanding amount of **Rs.55,23,253/-** (Rupees Fifty Five Lakhs Twenty Three Thousand Two Hundred and Fifty Three only) along with interest @18% until the date of its realization.

2. This Adjudicating Authority vide its order dated 20.07.2022 rejected the said Application on the ground of there being a serious dispute about the actual amount payable by the Corporate Debtor to the Operational Creditor.
3. Thereafter, an appeal bearing Company Appeal (AT) (Ins.) No. 1088 of 2022 was preferred by Operational Creditor against order dated 20.07.2022. The said Appeal was allowed by Hon’ble NCLAT vide order dated 21.12.2022 and the Impugned Order dated 20.07.2022 was set aside. Further, directions were also given to this Adjudicating Authority to pass an order of admission of section 9 application under IBC within a period of one month from the date when the copy of this order is produced and to take further steps in accordance with the law.
4. During the hearing held on 03.01.2023, it was noted that order passed by this Adjudicating Authority in CP. No. 251 of 2019 was set aside by Hon’ble NCLAT and directions were given to reconsider the application on merit within one month. Further, the Ld. Sr. Counsel for the Corporate Debtor made a statement that the Corporate Debtor is ready to pay the entire amount by way of Demand Draft to the Operational Creditor today itself in view of which the matter was adjourned.

5. Subsequently, the Corporate Debtor sent two demand drafts totaling to Rs.55,23,253/-. The said demand draft was not accepted and returned back by the Operational Creditor. Following that, the Corporate Debtor transferred the entire amount of Rs.55,23,253/- through RTGS in the account of Operational Creditor on 16.01.2023 in two tranches, first tranche for Rs.37,33,552/- and second tranche for Rs.17,89,701/-. However, the said amount too was returned by Operational Creditor to the Corporate Debtor. Thereafter, the Corporate Debtor filed an application bearing I.A. No. 123 of 2023 to bring the subsequent events on record and to seek dismissal of C.P. No. 251 of 2019 on the ground that even after making entire payment the same was returned by the Operational Creditor for pursuing the insolvency petition.

6. This Adjudicating Authority vide order dated 31.01.2023 reserved C.P. No. 251 of 2019 and I.A No. 123 of 2023 for order. Subsequent thereto, an application bearing I.A. No. 462 of 2023 was filed by Corporate Debtor before Hon'ble NCLAT, wherein Hon'ble NCLAT vide its order dated 03.02.2023 allowed this Adjudicating Authority to consider the subsequent events after passing of order of Hon'ble NCLAT i.e. order dated 21.12.2022. Therefore, this Adjudicating Authority vide its order dated 15.02.2023, re-opened the main application i.e. CP(IB) No. 251 of 2019 for hearing afresh. Accordingly, directions were given to place CP No. 251 of 2019 and all other pending IAs for consideration before Regular Bench on 06.03.2023. It is noted that in the order dated 03.02.2023, the Hon'ble NCLAT stated in para (2) that the Corporate Debtor had offered to

pay the entire amount claimed in the application i.e. Rs.55,23,253/- 'alongwith interest'. However, later by way of rectification, the word 'alongwith interest' was deleted vide order dated 06.04.2023 in I.A. No. 1182/2023.

7. Moreover, an appeal was filed by Operational Creditor against the order dated 15.02.2023, wherein Hon'ble NCLAT vide its order dated 12.04.2023 stated that order dated 15.02.2023 has to be confined only to I.A. No. 123 of 2023 filed by Corporate Debtor and there is no occasion for any fresh hearing in CP(IB) No. 251 of 2019 which is covered by their direction issued on 21.12.2022.
8. In view of the above we proceed to consider I.A. No. 123 of 2023. The said application is filed by Corporate Debtor for seeking dismissal of C.P. No. 251 of 2019 on the ground that even though the payment of principal amount was made by Corporate Debtor the same was returned by Operational Creditor as the Operational Creditor wants to pursue the application only for claiming interest with an intention to drag the Corporate Debtor into CIRP.
9. By considering the subsequent events it appears that payment of Principal amount has been made by Corporate Debtor which is not acceptable to Operational Creditor as the Operational Creditor is also claiming interest.
10. The defense taken by Corporate Debtor for not making payment of interest is that the purchase orders have no stipulation for interest and the invoices are unilateral documents and are not signed by the Corporate Debtor and therefore, the invoices cannot be relied to charge interest.

11. In order to support the said contention the Corporate Debtor has relied upon the decision in the matter of **S.S. Polymers Vs. Kanodia Technoplast Ltd. Company Appeal (AT) (Ins) No. 1227 of 2019** wherein it is observed as follows:-

“3. The Adjudicating Authority has noticed that a sum of Rs.25,00,000/- out of Rs.32,71,800/- was paid to the Appellant by 31st December, 2018 through RTGS(s). The remaining amount of Rs.7,71,800/- was also paid by ‘Corporate Debtor’ to the Applicant by 17th January,2019 through NEFT(s). The said amounts were paid before the admission of the application under section 9 of the I&B Code. Even after receiving the total amount due, the Appellant pursued the application under section 9 of the I&B Code for a sum of Rs.2,16,155/- towards interest. In these backgrounds, the Adjudicating Authority observed that in the absence of any Agreement, no such amount can be claimed.

4. The Learned Counsel for the Appellant relied on ‘Invoices’ to suggest that in ‘Invoices’, the claim was raised for payment of interest. However, we are not inclined to accept such submission as they were one-side invoices raised without any consent of the ‘Corporate Debtor’.

5. Admittedly, before the admission of application under section 9 of the I&B Code, the Corporate

Debtor paid the total debt. The application was pursued for realization of interest amount, which according to us is against the principle of I&B Code as it should be treated to be an application pursued by applicant with malicious intent (to realize only interest) for any purpose other than the resolution of insolvency, or liquidation of Corporate Debtor and which is barred in view of section 65 of the I&B Code.”

The Corporate Debtor has also relied upon the decision in the matter of **Rohit Motawat Vs. Madhu Sharma, proprietor of Hindu Chem Corporation & Ors. Company Appeal (AT) (Ins) No. 1152 of 2022** wherein facts of the matter are similar to that of the present case and view taken in **S.S. Polymers Vs. Kanodia Technoplast Ltd.** has been confirmed Further, it was also observed therein that principal amount has entirely been paid and the issue was only regarding to interest for which the application under section 9 of the Code was not maintainable as the spirit of the legislation of the Code is for ‘resolution of debt’ and not for ‘recovery’.

12. In the present case, it is noted that the Corporate Debtor made an attempt to pay the principal amount twice – once by sending demand draft and then by transferring the amount through RTGS but that was returned by the Operational Creditor. The Operational Creditor wants to pursue application u/s 9 only for payment of interest also on the basis of invoices. By considering the subsequent events and decisions relied upon by the Corporate Debtor we are of the

considered opinion that the Operational Creditor's intent of filing section 9 application is not at all resolution of Corporate Debtor but the recovery of its dues. It is also noteworthy that in the process of resolution, the priority of Operational Creditors are much below the Financial Creditors. The provisions of the Code are essentially intended to bring the Corporate Debtor to its feet and are not for money recovery proceedings. We rely upon the judgement of Hon'ble Principal Bench in the matter of **Ms. Rita Malhotra and Ors. Vs. M/s. Orris Infrastructure Pvt. Ltd.** (CP (IB) -234 (PB)/2019) wherein it is said that IBC cannot be used as a tool of recovery.

13. As per the direction of Hon'ble NCLAT after considering the subsequent events as placed in I.A. No. 123 of 2023, we are of the view that section 9 Petition in C.P. No.251 of 2019 does not deserve to be admitted therefore, in view of the above observations, I.A. No. 123 of 2023 is allowed and consequently, C.P. No. 251 of 2019 stands rejected.
14. Urgent certified copy of this order, if applied for, to be issued to all concerned parties upon compliance with all requisite formalities.

-Sd-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-Sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

Arati-LRA