

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

Company Petition (IB)No.10/ALD/2017

(Under section 9 of Insolvency and Bankruptcy Code,2016

Read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority Rule,2016)

IN THE MATTER OF:

M/s Surendra Trading Company

(Having its Registered Office at:

House No.102, Village and Post Office Forbesganj,

Ward No.12, District Araria, Bihar-854311

.....Operational Creditor/ Applicant

Versus

M/s Juggilal Kamapat Jute Mills Company Limited

(Having its Registered Office at

84/89, Zareeb Chowki, Kalpi Road

Kanpur-208012

.....Corporate debtor/Respondent

JUDGMENT/ORDER DELIVERED ON 10.04.2018

CORAM:

Sh. V.P. Singh, Hon'ble Member (Judicial)

Ms Saroj Rajware, Hon'ble Member (Technical)

For the Applicant/ Financial Creditor : Sh. Ashish Srivastava, Adv.

For the Respondent/ Corporate Debtor : Sh. Nesar Ahmed, PCS.

AS PER: Ms Saroj Rajware, Hon'ble Member (Technical)

Order/Judgment

1. The present petition is filed under *Section 9 of Insolvency and Bankruptcy Code,2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule,2016* by the Applicant i.e.*M/s Surendra Trading Company* for initiation of Corporate Insolvency Resolution Process against the respondent/ corporate debtor company "*M/s Juggilal Kamapat Jute Mills Company Limited*".

Company Limited".

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2. Brief facts of the case are as follows: -

- (i) The Petitioners have stated that Shri Mahendra Kumar Baid, Proprietor of M/s Surendra Trading Company, has been authorised to submit an application on behalf of Operational Creditor.
- (ii) The Operational Creditors has stated that the goods worth Rs. **17,06,766/- (Rupee Seventeen Lakh Six Thousand Seven Hundred Sixty-Six only)** were sold and delivered to the Corporate Debtor, against the various invoices/margin bills of different dates, and this is debt against corporate debtor as on 31-03.2004, copies of all purchase invoices/margin bills have been annexed by the operational creditors and marked as **Annexure-4** of the application.
- (iii) The Operational creditor has stated that the goods were received by the Corporate Debtor and debt for each invoice/margin bills fell due from receipt of such supplies. Details of the supplies made along with particulars of invoices raised have been compiled in the tabular form as mandated by Part-IV (2) in form 5 and attached as Annexure 4.
- (iv) The operational creditors have further stated that the sale was made under the contract for goods sold and delivered and Sale of Goods Act, 1930 and The Indian Contract Act, 1872 is the provision of the law under which Operational Debt has become due, an amount of Rs. 17,06,766/- has been due and payable to the operational creditor.
- (v) Further, the operational creditor has annexed:



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- (a) A certificate of debt dt. 24.10.2004 acknowledged by the Corporate debtor.
- (b) A List of the sundry creditor as on 31.03.2010 submitted by Corporate Debtor (JK Jute Mills) in DRS, in which name of the operational creditor is reflected, to prove the existence of Operational Debt and the amount in default.
- (vi) Petitioner further stated that a Demand Notice dated 06.01.2017 was issued to Corporate Debtor, which was received in their registered address, but no notice of dispute has been issued by the corporate debtor till date. A copy of demand notice dated 06.01.2017 is annexed and marked as (Annexure 1) in the application. As on the date of issuance of the Demand Notice, an amount of Rs. 17,06,766/- is admittedly due and payable.
- (vii) The Petitioner/Operational Creditor have submitted an Affidavit about disclosure of the statement of Account of the bank where deposits are made, or credits normally received by the operational creditor and Bank Certificate that outstanding debt of above-mentioned amount was not received till 19.09.2017.
3. The Corporate Debtor has filed objections for the maintainability of the present application filed by the petitioner on following grounds:
- (i) That, the petitioner, i.e. (M/s Surendra Trading Company) failed to annexe reply to the Demand Notice dated 25.01.2017 sent by the corporate debtor, and not stated about various civil & criminal proceedings regarding the present matter pending before various courts of law, and these facts have been suppressed by the operational creditor. *(Copy of reply to*



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demand notice by Corporate Debtor is annexed as Annexure R-1 of objection)

- (ii) Further, Corporate Debtor has stated in objection that Petitioner has also filed a Criminal Case titled as M/s Surendra Trading Company v/s M/s J.K Jute Mills Company Limited, before the court of Ld. CMM, Kolkata against the erstwhile Singhanian Group which was removed from management in 2008-2010 (*A Copy of petition is annexed as Annexure R-1 in the objection*).
- (iii) The Corporate Debtor has further raised a plea that Petitioner has disclosed after this application that they had filed Civil Writ Petition Being W.P No. 34477/2013 and an appeal before division Bench of Hon'ble Kolkata High court (AST No.228/2013 & ASTA No.113/2013) is still pending. As, such, the debt of the petitioner is still under consideration by various forums, Corporate Debtor has also annexed a copy of writ petition titled JK Jute Mill Mazdoor Ekta v/s Union of India & Ors. Which is stated to be Pending before Hon'ble Delhi High court where abatement has been challenged. (BIFR Case no.149/1994 have been abated on 01.12.2016.) (Writ Petition without annexures along with order dated 17.1.2017 is annexed with objection and marked as **Annexure R-2**).
- (iv) Further, the Corporate Debtor in their objection contented that, the main basis of demand notice is an alleged list of sundry creditors as on 31.03.2010 submitted before BIFR as part of DRS and stated that DRS was only a compromise proposal, which was under consideration of BIFR.



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(v) Corporate Debtor submitted that dispute pertains to the year 2001-2004 when the Company was registered with BIFR, and as per section 22(1) of SICA, no recovery proceedings can be initiated against the company, then also petitioner supplied goods to the company without advance payment, without checking and without even getting the invoices received/ counter signed, hence it is submitted that alleged certificate dated 24.10.2004 is clearly fraudulent and fabricated and it is not issued by the Authorized person on behalf, and no name is given of the person issuing the certificate on behalf of the company.

(vi) Further corporate debtor submitted that alleged debt of the petitioner is barred by time (Limitation Act, 1963) and as such, is not recoverable, and neither the Demand Notice nor the Petition can be filed for the Time barred dispute.



(vii) Therefore, Corporate Debtor submitted that list of creditor submitted to BIFR was only for Examination of BIFR. The amount stated therein are neither admitted nor payable till examined by law. As SICA was repealed and BIFR has been dissolved, therefore, the occasion to examine the said entries only arose on the receipt of aforesaid demand notice dated 06.01.2017. On examination of the said demand notice, it has been confirmed that only defective supplies amounting to Rs. 48,999/- has been received, and no other material has been received.

4. Operational Creditor further filed rejoinder contending that objections raised by the respondents/corporate debtor are not sustainable.

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5. Heard the Ld. Counsel of the Both the sides and perused the records, after hearing the argument and considering the contention of both the parties, the point that arises for consideration are as follows:

- (i) The validity of Margin Bills/Invoices against which alleged amount is claimed to trigger CIRP?
- (ii) Is alleged debt by the petitioner barred by time under (Limitation Act,1963)?

6. For consideration, we further produce a bare reading of the relevant provision of section 9 of IB Code which read as follows: -

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

(2) *The application under sub-section (1) shall be filed in such form and manner and accompanied with such fee as may be prescribed.*

(3) *The operational creditor shall, along with the application furnish—*

(a) *a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;*

(b) *an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational*

debt;

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(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and (d) such other information as may be specified

7. Hence, simple bare reading of the provision of section 9(3)(a) shows that petitioner is required to furnish a copy of the invoice demanding payment or demand notice delivered by the operational creditor to corporate debtor. Accordingly, petitioner had annexed both invoices and demand notice raised against services, goods provided to the corporate debtor company. But a perusal of margin bills annexed shows that they are neither on the letter head of the petitioner company nor bear any signature of the person raising it, and they cannot be treated as an invoice.



Learned counsel for the operational creditor is not able to clarify that why a copy of invoices submitted by them are without the signature of the person issuing the invoice. Therefore, alleged margin bill cannot be treated as invoices against supply/ services of good provided to Corporate Debtor. It is also pertinent to mention that not a single margin bill annexed is having the signature of any person. It may be considered, that by mistake, a person can forget to sign in one/two or three bills but how can a person forget to sign all the 101 bills, annexed and issued on different dates. Petitioner counsel fails to submit any explanation regarding this point.

8. Learned counsel for Operational Creditor during the argument, has emphasized two points:

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(i) Acknowledgement of debt by Corporate Debtor, which is at page 9 of the petition "in this certificate it is stated that this is to certify that as per our record of books the balance of Rs 1706766.95/- is outstanding as on 31/03/2004 in the name of Surendra Trading Company, Forbesganj, Araria, this Acknowledgment of debt has been issued by Assistant Manager of J.K Jute Mill. Ld. Counsel for corporate debtor has submitted that signature on the alleged certificate is forged and construed by them, and the certificate is manipulated.

(ii) Secondly, during the hearing, Ld. counsel for operational creditor has emphasised on list of sundry creditors (annexed at page no.10) which contains the name of Operational Creditor i.e. M/s Surendra Trading Company with an outstanding amount of Rs.17, 06766.95/- .Only on the basis of a list of sundry creditor and acknowledgment of debt, operational creditor claims that debt is proved by the said documents, so there is no need of looking into invoices filed by the operational creditor along with petition.



9. This petition has been filed by the Operational Creditor under Section 9 of Insolvency and Bankruptcy Code,2016, hence it is important to see the provision of **Section 8 of IBC ,2016** which provides that:

(1) An operational creditor may, on the occurrence of a default, deliver a demand notice of the unpaid operational debt, copy of invoice demanding payment of the amount involved in the default of the corporate debtor in such form and manner as may be prescribed

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10. On perusal of above provision, it is clear that Operational Creditor on the occurrence of default may deliver a demand notice of the unpaid operational debt, a copy of invoices involving amount involved in default.

11. In this case, invoices filed by the operational creditor (on which basis alleged debt have become due) are not on letterhead of the petitioner and also not contain the signature of any person, issuing them. It cannot be assumed that 115 invoices, which have been issued on a different dates, can remain unsigned inadvertently. A person may forget to sign one, two, or three bills, but there cannot be a situation when a person will commit the same mistake while issuing 115 invoices at different dates and time. Hence, margin bill annexed, cannot be treated as invoices or document.

12. Regarding, acknowledgement of the alleged debt by the corporate debtor, it is important to point out that this certificate shows that outstanding amount against the corporate debtor as on 31.03.2004 was Rs.17,06766.95/-, but this alleged amount does not match with the total of invoices in computation chart annexed by the petitioner (Rs.17,23077.66/-). and has no link with invoices. It cannot be ascertained if the alleged outstanding amount is due on account of Transaction under dispute. There is no evidence on record on which basis alleged acknowledged default can be linked to invoices.

13. Further, Ld. Counsel for operational creditor has relied on a list of sundry creditors which is at Page 10 of the petition and contains the name of M/s Surendra Trading Company at serial no 13 and amount shown against his name is Rs 17,06766.95/-. By simply filing list of sundry creditor containing the name of Surendra Trading Company, it



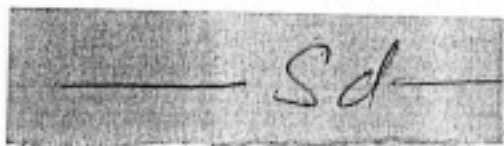
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cannot be contended that alleged outstanding amount is same as reflecting in sundry creditors list.

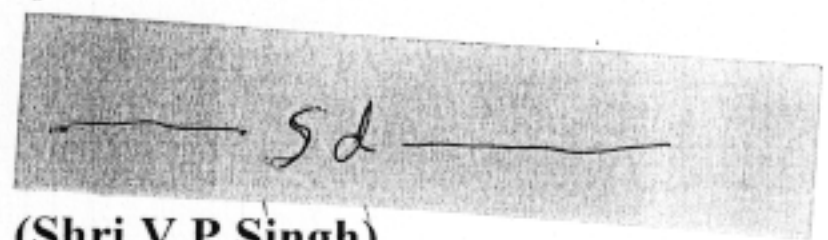
14. It is also important to point out that all the margin bills are in the name of M/s Surendra Trading company and the name of the corporate debtor is printed on the margin bill (i.e. JK Jute Mills Ltd) instead of the name of the supplier, i.e. M/s Surendra Trading Company. Invoices should normally bear the name of supplying company and invoice should carry an acknowledgment of delivery by receiving company, as proof of delivery. Hence, on the basis of these margin bill, no inference can be drawn that certain supply was made by Operational Creditor or received by the Corporate Debtor. The margin bill does not bear either the name and signature of issuing person or acknowledgement of receipt by the corporate debtor. Hence, these margin bills cannot be treated as valid invoices on the basis of which CIRP (Corporate Insolvency Resolution process) against the corporate debtor can be initiated.

15. Lastly, the claim is barred by limitation, because claim of the petitioners is on the basis of invoices issued from (2001-2003). Even operational creditor in Form -1 of their application have shown outstanding liability as on 31.03.2004.

16. Taking into consideration of above-stated facts, the Present petition is liable to be rejected, accordingly rejected. However, no order as to costs.



(Ms. Saroj Rajware)
Member (Technical)



(Shri V.P Singh)
Member (Judicial)

Dated- 10.04.2018