

**IN THE NATIONAL COMPANY LAW TRIBUNAL
BENCH-III
NEW DELHI**

C.P.No.IB-306/(ND)/2017

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

**APT PACKAGING LIMITED
KHASRA NO. 529, 5TH KM STONE
HARIDWAR ROAD, AKBARPUR,
LAKSAR, HARIDWAR.**

... APPLICANT

**SHEON SKINCARE PVT.LTD.
FLAT NO.6A, 6TH FLOOR,
ATMA RAM HOUSE,
NO.1 TOLSTOY MARG,
CANNAUGHT PLACE,
NEW DELHI -110001.**

...RESPONDENT



Coram:

**R.VARADHARAJAN,
Hon'ble Member (JUDICIAL)**

**Counsel for the Petitioners: Mr.Rohit Rathi, Advocate
: Mr.RameshwarTotala, Advocate**

Counsel for the Respondents : -

Order delivered On: 8.12.2017

ORDER

1. This Petition has been filed by the Petitioner under the provisions of Section 8 and 9 of Insolvency and Bankruptcy Code, 2016 (IBC, 2016) in the capacity of an Operational Creditor seeking for the initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor. According to the Petitioner a sum of Rs.10,78,372/- is due in relation to the goods supplied by the Operational Creditor to the Corporate Debtor commencing from 31.05.2016 till 06.08.2016. It is averred by the Operational Creditor that the Corporate Debtor is engaged in the business of skin care products and in the course of business carried on by the Corporate



Debtor, the Operational Creditor had supplied Neem Face Wash, Papaya F/Scrub, Lacto D Tan Cream and such other products which go into the manufacture of skin care products. The supplies were made against orders placed by the Corporate Debtor from time to time and the supplies were effected as per the Buyers Orders placed by the Corporate Debtor as evidenced by the dispatch documents subsequent to which invoices have also been raised for the supplies made by the Operational Creditor to the Corporate Debtor.

2. Out of the said supplies made to the Corporate Debtor, it is the claim of the Operational Creditor that a sum of Rs.10,78,372/- is due from the Corporate Debtor as on 19.06.2017 and a demand notice was sent to the Corporate Debtor demanding payment in respect of unpaid operational debt due from the Corporate Debtor. The demand notice was sent in Form-3, as prescribed under Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity called as 'AAA Rules') and that invoices were also attached based on which the payments remained outstanding giving rise to the demand as made by the Operational Creditor. It is stated by the Operational Creditor that the said demand notice dated 19.06.2017 was duly delivered to the Corporate Debtor on 23.6.2017. In addition to the service of the demand notice by post, it is also stated that Form-3 of the 'AAA' Rules alongwith the invoices was also sent by e-mail dated 19.6.2017 to the e-mail ID provided by the Corporate Debtor to the



Ministry of Corporate Affairs (MCA) and also as reflected in the website being maintained by MCA in the Master Data of companies including that of the Corporate Debtor. The Operational Creditor through its Director Mr. Arvind Machhar has also filed an affidavit in terms of Section 9(3)(b) of IBC,2016 wherein at Paragraph 6 of the said affidavit it has been stated that the Corporate Debtor has not given any notice relating to a dispute within the meaning of Section 8(2) of IBC,2016 in connection with the unpaid operational debt and the said affidavit is dated 31.07.2017.

3. Ld. Counsel appearing for the Operational Creditor also pointed out that in terms of Section 9 (3)(c) of IBC,2016 a certificate from the bankers in relation to the unpaid Operational debt has also been produced wherein it has been stated that a sum of Rs.10,78,372/- from the Corporate Debtor has not been received to the account of the Operational Creditor. Ld Counsel for the Operational Creditor further points out that even as per the financial statements for the year ending 31.3.2015, it is seen that the Company is suffering a loss to the extent of Rs.13,08,192/- and in relation to the previous years the loss is of Rs.22,61,379/- and that the net worth of the Company is also in the negative. In the circumstances, it is represented by the Ld. Counsel for the operational Creditor that the Corporate debtor is a fit case against whom CIRP is to be initiated as contemplated under the provisions of IBC,2016.



4. The above Petition came to be listed before this Tribunal on 28.8.2017 and on subsequent dates thereafter. This Tribunal vide order dated 05.09.2017 directed the Operational Creditor to file proof of service of notice of default issued under Section 8 of IBC,2016. In addition, the Petitioner/Operational Creditor was also directed to file the proof of service of advance copy of the application upon the Corporate Debtor at its registered office address. Pursuant to the said order, Ld. Counsel for the Petitioner has filed an affidavit of proof of service wherein it is seen that the consignment dispatched to the Corporate Debtor by speed post in relation to Notice of Default seems to have been delivered on 23.6.2017 as per the tracking report dated 29.07.2017 obtained from India Post website. Further, in relation to the copy of the Application, it is seen that the same seems to have been delivered on the Corporate Debtor on 31.8.2017 as per the tracking report issued by DTDC.

5. Despite receipt of notice of the Application/Petition, none appeared for the Corporate Debtor before this Tribunal to defend its cause and in the circumstances the matter was ultimately heard, in the absence of the Corporate Debtor, by this Tribunal on 10.10.2017 and the facts as narrated above were brought forth as filed before this Tribunal by the petitioner's counsel correlating the facts with typed set of documents filed along with the Application. The Operational Creditor to establish that the Corporate Debtor is indeed a corporate entity has filed a copy of Certificate of

Incorporation as Annexure-5 and the charter document of the Corporate Debtor as Annexure-6, a perusal of which disclose that the Corporate Debtor has been incorporated for the purpose of carrying on the business of manufacturing skin care products. It is further seen that Annexure-4 of the typed set of documents filed along with the application are the financial statements of the Corporate Debtor as filed by it with the Registrar of Companies and made available in the Data file of the Corporate Debtor maintained by MCA and as per the said financial statement it is seen that the Company namely Corporate Debtor has suffered losses, as per the report of the Directors and as disclosed in the profit and loss account of the Company for the year ended 31.3.2015 and as duly certified by its auditors. In relation to the transactions which had given rise to the debt, Operational Creditor has enclosed sales invoices at page nos.13 to 16 of the typed set. In addition to the sales invoices as per the directions of this Tribunal, an additional affidavit has also been filed by the Operational Creditor dated 26.9.2017 wherein account statement of the Corporate Debtor as reflected in the books of the Operational Creditor for the period commencing from 01.04.2016 to 19.09.2017 has also been filed which discloses that the closing balance as reflected in the said statement is to the extent of Rs.9,38,012/- being the principal amount due under the invoices. A certificate from the bankers in relation to the unpaid debt/liability is also



filed as Annexure-3 to the typed set correlating with the amounts claimed in the Application as well as the specified in notice of demand.

6. The facts averred in the application coupled with the documents evidences that the Petitioner is a Operational creditor vis-à-vis Corporate Debtor for the material/goods which have been supplied and which also has a direct correlation to the input to output of the products manufactured by the Corporate debtor and in the circumstances it is seen that the Petitioner satisfies the definition of an Operational Creditor as defined in Section 5(20) of IBC,2016 and that the debt in default arising out of a commercial transaction is an operational debt as defined under Section 5(21) of IBC, 2016. Further, it is also seen that the registered office of the Company is situated within the territorial jurisdiction of this Tribunal and that the amount in default and claimed is also in excess of Rs.1,00,000/- which is the minimum threshold amount specified in order to maintain an application under the IBC,2016.

7 Taking into consideration all the above factors and also in view of the fact that despite service of notice and thus an opportunity having been given to the Corporate Debtor to defend its cause by way of compliance with the principles of natural justice mandated to be adhered to by this Tribunal, the Corporate Debtor has not availed the opportunity given and from the facts averred and the documents placed before this Tribunal, this Tribunal is of the considered view that this is a fit case for admitting the application as



filed by an Operational Creditor for initiation of Corporate Insolvency Resolution Process, as contemplated under the provisions of IBC,2016.Since the Operational Creditor has failed to name an Interim Resolution Professional (IRP) in Part 3 of the Application as filed before this Tribunal, in terms of the provisions of Section 16 of IBC,2016 this Tribunal makes a reference to the Insolvency and Bankruptcy Board of India (IBBI)for recommendation of the name of an IRP subject to the condition that no disciplinary proceedings are pending against such an IRP named who may act as an IRP in relation to the CIRP of the Corporate Debtor. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016moratorium as envisaged under the provisions of Section 14(1)and as extracted hereunder shall follow in relation to the Corporate Debtor:

- (a) 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;
- (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.



However during the pendency of the moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

The duration of the period of moratorium shall be as provided in Section 14(4) of IBC, 2016 and for ready reference reproduced as follows:-

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be."

8. Based on the above terms, the Application/Petition stands admitted in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In



addition a copy of the order shall also be forwarded to IBBI by way of reference to the said authority for the recommendation of a name of an Resolution Professional to act as an IRP to effectuate the CIRP as envisaged under IBC,2016.

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- Sd/-
08/12/17
(R.VARADHARAJAN)
MEMBER(JUDICIAL)

U.D.Mehta
8.12.2017