



पश्चिम बंगाल पश्चिम बंगाल WEST BENGAL

99AA 761390

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH**

**C.P. (IB) No. 320 / KB / 2017**

**In the matter of the Insolvency and Bankruptcy Code, 2016: Section- 9**

**AND**

**In the matter of: Arun Kumar Jain.**

**-Vs-**

**Upadan Commodities Pvt. Ltd.**

**Certified Copy of the Order dated 01.09.2017 passed by this Bench.**



16809

M. SINGH & ASSOCIATES  
"Hastings Chamber"

2nd Floor, Room No. 18  
70, Kinnaird Shankar Roy Road  
Kolkata - 700 004

NAME.....  
 ADD.....  
 PS.....  
 9 MAY 2016  
 SUDHANU MUKHERJEE  
 Licensee Stamp Vendor  
 C. C. Court  
 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100

9 MAY 2016

9 MAY 2016

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NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA

CP (IB) No 320/KB/2017

CORAM: Hon'ble Member (J) Ms. Manorama Kumari

ADJUDICATION-CUM-ORDER SHEET OF THE HEARING ON 1<sup>st</sup> September 2017, 10.30 A.M

Name of the Company	Arun Kumar jain -Vs- Upadan Commodities Pvt Ltd		
Order Section	9 IBC		
Name & Designation of Authorized Representative (IN CAPITAL LETTERS)	Appearing on behalf of	Signature with date	

VIKASH SINGH, ADV.

Operational  
creditor

ORDER

The Ld. Lawyer on behalf of the petitioner is present.  
 Heard the petitioner at length. The petition is admitted.  
 Detailed order is given separately.  
 Fixing 04-10-2017.

MANORAMA KUMARI  
MEMBER(J)



C.P. (IB) No. 320/KB/2017

Arun Kumar Jain.

NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

Company Petition (IB) No. 320/KB/2017

In the matter of:

Section 9 of the Insolvency and Bankruptcy code

And

In the matter of:

ARUN KUMAR JAIN

Carrying on business of the proprietorship

Under and style of M/s Arun Jain & Associates

At 2B, Grant Lane, 2<sup>nd</sup> Floor, Room No. 74,

Kolkata-700012.

.... Petitioner Company / Operational Creditor

Versus

UPADAN COMMODITIES PRIVATE LIMITED

2 / 1A, Chaitan Seth Street,

Kolkata-700007.

.... Respondent Company / Corporate Debtor



**Judgement/Order delivered on 29<sup>th</sup> August, 2017**

**CORAM: Ms. manorama Kumari, Member (Judicial)**

**For the Petitioner/Operational Creditor**

**Mr. Vikash Singh, Advocate**

**For the Respondents/Corporate Debtor**

**Mr. Prabir Banerjee, Advocate**

**An application for initiation of Corporate Insolvency Resolution Process by the Operational Creditor in respect of Corporate Debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016.**

**ORDER**

Heard the Petitioner/operational creditor as well as respondent/Corporate debtor at length

The Corporate Debtor has fairly admitted the due amount of Rs. 6,32,500/- against Bill No. AIA/09/16/17/016 dated 05.11.2016.

The petitioner, operational creditor namely, Arun Kumar Jain has filed an application Under Section 9 read with Rule 6 of the Insolvency and Bankruptcy Code 2016 for (hereinafter called as "Code") initiating Insolvency Resolution Process against the respondent Company/ Corporate Debtor Upadan Commodities Private Limited claiming that the petitioner is an Operational Creditor within the meaning of Section 5 (20) of the Code and the respondent owes operational debt to the petitioner within the meaning of Section 5 (21) of the Code. It has also been claimed that the respondent is



a defaulter in making the payment of operational debt and the claim is within the period of limitation and well within the jurisdiction of this Bench.

1. The Petitioner/Operational Creditor is Professional Service Provider who had provided professional services to the Corporate Debtor for which professional fees amounting to Rs. 6,32,500/- was due from 05.11.2016. The Operational Creditor has issued bill no. AIA/09/16/17/016 dated 05.11.2016 for a sum of Rs. 6,32,500/- against the Corporate Debtor (at page 11 of the C.P.)

2. It is further submitted that the total operational debt to the tune of Rs. 6,32,500/- on bill no. AIA/09/16/17/016 dated 05.11.2016 remained unpaid which is payable by the Corporate Debtor to the operational creditor but the corporate debtor failed to do so. However, Corporate Debtor admitted unpaid operational debt vide his letter dated 04.04.2017 (at page 13 of C.P.) towards professional fees as claimed by the Operational Creditor.

**Particulars of the claim**

**To professional fees for the services rendered in and about the matter of:**

Preparation of feasibility report, consultation with vendors,	
Preparation of project report in the matter of your	
ware development project.	550000/-
1: Service Tax@ 14%	77000/-
1: Swachh Bharat Cess @ 0.50%	2750/-
1: Krishi Kalyan Cess @ 0.50%	2750/-

Permanent Account No. ACSPJ6243Q, Service Tax Registration No. SPJ6243QSD001

Fees Six Lacs Thirty-Two Thousand Five Hundred Only -----  
632500/-



1.

3. Be that as it may, the operational creditor sent a demand notice dated 10.04.2017 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016 to the corporate Debtor at its registered office and demanded payment of a sum of Rs.6,32,500/- inclusive all taxes as applicable (at page 8 of the C.P.). which was duly received by the Corporate Debtor. The Corporate Debtor has not disputed the demand notice rather he has specifically and categorically admitted the operational debts amount to the Operational Creditor vide their letter dated 12.04.2017

4. The Petitioner / operational creditor has prayed for the following relief(s):

a) To trigger the Corporate Insolvency Resolution Process in respect of Upadan Commodities Private Limited having its Registered Office at 2 / 1A, Chaitan Seth Street, Kolkata-700007.

b) To appoint the proposed Interim Resolution professional as the Interim Resolution Professional as per the provisions of section 16 of IBC 2016 to Conduct the Corporate Insolvency Resolution Process;

c) The petitioner has proposed the name of Mr. Sandip Kumar Kejriwal, as Interim Resolution Professional whose registration number is mentioned as under:

Name: Mr.Sandip Kumar Kejriwal,

Address: 322, 3<sup>rd</sup> Floor, Martin Burn House,

1, R.N. Mukherjee Road,

Kolkata-700001

Email: [sandipkej@yahoo.co.in](mailto:sandipkej@yahoo.co.in)

Registration Number: IBBI/PA-002/IP-N00236/2017-18/10687

5. The petitioner has also certified that Mr. Sandip Kumar Kejriwal is fully qualified and permitted to act as Interim Resolution Professional. The proposed IRP, Mr. Sandip Kumar Kejriwal has also given his consent letter in form No.2 of Insolvency and



Bankruptcy Code (Application to Adjudicating Authority) Rules, 2016 and he has also certified that no disciplinary proceeding is pending against him with the Board, ICSI Insolvency Professional Agency as specified in Section 9(5)(i) of IBC Code 2016.

On perusal of the records it reflects that the applicant / operational creditor has delivered demand notice of unpaid operational debt/copy of Invoices on 10<sup>th</sup> April 2017 to Corporate Debtor in prescribed manner as specified in Rule 5(2) of Insolvency and Bankruptcy Code 2016 under Section 8(1) of the Insolvency and Bankruptcy Code, 2016.

Operational Creditor has proposed the name of Resolution Professional Mr. Sandip Kumar Kejriwal to be appointed as Interim Resolution Professional in terms of Section 4) of the Insolvency Code.

The applicant operational creditor certified that no disciplinary proceeding is pending against the proposed Resolution Professional under Section 9(5)(i) of the Insolvency and Bankruptcy Code, 2016.

Under the facts and circumstances as aforesaid, it is evident that corporate debtor committed default by not making payment of outstanding dues amounting to Rs. 6,32,500/- to operational creditor despite receipt of demand notice, which is not disputed, rather the same is admitted by the Corporate Debtor in the court at the time of hearing.

This Bench admits this Petition u/s.9 of the Code declaring moratorium for the purposes as provided in section 14 of the Code with following directions:

That this Bench, subject to provisions of sub sections (2) & (3) of section 14 of the Code, hereby prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, Tribunal arbitration panel or other authority; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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

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h.





Financial Assets and Enforcement of Security Interest Act, 2002 and the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

- (ii) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
- (iii) That 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.
- (iv) That the order of moratorium shall have effect from 04.09.2017 till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.
- (v) That his Bench hereby directs to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.
- (vi) That this Bench hereby appoints Mr. Sandip Kumar Kejriwal enrolled with IBBI Insolvency Professional Agency as Interim Resolution Professional to carry the functions as mentioned under the Insolvency and Bankruptcy Code.
- (vii) That this Bench hereby directs the Registry of NCLT, Kolkata to communicate this order to the Petitioner i.e., Operational Creditor and the Corporate debtor.
- (viii) That, moratorium is declared for the purposes referred to under 14 of the IBC Code.

Accordingly, this Petition is admitted.

This order be communicated to the Operational Creditor as well as Corporate Debtor in terms of Section 9 of the Insolvency and Bankruptcy Code, 2016.

List on 04/10/2017 for submission of progress report by the Interim Resolution Professional.



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No. MA NO - 2503/2017  
Date of Presentation 8/9/17  
of application for Copy.....  
No. of Pages Eight  
Copying Fee 50/-  
Registration & Postage Fee 10/- Per Page  
Total ₹ 100/-  
Date of Receipt & 5/9/17  
Record of Copy.....  
Date of Preparation of Copy 13/9/17  
Date of Deliver of Copy 13/9/17

SKT  
(MANORAMA KUMARI)  
Member (Judicial)

Manoj  
13/09/17  
DIPAK K. MANDAL  
SR. PRIVATE SECRETARY  
National Company Law Tribunal  
Kolkata Bench