

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI (COURT NO. IV)**

**Company Petition No. IB-402A/ND/2018**

(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:**

**AVNEET GOYAL**

**PROP. M/S R.B. ENTERPRISES**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s GANAYA COMMODITIES PRIVATE LIMITED**

**...Respondent/ Corporate Debtor**

Judgment Pronounced on: 12.01.2021

**CORAM:**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SH. HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

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*Avneet Goyal vs M/s Ganaya Commodities Pvt Ltd*

**MEMO OF PARTIES****AVNEET GOYAL****PROP. M/S R.B. ENTERPRISES**

4064, Naya Bazar

Delhi-110006

**...Applicant/Operational Creditor****VERSUS****M/s GANAYA COMMODITIES PRIVATE LIMITED****Registered office at G-249, Block-G, Preet Vihar**

Delhi-110092

**...Respondent/ Corporate Debtor****For the Applicant:** Mr. Anurag Gupta, CA**For the Respondent:** Ms. Srishti Thukral, Adv.*IB-402/ND/2018**Avneet Goyal vs M/s Ganaya Commodities Pvt Ltd*

**ORDER**

**Per-Dr. Deepti Mukesh, Member (J)**

1. The Present Application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Avneet Goyal (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/s Ganaya Commodities Private Limited (for brevity 'Corporate Debtor').
2. The Applicant is a sole proprietor of the firm M/s R.B. Enterprises, having PAN AADPG4230D and is having its office at 4064-Naya Bazar, Delhi-110006.
3. The Corporate Debtor is a private limited company, incorporated under the provisions of Companies Act, 1956 on 01.03.2011 bearing CIN U51909DL2011PTC215068. The company is engaged in the business of buying, selling, market, trade, import, export of all kinds of commodities and the registered office of the corporate debtor is situated at G-249, Block-G, Preet Vihar, Delhi-110092.

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4. The Applicant has stated that in the usual course of its business, the corporate debtor had purchased Rajma Chitra from the applicant and had raised invoices dated 02.07.2016 and 02.07.2016 for Rs 1,02,40,351/- and Rs 1,02,97,978/- respectively total amounting to Rs 2,05,38,329/-. It is submitted that the corporate debtor had to make the payment within 10 days of the raised bills/invoices.
5. It is submitted by the applicant that towards the payment of the goods purchased and in lieu of discharge of part payment liability, the corporate debtor issued various cheques all dated 05.09.2016 to the applicant for the total amount of Rs 2,00,00,000/-, however, on presentation of those cheques, the cheques were returned unpaid with the reason 'payment stopped by drawer'.
6. The applicant has stated three complaints are filed by the applicant against the corporate debtor under the provisions of section 138, 141 and 142 of the Negotiable Instrument Act, 1881 which is pending before Hon'ble MM, Tis Hazari Court, Delhi. The applicant further submitted that a company petition 1065/2016 was filed before Hon'ble High Court, New Delhi on 24.10.2016 under section 439(1)(b) read with

section 434 of the Companies Act, 1956 seeking winding up of corporate debtor where the notice was issued on 26.10.2016.

7. The Applicant issued demand notice dated 25.08.2017 under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016 as per Form 3 as prescribed under in the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to the Corporate Debtor. The Corporate Debtor has replied to the notice dated 31.08.2017 and has asserted that the corporate debtor did not engage in any kind of transactions with the applicant hence there exists no question of any kind of debt and further the case under section 138 of NI Act filed by the applicant before the Tiz Hazari Court, Delhi is based on stolen cheques.
8. The Applicant filed present Application on 10.04.2018 under section 9 of IBC, 2016 and served the copy of this application which is duly delivered to the Corporate Debtor as per the tracking report as well as through affidavit of service filed by the applicant.
9. As claimed by the applicant as on date, the Corporate Debtor is liable to pay a sum of Rs.2,05,38,329/- (Rupees Two Crore and Five Lakh



12. It is concluded that no substantial corroboration with respect to the pre-existing dispute is established between the parties and no concrete proof or document in support thereof are placed on record to substantiate that there exists any pre-existing dispute.
13. Heard both the sides and perused the documents on record, it is beyond doubt that the default has occurred with respect to the payment of the operational debt due to the Applicant. It manifests that the corporate debtor has tried to create and raise a dispute by asserting the stories without any proofs or documents on records with respect to the stolen cheques. The corporate debtor has further not placed on record any reply or document with respect to the complaints pending before Hon'ble MM, Tis Hazari Court, Delhi and before Hon'ble High Court, New Delhi seeking winding up of corporate debtor. It can be thus inferred that there is no merit in the so-called dispute raised by the corporate debtor in reply to the application.
14. The date of default is occurred from 02.07.2016 and the application is filed on 10.04.2018 and hence the debt is not time barred and the application is filed within the period of limitation.

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15. The registered office of corporate debtor is situated in Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
16. The present application is complete and the applicant has established the default in payment of the operational debt beyond doubt, hence is entitled to claim. The present application is admitted.
17. The Applicant has named the Insolvency Resolution Professional, to be appointed by the order of Tribunal, as Mr. Debashis Nanda, with registration number IBBI/IPA-003/IP-00013/2016-17/1033 (email – dnanda.cma@gmail.com) as the Interim Resolution Professional 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 Respondent and specific consent is filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and make disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016 within a period of one week from the date of this order.

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18. We direct the operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely Mr. Debashis Nanda to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days for the date of receipt of this order by the operational Creditor. The amount however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the operational Creditor.
19. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Corporate debtor prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in vogue.
20. A copy of the order shall be communicated to the Applicant, Corporate Debtor as well as to the IRP above named by the Registry. In addition,

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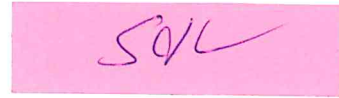
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a copy of the order shall also be forwarded to IBBI for its records. A copy of this order be also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.



**HEMANT KUMAR SARANGI**  
**MEMBER (T)**



**DR. DEEPTI MUKESH**  
**MEMBER (J)**

Pronounced today under Rule 151 of the NCLT Rules 2016 as Hon'ble Member(T), Hemant Kumar Sarangi is not holding court today.



**(Asim Kumar Pal)**

**COURT OFFICER**

12/01/2021.