

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.19/Chd/Hry/2019**

**Under Section 9 of the Insolvency  
and Bankruptcy Code, 2016**

**In the matter of :**

**A.O. Smith India Water Products Pvt. Ltd.**

having its registered office at  
Plot No.300, KIADB Industrial Area Phase-II,  
Harohalli (V&P), Kanakapura Taluk,  
Ramanagar District Bangalore  
Karnataka - 562112

...Petitioner/Operational Creditor

Versus

**Dawar International Electronics Pvt. Ltd.**

having its registered office at  
10/05, Jacobpura, Opp. Vaidik Kanya School,  
Gurgaon, Haryana - 122001

...Respondent/Corporate Debtor

**Judgement delivered on: 10.02.2021**

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)  
HON'BLE MR.RAGHU NAYYAR, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Nitin Kaushal, Advocate

For the Respondent : None

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**JUDGEMENT**

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 (for short hereinafter referred to as '**Rules**') by A.O. Smith India Water Products Pvt. Ltd. (**Operational Creditor**), for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of Dawar International Electronics Pvt. Ltd. (**Corporate Debtor**). The registered address of the operational creditor is Plot No.300, KIADB Industrial Area, Phase-II, Harohalli (V&P), Kanakapura Taluk, Ramanagar District Bangalore, Karnataka - 562112. There is an affidavit in support of the contents of the application which is from pages 12A to 12C of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s Dawar International Electronics Pvt. Ltd. (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹2,00,00,000/- and paid up share capital of ₹85,90,000/-. The CIN of the respondent-corporate debtor is U32109HR2004PTC035531 and its registered office is situated in Gurgaon which lies in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at page 3 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the petitioner-operational creditor is engaged in the business of manufacture of water heaters. The Corporate Debtor has placed order for purchase of goods and the operational creditor in lieu of the same has issued two invoices bearing no. Hry/0537/16-17 Dated 20.12.2016 and Hry/0538/16-17 Dated 20.12.2016. It is stated that the amount is due after 45 days from the date of invoice and the respondent-corporate debtor has failed to discharge its obligations towards the

applicant-operational creditor, inasmuch as it has failed to make the payment due to the applicant-operational creditor. In Part –IV of the application, total amount claimed to be in Default is ₹3,26,937.43/- and the amount was due on 03.02.2017.

4. A demand notice in Form No.4 dated 31.07.2018 is stated to have been served upon the Corporate Debtor by speed post as well as by e-mail (Annexure-I of the petition). The corporate debtor vide this demand notice was called upon to repay the total unpaid operational debt (in default) of ₹3,26,937.43/- within 10 days from the receipt of the notice. The demand notice was accompanied by copy of invoices raised by operational creditor against the goods provided to the corporate debtor and the same are attached at page 6 and 7 of Annexure A-5 (Diary No 523 Dated 01.02.2019). The copy of tracking reports and e-mail sent to corporate debtor are part of Annexure-1 of the petition (Page No.26 to 28).

5. It is deposed by the petitioner that the Operational Creditor has neither received any payment qua the aforesaid outstanding amount from the Corporate Debtor nor have they been served with any notice of dispute of the unpaid operational debt. The affidavit is appended with the petition from pages 13 and 15.

6. The operational creditor has also filed a certificate from its Banker “Axis Bank JP Nagar Branch” stating that Operational Creditor has not received any payment from the Corporate Debtor from 03.06.2017 till 06.09.2018. The Operational Creditor has also attached a copy of Bank Statement from 01.04.2017 to 06.09.2018 as Annexure-4 of the petition.

7. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 31.07.2018 and has not made any outstanding payment and hence this petition.

8. Notice of this petition was issued to the Corporate Debtor on 10.05.2019 to show cause as to why this petition be not admitted. The petitioner has filed affidavit of service vide Dairy No 3254 dated 08.07.2019 wherein notices sent through speed post were returned with an endorsement that the "addressee moved". The notices were also published in two newspapers but no representation has been made by respondent- corporate debtor. Original paper clippings are found to be part of Diary no 6951 Dated 09.12.2019

9. On the last date of hearing, the following order was passed:-

*"Notices were ordered to the respondent-corporate debtor on 10.05.2019 in the instant CP.*

*2. Since the notices sent through speed post were returned with an endorsement that the 'addressee moved', the petitioner was permitted to adopt the substitute mode of service and accordingly, the petitioner published the notice of hearing of the CP in newspaper and filed affidavit of service to that effect vide Dairy No.6951 dated 09.12.2019 and in spite of the same, there is no representation for the respondent-corporate debtor on all the subsequent dates. Today also there is no representation for the respondent-corporate debtor.*

*3. Heard Mr. Nitin Kaushal, the learned counsel for the petitioner.*

*4. Orders reserved."*

10. We have heard the learned counsel for the operational creditor and have also perused the records.

11. The first issue for consideration is whether the demand notice in Form No.4 dated 31.07.2018 was properly served. The demand notice dated

31.07.2018 was sent at the address as per the master data at Page No.3 of the petition in which the registered office is shown as 10/5, Jacobpura, Opp Vaidik Kanya School, Gurgaon, Haryana – 122001 as well as on the e-mail address of the corporate debtor. The postal receipt and tracking report along with copy of e-mails sent by operational creditor are found to be attached at Page 15 to 29 (Annexure-1) of the petition. Original Notice along with invoices and original envelope is attached as Annexure-A5. ( Diary No 523 Dated 01.2.2019)

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor has neither filed any reply to the petition nor has disputed the liability towards the operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor. It is also observed that till the last date of hearing, there has been no representation from the respondent-corporate debtor.

13. We have gone through the contents of the application filed in Form No.5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹3,26,937.43/-. Copy of invoices raised by the operational creditor are filed with the petition and same is found at page No.6-7 of Annexure A-5, "Axis Bank"- the Banker of the petitioner - has also issued a certificate certifying that no payment has been received from the Corporate Debtor during the period of 3<sup>rd</sup> June 2017 till 6<sup>th</sup> September 2018 by the operational creditor. True copy of the Ledger Account maintained by the Operational Creditor is at Annexure-4 of the petition. Demand notice in Form 4 was also sent on 31.07.2018 stating that amount due from the corporate debtor is ₹3,26,937.43/-. As a statutory requirement under Section 9(3)(b) of the Code,

an affidavit dated 04.10.2018 (at pages 13 to 15 of the petition) has been placed by the operational creditor stating that no reply has been received to its demand notice issued 31.07.2018. We have held above that the demand notice in Form No.4 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

14. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The applicant-operational creditor states that from the abovementioned facts it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lakh by the respondent-corporate debtor.

15. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor M/s Dawar International Electronics Pvt. Ltd. and direct moratorium to take effect and appointment of Interim Resolution Professional as below.

16. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- 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 Operational 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.

17. It is further directed that 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. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

18. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

19. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also the

operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for corporate insolvency resolution process is made by an operational creditors and –

- “a) *no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*
- b) *xxxxx*”

20. In this regard a letter bearing File No. 25/02/2021-NCLT dated 01.01.2021 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IP-12011/1/2020-IBBI/978/1290 dated 31.12.2020 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months for January-June 2021. We select Mr. Ajay Kumar Siwach appearing at Serial No.22 of the panel to be appointed as Interim Resolution Professional.

21. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ajay Kumar Siwach and there is nothing adverse against him. In view of the above, we appoint Mr. Ajay Kumar Siwach, Registration No.IBBI/IPA-002/IP-N00668/2018-2019/12214, Mobile No.9643566303, E-mail: [siwachajay@gmail.com](mailto:siwachajay@gmail.com), as the Interim Resolution Professional with the following directions: -



- i.) The term of appointment of Mr. Ajay Kumar Siwach shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his

profession and as an Insolvency Professional with high standards of ethics and moral;

- iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;
- v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- vi.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall

convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

- vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-  
(Raghu Nayyar)  
Member (Technical)

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Feb, 10, 2021  
AV