

**THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP (IB) No. 99/Chd/Hry/2020**

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

**In the matter of:**

**Rajnikant Nanubhai Kapadi,  
Proprietor of M/s Sri Balaji Enterprise**  
Amgan Road, Near Railway Crossing,  
Sanjan, Sanjan, Valsad,  
Gujrat-396150

...Petitioner-Operational Creditor

Vs.

**RBT Private Limited**  
with its registered office at  
Khasra No. 48/21,  
47/25 Village Dhatir,  
Palwal, Haryana

...Respondent-Corporate Debtor

**Judgement delivered on: 18.06.2021**

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)  
Hon'ble Mr. Raghu Nayyar, Member (Technical)**

For the Operational Creditor : Mr. Nahush Jain, Advocate

For the Corporate Debtor : Mr. Gaurav Mankotia, Advocate

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

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, (**for brevity 'IBC' / 'Code'**), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Ranikant Nanubhai Kapadi, Proprietor of M/s Sri Balaji Enterprise (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Process (CIRP) in case of RBT Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**). The petitioner-operational creditor authorized Mr. Sadashivan Sridharan Pillai to initiate appropriate proceedings against corporate debtor. There is an affidavit of Mr. Sadashivan Sridharan Pillai in support of the contents of the application at Annexure-3, Page No.13-15 of the petition.

2. The Corporate Debtor namely, RBT Private Limited, is a Company incorporated on 25.05.2016 under the provisions of Companies Act, 2013 with CIN No. U17299HR2016PTCO64269 with its registered office at Khasra No. 48/21, 47/25 Village Dhatir, Palwal, Haryana, which falls within the State of Haryana. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹3,00,00,000/- and Paid-Up Share Capital of the Company is ₹2,00,00,000/-. Copy of Master Data of corporate debtor is found attached as Annexure-2 of petition.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor had supplied printing cylinder to corporate debtor on

17.11.2018 and 14.12.2018 and raised Invoice No. 98/18-19 amounting to ₹1,27,440/- and Invoice No. 110/18-19 amounting to ₹8,97,626/-. Copy of Invoices and E-way Bills are attached as Annexure-4 (Colly) of the petition. It is mentioned that the said debt fell due after 30 days from the respective date of Invoice. Afterwards, operational creditor issued payment reminders vide E-mail dated 22.02.2019 and 20.08.2019 (Annexure-6). A formal legal notice dated 09.07.2019 (Annexure-7) was issued by petitioner-operational creditor demanding the payment of the outstanding amount. In Part-IV of Form-5, the amount claimed to be in default is ₹10,25,066/- and date of default is stated to be 30 days from the invoice date.

4. It is stated that the respondent-corporate debtor has failed to discharge its obligation towards the applicant-operational creditor, in as much as it failed to make the payment due to the applicant-operational creditor.

5. A demand notice in **Form 3** dated 25.11.2019 (Annexure-8) is stated to be served upon the corporate debtor by speed post and e-mail. The demand notice was accompanied by statement of accounts of corporate debtor, copy of invoices and e-way Bills. The corporate debtor vide the demand notice dated 25.11.2019 was called upon to repay the total unpaid operational debt of ₹10,25,066/- within 10 days. Original postal receipts and tracking report are a part of Annexure-8 at Page Nos. 41 and 42. It is stated that Demand Notice was also served upon corporate debtor vide E-mail dated 27.11.2019 which are attached as Annexure-9 (Colly) of the petition.

6. It is deposed by the petitioner that the demand notice was issued to the corporate debtor vide speed post and the same has not been delivered and no reason was mentioned in tracking report. It is also deposed that the

operational creditor has also served the copy of demand notice in **Form 3** at the registered e-mail address of the corporate debtor which has not bounced back. The affidavit is appended with the petition at Page No. 45 to 47.

7. Notice of this petition was issued to the corporate debtor on 23.02.2020 to show cause as to why this petition be not admitted.

8. Respondent-corporate debtor filed reply vide Diary No. 00141/01 dated 03.02.2021, in which it has been stated that no demand notice has ever been received by corporate debtor. It is submitted that corporate debtor is unable to repay financial debt due to financial constraints.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in **Form 3** dated 25.11.2019 was properly served. The demand notice was sent to the registered address of the corporate debtor on 27.11.2019 and original postal receipt is found at Page No. 41 of Annexure 8. As per tracking report, it is seen that notice could not be delivered with remark "Door Locked". Corporate Debtor in its reply has categorically denied that the service of demand notice. However, it is observed that petitioner-operational creditor has sent the demand notice vide e-mail on 27.11.2019 on the registered e-mail address of the corporate debtor as per master data. Petitioner has also deposed in an affidavit dated 10.01.2020 stating that e-mail dated 27.11.2019 has not bounced back. In view of the same, it is held that demand notice has been duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent-corporate debtor has

filed reply vide Diary No. 00141/01 dated 03.02.2021. It is submitted that corporate debtor is unable to pay the debt due to financial crisis occurred because of Global Pandemic. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

12. The other issue for consideration is whether the CP is filed within limitation. All the invoices (Annexure 4) are pertaining to the year 2018 and since the CP is filed in the year 2020, the CP is well within the period of limitation.

13. We have gone through the contents of the application filed in the Form No. 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹10,25,066/-. Operational creditor has supplied goods to the corporate debtor and raised invoices dated 17.11.2018 and 14.12.2018 (Annexure A-4). Table of computation showing the calculation of outstanding debt amounting to ₹10,25,066/- is found at Annexure-5 (Page No. 30). Afterwards, operational creditor has sent e-mail dated 22.02.2019 and 20.08.2019 for the payment of outstanding dues. Copy of e-mails dated 22.02.2019 and 20.08.2019 are attached as Annexure-6. Moreover, a legal notice dated 09.07.2019 (Annexure-7) has been sent to corporate debtor demanding payment of outstanding amount. Postal receipt and tracking report of duly served legal notice is at Page 36. A demand notice in **Form 3** dated 25.11.2019 was issued stating that an amount of ₹10,25,066/- was due. Leger account of corporate debtor maintained by operational creditor is found at Annexure-11. A copy of bank statement of operational creditor from 01.11.2019 to 18.12.2019 maintained with 'Axis Bank' and 'Federal Bank' is attached as Annexure-12 (Colly). 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. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lakh by the respondent-corporate debtor.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Operational Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 9 of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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.
- (e) 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.
- (f) 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) 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.”

15. The Operational Creditor has not recommended any IRP. 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 alongwith 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.

16. 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. 96435-66303 E-mail: [siwachajay@gmail.com](mailto:siwachajay@gmail.com) as the Interim Resolution Professional subject to the condition that the appointed IRP will furnish Form 2 within one week from the date of this order, if not filed. The IRP is directed to take the steps as mandated under the IBC inter-alia under Section 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial 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 the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

A copy of order shall 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 e-mail address  
forthwith.

Sd/-  
(Raghu Nayyar)  
Member (Technical)

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

June 18<sup>th</sup>, 2021  
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