

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**CP (IB) No. 102/Chd/CHD/2018
with
CA No.316/2018**

Under Section 9 of IBC, 2016

In the matter of:

Weather Makers Pvt.Ltd.
SCO: 139-141, First Floor,
Sector 17-C,
Chandigarh – 160017

...Petitioner –Operational Creditor

Versus

Parabolic Drugs Ltd.
having its registered office at
ScO: 99-100, Top Floor,
Sector 17-B,
Chandigarh - 160017

...Respondent –Corporate Debtor

Judgment delivered on : 23.08.2018

**Coram: Hon’ble Mr.Justice R.P.Nagrath, Member (Judicial)
Hon’ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Petitioner : Mr.Yogeh Goyal, Advocate

For the Respondent : Mr.Gaurav Mankotia, Advocate

Per: R.P.Nagrath, Member (Judicial)

JUDGMENT(Oral)

Notice of CA No.316/2018 to the respondent-corporate debtor and Mr.Gaurav Mankotia, Advocate appearing for the respondent accepts notice. Learned counsel for respondent submits that the respondent is not to file any reply/objections to the application. The prayer is made in the application to place on record upto date Ledger Account statement

(Annexure A15) along with complete synopsis of the case. Having heard learned counsel for the parties, the application is allowed and the documents be taken on record. CA No.316/2018, therefore, stands disposed of.

2. This petition has been filed by M/s Weather Makers Pvt.Ltd., a company incorporated under the Companies Act, 1956 as an Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the Code) to initiate insolvency resolution process against the corporate debtor.

3. The petitioner-company was incorporated on 05.11.1990. The certificate of incorporation is at page 32 (Annexure-A) of the paper book with which the Memorandum and Articles of Association have been annexed. The petition has been filed under the Code on the basis of resolution of Board of Directors of the company passed on 10.02.2018 authorising Mr.Anil Sahni, Managing Director or Mr.Arun Sahni, Director of the company to file the application/petition before the Tribunal and to do all the acts necessary in the progress of the case.

4. The petition has been filed by moving application in Form 5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the Rules) furnishing all the required particulars.

5. The respondent company was incorporated on 22.02.1996 with authorised share capital of ₹72 crores and paid-up capital of ₹61,89,20,140/-. The master data of the respondent-corporate debtor is at page 52-54 of the paper book. The registered office of the respondent-corporate debtor is at

Chandigarh and therefore, the matter falls within the territorial jurisdiction of this Bench of the Tribunal.

6. The facts of the case briefly stated, are that the petitioner was supplying Heating, Ventilation and Air Conditioning System (HVAC) and providing services of supplying, installation, testing and commissioning, fabrication of HVAC System in the plant(s) etc. to the respondent-corporate debtor. The first bill of default was issued on 19.09.2011. Goods were supplied to the respondent by various invoices Annexure A5 (colly) from 19.09.2011 to 29.08.2012. The respondent had been making payment of the amount from time to time and the last payment to the tune of ₹4 lacs was made on 21.03.2014 and the balance outstanding amount was ₹73,37,732.80 for which the details have been mentioned with the additional synopsis filed with CA No.316/2018 as under:-

Material supplied to Parabolic Drugs Ltd. Village Sudran (MP-3, DERA BASSI)	₹306164.80
Material supplied to Parabolic Drugs Ltd. Village Sudran (STERILE PLANT, DERA BASSI)	₹2062327
Material supplied to Parabolic Drugs Ltd. Village Chharoli (LALRU PROJECT)	₹4969241
Total	----- ₹73,37,732.80

The computation of calculation of the outstanding amount has been attached at Annexure A-3 with the main petition.

7. It is further stated that the respondent-corporate debtor issued balance confirmation letter dated 30.07.2016 accepting the outstanding amount as on 30.06.2016 to be ₹73,37,734/- and another balance confirmation letter dated 31.08.2017 which are in the nature of

acknowledgements of debt in writing signed by the respondent-corporate debtor. The balance confirmation letters are at Annexure A4 (colly) with the main petition. It is stated that the outstanding amount was not paid despite repeated demands. In this way, the total outstanding amount stated is ₹73,37,732.80 in Col.1 of Part IV of Form 5 for which details of the transactions have also been mentioned.

8. Before filing the instant petition, the petitioner sent a Demand Notice dated 21.02.2018 Annexure A-7 in terms of Section 8 of the Code in Form 3 with which the petitioner has also sent summary details/working of the transactions, copy of the ledger account and copy of all the invoices. Same are forming part of the record. This notice was sent by speed post to the corporate debtor and it was delivered to the corporate debtor on 22.02.2018. Petitioner has stated that it did not receive any notice of dispute from the corporate debtor in respect of the amount in default. The affidavit of the authorised representative of the petitioner company is at Page 149 of the paper book (Annexure A9).

9. Being an operational creditor, the petitioner was not required to propose the name of the Resolution Professional to be appointed as Interim Resolution Professional, yet in Part III of Form 5 the petitioner has proposed the name of Mr.Sanjay Kumar Aggarwal, having IBBI Regn.No.IBBI/IPA-002-IP-N00126/2017-18/10295 as the Interim Resolution Professional. The written communication by the proposed Interim Resolution Professional in Form 2 is also annexed at Annexure A11. He has certified that there are no disciplinary proceedings pending against him and he is currently appointed

as Resolution Professional in one case. At page 156 of the paper book, there is certificate of registration issued by IBBI in favour of Mr.Sanjay Kumar Aggarwal.

10. On filing of this petition, copy of the petition along with entire paper book was also dispatched to the respondent-corporate debtor in order to comply with the requirement of sub-rule 2 of Rule 6 of the Rules.

11. Notice of this petition was issued to the respondent-corporate debtor and appearance was made for the corporate debtor by Mr.Gaurav Mankotia, Advocate. The objection to the prayer has been filed by the respondent-corporate debtor. It is stated that the goods supplied by the petitioner company were not as per specification and there was manufacturing defect in the heating, ventilation and air conditioning system and the representatives of the petitioner company were apprised of the defects. It is also stated that the respondent-corporate debtor was facing tough times because of the slump in business and the returns as envisaged were never achieved. The promoters of the corporate debtor, however, tried their best to revive the company and settle with various creditors for revival of an on-going company. Even certain policies of the Government of India were not conducive for the revival of the company which had witnessed huge growth on previous occasions. The turnover of the company has come down from ₹1150 crores in the year 2011-12 to merely ₹75 crores.

12. We have heard learned counsel for the parties and have perused the records quite carefully.

13. The petition has been filed after the expiry of 10 days of the service of the demand notice in the prescribed form and thus fulfilling the requirement of sub-section (1) and (2) of Section 9 of the Code.

Sub-section (3) of Section 9 of the Code reads as under:-

“(3) The operational creditor shall, along with the application furnish—

- (a) a copy of the invoice demanding payment or demand notice delivered by the operational creditor to the corporate debtor;*
- (b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;*
- (c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and*
- (d) such other information as may be specified”*

14. The petitioner has complied with the requirement of Clause (a) by sending copy of the invoice in the prescribed form demanding payment from the corporate debtor which fact is not disputed during the course of arguments. The petitioner has also filed affidavit of not receiving any notice of the dispute relating to unpaid operational debt, to comply with the requirement of Section 9(3)(b) of the Code. Certificate from Union Bank of India where the petitioner is maintaining its account and receiving payment from the corporate debtor has also been filed to the effect that since 01.02.2018 i.e. before the date of demand notice, no payment has been received from the corporate debtor in this account, thereby complying with the requirement of Section 9(3)(c) of the Code. Learned counsel for the petitioner submits that there is no record of the information utility available confirming that no payment of unpaid operational debt by the corporate debtor, but the proof confirming that there is no payment of the operational

debt by the corporate debtor has been produced in abundance in order to comply with clause (e) of Section 9(3) of the Code.

15. There is an allegation in the reply/objection filed by the corporate debtor that the goods supplied were of sub-standard, but there is no proof forthcoming, rather it is admitted during the course of arguments by learned counsel for respondent that any such dispute was never raised by the corporate debtor except the objection to this effect taken in the reply. It is also not disputed that reply to the demand notice was not sent.

16. The petitioner's version is further established from copy of the ledger account of the corporate debtor being regularly maintained. Copy of the ledger account was sent along with the demand notice Annexure A7. At page 145 of the paper book is the entry dated 21.03.2014 of the Ledger Account showing last payment received from the corporate debtor was to the tune of ₹4 lacs. There are then the balance confirmation letters admittedly executed by the corporate debtor before the expiry of 3 years taken from 21.03.2014. The Ledger Account statement was initially filed upto 01.09.2014 along with the main petition but copy of the ledger account for the subsequent period has been filed as Annexure A-15 with CA No.316/2018 which also indicates that no further payment was received from the corporate debtor. Learned counsel appearing for the respondent does not dispute the authenticity of the aforesaid ledger account in view of the balance confirmation letters which have been relied upon by the petitioner. So, simply raising the issue of sub-standard goods in the reply cannot be taken as an 'existence of a dispute'.

18. We have also perused the written communication in Form 2 furnished by the registered Resolution Professional, proposed to be appointed as the Interim Resolution Professional and the same is found to be in order. All the ingredients required to be established are made out.

19. In view of the above, the instant petition deserves to be admitted. The petition under Section 9 of the Code is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code as amended:-

- (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.

20. 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

22. The matter be listed on 29.08.2018 for passing formal order to appoint Interim Resolution Professional with further directions.

Copy of this order be communicated to both the parties.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

Sd/-
(Justice R.P. Nagrath)
Member (Judicial)

Aug 23, 2018
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