

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

**CP (IB) No.298/Chd/Hry/2018**

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

**In the matter of:**

M/s Vardhman Trading Company  
 E-18, Nehru Ground, Faridabad NIT,  
 Faridabad, Haryana- 121001

...Petitioner-Operational Creditor

Versus

Allwyn Furniture Private Limited,  
 CIN: U51103HR2011PTC043895  
 3G/19, NIT Faridabad, Haryana- 121002

...Respondent-Corporate Debtor

**Judgment delivered on 07.01.2019**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL)  
 HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. G.S. Sarin, Practising Company Secretary

For the Respondent : Mr. Subhash Saini, Practising Company  
 Secretary for Mr. Anil Kumar, Director

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

**JUDGMENT (Oral)**

This petition has been filed by M/s Vardhman Trading Company, a proprietorship concern, as operational creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the '**Code**') for initiating Insolvency Resolution Process against the

respondent-corporate debtor. This petition has been filed by the operational creditor in Form 5, as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules'). The contents of the application are supported by affidavit of Mr. Anil Jain, proprietor of the petitioner concern, which is Annexure E, (Page 20-22) of the paper book.

2. The respondent-corporate debtor was incorporated on 16.09.2011 as a private limited company under the Companies Act, 1956 with authorized share capital of ₹ 51,00,000/- and paid up capital of ₹ 50,00,000/-. The respondent-corporate debtor has its registered office at Faridabad in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The master data in respect of the respondent company is at Annexure O.

3. The facts of the case in brief are that the petitioner-operational creditor was supplying CR Sheets, CR Coils, CR Steel Strips and HR Coils to the respondent-corporate debtor from 30.11.2011. The respondent-corporate debtor is engaged in the manufacturing of furniture made from wood, brass, steel, fibre, glass, plastic or any other alloy or combination thereof. The petitioner-operational creditor had been issuing the invoices of the transactions to the respondent-corporate debtor from time to time. As per the list of outstanding invoices, the disputed invoices are 48 in number i.e. from 21.02.2013 to 27.03.2015, Annexure G. The respondent-corporate debtor is said to have made the payment to the petitioner lastly on 13.10.2016 to the tune of ₹40,610/- as is evident from the ledger account of the respondent

company, Annexure J, being maintained by the petitioner. No payment was made thereafter. The principal amount then outstanding was ₹81,56,261/-.

4. The petitioner-operational creditor sent a demand notice dated 10.07.2018 to the respondent-corporate debtor in Forms 3 and 4 as prescribed in Rule 5(1) of the Rules, giving all the particulars, copies of which are at Annexure N (Colly). The postal receipts of the notices sent by speed post are at Page 162 of the paperbook. The notices were sent to the respondent-corporate debtor as well as its directors, namely, Mr. Anil Jain and Jagdish Lal Bhatia. The petitioner has attached the tracking report of the Postal Department from pages 163 to 165 in order to fortify the contention that the demand notice was delivered to the respondent-corporate debtor on 13.07.2018 and it was also delivered to Mr. Jagdish Lal Bhatia i.e. one of the Directors of the company, on 14.07.2018 and to Mr. Anil Jain on 21.07.2018. The petitioner neither received the payment nor any notice of dispute from them. The proprietor of the petitioner concern has furnished his affidavit at Annexure F, stating therein that no notice of the dispute of unpaid operational debt was sent by the respondent-corporate debtor, in order to comply with requirement of Section 9(3)(b) of the Code. Along with the notice of demand, the petitioner also sent copies of invoices and computation of calculation of interest.

5. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted. The petitioner filed affidavit of service vide Diary No.4332 dated 12.11.2018, as directed in the order dated 04.10.2018 while issuing notice. It is stated by the petitioner

that notice was sent through both the modes i.e. by speed post as well at the e-mail address of the respondent-corporate debtor, available on the master data. It is also stated that the e-mail did not bounce back. However, with this affidavit, the petitioner has also attached the original envelope returned by the Postal Authorities with the report, purportedly made by the postal employee, that the addressee has left the address. Mr. Subhash Saini, Practising Company Secretary, was present for Mr. Anil Jain, one of the Director of the company. It was made clear in the order dated 26.11.2018 that it is only the corporate debtor which can be represented in the petition under Code and one of the Director has no separate legal entity to represent the corporate debtor. It was submitted by Mr. Subhash Saini, that there are only two Directors of the company and they are not on cordial terms with each other and therefore, no Resolution could be passed by the Board to represent the corporate debtor before this Tribunal. The matter however, was adjourned for today in the interest of justice.

6. It is again stated by Mr. Subhash Saini, Practising Company Secretary, representing one of the Director that a meeting was convened by Mr. Anil Kumar, one of the Director and notice was issued to Mr. Jagdish Lal Bhatia. It is also stated that Mr. Jagdish Lal Bhatia was present on the day of meeting but refused to participate in the meeting of the Board of Directors and in this way, the respondent-corporate debtor remains unrepresented.

7. We have heard the Authorized Representative of the petitioner-operational creditor and have carefully perused the records.

8. The instant petition has been filed after the expiry of more than 10 days of the requisite period of delivery of notice to the respondent-corporate debtor. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rule. The petitioner has therefore, fulfilled the requirements of sub-sections (1) and (2) of Section 9 of the Code.

9. 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, if available]; and*
- (d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and*
- (e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.*

10. In the instant case, the petitioner has complied with the requirement of Clause (a) of sub-section (3) of Section 9 of the Code, as copies of the invoices demanding payment, which were delivered are attached. As already discussed, the petitioner-operational creditor has also complied with Section 9(3)(b) of the Code.

11. The Authorized Representative of the petitioner has also referred to the certificate from the bank, namely 'Yes Bank', where the petitioner is maintaining the account and credits are being received from the corporate

debtor. Annexure K is the certificate dated 16.08.2018 issued by Yes Bank, certifying that the last payment to the tune of ₹40,610/- was received from the corporate debtor on 13.10.2016 through NEFT. Therefore, the instant petition apart from being complete, fulfils the requirement of Section 9(3)(c) also and the petition has been filed within limitation.

12. The petitioner has also filed ledger account of the respondent-corporate debtor being maintained by the petitioner, revealing all the transactions since the year 2011 upto the year 2017-18, showing the outstanding balance to the tune of ₹81,56, 261/-, which is claimed to be in default in the instant application. There is also an affidavit of the petitioner to the effect that no notice of dispute has been received from the respondent-corporate debtor and in fact, the respondent-corporate debtor is unrepresented.

13. We have perused the application, filed in Form 5, which is complete in all respects and all the ingredients of sub-section (5) of Section 9 have been fulfilled.

14. The petitioner being an operational creditor is not obliged to propose the name of Resolution Professional to be appointed as Interim Resolution Professional. The petitioner, in the instant case has, however, proposed the name of Mr. Sunil Kumar Agrawal, Resolution Professional registered with the IBBI as the Insolvency Resolution Professional. Form 2 (Annexure M) is the written communication furnished by Mr. Sunil Kumar Agrawal, in which he has given the necessary particulars as required in the Form. It is certified that there are no disciplinary proceedings pending against

him with the Board or ICSI IPA. He is presently functioning as Liquidator in two cases. We have perused the written communication in Form 2, which is found to be in order.

15. Before parting with the judgment, the allegation with regard to the claim of the interest has to be dealt with. As per the ledger account maintained from the year 2011-12 onwards, the amount of interest has not been added and the principal amount outstanding was ₹81,56,261/- only. While preparing the computation of chart of calculation, the interest has been added in the document, Annexure H, @ 12% per annum. It is not clear whether compound interest @12% has been calculated or it is only the simple interest. Since interest for so many years has been added while calculating the total outstanding amount, we would permit the petitioner to charge simple interest @12% per annum and if the petitioner has any higher claim, he can avail of the remedy before the Civil Court.

16. In view of the above, the instant petition under Section 9 of the Code is admitted. The matter be now posted on 16.01.2019 for passing of formal order of declaration of moratorium and appointment of Interim Resolution Professional.

A copy of this order be communicated to both the parties.

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

January 07, 2019  
Mohit Kumar

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