

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

CP (IB) No. 67/Chd/Hry/2018

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

In the matter of :

Walsons Services Private Limited
 74 Golf Links,
 New Delhi-110003.

...Operational Creditor

Versus

Quickdel Logistics Private Limited
 1101, 11th Floor, Spaze I-Tech Park,
 Tower A-2, Sohna Road, Sector 49,
 Gurugram-122018.

...Corporate Debtor

Judgement 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 Operational Creditor : 1. Mr. Anuj Dewan, Advocate.
 2. Ms. Palak Rohmetra, Advocate.

For the Corporate Debtor : 1. Mr. Aman Jha, Advocate
 2. Ms. Sapna Khurana, Advocate.

Per: Pradeep R. Sethi, Member(Technical)

JUDGEMENT

At the outset, it would be pertinent to mention that the title of the case with the new address of the respondent has been derived from the

amended Memo of Parties filed vide Diary No. 1493 dated 09.05.2018 along with the up-dated master data, Annexure P-9 attached with the affidavit.

2. This petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Rules) by M/s Walsons Services Private Limited (Operational Creditor) for initiating the Corporate Insolvency Resolution Process (CIRP) in the case of Quickdel Logistics Private Limited (Corporate Debtor). As per master data at page 101 of the petition, the registered office of the Corporate Debtor is at Plot No.31, Udyog Vihar, Sector 18, Gurugram. The jurisdiction lies with this Bench of the Tribunal.

3. It is stated that on 04.04.2016, a security services agreement was executed between the Corporate Debtor and the Operational Creditor for providing security services at the premises of the Corporate Debtor in the States of Tripura, Assam and Mizoram. In Part 4 of Form 5 the total amount of debt is stated to be ₹13,04,521/-. The details of the amount remaining outstanding out of the invoices is stated to total to ₹11,29,565/- and further interest @ 1.5% per month up to 02.01.2018 is stated to amount to ₹1,74,956/- and the total outstanding is thereby computed at ₹13,04,521/- (see also Annexure No.3 of the petition). The dates of default are stated to be from 15.11.2016 to 15.05.2017. A legal notice is stated to be issued on 02.08.2017 (Annexure No.6) (colly) of the petition). The e-mails from the Operational Creditor to the Corporate Debtor demanding outstanding payment are stated to be in Annexure No.6 (colly). It is further stated that there is an e-mail dated 10.04.2017 from the Corporate Debtor to the Operational Creditor assuring

payment. The Demand Notice in Form No.3 is stated to be issued on 19.09.2017 and served by speed post on the Corporate Debtor on 23.09.2017 (Annexure No.2) (colly) of the petition. The petition is signed by Shri Raj Kumar, General Manager- Operations of the Operational Creditor and true copy of resolution passed in Board meeting of Corporate Debtor held on 18.12.2017 authorizing Shri Raj Kumar is at page 27 of the petition. Shri Raj Kumar has also filed an affidavit dated 26.02.2018 verifying the contents of Form No.5 and also stating that the Operational Creditor has not received any reply to the notice given to the Corporate Debtor relating to a dispute of the unpaid operational debt (page 23A of the petition). In part 3 of Form 5, the Operational Creditor has not proposed any Interim Resolution Professional(IRP).

4. Notice of the petition was directed to be issued to the Corporate Debtor to show cause as to why the petition be not admitted. When the petition was listed on 02.05.2018, the service of respondent was directed to be effected 'dasti'. Affidavit of service was filed vide Diary No. 1627 dated 16.05.2018.

5. The respondent has contested this petition and filed reply by Diary No. 2451 dated 12.07.2018. It is stated that the Corporate Debtor never received any Demand Notice under the Code and that the Corporate Debtor had relocated to the new address i.e. 1101, 11th Floor, Spaze Hightech Park Tower A-2, Sohna Road, Sector 49, Gurugram and that this address is duly reflected as registered address on the website of the Ministry of Corporate Affairs.

6. It was further stated that the Corporate Debtor has paid a total sum of ₹58,96,992/- during the period of the contract to the Operational Creditor and as per the books of account, a total sum of ₹2,50,000/- has to be recovered from the Operational Creditor after adjustment of all debit notes. It is stated that amongst other disputes, the issue raised between the Operational Creditor and the Corporate Debtor, was of continuous theft of the shipment and appointment of unverified and unprofessional guards who resort to absents from duty on regular basis, thus being directly/indirectly responsible for theft of valuables and costly shipments. Reference in this context has been made to e-mails dated 23.08.2016 and 10.08.2016. It is submitted that there are several instances of violation of agreement by the Operational Creditor and that as per the terms of the agreement, the Operational Creditor was required to send invoices alongwith duly attested attendance sheet, challan regarding payment of PF, ESIC and service tax qua the security guards deployed with the Corporate Debtor but the Operational Creditor did not fulfil the above obligation.

7. It is also averred that there was a change in the management of the Operational Creditor company in the month of August, 2016 and during the verification of documents by the new management of the Corporate Debtor, it was noticed that even the attendance register relating to the alleged security staff was not properly maintained and the same is contrary to the records maintained by the Operational Creditor. It is stated that the Corporate Debtor lodged FIR regarding collusion and criminal breach of trust against vendor and the staff members of the Corporate Debtor relating to excess payment made to vendors without proper scrutiny of documents.

8. Rejoinder was filed by the Operational Creditor by Diary No.2844 dated 03.08.2018. It is stated that the Corporate Debtor has not filed a single document wherein the sum sought by the Operational Creditor has been disputed or denied by the Corporate Debtor and that it is not disputed that the Operational Creditor provided services at the premises of the Corporate Debtor from December, 2016 to April, 2017 and that there was no dispute with respect to quality of service or any claim or credit note for alleged deficiency in service by the Corporate Debtor. It is stated that the Corporate Debtor has relocated to the new address on 18.02.2018 and therefore, the service of the Demand notice made at the erstwhile address was valid.

9. They stated that the Corporate Debtor made a feeble attempt to create a fictitious dispute by going way back to July, 2016 and that the same was a mere operational issue which was sorted between the parties and the payment pertaining to the said period i.e. July and August was cleared without any dispute. It is submitted that the FIR filed by the Economic Office Wing of Delhi Police dated 23.06.2017 has no relevance since the Corporate Debtor has not named the Operational Creditor in this FIR and that the allegation in the FIR was that the erstwhile management has misappropriated the funds received from Jasper and of the Corporate Debtor itself. Reference has been made to clause 4 of the agreement dealing with the payment terms and it is submitted that the aforesaid clause also provides for communicating dispute with respect to an invoice and that no dispute was raised during the currency of the agreement or post its termination. It is stated that assuming without admitting the instance of July, 2016 to be true and holding that the Corporate Debtor is entitled to damages, the Operational Creditor's liability as per clause

13(5) of the agreement is restricted to the amount equivalent to one month's service charges for guarding services, per incident or series of incidents arising out of the same event and in the aggregate for all claims in any year of the agreement and that for claiming the benefit of clause 13(5), the Corporate Debtor has to be compliant of clause 13(7) of the agreement which requires the Corporate Debtor to be up-to-date with its payment in accordance with payment terms of the agreement, which condition was not satisfied by the Corporate Debtor.

10. Additional affidavit was filed by the Corporate Debtor by Diary No.4413 dated 13.11.2018 stating that there are glaring inconsistencies and contradictions in the various communications by the Operational Creditor to the Corporate Debtor for the amount that is allegedly due and payable by the Corporate Debtor to the Operational Creditor and that the amount claimed is based on fraudulent and forged calculation and that despite emails dated 01.02.2016 and 02.02.2016, the soft copies of the invoices raised were not given. Reference is made to email dated 20.12.2016 that the Operational Creditor deliberately created a situation of allegedly not being paid which lead to theft at the warehouses of the Corporate Debtor as the guards deployed at the sites abandoned without any information and various e-commerce vendors to whom the Corporate Debtor had provided services imposed debit note to the tune of ₹38.00 crores approx.

11. During the course of the hearing, the learned counsel for the Operational Creditor has argued that there was no reply to the Demand Notice and that the issue raised in the reply regarding incident of July, 2016 was not relevant since the payment in full was made for July to Sept, 2016. In reply,

the learned counsel for the Corporate Debtor referred to the invoices at Annexure- 5 (colly) of the petition and stated that the charges in respect of security guards deployed in Tripura was more than the amount due as per the security service agreement dated 04.04.2016. Reference was also made to para 9 of the security service agreement dated 04.04.2016 and it was argued that the Corporate Debtor did not fulfil its responsibility in respect of statutory liabilities and compliances including ESI, PF, bonus, MH, LWF etc. in respect of personnel deployed for security services. Reference was made to para 6 of the demand notice dated 19.09.2017 and it was argued that the payments received against the invoices shown therein were less than the receipts from the Corporate Debtor between 15.10.2016 to 15.11.2017 shown in the bank certificate dated 20.12.2017 filed by the Operational Creditor at Annexure-7 of the petition. It was also argued that there was a difference in the outstanding amount of invoice No.KOLC/001354/1617 shown in part 4 of Form No.5 and para No.6 of the demand notice (*supra*).

12. We have carefully considered the submissions of the learned counsel for the Operational Creditor and Corporate Debtor and have also perused the record.

13. The first issue for consideration is whether the demand notice in form No.3 dated 19.09.2017 was properly served. This demand notice was sent at the address as per master data at page 101 of the petition in which the registered office is shown as Plot No.31, Udyog Vihar, Sector 18, Gurgaon-122015. The demand notice was sent by speed post. The tracking report filed at page No.59 of the petition shows delivery on 23.09.2017 (Consignment No.EH611740976 IN). The learned counsel for Corporate Debtor has argued

that the demand notice was not received and that the Corporate Debtor has relocated to the new address i.e. 1101, 11th Floor, Spaze I, Tech Park, Tower A-2, Sohna Road, Sector 49, Gurugram, Haryana and this address is duly reflected on the website of Ministry of Corporate Affairs.

14. On the other hand, the learned counsel for the Operational Creditor has argued that the Board resolution for change of address was passed by the Corporate Debtor on 16.02.2018 and Form INC 22 for change of address was thereafter filed with the Registrar of Companies (Annexures P-11 and P-12 of rejoinder - Diary No.2844 dated 03.08.2018.). It was therefore, argued by the learned counsel for the Operational Creditor that the address of the Corporate Debtor was changed much after the petition was filed on 29.01.2018 and therefore, service of the demand notice upon the registered address as shown in the then master data was a valid service. The learned counsel for the Corporate Debtor has argued that the relocation was done before 16.02.2018. However, no evidence in this regard is furnished. In view of the above discussion, the service by speed post at the then registered address of the Corporate Debtor is held to be a valid service.

15. The next issue for consideration is whether there was a dispute. The matter is being examined with reference to the provisions of the Code and the judgement of the Hon'ble Supreme Court in **Mobilox Innovations Private Limited Versus Kirusa Software Private Limited (2017)140 CLA 123(SC)**. In para No.40 the Hon'ble Supreme Court held as under:-

"It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under

Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

16. The learned counsel for the Corporate Debtor has argued that the Corporate Debtor has paid total sum of ₹58,96,992/- during the period of contract to the Operational Creditor and as per the books of accounts, a total sum of ₹2,50,000/- has to be recovered from the Operational Creditor after adjustment of all debit notes and the copy of the ledger is at Annexure D-1 of Diary No.2451 dated 12.07.2018. The learned counsel for the Operational Creditor has argued that the ledger filed by the Corporate Debtor does not contain the invoices from January to April, 2017 while payments made during this period have been reflected and the ledger filed by the Corporate Debtor is full of inconsistencies and also incomplete and therefore, cannot be relied upon. We have examined the ledger account (Annexure D-1 of Diary No.2451 dated 12.07.2018) and find that after 30.09.2016, only three invoices are entered on 15.11.2016 (₹2,86,184), 19.12.2016 (₹2,62,782/-) and 27.12.2016 (2,56,971/-) totalling to ₹8,05,937/-. We may add here that the details of the invoices i.e. Invoice No. and date of the invoice are not given in the ledger

account. On the other hand, the invoices issued as per the Operational Creditor in which amounts are still outstanding (Annexure No.5 (colly) of the petition) starting from 31.10.2016 to 30.04.2017 total to ₹16,21,739/-. We have already observed that the ledger account filed does not contain the details of the invoices. Therefore, it cannot be said that the invoices issued by the Operational Creditor from 31.10.2016 to 30.4.2016 are recorded in the ledger account especially since the amounts of invoices recorded in the ledger on 15.11.2016, 19.12.2016 and 27.12.2016 do not tally with the amount of the invoices issued by the Operational Creditor for the period 31.10.2016 to 30.04.2017. Therefore, the plea of the Corporate Debtor that the complete sum is paid and on the other hand a sum of ₹2,50,000/- is recoverable from the Operational Creditor cannot be accepted.

17. The learned counsel for the Corporate Debtor has argued that amongst other disputes the issue is of continuous theft of shipment and appointment of unverified and unprofessional guards who resorted to absconding from duty on regular basis thus being directly/indirectly responsible for theft of valuable and costly shipments. The reference has been specifically made to e-mail dated 10.08.2016 and 23.08.2016. We find that the e-mails relate to untraceable shipments stated to be on account of one newly appointed security guard Mr. Hmangaihkima being found in theft cases. The learned counsel for the Operational Creditor has argued that the payments for the months of July, 2016 and August, 2016 stood paid on 15.11.2016 and 21.12.2016 and therefore, the Corporate Debtor did not withhold the payments for the months in which the alleged incident occurred and that the Corporate Debtor did not convey any loss to the Operational

Creditor, let alone a loss as huge as ₹11,00,000/- as claimed in the reply without any supporting document. It is therefore, submitted by the learned counsel for the Operational Creditor that this was merely an operational issue which stood amicably settled between the parties.

18. The learned counsel for the Operational Creditor has also referred to clause 4 of the security services agreement dated 04.04.2016 (Annexure No.4 of the petition) and has pleaded that the agreement itself provided for raising dispute against the invoice raised by the Operational Creditor and clauses 13(5) and 13(7) of the agreement are also relevant. We find that in view of the payment of the invoices for July, 2016 and August, 2016, the issue raised in the e-mails dated 10.08.2016 and 23.08.2016 were amicably settled. Further, we may add that at para (III) of the reply filed by Diary No.2451 dated 12.07.2018, it was *inter alia* stated by the Corporate Debtor that adjustment of all debit notes was made. However, the details of these debit notes are not given and there is also no averment that a debit note was issued in respect of the shipments covered by the e-mails dated 10.08.2016 and 23.08.2016.

19. We also find that the dispute as required by clause 4 of the security services agreement dated 04.04.2016 is not shown to have been raised. We further find that the liability of the Operational Creditor is restricted by clause 13(5) of security services agreement to one month's salary of the guard and even this liability can be enforced by the Corporate Debtor only when he is up-to-date with its payments in accordance with the terms of payment of security services agreement. It has been stated by Operational Creditor in the rejoinder filed by Diary No.2844 dated 03.08.2018 (page No.15)

that the payments for July, 2016 and August, 2016 were made only in the months of November, 2016 and the December, 2016, whereas as per the terms of the agreement, the payment was required to be made within 15 days of the date of receipt of the bills. The Corporate Debtor filed an additional affidavit by Diary No.4413 dated 13.11.2018 but no further evidence was filed to dispute the reply of the Operational Creditor, discussed above.

20. In the additional affidavit dated 13.11.2018, reference has been made to e-mails dated 01.02.2016 and 02.02.2016 and it is stated that the Operational Creditor requested the Corporate Debtor for soft copies of the invoices raised, which were not given in spite of the repeated follow ups. The security services agreement is dated 04.04.2016 (Annexure No.4 of the petition). Therefore, the e-mails related to a period earlier to the security services agreement and are not relevant for the present case. In the additional affidavit *supra*, reference is also made to e-mail dated 20.12.2016 to state that the Operational Creditor deliberately created a situation of allegedly not being paid which led to the theft at warehouses of the Corporate Debtor as the guards deployed at the sites abandoned without any information, and e-commerce vendors from whom the Corporate Debtor has been provided services imposed debit note to the tune of ₹38.00 crores approx. The plea of the Corporate Debtor that the payments of all the invoices were duly made and there was an amount recoverable of ₹2,50,000/- as on 19.04.2017 has been discussed and negated above. Therefore, the averment in the email dated 20.12.2016 (*supra*) that payments since August, 2016 are still pending appears to be correct. Moreover, no evidence of the debit note of e-commerce

vendors to the tune of ₹38.00 crores has been filed. Therefore, the plea raised by the Corporate Debtor cannot be accepted.

21. In the reply filed vide Diary No. 2451 dated 12.07.2018, the Corporate Debtor has submitted that there are several instances of violation of the security services agreement dated 04.04.2016. However, no evidence in this regard have been furnished. Therefore, the contention raised is rejected.

22. In the reply(*supra*), the Corporate Debtor has referred to FIR lodged with the Economic Offences Wing, Delhi. We find that the operational creditor is correct in stating that the FIR has no relevance since the Corporate Debtor has not named the Operational Creditor in this FIR and secondly, the allegations in the FIR are that the erstwhile management of the Corporate Debtor misappropriated the funds received from Jasper and of the Corporate Debtor itself. The plea raised is therefore, rejected.

23. The learned counsel for the Corporate Debtor has argued that in the invoices at Annexure No.5 (colly) of the petition, the charges for providing security guards in Tripura are more than the proposed rates given in the security services agreement dated 04.04.2016. The learned counsel for the Corporate Debtor has not been able to show that any communication in this regard was made before the receipt of demand notice in Form No.3 by them. Therefore, the contention raised cannot be accepted.

24. The learned counsel for the Corporate Debtor has argued that there is difference between the payment received against invoice amounts given in para No.6 of the demand notice dated 19.09.2017 (Annexure No.2(colly) of the petition) and the receipts from the Corporate Debtor certified

by Axis Bank in bank certificate dated 20.12.2017 (Annexure No.7 of the petition). We find that the details in para No.6 of the demand notice are in respect of amounts received relating to the invoices from September, 2016 to April, 2017 only whereas the bank certificate is for the receipts from the Corporate Debtor for the period 15.11.2016 to 19.04.2017. Therefore, the details cannot be directly compared and the submissions of the Corporate Debtor are not acceptable. However, even though direct correlation is not possible, we have endeavoured to make the correlation on the basis of the details available in the record.

25. The details of receipts from the corporate debtor as certified in the bank certificate dated 20.12.2017 (*supra*) are as follows:-

Transaction Date	Mode of payment	Amount(INR)
15.11.2016	NEFT	286184
21.12.2016	NEFT	286184
17.01.2017	NEFT	262783
04.02.2017	NEFT	256972
29.03.2017	NEFT	150000
19.04.2017	NEFT	100000

26. The details of the invoices against which payment is adjusted as given in para No.6 of the demand notice (*supra*) are as follows:-

Invoice No.	Invoice amount (Rs.)	Payment received (Rs.)	Due amount (Rs.)	Date of invoice	Date of payment
KOLCI/00 1089/1617	2,91,249	2,62,216	29,033	September 2016	4 February 2017
KOLCI/00 1354/1617	2,91,249	1,53,061	1,38,188	October 2016	30 March 2017
KOLCI/00 1532/1617	2,87,619	2,68,146	19,473	November 2016	17 January 2017

27. We note that even though there is minor variance between the amounts as they appear in the bank certificate and para No.6 of the demand notice, the receipts dated 17.01.2017(₹2,62,783/-), 04.02.2017 (₹2,56,972/-) and 29.03.2017 (₹1,50,000/-) have been taken into account in the details in para No.6 of the demand notice. We find that at page 15 of rejoinder filed by diary No.2844 dated 03.08.2018, it is stated that payments on 15.11.2016 and 21.12.2016 have been adjusted towards the invoices raised for July and August, 2016 . Therefore, the first two entries of the bank certificate appear to be adjusted towards the invoices for July and August, 2016. The receipt of ₹1,00,000/- on 19.04.2017 only remains for consideration. This receipt does not appear to be taken into consideration in para no.6 of the demand notice. However, the comparison of details in para No.6 of the demand notice with Part 4 of Form No.5 (alongwith Annexure No.3 of the petition) shows that ₹29,033/- was adjusted against invoice No.KOLCI/001089/1617 and ₹70,967 was adjusted against invoice No.KOLCI/001354/1617. The amount outstanding in respect of invoices of ₹12,29,565/- as per demand notice was thereby reduced to ₹11,29,565/- as per Part 4 of Form no.5. Therefore, the

amount of ₹1,00,000/- of 19.04.2017 is finally taken into consideration in the amount claimed to be in default in Part 4 of Form 5. Therefore, even on the basis of detailed comparison as per available record, the contention of the learned counsel for the Corporate Debtor cannot be accepted. The learned counsel for the Corporate Debtor has referred to the difference of outstanding in respect of Invoice No.KOLCI/001354/1617 of ₹1,38,188/- in para no.6 of the demand notice and ₹67,221/- in part 4 of Form No.5. The reduction of ₹70,967/- has been discussed above. The plea of the learned counsel for the Corporate Debtor is not accepted.

28. In view of the above discussion, it is held that the Corporate Debtor has not been able to prove that a dispute truly exists in fact. The dispute raised is in the nature of spurious, hypothetical or illusory dispute and therefore, the contentions raised are rejected.

29. The provisions of Section 9(5)(i) of the Code are as follows:-

“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”

30. In the present case, no averments have made before us that the application under Section 9(2) is not complete. We have gone through the contents of the application and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹13,04,521/- comprising of outstanding amount of invoices of ₹11,29,565/- and interest at 1.5% per month up to 02.01.2018 of ₹1,74,956/- (Interest @ 1.5% per month is provided for in Clause 4 of the Security Services Agreement dated 04.04.2016). We have held above that the demand notice in form No.3 dated 19.09.2017 was properly delivered by the Operational Creditor and that no reply thereof was furnished by the Corporate Debtor and no pre existing dispute is also proved. Resolution Professional was not proposed in the petition and therefore, Section 9 (5) (i)(e) is not applicable.

31. 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 CIRP process in the case of the Corporate Debtor M/s Quickdel Logistics Pvt. Ltd. and direct moratorium and appointment of Interim Resolution Professional as below.

32. 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 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.

33. 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.

34. 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.

35. In the present case, the operational creditor has chosen not to propose a Resolution Professional to be appointed as the Interim Resolution Professional (IRP). The operational creditor is not obliged to propose the name of Resolution Professional to be appointed as such. Section 16(3)(a) of the Code says that where the application for corporate insolvency resolution process is made by an operational creditor 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) x x x x x

Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

36. In this regard a letter bearing File No. 25/02/2018-NCLT dated 28.12.2018 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/ EMP/ 2018/02 dated 25.12.2018 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 from 01.01.2019 to 30.06.2019.

We select Mr. Gyaneshwar Sahai appearing at Serial No. 83 of the panel to be appointed as Interim Resolution Professional.

37. The Law Research Associate of this Tribunal has checked the credentials of Mr. Gyaneshwar Sahai and there is nothing adverse against him. In view of the above, we appoint Mr. Gyaneshwar Sahai, Registration No. IBBI/IPA-002/IP-N00130/2017-18/10546, Mobile No. 9953541408, e-mail id: gyaneshwar.sahai@gmail.com as the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Gyaneshwar Sahai 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 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 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.

Pronounced in open court.

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

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

January 07, 2019
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