

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

CP (IB) No.3/Chd/Pb/2019

Under Section 9 of the Insolvency  
and Bankruptcy Code, 2016

**In the matter of :**

**Gurdev Singh, Sole Proprietor of  
M/s New Bhullar Trading Company, Commission Agent**  
having its correspondence address at  
Anaj Mandi, Ferozepur City,  
Ferozepur, Punjab

...Petitioner/Operational Creditor

Versus

**D.P.D. Industries Limited**  
having its registered office at  
Moti Bazar, Outside Hira Mandi,  
Ferozepur, Punjab  
CIN:U15400PB2009PLC033380

...Respondent/Corporate Debtor

Judgement delivered on: 06.11.2019

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

For the petitioner-Operational Creditor : Mr. Vishav Bharti Gupta, Advocate  
For the respondent-corporate debtor : Mr. Nakul Sharma, Advocate

**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 Mr. Gurdev Singh, the Sole Proprietor of M/s New Bhullar Trading Company (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of D.P.D Industries Limited (**Corporate Debtor**). The Identification Number of the operational creditor as mentioned in Part-I of Form-5, is PAN: AGGPB2731F and the correspondence address is Anaj Mandi, Ferozpur City, Ferozpur, Punjab. The petitioner is a sole proprietorship concern with Mr. Gurdev Singh as its Proprietor and has also filed an affidavit in support of the contents of the application at pages 14 to 16 of the paper book.

2. M/s D.P.D Industries Limited (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 ₹12,40,00,000/- and paid up share capital of ₹12,34,85,340/-. The CIN of the respondent-corporate debtor is U15400PB2009PLC033380 and its registered office is situated in Ferozpur in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure A-5 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the respondent-corporate debtor has purchased paddy worth ₹22,96,297.64/- from the petitioner-operational creditor against which petitioner raised the invoice dated 17.01.2015 attached as Annexure-7 of the petition. It is stated that the debt fell due on 31.03.2015. It is also stated that as per ledger account the debt calculated upto 31.08.2018 is ₹23,37,183.74/-, the principle amount due is ₹12,70,737.64/- and interest amount due thereupon is ₹10,66,446.10/-. The copy of ledger account is attached as Annexure-8 (Colly) of the petition.

4. A demand notice in Form No.3 & 4 is stated to be issued on 22.09.2018 (Annexure-11 of the petition). The copy of postal receipts and acknowledgement of the corporate debtor qua receipt of demand notice is attached as Annexure-12 and 13 to 19 of the petition. The corporate debtor vide this demand notice was called upon to repay the unpaid operational debt (in default) of ₹23,37,183.74/- (inclusive of principal amount ₹12,70,737.64/- and ₹10,66,446.10/- interest thereupon) within 10 days from the receipt of the notice.

5. The corporate debtor in its reply dated 17.10.2018 to the demand notice dated 22.09.2019 (Annexure-20 of the petition) has not denied its liability towards the corporate debtor and stated its inability to clear the debt owing to acute financial crunch. The Corporate Debtor also sent a cheque of ₹5,000/- and requested some more time to clear the entire outstanding and requested to withdraw the demand notice.

6. It is stated that the respondent-corporate debtor have failed to discharge its obligations towards the applicant-operational creditor, inasmuch as have failed to make the payment due to the applicant-operational creditor despite the successful delivery of the demand notice.

7. In Part III of Form 5, the operational creditor has proposed Mr. Anup Sood, bearing Registration No. IBB/I/PA-003/IP-N000114/2017-18/11218 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form No. 2 is placed at Annexure-6, in which he has stated that he is currently serving as an Interim Resolution Professional in one proceeding. It is stated that there are no disciplinary proceedings pending against the proposed Interim Resolution Professional with the Board or the Insolvency Professional Agency of Institute of Cost Accountants of India.

8. Notice of this petition was issued to the Corporate Debtor on 06.02.2019 to show cause as to why this petition be not admitted.

9. The Corporate Debtor filed reply vide Diary No.5214 dated 30.09.2019. It is submitted in the reply that the corporate debtor has no objection if the present application is admitted and Interim Resolution Professional is appointed to initiate Corporate Insolvency Resolution Process against respondent-Corporate Debtor.

10. On the last date of hearing, the learned counsel for the respondent submitted that the Corporate Debtor filed a reply by categorically stating that they have no objection, if the CP is admitted and the Interim Resolution Professional is appointed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor.

11. We have heard the learned counsel for the corporate debtor and operational creditor and have also perused the records carefully.

12. The first issue for consideration is whether the demand notice in Form No.3 & 4 dated 22.09.2018 was properly served. The demand notice dated 22.09.2018 was sent at the address as per the master data at Page No.22 to 23 (Annexure-5) of the petition in which the registered office is shown as Moti Bazar, Outside Hira Mandi, Ferozpur, Punjab – 152002 and the speed post receipts are found attached with the petition. The reply to demand notice evidencing successful service is also found attached with the petition is at page 45 (Annexure-20) of the petition.

13. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor in its

reply to the demand notice dated 22.09.2018 has not disputed the liability towards the operational creditor and requesting some time to clear the debt. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

14. 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.”*

15. The Hon'ble Supreme Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017**, held as under:-

*“51. 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)(ii)(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 further 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. 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 an unpaid operational debt as on 31.08.2018 amounting to ₹23,37,183.74/- (inclusive of principal amount ₹12,70,737.64/- and ₹10,66,446.10/- interest thereupon) and after receipt of demand notice under Section 8 of the Code, a payment of ₹5,000/- (dated 17.10.2018) was received by the Operational Creditor thereby reducing the amount to ₹23,32,183.74/- as per ledger account annexed at Annexure-10 of the petition. Copy of Ledger Account of the corporate debtor in the books of the operational creditor for the period of 01.04.2014 to 31.08.2018 attached as Annexure-8 (Colly) (pages 26 to 30 of the petition). The copy of invoice has been filed at Annexure-7 of the petition. Moreover, demand notice in Form No.3 & 4 was also sent on 22.09.2018 stating that the amount due as on 31.08.2018 from the corporate debtor to the operational creditor is ₹23,37,183.74/- (inclusive of principal amount ₹12,70,737.64/- and ₹10,66,446.10/- interest thereupon). The corporate debtor in its reply to the demand notice dated 22.09.2018 has not disputed its liability and towards operational creditor and has requested for some time to clear the

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debt. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 12.11.2018 has been placed by the operational creditor stating the Operational Creditor has not received any notice of dispute under Section 8(2) of the Code relating to the operational debt of ₹23,37,183.74/-. We have held above that the demand notice in Form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

17. 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 fact 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 lac by the respondent-corporate debtor.

18. 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 D.P.D. Industries Limited and direct moratorium and appointment of Interim Resolution Professional as below.

19. 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;

*12-11-2018*

- 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.
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 operational 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 passes an order for liquidation of corporate debtor under Section 33 as the case may be.
22. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anup Sood and there is nothing adverse against him. In view

*V. S. Qureshi*

of the above, we appoint Mr. Anup Sood, Registration No. IBB/IPA-003/IP-N000114/2017-18/11218, R/o Flat No.185, Block-H, 5<sup>th</sup> Floor, Spangle Condos, Old Ambala Road, Gazipur, Tehsil Dera Bassi, Mohali, Sahibzada Ajib Singh Nagar, Punjab - 140603, Mobile No.9888606330, E-mail: [anupsood1954@gmail.com](mailto:anupsood1954@gmail.com), as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Anup Sood 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

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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;

*V. S. GAWLA*

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.

  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Nov, 6<sup>th</sup>, 2019  
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