

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

CP (IB) No. 153/Chd/Pb/2019

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

In the matter of:

Parmod Sharma

S/o Shri Jagdish Prashad Sharma
R/o House No. 411/1,
Sector 44-A, Chandigarh

...Petitioner/Operational Creditor

Versus

Emsons Organics Ltd.

having its registered office at
Village Faridpur, Jhansla Road,
Post Office: Urban Tehsil
Rajpura Patiala Punjab-140602

...Respondent/Corporate Debtor

Judgement delivered on: 27.09.2019

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the petitioner-operational creditor : Mr. G.S. Sarin, PCS

For the respondent-corporate debtor : Mr. Karanveer Jindal, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

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 Mr. Parmod Sharma (**Operational Creditor**) for initiating the Corporate Insolvency Resolution Process (**CIRP**) in the case of Emsons Organics Ltd (**Corporate Debtor**). As per master data at page 24 of the petition, the registered office of the Corporate Debtor is at Village Faridpur, Jhansla Road, Post Office: Urban Tehsil Rajpura Patiala Punjab-140602. Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. It is stated that the operational creditor- Mr. Parmod Sharma was engaged by the Corporate Debtor for availing the services for attending the Excise & DGFT Matters before various Tribunals and Courts situated in the State of Punjab and for this purpose a fee of ₹1 lac per financial year had been settled between the parties and it was also agreed that in case of delayed payment the Petitioner shall be entitled for interest @ 12% p.a. Consequently for the 2 Financial Years for which the Petitioner rendered services, two (2) bills were raised for ₹1 lac each dated 01.04.2014 (for FY 2014-15) and 05.04.2015 (for FY 2015-16), totalling to ₹2 lacs. In Part 4 of Form 5, the total amount of debt is stated to be ₹2,12,800/- which includes, principal amount of ₹1,90,000/- and interest amount of ₹22,800/- @ 12% per annum on the delayed part.

3. A demand notice in Form No. 3 is stated to be issued on 12.04.2017 (Annexure A4 of the petition) and served by speed post on the corporate debtor on 23.04.2017 (Page No. 39 and as per the reply of the respondent at Page 43 of this petition). The demand notice were accompanied by invoices and ledger statement of corporate debtor maintained by the operational creditor. A copy of the notice was also sent by e-mail on

05.04.2018 on the e-mail address as reflected in the master data of the corporate debtor (Page 27 of the petition).

4. The petition is signed by Mr. Parmod Sharma, the Operational Creditor and Mr. Parmod Sharma has filed an affidavit dated 23.03.2019 verifying the contents of Form No. 5. He has also filed an affidavit dated 23.03.2019 (Annexure A9) stating that till the expiry of the period of 10 days from the date of delivery of the demand notice and invoice demanding the payment under sub-Section (8)(1), the operational creditor has neither received any payment from the corporate debtor nor any notice of dispute under sub-Section 8(2) relating to the operational debt or ₹2,12,800/- and that the corporate debtor has duly acknowledged the amounts due in its reply dated 03.05.2017 attached as Annexure A4.

5. In Part III of Form 5, the operational creditor has proposed Ms. Taruna Goel, bearing Registration No. IBBI/IPA-002/IP-N00314/2017-2018/10902 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form No. 2 at Annexure A6 in which she has stated that there are no disciplinary proceedings pending against her with the Board or IIIPI.

6. By order dated 02.05.2019, notice of the petition was directed to be issued to the corporate debtor to show cause as to why the petition be not admitted on 25.07.2019.

7. The authorized counsel for the petitioner filed compliance affidavit dated 17.07.2019 (Diary No. 3476 dated 18.07.2019) alongwith postal receipts and tracking reports showing that the copy of the notice to the corporate debtor was sent to the registered address of the corporate debtor by speed post on

03.06.2019 but the consignment was not delivered and returned with an observation that the premises was locked. Copy of the postal receipt alongwith tracking report and returned envelope are attached as Annexure A1, A2 and A3 of the affidavit respectively. Further, the operational creditor made alternate service by serving the notice on the registered address available on the signatory details of the company of all the 3 Directors at master data of MCA on 29.06.2019. Copy of the postal receipts along with tracking report is attached as Annexure A4 & A5. It is also stated that a copy of the notice was also sent on the e-mail address reflected on the master data of the company but the e-mail bounced back. Copy of the email sent along with bounced back report is attached as Annexure –A6 of the affidavit.

8. The Corporate Debtor filed reply dated 22.07.2019 vide Diary No.3555 dated 22.07.2019. It is stated in the reply that the corporate debtor admits the outstanding amount of ₹1,90,000 to be paid to the petitioner for his legal services but the interest component is denied as no interest on delayed payments was ever agreed between the parties. It is also stated that the losses of the Corporate debtor are more than its entire net and therefore the financial creditors of the corporate debtor have already started action against the Company under SARFAESI Act, 2002.

9. We have carefully considered the submissions of the learned counsel for the operational creditor and corporate debtor and have also perused the records.

10. The issue for consideration is whether the operational debt was disputed by the corporate debtor. We have noted above that the demand notice in Form No. 3 issued on 12.04.2017 was properly served. We have also

discussed above that Mr. Parmod Sharma, the Operational Creditor has filed an affidavit dated 23.03.2019 stating that the corporate debtor has duly acknowledged the amount of debt due in its reply dated 3.05.2017 attached as annexure A-4 of the petition and that there is no dispute of unpaid operational debt pending between the parties against the claim. Also it is pertinent to note that the Corporate Debtor in its reply dated 22.07.2019 has admitted the outstanding amount of ₹1,90,000/- to be paid to the Petitioner and therefore, there is no dispute with regard to the operational debt.

11. 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.”*

12. 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 amounting to ₹2,12,800/- (along with interest @12%

per annum). The copy of the bank account statement from 10.07.2018 is attached as Annexure A3 where the amounts received from the customers are regularly deposited and the payments made are debited. Also, the certificate of the operational creditor declaring that no amount has been received from the corporate debtor from 01.08.2018 to 26.03.2019 duly certified by the bank is attached as Annexure-A5. Demand notice in Form No. 3 was also received on 03.05.2017 stating that the amount due from the corporate debtor to the operational creditor is ₹2,12,800/- along with interest @ 12% per annum and as per the reply to the notice, the same was acknowledged by the Corporate Debtor by reply dated 03.05.2017 and no pre-existing dispute is also proved.

13. No objections are being raised to the completeness of the application filed under Section 9(2) of the Code. As discussed above, the operational debt remains unpaid, the demand notice was delivered to the corporate debtor and no reply was received within the stipulated 10 days period. As discussed above, the proposed Resolution Professional Ms. Taruna Goel, has filed Form No.2 in which he has stated that there are no disciplinary proceedings pending against her with the Board or ICSI Insolvency Professionals Agency.

14. 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. Emsons Organics Ltd. and direct moratorium and appointment of Interim Resolution Professional as below.

15. 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.

16. 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.

17. 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.

18. The Law Research Associate of this Tribunal has checked the credentials of Ms. Taruna Goel and there is nothing adverse against him. In view of the above, we appoint Ms. Taruna Goel, Flat No. 1309, Silver City Towers, Main Silver City, Zirakpur, Punjab, 140603, Registration No. IBBI/IPA-002/IP-N00314/2017-18/10902, e-mail id: tarunagoelcs@gmail.com the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Ms. Taruna Goel 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 her email address forthwith.

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

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

September 27th, 2019
Yashpal

Pronounced in open court Sd/- 27/09/2019