



IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB) 326/9/JPR/2019

UNDER SECTION 9 OF IBC, 2016

IN THE MATTER OF:

HARISH STORES

...Operational Creditor

VERSUS

FADAN HEALTH AND BEAUTY PRIVATE LIMITED

...Corporate Debtor

MEMO OF PARTIES

Harish Stores

Through Partner Mr. Manoj Jainani
248-249, Kishanpole Bazar,
Jaipur- 302001 (Rajasthan)

...Operational Creditor

VERSUS

Fandan Health And Beauty Private Limited

TF-1, Tamanna Tower,
Amrapali Marg, Opp. Kataria Motors,
Nand Vihar, Jaipur- 302021 (Rajasthan)

...Corporate Debtor

For the Applicant : Prabhansh Sharma, Adv.

For the Respondent : None-appeared

Order Pronounced On:29.07.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

CP No. (IB) 326/9/JPR/2019



1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code' / 'IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by Harish Stores through its authorised signatory Mr. Manoj Jainani ('Applicant'), claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s Fandan Health and Beauty Private Limited ('Respondent' / 'Corporate Debtor').

2. The Applicant has its registered office at 248-249, Kishanpole Bazar, Jaipur-302021 (Rajasthan), and is involved in the distribution of fitness and spa equipment. The Application has been filed in Form 5 as prescribed in Rule 6(1) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

3. The Respondent is a private limited Company incorporated under the Companies Act, 2013 on 09.12.2013, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U93020RJ2013PTC044512. The Registered Office of the Respondent is at TF-1, Tamana Towers, Amrapali Marg, Opposite Kataria Motors, Nand Vihar, Jaipur-302021 (Rajasthan). The company's nominal share capital is Rs. 10,00,000/- (Rupees Ten Lakhs Only), and the paid-up share capital is Rs. 10,00,000/- (Rupees Ten Lakhs Only).

4. The facts of the case, as stated in the Application, show that the Applicant agreed to supply Sauna Sawo set to the Corporate Debtor as per the quotation dated 08.06.2016. In turn, the Applicant raised and issued invoices dated



25.11.2016 and 15.12.2016 (a total of two invoices) in favour of the Respondent against supply of orders. Copy of the same is annexed in Annexure – 3 of the Application. The total supply value as per quotation was Rs. 2,51,055/- (Rupees Two Lakhs Fifty-One Thousand Fifty-Five Only) along with VAT of Rs. 36,403/- (Rupees Thirty-Six Thousand Four Hundred and Three Only).

5. The Applicant submitted that the Respondent made part-payment of Rs. 1,25,528/- (Rupees One Lakh Twenty-Five Thousand Five Hundred and Twenty-Eight Only) to the Applicant. The Applicant further submitted that this payment was received from the Respondent on 30.08.2016 through NEFT per terms of supply. However, the balance payment and VAT charges of the aforementioned invoices were not received despite several reminders and requests. Thus, the Respondent has failed to make the balance payment for the other invoices amounting to total debt of Rs. 1,61,930/- (Rupees One Lakh Sixty-One Thousand Nine Hundred and Thirty Only). Copy of part-payment made is annexed at Page 248 of the Application.

6. The Applicant further submits that excluding the aforesaid part-payments made by the Respondent, a sum of Rs. 2,47,456/- (Rupees Two Lakh Forty-Seven Thousand Four Hundred and Fifty-Six Only) including interest @ 18% per annum is charged on outstanding invoices. Copy of the same is annexed in Annexure – 2 of the Application.

7. Applicant issued and served a Demand Notice dated 23.11.2019 to the Respondent under Section 8 of the Code as per Form 3 as prescribed under Rule



5 of the Rules at its registered office demanding a sum of Rs. 2,47,456/- (Rupees Two Lakh Forty-Seven Thousand Four Hundred and Fifty-Six Only) with interest @18% per annum on the invoices. The Respondent neither paid the outstanding debt nor raised a dispute regarding the outstanding debt till the filing of the present petition. The demand notice was accompanied by computation of interest, details of invoices, and relevant dates of default. Copy of Demand Notice dated 23.11.2019 and postal receipt dated 23.11.2019 sent to the Respondent are annexed as Annexure – 5 of the Application.

8. The Applicant has filed a Statement of Bank Account maintained with Yes Bank, HDFC Bank and Canara Bank from 30.08.2016 to 05.12.2019 in Annexure – 4 of the Application. It is stated that there is no repayment of the unpaid operational debt by the Respondent.

9. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 2,47,456/- (Rupees Two Lakh Forty-Seven Thousand Four Hundred and Fifty-Six Only), as an outstanding amount, as reflected in Part IV of the Form - 5 filed with the Application.

PART IV

Particulars of Operational Debt	
The total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Total debt due is Rs. 2,47,456/- (Rupees Two Lakh Forty-Seven Thousand Four Hundred and Fifty-Six Only), as of 22.11.2019, along with interest @18% per annum on



	the Invoices.
Amount claimed to be in default and the date on which the default occurred	Total debt due is Rs. 2,47,456/- Date from which such debt fell due: 16.12.2016.

10. Notices were issued in the aforesaid Application, and the Respondent has failed to file a reply in this regard. Therefore, this Adjudicating Authority *vide* its Order dated 20.05.2022 proceed in the instant matter *ex-parte* as the Corporate Debtor has not appeared before the Court proceedings on various dates of hearing stated in the notices, in spite of the notices being duly served upon it by the Registry and the Applicant through various mode(s) of service in this regard.

11. As per the terms mentioned in the quotation letter and mutual understanding between the parties, the payment has to be made 50% in advance and the remaining 50% at the time of confirmation of full delivery. Such delivery of equipment would also have to bear 14.5% VAT upon the total bill. Copy of quotation dated 08.06.2016 and invoices is annexed in Annexure – 3 of the Application.

12. In the instant case, the Operational Creditor sent various reminders and requests through e-mail(s), and WhatsApp Chat to the Corporate Debtor to pay the pending amount raised in the invoices. Copy of the aforesaid communications is annexed in Annexure 7 and 8 of the Application, respectively. It is clear from aforementioned communication that there is no dispute between the parties regarding the quality, quantity or services provided by the Operational Creditor.



13. This Adjudicating Authority has perused all the relevant papers and found them in Order. The registered office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this Application. The matter is within the purview of the Law of Limitation, as the debt fell due on 16.12.2016, and the Application was filed on 11.12.2019. Therefore, the present Application has been filed within the period of limitation.

14. The first issue for consideration is whether the demand notice in Form No.3 dated 23.11.2019 was served upon the Respondent. The demand notice was sent *via* a registered post on 23.11.2019 to the corporate debtor and its directors. The postal receipt is attached on Page 198 (Annexure – 5) of the Application.

15. The next issue for consideration is whether the Respondent disputed the operational debt. The Respondent has not filed a reply in this regard. However, considering communication on record between the parties, there is no dispute regarding the goods' supply and quality. Thus, as per documents placed on record with the adjudicating authority, there is no dispute as to the outstanding liability of the Respondent/ Corporate Debtor towards the Applicant/ Operational Creditor.

16. Further, the Corporate Debtor in its Audited Financial Statement as of 31.03.2019 has acknowledged its liability towards the Operational Creditor. Copy of the Audited Financial Statement of the Corporate Debtor is annexed in Annexure – 9 (Colly) of the Application.

17. We have gone through the contents of the Application filed in Form No.5



and found the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 2,47,456/- (Rupees Two Lakh Forty-Seven Thousand Four Hundred and Fifty-Six Only), including the interest @ 18% per annum. It is observed that the Operational Creditor has issued various invoices (Annexure – 3) for goods supplied to the Corporate Debtor. Operational Creditor has given demand notice in Form-3 dated 23.11.2019, duly served on the Respondent. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the demand notice in Form No.3, and no pre-existing dispute is proved.

18. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Hence, this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.

19. Under sub-section (4) of Section 9 of the Code, the Operational Creditor proposed the name of Mr. Sudhir Bhansali be appointed Interim Resolution Professional ('IRP'), bearing Registration No. IBBI/IPA-001/IP-P01109/2017-18/11799 with the e-mail address sbhansalico@gmail.com, in the present matter. The said IRP has filed the written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse is



found on record.

20. In this matter, the Interim Resolution Professional appointed herein, Mr. Sudhir Bhansali, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this Order to IBBI for its records.

21. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

22. Consequences of commencement of CIRP shall be inter-alia as follows:

- (i) The IRP appointed by the Adjudicating Authority, Mr. Sudhir Bhansali, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of the Code, including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
- (ii) Further, as a sequel of admission, a moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code



concerning the Corporate Debtor.

- (iii) The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 1,00,000/- (One Lakhs Only) to the bank account of IRP within two weeks from the date of this Order. This amount shall be proportionately contributed and reimbursed to the Applicant upon forming a Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP concerning the Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor, including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during her tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.
- (iv) In terms of Section 9 of the Code, this Order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this Order shall also be communicated to IBBI for its records.

23. Copy of this Order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this Order along with a copy of the



Application and documents on the Resolution Professional by all modes for information.

24. The Registry is directed immediately to send a soft copy of the instant Application along with this Order to the RP nominated herein on his e-mail id.

25. Accordingly, CP No. (IB)- 326/9/JPR/2019 is admitted.

DEEP
CHANDRA
JOSHI

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(DEEP CHANDRA JOSHI)
JUDICIAL MEMBER

PRASANTA
KUMAR
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(PRASANTA KUMAR MOHANTY)
TECHNICAL MEMBER