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**NATIONAL COMPANY LAW TRIBUNAL**  
**ZNEW DELHI BENCH**

In the matter of

(IB)-939/ND/2019

M/s. Ready Roti India Pvt. Ltd.  
Having Registered Office at:  
F -28, RIICO Industrial Area  
Tehsil – Tijara, Sare Khurd  
Alwar – 301707, Rajasthan

...Applicant/Operational Creditor

Versus

Harish Bakers & Confectioners Pvt. Ltd.  
Having Registered Office at:  
C -30, Ram Dutt Enclave,  
Uttam Nagar, New Delhi – 110059

Also at:  
21/11 Shiv Puri, Sector -7 Corner,  
Old Railway Road, Gurgaon – 122001,  
Haryana

...Respondent/ Corporate Debtor

SECTION: 9 of IBC, 2016

Order delivered on: 15.11.2019

Coram:

SMT. INA MALHOTRA, HON'BLE MEMBER (J)  
SH. L. N. GUPTA, HON'BLE MEMBER (T)

Present for the Petitioner.: Mr. Amit Agrawal, Ms. Aanchal  
Tikmani, Advocates

Present for the Respondent: Mr. Rabin Majumder, Ms. Akansha  
Srivastava, Advocates



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20/11/19

## ORDER

### PER SMT. INA MALHOTRA, MEMBER (J)

1. The present petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor for its inability to liquidate its dues.

2. As per averments, the Operational Creditor is engaged in the business of bakery and during the course of its business had been supplying products like bread, buns, pizza bases etc. to the Corporate Debtor since 2012. The Operational Creditor submits that as per the business arrangement the demand raised vide invoices would normally get settled within three or four days. However, on account of certain bills pending for remittance raised between the period 10.07.2018 to 16.07.2018, the Operational Creditor stopped supplying goods to the Corporate Debtor thereafter.

3. The last invoice settled by the Corporate Debtor was on 13.07.2018 towards products supplied up to 09.07.2018. It is the Operational Creditor's case that a sum of Rs. 27,18,465/- is due and payable by the Corporate Debtor which despite repeated request and demands has not been remitted. A notice under Section 8 of the Code was issued which was duly replied to. Since no plausible dispute was raised in respect of the quality or quantity of supply in any previous transactions between

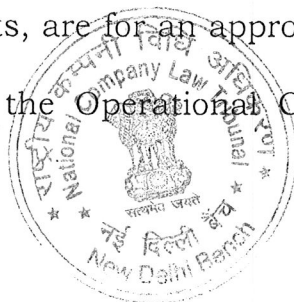


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the Corporate Debtor and the Operational Creditor herein, and neither were any steps taken for liquidating the outstanding amount, the Operational Creditor proceeded to file the present petition.

4. Upon notice being issued, the Corporate Debtor put in its appearance and filed their reply. In their reply filed before this Bench the main dispute raised is that is a pre-existing dispute between the parties, primarily with the parent company of the Operational Creditor and in view of the counter claim of a higher amount to be recovered, the liability sought herein is required to be set off.

5. Ld. Counsel for the Corporate Debtor has also relied upon a settlement arrived at between the parties which existed prior to the issuance of the demand notice. It appears that on a FIR being filed by the parent company of the Operational Creditor, viz. M/s. Harvest Gold, a settlement was arrived at in the presence of concerned SHO. A perusal of this settlement clearly reflects the liability of the Corporate Debtor due to the Operational Creditor as well as the amount under 2 debit notes raised by them. The Amount due from M/s. Harvest Gold is also mentioned on the same paper. The ledger account maintained by the Corporate Debtor is clearly in sync with the demand raised by the Operational Creditor. The two debit notes that are being asserted in the settlement of sorts, are for an approximate amount of Rs. 4 lakhs only. Ld. Counsel for the Operational Creditor submits that even if they

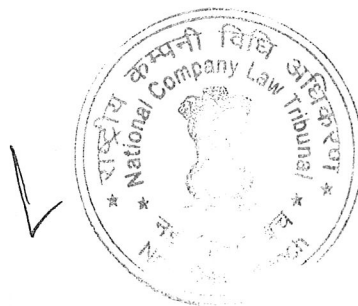


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concede to this amount, their claim is well over the threshold of Rs. 1 lakh.

6. While the Corporate Debtor arguments revolve around the allegations of a prior dispute, we find the same unsustainable as the dispute is more with M/s. Harvest Gold, the group Company of the Operational Creditor. The liability of one legal entity cannot be off set against the obligation of another legal entity. The claim against M/s. Harvest Gold, if any, would entitle the Corporate Debtor to move against them before any legal forum, but the plea of offsetting it against the dues of the Operational Creditor herein is untenable.

7. It has also been pointed out that another objection raised by the Corporate Debtor was in respect of certain loading charges which are due since the year 2007 onwards. It is admitted by the Ld. counsel for the Corporate Debtor that this oral arrangement for recovery of loading charges was made by M/s. Harvest Gold and not by M/s Ready Roti India Pvt. Ltd. We therefore find that the pre-existing dispute is not with the Operational Creditor. It is the endeavor made by the Corporate Debtor to mix both the issues. The liability of a company, being a legal entity, does not bind a group company for its individual transactions. Reliance is placed by the Id. Counsel for the Corporate debtor on various judgements. Their citing judgements of prior disputes for rejecting an application under section 9 of the Code is of no help, as in the present



case the dispute sought to be raised is only with M/s. Harvest Gold, another legal entity and not with the Operational Creditor, who after conceding to the debit notes is still entitled to recover its dues. Reliance on the judgement delivered by the Hon'ble Apex Court in the matter of MTNL vs. Canara Bank reported in 2019 SCALE(10) 619 to fortify their arguments that a non signatory can be bound by an agreement is also misconceived as it pertains to Arbitration, which Act has been amended to incorporate such a doctrine.

8. We therefore, find that there are amounts due by the Corporate Debtor to the Operational Creditor herein. Non payment of the same has entitled the Operational Creditor to the prayer made in the petition. Accordingly, this petition is Admitted. A moratorium in terms of Section 14 of the Code shall come into effect forthwith, staying the institution of suits or continuation of any pending legal proceedings, transferring or disposing of any asset of the Corporate Debtor, foreclosure or enforcement of any security or recovery of any property by the owner or lessor of the property occupied or in possession of the Corporate Debtor. Further, in terms of Section 14 of the Code, the supply of essential goods or services shall not be terminated. The moratorium shall remain in effect till completion of the CIR Process.

10. The Operational Creditor has not proposed the name of any Interim Resolution Professional. Accordingly, we appoint Mr. Sanjay



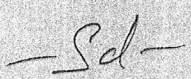
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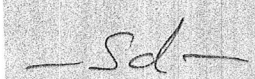
Sahni, Registration No. IBBI/IPA-001/IP-P00341/2017-18/10642, E-mail Id:- [casabnjaysahni@gmail.com](mailto:casabnjaysahni@gmail.com) Mob: - 9810282770 duly empanelled with the IBBI as the IRP. He is directed to take such steps as are mandated under the Code, more specifically under Sections 15, 17,18,20 and 21 and file his report. The Operational Creditor shall deposit a sum of Rs. 2 lakhs with IRP to meet the immediate expenses. The IRP shall maintain an account which shall be reimbursed by the COC and remitted back to the Operational Creditor. The same shall be recovered as costs of the CIR Process.

8. Copy of the order be communicated to both the parties as well as to the IRP.

8. To come up on 19.12.2019

  
(L. N. Gupta)  
Member (T)



  
(Ina Malhotra)  
Member (J)

  
Deputy Registrar  
National Company Law Tribunal  
CGO Complex, New Delhi-110003