

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III

IB-606/ND/2021

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

Bansal Trading Company,

Having registered address at 603-605

NDM-1, Netaji Subhash Place, Pitampura

New Delhi-110034

...Operational Creditor/Petitioners

Versus

M/s Periwinkle Herbals Private Limited

Regd. Office:

3 D & C, 3rd Floor, Gopala Tower

Rajendra Place, North Delhi-110008

...Corporate Debtor/Respondent

Delivered on 15.03.2022

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Narender Kumar Bhola

Hon'ble Member (Technical)

Appearances:

Operational Creditor : Adv. Sanyam Jain

Corporate Debtor:



ORDER

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-606/ND/2021 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, Bansal Trading Company is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') of the Corporate Debtor viz., M/s Periwinkle Herbals Private Limited, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

- a. It is the case of the Operational Creditor that it is a partnership firm, engaged in supply of various cosmetic raw materials and other industrial chemicals items. It is stated that during period from 28.09.2019 to 04.02.2020, the operational creditor had supplied various Cosmetic Raw Materials/Industrial Chemical items to corporate debtor and the details are as follows:

Invoice No.	Invoice Date	Invoice Amount (Rs.)
BTC/19-20/3306	23-Nov-19	48,616
BTC/19-20/3421	30-Nov-19	1,56,532
BTC/19-20/3549	07-Dec-19	98,235
BTC/19-20/3758	20-Dec-19	43,318
BTC/19-20/3830	26-Dec-19	24,804

- b. It is submitted that the Corporate Debtor has not paid any amount. It has, however, issued Cheque no. 649959 dated 24.12.19 of Rs



48,616, Cheque no. 649960 dated 05.01.2020 of Rs 98,235 and Cheque no. 649961 dated 05.01.2020 of Rs 1,56,532, on presentation all the cheques dishonored. Last financial transaction carried out on 26th December, 2019 by supplying material to Corporate Debtor. There is no further transaction. First date of outstanding invoice was 23th December, 2019 and date of default is 17th Jan. 2020 much prior of the notification no. CG-DL-E-24032020-218898 dated 24.03.2020 issued by Ministry of Corporate Affairs, by which the minimum threshold amount to trigger the insolvency proceedings is enhanced from Rs. one lakh to Rs. one Crore.

- c. It is further submitted that demand notice U/s 8 of the Insolvency and Bankruptcy Code, 2016 dated 12.03.21 & 28.07.2021 sent to corporate debtor on 17.03.21 and 03.08.2021. The said demand notice (s) dated 12.03.2021 and 28.07.2021 sent under section 8 of the Insolvency and Bankruptcy Code, 2016 asking the corporate debtor for repayment of unpaid amount of Rs. 3,71,505 /- along with interest to the operational creditor within 10 days of receipt of the present notice failing which operational creditor may file an application before adjudicating authority to initiate a Corporate Insolvency Resolution Process under section 9 of the Code. Demand Notice dated 12.03.2021 and Demand notice dated 28.03.21 returned back. As per postal tracking report "Addressee left without instructions". Operational Creditor sent notice on Registered Address as per company master Data. Notice also sent on registered email.
- d. It is averred that no payment has been received by the Operational Creditor from Corporate debtor. Therefore, the petition as the corporate debtor has failed to repay the debt to the extent of Rs. 4,81,246/- (inclusive of interest of Rs. 1,09,741 till 25.08.2021 @18%) to the operational creditor.



3. The Corporate Debtor has been provided with several opportunities for causing appearance and for filing reply. However, no one appeared on behalf of the Corporate Debtor. Therefore, this Adjudicating Authority vide order dated 06.01.2022 proceeded *ex-parte* against the corporate debtor, relevant extract of the said order is as follows:

“Counsel for the Operational Creditor is present. Counsel for the Corporate Debtor is not present. Counsel for the Operational Creditor submits that in compliance to previous order dated 29.11.2021, he has filed an affidavit in terms of Section 65B of the Indian Evidence Act and the same is taken on record.

In addition, upon going through the present application, it is seen that the same has been duly served upon the Corporate Debtor through email and speed post as well and tracking report of the same confirms received of the petition on 15.11.2021.

*In view of the above, we are convinced that the service of present petition on the Corporate Debtor has been adequately effected and therefore, it is a fit case to be proceeded *ex parte* as against the Corporate Debtor. Accordingly, the Corporate Debtor in the matter is set **ex parte**. Post this matter after three weeks for final arguments on behalf of the Operational Creditor.”*

4. We have perused the Petition and arguments advanced by Operational Creditor. It is clear that the Petitioner has supplied the goods as evident from the invoices attached with the petition. Furthermore, to discharge its liability, the corporate debtor has issued the cheques and same got dishonored as evident from the ledger account attached with the petition. Therefore, it is clear from the above discussion that the corporate debtor has committed the default in paying the outstanding dues. Moreover, the corporate debtor has not replied to section 8 notice in order to show any pre-existing dispute. It is also pertinent to mention that the Notification regarding the enhancement of minimum amount of default to Rs. one crore for the purpose of Section 4 was issued by the



Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the Corporate Debtor was much before that. Since any notification issued by the Government is generally Prospective in nature unless specifically expressed, hence the above notification is not applicable to the present case. Accordingly, this authority is inclined to initiate the CIR Process of Corporate Debtor. Therefore, the captioned petition is **admitted**.

5. The Applicant has not proposed any insolvency resolution professional. This Tribunal, hereby, appoints Insolvency Professional namely, **Mr. Ahsan Ahmad** having Registration Number IBBI/IPA-002/IP-N00987/2020-2021/13183 (Email ID: ahsan_123ahmad@yahoo.co.in) as Interim Resolution Professional from the List provided by IBBI. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.
6. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
 - a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);
 - d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
7. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.
8. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016.
9. The Petitioner is directed to pay a sum of Rs. 2,00,000/- to the interim resolution professional upon the IRP filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to him in accordance to Regulation 6 of Insolvency Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
10. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate



debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.

11. The Registry is directed to serve a copy of this order on Registrar of Companies, Delhi & Haryana (RoC) for appropriately updating the status of Corporate Debtor on M/o Corporate Affairs website for information of general public. The RoC as aforesaid shall then file a compliance report in this regard with this Tribunal.

12. The order is pronounced by this Adjudicating Authority in virtual Hearing.



(Bachu Venkat Balaram Das)
Member (Judicial)



(Narender Kumar Bhola)
Member (Technical)