

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH"  
(through web-based video conferencing platform)**

**IA No. 213/2020 & No.320/2020  
IN  
CP (IB) No.97/Chd/Pb/2019  
(Admitted matter)**

**Under Section 60 (5) of the  
Insolvency and Bankruptcy  
Code, 2016 read with Rules 49  
and 11 of the National Company  
Law Tribunal Rules, 2016 and  
under Order 1 Rule 10 of the  
CPC.**

**In the matter of:**

Nilkamal Limited. ...Petitioner-Operational Creditor.

Versus

U. I. Beverages Private Limited. ....Respondent-Corporate Debtor.

And in the matter of: **IA No. 213/2020 :**

Rajnishpal Singh Dhaliwal. ....Applicant.

Versus

U. I. Beverages Private Limited & Anr. ....Respondents.

And in the matter of: **IA No. 320/2020 :**

Punjab National Bank. ....Applicant-Financial Creditor.

**Order delivered on:18.09.2020**

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

**Present through Video Conferencing : -**

|                                                       |                                                                                       |
|-------------------------------------------------------|---------------------------------------------------------------------------------------|
| For the Applicant - Suspended<br>Director & Promoter: | 1. Mr. Atul V. Sood, Advocate<br>2. Mr. Jatin Singal, Practising<br>Company Secretary |
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|                                                          |                                                                                                  |
|----------------------------------------------------------|--------------------------------------------------------------------------------------------------|
| For the Non-applicant / Petitioner<br>Nilkamal Limited : | Mr. Gurpreet Singh, Advocate                                                                     |
| For the Resolution Professional :                        | 1) Mr. Karanveer Jindal, Advocate<br>2) Mr. Rajeev Bhambri, Resolution<br>Professional in person |
| For the Respondent – COC<br>Member :                     | Mr. Yogesh Kumar, Advocate                                                                       |

**Per: Ajay Kumar Vatsavayi, Member(Judicial)**

### **ORDER**

#### **IA No. 213/2020 :**

M/s Nilkamal Limited, an Operational Creditor filed CP (IB) No.97/Chd/Pb/2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**) for initiation of the CIRP against the Corporate Debtor-M/s U. I. Beverages Private Limited.

2. Though notice of the CP was issued and served on the respondent-Corporate Debtor, but as it did not appear through any of its Directors or through advocate and as no counter was filed opposing the CP, the respondent-Corporate Debtor was proceeded ex-parte and the CP was admitted vide order dated 02.03.2020 and Resolution Professional was appointed to conduct the CIRP against the Corporate Debtor.

3. Shri Rajnishpal Singh Dhaliwal, Promoter, Shareholder and Suspended Director of U. I. Beverages Private Limited (Corporate Debtor) filed the instant IA No.213 of 2020 under Section 60 (5) of the

Insolvency and Bankruptcy Code, 2016 read with Rules 49 and 11 of the National Company Law Tribunal Rules, 2016 seeking setting aside of the ex parte admission order dated 02.03.2020 passed in CP (IB) No.97/Chd/Pb/2019.

4. Heard Mr. Atul V. Sood, learned counsel for the applicant and Mr. Karanveer Jindal, learned counsel for the respondent / Resolution Professional of the Corporate Debtor and perused the pleadings on record.

5. The learned counsel for the applicant-Corporate Debtor submits that no valid notice in the CP was served on the applicant before the CP was admitted.

6. The relevant paragraphs in the order dated 02.03.2020 passed in CP (IB) No.97/Chd/Pb/2019 where under the CP was admitted, read as under : -

*“8. Notice of this petition was issued to the Corporate Debtor on 18.03.2019 to show cause as to why this petition be not admitted. Affidavit of service supported by tracking report and postal receipt was filed vide Diary No.1437, dated 22.03.2019. The tracking report at page-4 of the affidavit states that the article is out for delivery. However, time being short, one more opportunity was granted to the corporate debtor vide order dated 25.03.2019 and the petitioner was directed to serve another notice intimating the date of hearing. Further, affidavit of service was filed vide Diary No.2163, dated 29.04.2019 alongwith tracking report and postal receipt which shows that the notice was served on the corporate debtor on 01.04.2019.*

*9. There has been no representation on behalf of the corporate debtor on various dates nor they filed any reply inspite of affording them various opportunities vide orders dated 30.08.2019, 23.10.2019 and 18.12.2019.”*

7. In this regard, the learned counsel for the applicant, while admitting that the entire copy of the CP was received by the Corporate Debtor at its registered address vide Annexure A-7 sent by the learned

counsel for the petitioner in the CP, however, submits that the said copy of the application did not contain the CP number and the next date of hearing of the CP and hence, it cannot be treated as a valid service of notice in the CP on the Corporate Debtor. Once the complete copy of the paper book of the CP was received by the Corporate Debtor, where-under all the details of the petitioner, which is an Operational Creditor and of the Corporate Debtor and the address of the counsel for the petitioner were clearly mentioned, the respondent-Corporate Debtor having not made any attempt of any sort by contacting the petitioner or its counsel or the registry of this Tribunal to find out the next date of hearing in the CP and the number of the CP, cannot contend that the same is not a valid service of notice.

8. The learned counsel for the applicant further contended that this Tribunal vide Annexure A-3, order dated 18.03.2019, directed to issue notice to the Corporate Debtor vide all modes including through the process of the Bench, but the notice was served only through one mode i.e. speed post and hence, the admission order dated 02.03.2020 passed in CP (IB) No.97/Chd/Pb/2019, is liable to be set aside.

9. The service of notice in the CP through speed post is a valid service. Once the notice was served through the said mode of speed post, the contention of the learned counsel for the applicant that the notice required to be served through all the modes of service before admitting the C.P., cannot be accepted.

10. The applicant failed to show any other valid reason for setting aside the order dated 02.03.2020 passed in CP (IB)

No.97/Chd/Pb/2019 and accordingly, the instant application filed by the applicant is liable to be dismissed. Accordingly, IA No.213 of 2020 is dismissed. However, this order shall not preclude the applicant from settling the matter with the stakeholders, if so advised, to enable them to file an application under Section 12A of the Code for withdrawal of the CP.

**IA No. 320/2020 :**

The instant IA has been filed by the Sole CoC Member i.e. Punjab National Bank seeking to implead as party-respondent in IA No.213/2020 filed by the suspended director of Corporate Debtor, Mr. Rajnishpal Singh Dhaliwal.

2. Since IA No.213/2020 itself has been dismissed after hearing the parties therein, vide order of even date passed in the said IA, the instant IA has become infructuous and accordingly, IA No.320/2020 is dismissed.

Sd/-  
(Raghu Nayyar)  
Member (Technical)

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

September 18th, 2020.  
Ashwani