

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

CP (IB) No.25/Chd/HRY/2019

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

In the matter of:

Naveen Malhotra,
470, Lawyers Chambers,
Patiala House Courts,
New Delhi- 110001

...Petitioner/Operational Creditor

Versus

Vishal Lakto India Limited
Regd. Office at 5D/93, N.I.T. Faridabad,
Haryana- 121001

...Respondent/Corporate Debtor

Judgment delivered on: 31.10.2022

**CORAM: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

For the Operational Creditor : Mr. Vaibhav Sahni, Advocate
For the Corporate Debtor : Mr. Deepankur Sharma, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as the '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as the '**Rules**') by Naveen Malhotra (for short hereinafter referred to as the '**operational creditor/petitioner**') for initiating Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against Vishal Lakto India Limited (for short hereinafter referred to as the '**corporate debtor/respondent**'). The present petition has been filed in Form 5

as prescribed in Rule 6 (1) of the Rules. The petition is supported by affidavit of Mr. Naveen Malhotra and the same is at page 15-16 of the petition.

2. The corporate debtor, namely, Vishal Lakto India Limited, is a company incorporated on 28.01.1992, under the Companies Act, 1956, having CIN U15204HR1994PLC032464 and its registered office is at 5D/93, N.I.T., Faridabad, Haryana- 121001. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at Annexure I of the petition.

3. The brief facts, as stated in the petition, are that the operational creditor is an Advocate by profession, who used to render his professional services to the respondent/corporate debtor from time to time, for which the operational creditor raised a bill on 11.04.2017 (Annexure III) amounting to Rs.3,10,000/- towards professional services with respect to legal case pending before Courts.

4. It is further stated that despite telephonic reminders, respondent/corporate debtor has not cleared the outstanding amount and it continues to be due and payable. Thus, the operational creditor sent a Demand Notice dated 27.08.2018 in Form 3 (Annexure III) by speed post on 29.10.2018 at the registered address of the corporate debtor, calling upon the corporate debtor to pay the unpaid operational debt in full within 10 days from the date of receipt of notice. Copy of postal receipt and tracking report have been annexed with the demand notice. A perusal of the tracking report annexed with the demand notice shows that the demand notice sent at registered address of the corporate debtor was delivered on 02.11.2018. However, after service of the demand notice on the

respondent/corporate debtor, neither any payment has been received from the respondent/corporate debtor nor any reply has been received.

5. On 12.09.2019 notice of this petition was also issued to the respondent/corporate debtor to show cause as to why the petition be not admitted. On 01.11.2019, Mr. Deepankur Sharma, learned counsel appeared on behalf of the respondent/corporate debtor and sought some time to file the reply/objections. Thereafter, several opportunities were granted to the respondent/corporate debtor to file the reply, but it chose not to file the reply, and accordingly, vide order dated 14.02.2020, the respondent/corporate debtor was set ex-parte.

6. When the matter was listed on 27.10.2021, learned counsel for the respondent/corporate debtor appeared and sought some time to file an application for setting aside ex-parte order dated 14.02.2020. Accordingly, respondent/corporate debtor filed IA No.198 of 2022, for setting aside ex-parte order dated 14.02.2020. Since, the petitioner/operational creditor showed his no objection to the said application, IA No.198 of 2022 was allowed and order dated 14.02.2022 was set-aside and respondent/corporate debtor was allowed to file its reply to the main petition.

7. When the matter was listed on 29.08.2022, learned counsel for the respondent/corporate debtor instead of filing the reply to the main petition, admitted the claim of the petitioner/operational creditor and stated that he could not file the hard copy of the reply. However, in the interest of justice, the respondent/corporate debtor was granted an opportunity to file the reply.

8. On 23.09.2022, despite granting the opportunity, the reply was not filed and during the course of arguments, it was admitted by the learned counsel for the

respondent/corporate debtor that corporate debtor is not in a position to payback the amount claimed, due to acute financial crises.

9. We have heard the learned counsel for the petitioner/operational creditor and learned counsel for the respondent/corporate debtor, perused the pleadings, and have carefully reviewed the records.

10. The first issue for consideration is whether the demand notice dated 27.08.2018 was properly served. As discussed above, the demand notice sent at registered address of the respondent/corporate debtor, as available on the master data of the corporate debtor, was delivered and tracking report showing its delivery has also been annexed with the petition.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The petitioner/operational creditor has filed an affidavit dated 28.11.2018 under Section 9(3)(b) of the Code, wherein it has been deposed that the operational creditor has not received reply to its demand notice from the respondent/corporate debtor. Further, it has been deposed that there is no notice given by the respondent/corporate debtor relating to a dispute of the unpaid operational debt.

12. The other issue for consideration is whether this application was filed within limitation. A perusal of the case file shows that the present petition was filed vide Diary No.4839 dated 10.12.2018, and the date of default is 11.04.2017 i.e. the date of issuance of invoice (Annexure III). Therefore, this Adjudicating Authority finds that this application has been filed within limitation.

13. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt of Rs.3,10,000/- as claimed in the petition. As noted above, the operational creditor has provided the details of the debt due and has also annexed with the petition copy of bank account maintained by the operational creditor and the invoice. Accordingly, the petitioner/operational creditor has established the debt and the default, which is more than Rupees one lakh i.e. the threshold limit (pre-revised).

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed and established. Also, there is no rebuttal to the claim filed by the petitioner as respondent/corporate debtor chose not to appear. Accordingly, the petitioner has proved the debt and the default which is above threshold limit

15. In Part-III of Form No. 5, Mr. Ashish Singh, has been proposed as Interim Resolution Professional by the petitioner/operational creditor. Form No. 2 submitted by the proposed IRP has been annexed with the petition as Annexure II, wherein it has been stated that there are no disciplinary proceedings pending against the professional with the Board or the Insolvency Professional Agency, Indian Institute of Insolvency Professionals of ICAI.

16. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default

in payment of the claimed operational debt even after demand made by the petitioner. 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 in the case of the corporate debtor, Vishal Lakto India Limited.

17. We also direct moratorium in terms 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 Operational 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;
- e) 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 operational sector regulator and to a surety in a contract of guarantee to a corporate debtor; and

- f) 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 Mr. Ashish Singh from the online database provided by the IBBI and there is nothing adverse against him. In view of the above, we appoint Mr. Ashish Singh, having Registration No.IBBI/IPA-002/IP-N00416/2017-18/11230, E-mail: ashishsinghcs@gmail.com Mobile No.9312680896 as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Ashish Singh 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.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to the Interim Resolution Professional after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner. The Interim Resolution professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP and move an application seeking appropriate remedy, if required.

- vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying the 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
- viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

19. The petitioner is directed to deposit an amount of ₹40,000/- (Rupees Forty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by the Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

20. This petition is accordingly admitted.

A copy of this order be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

October, 31st 2022
MK

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

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Present though Video Conferencing:-

For the Operational Creditor : Mr. Vaibhav Sahni, Advocate
For the Corporate Debtor : Mr. Deepankur Sharma, Advocate

Vide separate detailed order of even date, the present petition is admitted.

Sd/-
(Subrata Kumar Dash)
Member (Technical)

Sd/-
(Harnam Singh Thakur)
Member (Judicial)

October, 31st 2022
MK