

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority  
under the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.285/Chd/Pb/2018**

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

**In the matter of:**

BLR Logistiks [I] Ltd.

Registered Address at D 201/202, Lotus Corporate Park,

Western Express Highway, Goregaon, (East) Mumbai- 400063

CIN: U63010MH1989PLC052533

...Petitioner-Operational Creditor

Versus

Malwa Cotton Spinning Mills Ltd.

Registered Address at Industrial Area-A, Ludhiana, Punjab- 141003

CIN: L17115PB1976PLC003702

...Respondent-Corporate Debtor

**Judgment delivered on 07.02.2020**

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)  
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Vaibhav Sharma, Advocate

For the Respondent : Mr. D.S. Sobti, Advocate

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

**JUDGMENT**

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as '**Rules**'). The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. The application in the prescribed Form 5 is filed by BLR Logistiks [I] Ltd. (hereinafter referred to as '**petitioner**' or '**operational creditor**') for initiation of Corporate Insolvency Resolution Process ('**CIRP**') in the case of Malwa Cotton Spinning Mills Ltd. (hereinafter referred to as '**respondent**' or '**corporate debtor**'). Annexure A is the copy of Board Resolution dated 22.12.2017, wherein Mr. Gaurav Dutt, Executive of the petitioner-operational creditor has been authorized to file the petition against Malwa Cotton Spinning Mills Limited. There is also an affidavit in support of the contents of the application. The CIN of the petitioner-operational creditor is U63010MH1989PLC052533 and its registered address is in Goregaon (East) Mumbai.

3. The respondent-corporate debtor is a company incorporated under the Companies Act, 1956 with authorized share capital of ₹45,00,00,000/- and paid up capital of ₹35,14,90,000/-. The CIN of the respondent-corporate debtor is L17115PB1976PLC003702 and its registered office is situated in District Ludhiana, Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

4. The facts of the case, briefly stated, are that the petitioner-operational creditor provided various services, namely, transportation, detention and warehousing, to the respondent-corporate debtor. The invoices under which the petitioner-operational creditor provided services to respondent-corporate debtor are from 28.09.2010 to 23.07.2015, copies of which are at Annexure F. It is stated that the respondent-corporate debtor defaulted in making payments to the petitioner-operational creditor.

5. It is stated that the petitioner-operational creditor sent a demand notice in Form 3 & 4 dated 04.01.2018, demanding an amount of ₹19,19,471/- to the respondent-corporate debtor which is stated to be delivered to the respondent-corporate debtor on 17.01.2018 as per the tracking report. The demand notice in Form 3 & 4 is the part of record and the same is at Annexure C. Copy of tracking report, showing the delivery of article is at Annexure D. Mr. Gaurav Dutt, Executive of the petitioner-operational creditor has also filed his affidavit, stating therein that the petitioner-operational creditor has not received any reply within the stipulated period of 10 days from the respondent-corporate debtor to its demand notice dated 04.01.2018. In the said affidavit, it is also stated that no dispute is communicated by the respondent-corporate debtor and that no payment has been received during this period. The affidavit is annexed at Annexure B of the petition.

6. Notice of this petition to show cause as to why this petition be not admitted was issued to the respondent-corporate debtor on 23.10.2018.

7. The respondent-corporate debtor filed its reply vide Diary No.3497 dated 18.07.2019, wherein the respondent-corporate debtor denied all the allegations made in petition, being false, malicious and against the provisions of the Code. The respondent-corporate debtor in its reply stated that the petitioner-operational creditor was providing two kinds of services to the respondent-corporate debtor, one being that of transportation and the other being that of warehousing (carrying and forwarding agent) and that two separate accounts were being maintained between the parties and that the instant petition is filed for both the accounts together i.e. for transportation and warehousing (carrying

and forward) is liable to be dismissed. The respondent-corporate debtor also contended that the petition filed by the petitioner-operation creditor was barred by limitation as out of the total alleged bills i.e. 64 bills, 57 bills pertained to the years 2010 to 2014 and thus, the present petition being filed after more than three years is time barred. The respondent-corporate debtor alleged that the petitioner-operational creditor is responsible for causing mass scale damage to the goods during transportation and has caused loss of goods during the process of warehousing. The respondent-corporate debtor further alleged that the losses so suffered were settled by issuing debit notes dated 30.04.2017 to the tune of ₹17 lacs approximately, which were handed over to the petitioner-operational creditor on its visit to the premises.

8. Vide Diary No.3981 dated 08.08.2019, the petitioner-operational creditor filed its rejoinder denying each and every allegation, submissions and averments made in the reply filed by the respondent-corporate debtor. The petitioner-operational creditor stated in its rejoinder that no such debit notes of any nature were ever received by the petitioner-operational creditor and that the averments made are false and misleading, created by respondent-corporate debtor just to save its skin from liabilities.

9. We have heard the learned counsel for the petitioner and the learned counsel for the respondent and have carefully perused the records.

10. We find that in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2017) 140 CLA 123 (SC), Civil Appeal No. 9405 of 2017*** the Hon'ble Supreme Court has held in Para No. 40 thereof as under:-

*“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”*

The facts of the present case are being examined with reference to the judgment of the Hon'ble Supreme Court.

11. The present petition is filed by the operational creditor since the payment for the invoices issued for the period of 28.09.2010 to 23.07.2015 has not been paid by the corporate debtor. The total amount of debt is stated to be of ₹19,19,471/-. Along with the petition, the operational creditor has filed copy of the ledger account of the corporate debtor in its books (Annexure E), copy of the invoices (Annexure F), copy of Bank Certificate certifying that there are no credits received from the Corporate Debtor after 29.07.2015 in the bank accounts of the Operational Creditor maintained with Kotak Bank and ICICI Bank (Annexure G) and bank account statement for the periods ranging from 01.07.2015 to 31.07.2015 & 13.02.2015 to 26.05.2015 (Annexure H).

12. It is the case of the Corporate Debtor that it has suffered losses on account of delay and mishandling of goods during the provision of transportation and warehousing services by the Operational Creditor and the Corporate Debtor have issued debit notes to the tune of ₹17 lacs dated 30.04.2017 in order to settle the losses so suffered by the Corporate Debtor. These debit notes have been found attached with the Dairy No. 3497. The Corporate Debtor has also contended that the invoices as mentioned in Part IV of the petition are ingenuine and termed the claim of the operational Creditor as time-barred.

13. The Operational Creditor in its Rejoinder has denied receiving any such Debit Notes raised by the Corporate Debtor and challenged the veracity of them as well.

14. It can be seen that the Operational Creditor has served demand notice in Form 4 dated 04.01.2018 upon the Corporate Debtor successfully. The speed post receipt along with the tracking report showing the delivery of the demand notice is found attached as Annexure-D of the petition. It is observed that the Corporate Debtor has chosen not to reply to the above stated demand notice. It could also be seen that if any dispute as to the outstanding due was there, the same could have been stated in the reply to the demand notice by the Corporate Debtor. Therefore, the pleading of the Corporate Debtor challenging the veracity of the invoices raised by the Operational Creditor lacks force. The only evidence that is furnished by the Corporate Debtor are the Debit Notes and the same seems to be insufficient evidence and hence, cannot be relied upon. Even if the contention of the Corporate Debtor with regard to the Debit Notes are accepted, the total claim of the petitioner in the C.P. is ₹19,19,471/- and after deducting

the amount of total of three debit notes is ₹17,03,827/- is ₹2,15,644/- which is more than ₹1 lac and is sufficient for the purpose of admission of C.P.

15. With regard to the issue of Limitation as raised by the Corporate Debtor, the Operational Creditor has attached the bank statement of ICICI Bank (Page 148 of the petition) wherein it could be seen that the last payment of ₹50,000/- dated 22.07.2015 has been received by the Corporate Debtor from which it could be presumed that the same was received in lieu of the services provided by the Operational Creditor. It could also be inferred from the ledger of the Corporate Debtor (Page 20 of the petition) that the due date for the payment for the last invoice raised on 23.07.2015 is 22.08.2015. It is therefore held that the period of limitation starts from the date 22.08.2015 itself and the petition is very well within the limitation period as the petition has been filed on 17.08.2018 with this Tribunal.

16. In view of the above discussion, this petition deserves to be admitted.

17. The provisions of Section 9(5)(i) of the Code are as follows:-

*“(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

*(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*

*(a) the application made under sub-section (2) is complete;*

*(b) there is no payment of the unpaid operational debt;*

*(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*

*(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*

*(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.”*

18. As discussed above, the operational debt remains unpaid, the demand notice was delivered to the corporate debtor and reply was received within the stipulated 10 days period. 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 process in the case of the Corporate Debtor Malwa Cotton Spinning Mills Limited and direct moratorium and appointment of Interim Resolution Professional as below.

19. We declare the Moratorium in terms of sub-section (1) 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 Financial

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.

20. 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. 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.

22. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also, the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for Corporate Insolvency Resolution Process is made by an operational creditor and –

*“a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for*

*the recommendation of an insolvency professional who may act as an interim resolution professional;*  
 b) x x x x x”

23. Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

24. In this regard a letter has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2019/01 dated 07.01.2020 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.01.2020 to 30.06.2020. We select Mr. Ashok Kumar Singla, appearing at Serial No.7 of the panel to be appointed as Interim Resolution Professional.

25. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ashok Kumar Singla and there is nothing adverse against him. In view of the above, we appoint Mr. Ashok Kumar Singla having Registration No. IBBI/IPA-002/IP-N00229/2017-18/10680, e-mail id: asingla\_cs@yahoo.co.in as the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Ashok Kumar Singla Jindal 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) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a committee of creditors and shall file a report, certifying 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
- vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

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

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

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

February 07<sup>th</sup>, 2020  
Mohit Kumar