

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

**CP (IB) No.269/Chd/HP/2019**

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

**In the matter of :**

**Gulshan Kumar (Proprietor) of  
Gulshan Trading Company**  
having its registered office at  
Sai Road, Near S C Jhonson,  
Baddi, Distt-Solan,  
Himachal Pradesh – 173205

...Petitioner/Operational Creditor

Versus

**M/s Bhandari Deepak Industries Private Limited**

having its registered office at  
Plot No.36, DIC, Industrial Area,  
Baddi, Tehsil Baddi, Distt-Solan,  
Himachal Pradesh – 173205  
CIN: U21014HP1992PTC012443

...Respondent/Corporate Debtor

**Judgement delivered on: 19.11.2019**

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

For the Petitioner : Mr. G.S. Sarin, Practising Company Secretary

For the Respondent : Mr. Ajay Bhagwati, Advocate

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

**JUDGEMENT**

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as 'Code') read with

Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as '**Rules**') by Mr. Gulshan Kumar, Proprietor of M/s Gulshan Trading Company (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of Bhandari Deepak Industries Private Limited (**Corporate Debtor**). The Permanent Account Number (PAN) of the operational creditor as mentioned in Part-I of Form-5, is AHCPK6791K and the address of its registered office is Sai Road, Near S.C. Johnson, Baddi, Distt. Solan, Himachal Pradesh. There is also an affidavit in support of the contents of the application annexed as Annexure-VIII of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s Bhandari Deepak Industries Private Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 1956 with authorized share capital of ₹4,15,00,000/- and paid up share capital of ₹2,97,71,100/-. The CIN of the respondent-corporate debtor is U21014HP1992PTC012443 and its registered office is situated in Solan in the State of Himachal Pradesh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure-III of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the applicant-operational creditor has been supplying paper scrap as per the requirement of the respondent-corporate debtor for manufacturing of paper. It is stated that the operational creditor has been maintaining a running account against the corporate debtor and various invoices for supply of material for the

period of 31.05.2016 to 31.10.2016 have been issued and are attached as Annexure-IV of the petition.

4. It is stated that the respondent-corporate debtor have failed to discharge its obligations towards the applicant-operational creditor, inasmuch as have failed to make the payment due to the applicant-operational creditor despite various reminders.

5. A demand notice in Form No.3 & 4 is stated to be issued on 14.03.2019 (Annexure-I of the petition). The demand notice was accompanied by the duly issued invoices in the name of the corporate debtor. The corporate debtor vide this demand notice was called upon to repay the unpaid operational debt (in default) of ₹2,43,43,067/- along with future interest @12% per annum on the principal amount of ₹1,86,42,633/- from 28.02.2019 till the date of payment or realization.

6. It is deposed by the Operational Creditor that no reply to the demand notice under Section 8 of the Code, has been received by the Operational Creditor mentioning any kind of dispute or pendency of any suit or arbitration proceedings filed in relation to the dues claimed in the present petition.

7. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 14.03.2019 nor made any outstanding payment and hence this petition.

8. In Part III of Form 5, the operational creditor has proposed Mrs. Mandeep Gujral, bearing Registration No. IBBI/IPA-001/IP-P00507/2017-2018/10908 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form No. 2 is placed at Annexure-X, in which she

has stated that she is currently serving as the monitoring agency in the matter of Quality Rice Exports Private Limited and also got appointed as an Interim Resolution Professional and then ratified as the Resolution Professional. It is also stated that there are no disciplinary proceedings pending against the proposed Interim Resolution Professional with the Board or the Indian Institute of Insolvency Professional of ICAI.

9. Notice of this petition was issued to the Corporate Debtor on 07.06.2019 to show cause as to why this petition be not admitted.

10. The Corporate Debtor filed reply vide Diary No.4189 dated 20.08.2019 by way of affidavit of Mr. Deepak Bhandari, Managing Director of the respondent-corporate debtor. It is submitted that amount overdue as on 01.08.2019 to the petitioner company is ₹60,60,503.86 and is not the same as claimed in the petition. It is also submitted that due to lack of demand of semi craft paper, the respondent company was unable to generate revenue, eventually leading to huge losses and virtual closure of business since November 2018. It is also stated in the reply that the Corporate Debtor has incurred defaults of Operational and Financial Creditors.

11. On the last date of hearing, the learned counsel for the respondent submitted that the respondent-corporate debtor has defaulted in making payment of debt and CP may be admitted.

12. We have carefully considered the submissions of the learned counsel for the corporate debtor and operational creditor and have also perused the records.

13. The first issue for consideration is whether the demand notice in Form No.3 & 4 dated 14.03.2019 was properly served. The demand notices

dated 14.03.2019 were sent at the address as per the master data at Page No.82-83 of the petition in which the registered office is shown as 36, Industrial Area, Baddi, Distt. Solan, Himachal Pradesh. The postal receipts showing delivery of the demand notice are found at page 79 of the petition.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor in its reply has not disputed the liability towards the operational creditor but has dispute only the amount as claimed by the Operational Creditor. The Corporate Debtor has expressed its inability to clear its outstanding towards the Operational Creditor because of financial losses. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

15. 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.”*

16. The Hon'ble Supreme Court in **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017**, held as under:-

*“51. 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)(ii)(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.”*

17. We have gone through the contents of the application filed in Form No.5 and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹2,43,43,067/- (inclusive of ₹1,86,42,633/- plus ₹57,00,434/- @ 12% annually for the period from 31.05.2016 to 28.02.2019). Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.04.2014 to 31.03.2019 (Annexure-VI of the petition) has been filed. The copy of invoices has been filed at Annexure-IV of the petition. Moreover, demand notice in Form No.3 & 4 were also sent on 15.03.2019 stating that the amount due from the corporate debtor to the operational creditor is ₹2,43,43,067/-. As a statutory requirement under Section

9(3)(b) of the Code, an affidavit dated 24.04.2019 has been placed by the operational creditor stating the corporate debtor has not given any notice relating to the dispute of unpaid operational debt in terms of the Code. We have held above that the demand notices in form No.3 & 4 were properly delivered by the Operational Creditor and no pre-existing dispute is proved.

18. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notices till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The applicant-operational creditor states that from the abovementioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

19. 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 M/s Bhandari Deepak Industries Pvt. Ltd. and direct moratorium and appointment of Interim Resolution Professional as below.

20. 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 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.

21. 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.

22. 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.

23. The Law Research Associate of this Tribunal has checked the credentials of Mrs. Mandeep Gujral and there is nothing adverse against her. In view of the above, we appoint Mrs. Mandeep Gujral, Registration No. IBBI/IPA-

001/IP-P000507/2017-18/10908, R/o 3073, Sector 46-C, Chandigarh – 160047, Mobile No.9814228288, E-mail: [mandeepgujral.ip@gmail.com](mailto:mandeepgujral.ip@gmail.com), as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mrs. Mandeep Gujral 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 operational 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)

Nov., 19, 2019  
Anchal