

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

CP (IB) No.281/Chd/Pb/2019

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

In the matter of :

M/s Ricela Health Foods Limited

(Through: Sh. Sanjeev Goyal, Liaison Officer)
having its registered office at
224 L, Choice Complex, 1st Floor,
Above Barista Coffee Shop,
Model Town, Ludhiana - 141002

...Petitioner/Operational Creditor

Versus

M/s Evershine Solvex Private Limited

having its registered office at
Jalalabad Road, Muktsar,
Punjab - 152026

...Respondent/Corporate Debtor

Judgement delivered on: 27.02.2020

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

For the Petitioner : Mr. Pulkit Goyal, Advocate

For the Respondent : None

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 M/s Ricela Health Foods Limited (**Petitioner/Operational Creditor**), through its Liaison Officer, Mr. Sanjeev Goyal, for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Evershine Solvex Private Limited (**Corporate Debtor**). The Identification Number of the operational creditor as mentioned in Part-I of Form-5, is U15142PB1992PLC012726 and the registered address of its office is 224 L Choice Complex, 1st Floor, Above Barista Coffee Shop, Model Town, Ludhiana - 141002. The petitioner-operational creditor has authorized Mr. Sanjeev Goyal, Liaison Officer to file petition on its behalf. The copy of the Board Resolution dated 17.04.2019 passed by the Board of Directors of Operational Creditor is at Annexure-2 of the petition. There is also an affidavit in support of the contents of the application is at page 19 of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s Evershine Solvex Private Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹5,50,00,000/- and paid up share capital of ₹5,49,99,000/-. The CIN of the respondent-corporate debtor is U15143PB1983PTC005567 and its registered office is situated in Muktsar in the State of Punjab 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-1 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the petitioner-operational creditor is engaged in manufacturing and trade of Rice Bran Oil. It is stated that Corporate Debtor had agreed to supply Rice Bran Oil

Raw Grade-1 to the petitioner-operational creditor and on the account of financial constraint, the Corporate Debtor had demanded a payment of ₹1,00,00,000 (Rupees One Crores) in advance for the supply of Rice Bran Oil Raw Grade-1. The petitioner had advanced the Corporate Debtor an amount of ₹1 crore on 04.11.2015 from its bank account maintained with Punjab National Bank bearing account No.3881008700003028 through RTGS. Copy of RTGS form is placed as Annexure-3. It is also stated that as after receiving advance payment of ₹1 crore on 04.11.2015 for the supply of the goods as promised, the corporate debtor did not supply the goods/Rice Bran Oil Raw Grade-1, on one pretext or the other delayed the supply and had lastly refused to supply the goods as was agreed between the parties and started reverting back the payment in various instalments and with the last payment made on 10.10.2018 of an amount of ₹7,00,000/-. Thereafter the Corporate Debtor failed to make any further payment.

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 is stated to be issued on 08.03.2019 (Annexure-7 of the petition). The demand notice was accompanied by the copy of RTGS form and ledger account maintained by the operational creditor of the corporate debtor w.e.f. 01.04.2015 to 27.02.2019 to substantiate the said date of default. Copies of these enclosures are attached at pages 24 to 27 of the petition. The corporate debtor vide this demand notice was called upon to repay the total unpaid operational debt (in default) of ₹27,00,000/- (Rupees

Twenty Seven Lakhs only) within 10 days from the receipt of the notice. Copy of the postal receipt along with tracking report and e-mail are attached as Annexure-8 (Colly).

6. It is deposed by the Operational Creditor that after sending of the demand notice dated 08.03.2019, the corporate debtor did not raise any dispute within the stipulated time or upto the date of filing this petition and did not raise any dispute qua the outstanding amount. It is also deposed that there is no dispute was pending or arose by the corporate debtor qua the outstanding amount even prior to the sending of the statutory demand notice dated 08.03.2019. The affidavit is appended with the petition at pages 20 to 21.

7. It is submitted that the after the service of demand notice respondent-corporate debtor had deposited an amount of ₹8 lakhs vide two transactions, first an amount of ₹3 lakhs on 09.04.2019 and secondly ₹5 lakhs on 22.04.2019, therefore, this amount of ₹8 lakhs has been adjusted against the total amount due from the corporate debtor and hence the total outstanding is ₹19,00,000/- (Rupees Nineteen Lakhs only). Copy of ledger account maintained by the operational creditor of the corporate debtor w.e.f. 01.04.2015 to 01.05.2019 is appended as Annexure-4 (pages 25 to 27 of the petition).

8. Notice of this petition was issued to the Corporate Debtor on 13.06.2019 to show cause as to why this petition be not admitted.

9. On the last date of hearing, the following order was passed:-

“Affidavit of service was filed by the petitioner vide Diary No.3976 dated 08.08.2019 in proof of service of the notice of the CP on the respondent. However, thereafter since there was no representation for the corporate debtor, their right to file reply was forfeited. In spite of listing the matter today for

arguments, still there is no representation for the respondent/corporate debtor. Hence the respondent is set ex parte.

2. Heard the learned counsel for the petitioner. Order reserved.”

10. We have heard the learned counsel for the operational creditor and have also perused the records.

11. The first issue for consideration is whether the demand notice in Form No.3 dated 08.03.2019 was properly served. The demand notice dated 08.03.2019 was sent at the address as per the master data at Page No.22 of the petition in which the registered office is shown as Jalalabad Road, Muktsar, Punjab - 152026. Copy of the postal receipt along with tracking report and e-mail are attached as Annexure-8 (Colly) of the petition. It is submitted that the Corporate Debtor has chosen not to reply to the demand notice dated 08.03.2019.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor has neither filed any reply to the petition nor has disputed the liability towards the operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor. It is also observed that till the last date of hearing, there has been no representation from the respondent-corporate debtor, hence the respondent can be proceeded ex parte and accordingly this CP may be admitted.

13. 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.”*

14. 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.”

15. 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 total unpaid operational debt (in default) of ₹19,00,000/- (Rupees Nineteen Lakhs Only). It is stated that demand notice was sent for an amount of ₹27,00,000/- which was pending against the corporate debtor as on the date of demand notice. However, after sending the demand notice dated 08.03.2019, corporate debtor had deposited an amount of ₹8 lakhs vide two transactions, first an amount of ₹3 lakhs on 09.04.2019 and secondly ₹5 lakhs on 22.04.2019, therefore this amount of ₹8 lakhs has been adjusted against the total amount due from the corporate debtor and hence the total outstanding is ₹19,00,000/-. Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.04.2015 to 01.05.2019 is appended as Annexure-4 (page 25 to 27 of the petition) has been filed. The copy of the RTGS form has been filed at Annexure-3 of the petition. Moreover, demand notice in Form No.3 was also sent on 08.03.2019 stating that the amount due as on date from the corporate debtor to the operational creditor is ₹19,00,000/-. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 06.05.2019 (pages 20 & 21 of the petition) has been placed by the operational creditor stating that despite service of the demand notice dated 08.03.2019, till the date of filing of the present application, Corporate Debtor did not raise any dispute qua the outstanding payment and even no dispute was pending or arose by the corporate debtor qua the outstanding amount even prior to the sending the statutory demand notice dated 08.03.2019. We have held above that the

demand notice in Form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

16. It has been shown that the corporate debtor has failed to make payment of the ₹19,00,000/- as due after receiving payment of ₹8 lakhs vide two transactions, first an amount of ₹3 lakhs on 09.04.2019 and secondly ₹5 lakhs on 22.04.2019 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.

17. 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 Evershine Solvex Private Limited and direct moratorium and appointment of Interim Resolution Professional as below.

18. 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.

19. 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.

20. 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.

21. 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) *xxxxx*”

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.

23. In this regard a letter bearing File No. 25/02/2020-NCLT dated 07.01.2020 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No.IBBI/IP/EMP/2019/01 dated 31.12.2019 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. Anjum Goyal appearing at Serial No.8 of the panel to be appointed as Interim Resolution Professional.

24. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anjum Goyal and there is nothing adverse against him.

25. In view of the above, we appoint Mr. Anjum Goyal, Registration No.IBBI/IPA-002/IP-N00251/2017-2018/10765, E-mail:agoyal4u@yahoo.com as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Anjum Goyal 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)

Feb. 27, 2020
Anchal