

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

CP (IB) No. 359/Chd/Hry/2018

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

In the matter of :

M/s Gujarat Poly Electronics Limited
having its registered office at
B-17/18, Gandhi Nagar Electronics Estate,
Gandhinagar, Gujarat-382024

... Petitioner/Operational Creditor

Versus

Bony Paul Systems Private Limited
having its registered office at
Plot No. 37 P, Sector-6
Faridabad – 121006

... Respondent/Corporate Debtor

Judgement delivered on: 23.10.2019

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

For the petitioner-Operational Creditor : Mr. Amandeep Singh, Advocate

For the respondent-corporate debtor : 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)



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Rules, 2016 (for short hereinafter referred to as 'Rules') by M/s Gujarat Poly Electronics Limited (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of Bony Paul Systems Private Limited (**Corporate Debtor**). The Identification Number of the operational creditor is CIN-L21308GJ1989PLC012743 and the address of its registered office is B-17/18, Gandhinagar, Electronics Estate, Gandhinagar, Gujarat-382024. The petitioner-operational creditor has authorized Mr. Rajeev Singhal to file petition on its behalf. The copy of the Resolution passed by the Board of Directors of the company is annexed as Annexure A-1 and the Power of Attorney is at Page Nos. 154-155 of the petition. There is also an affidavit in support of the contents of the application. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s Bony Paul Systems 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 ₹1,00,00,000/- and paid up share capital of ₹40,00,000/-. The CIN of the respondent-corporate debtor is U36103HR2016PTC063814 and its registered office is situated in Faridabad in the State of Haryana 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 A-14 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the main objectives of applicant-operational creditor is to carry on business inter alia manufacturing, selling and distribution of Capacitors and transistors, Active and passive electronic components, specializing in Ceramic Capacitors both Single Layer (Disc) and Multilayer (MLCC) in Radial, Axial and SMD configurations,



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also stocks and sells Diodes for Diotec Semiconductors etc (hereinafter referred as Goods). It is stated that the respondent-corporate debtor approached applicant-operational creditor and requested for purchase of goods from applicant-operational creditor and assured the applicant-operational creditor that payment in respect of those goods would be released within 30 days. The applicant-operational creditor believing on eloquent representation of respondent-corporate debtor considered the request of the respondent-corporate debtor and agreed to supply the goods as per order of the respondent-corporate and subsequently, the said goods were supplied as per the orders placed by the respondent-corporate debtor. The applicant-operational creditor also raised bills/invoices in respect of these goods supplied to the respondent-corporate debtor. The copy of the invoices are attached as Annexure A-2 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. The demand notices in Form No. 4 are stated to be issued on 31.03.2018 and 27.08.2018 (Annexure A-6 & A-8 of the petition respectively). The demand notices were accompanied by the duly issued invoices in the name of the corporate debtor alongwith the ledger account maintained by the operational creditor in its books. The corporate debtor vide these demand notices was called upon to pay an amount of ₹6,10,196/- within a period of 10 days from the receipt of the notice.



6. The corporate debtor in its reply to the first demand notice dated 31.03.2018 has not denied its liability to pay the outstanding dues and showed its intention to settle the debt amicably by making payment to the operational creditor in due course. Copy of the reply of the demand notice is at Annexure A-7 of the petition.
7. It is further submitted that the respondent-corporate debtor despite receiving statutory notices dated 31.03.2018 and 27.08.2018, did not clear the legal outstanding dues. It is stated that since the respondent-corporate debtor refused to receive the statutory notice dated 27.08.2018, hence as additional service of the notice, the applicant-operational creditor even sent the demand notice by email at the official email of the respondent-corporate debtor, but the respondent-corporate debtor still failed to comply with the said notices nor made any outstanding payment and hence this petition.
8. Notice of this petition was issued to the Corporate Debtor on 13.11.2018, and the petitioner filed the affidavit of service vide Diary No. 5108 dated 24.12.2018 showing that the notice was effected on 04.12.2018. There has been no representation from the side of corporate debtor, though, C.P. was listed on number of occasions thereafter, the corporate debtor neither chose to be represented nor filed any reply.
9. During the course of the hearing, the learned counsel of the operational creditor has argued that there was no reply to the 2nd demand notice dated 27.08.2018 nor there was any dispute raised as to the debt by the respondent-corporate debtor.



10. We have carefully considered the submissions of the learned counsel for the operational creditor and have also perused the records.
11. The first issue for consideration is whether the demand notices in Form No. 4 dated 31.03.2018 & 27.08.2018 were properly served. The demand notice dated 31.03.2018 was sent at the address as per the master data at Page No. 153 of the petition in which the registered office is shown as Plot No. 37 P, Sector-6, Faridabad – 121006. The demand notice was duly delivered as per the tracking report (Page Nos. 119-120 of the petition). Another demand notice dated 27.08.2018 is stated to be served upon the corporate debtor vide Speed Post and stated to be unclaimed, not delivered as per the tracking report (Annexure A-9). It is further stated that this demand notice was sent by e-mail at the official e-mail address available at the master data and which got duly delivered. Therefore, the statutory demand notices were duly delivered upon the corporate debtor.
12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor in its reply to the demand notice dated 31.03.2018 has not disputed the liability towards the operational creditor and expressed willingness to settle the matter. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.
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—



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- (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.



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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 unpaid operational debt amounting to ₹6,10,196/- (inclusive of ₹61,634/- as interest). Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.04.2017 to 31.03.2018 [(Annexure A-3) of the petition] has been filed showing recoverable amount of ₹5,48,562/- (principal amount). The copies of invoices have been filed at Annexure A-2 (colly) of the petition. Moreover, demand notices in Form No. 4 were also sent on 31.03.2018 and 27.08.2018 stating that the amount due from the corporate debtor to the operational creditor is ₹6,10,196/- (inclusive of interest of ₹61,634/-). The corporate debtor in its reply to the first statutory notice dated 31.03.2018 has not disputed its liability towards operational creditor and insisted upon settling the issue but has failed to do so and in regard to the second demand notice dated 27.08.2018, no reply has been furnished from the side of corporate debtor. As a statutory requirement under Section 9(3)(c) of the Code, an affidavit dated 04.10.2018 has been placed by the operational creditor stating that there is no dispute of unpaid operational debt in terms of the Code or a dispute of the operational debt pending between the parties in any court of law or authorities as on the date of filing. There is also a certificate by the Bank of the operational creditor wherein it has been mentioned that the banker has not received any payment from the corporate debtor during the period of 18.04.2017 to 10.09.2018. We have held above that the demand notices in



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form No.4 were properly delivered by the Operational Creditor and no pre-existing dispute is proved.

16. It has been proved beyond doubt that the corporate debtor has failed to make payments 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. The above-iterated chronology of developments makes it abundantly clear that the corporate debtor by refraining from clearing their dues towards the operational creditor is deliberately not adhering to the terms and conditions contained in the invoices. 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 Bony Paul Systems 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;



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- 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) x x x x x"

22. 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.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 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 01.07.2019 to 31.12.2019. We select Mr. Anil Arora appearing at Serial No. 16 of the panel to be appointed as Interim Resolution Professional.

24. The Law Research Associate of this Tribunal has checked the credentials of Mr. Anil Arora and there is nothing adverse against him. In view of the above, we appoint Mr. Anil Arora, Registration No. IBBI/IPA-001/IP-P00729/2017-2018/11224, Mobile No. 98761-10038, E-mail: ca.anil@gmail.com

as the Interim Resolution Professional with the following directions: -



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- i.) The term of appointment of Mr. Anil Arora 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



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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



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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.

- Sol -

(Pradeep R. Sethi)
Member (Technical)

October 23rd, 2019
Yashpal

- Sol -

(Ajay Kumar Vatsavayi)
Member (Judicial)



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