

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

**CA No. 1224/2019, IA No. 645/2023
And
CP (IB) No. 196/Chd/Pb/2019**

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

In the matter of CP (IB) No. 196/Chd/Pb/2019 and IA No. 645/2023

Sachin Garg, Proprietor of :

M/s Deepak Traders

Shop No. 31, First Floor,
New Anaj Mandi,
Narela-110040, Delhi

...Petitioner-Operational Creditor

Vs.

J.R.D. International Limited

having its registered office at
40-Industrial Estate, Gurdaspur,
Punjab-143521, India.

...Respondent-Corporate Debtor

In the matter of CA No. 1224/2019 :

Sachin Garg, Proprietor of :

M/s Deepak Traders

Shop No. 31, First Floor,
New Anaj Mandi,
Narela-110040, Delhi

...Applicant-Operational Creditor

Vs.

J.R.D. International Limited

having its registered office at
40-Industrial Estate, Gurdaspur,
Punjab-143521, India.

...Respondent No. 1

State Bank of India
Stressed Assets Management Branch
Zonal Business Office Building
Fountain Chowk Civil Lines,
Ludhiana-141001

...Respondent No. 2

Judgement delivered on: 12.06.2023

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)

For the Applicant/Petitioner-
Operational Creditor

: Mr. Nahush Jain, Advocate

For the Respondent-Corporate Debtor
in main CP and CA No. 1224/2019

: Mr. G.S. Sarin, Practising Company
Secretary

Per: Harnam Singh Thakur, Member (Judicial)

CA No. 1224/2019

The present application has been filed by the applicant against the corporate debtor and State Bank of India from restraining the respondents from alienating the properties and assets of the corporate debtor till admission of the present case.

2. The brief facts are that the respondents are proceeding to sell the assets of the corporate debtor. The State Bank of India had issued a notice for E-auction on 23.05.2019 for the sale of various properties of corporate debtor which was held on 25.06.2019, vide which one of the properties was sold by SBI. The corporate debtor is trying to enter into OTS Settlement with SBI. SBI has also registered an FIR against promoters due to fraud and irregularities.

3. The Affidavit of Service was filed vide Diary No. 2118 dated 09.01.2020. The reply was filed vide Diary No. 1529 dated 25.02.2020 wherein it is stated that the applicant does not have any cause of action to maintain the present application. The sale of one of the properties of a corporate debtor was auctioned by SBI under SARFAESI Act. OTS has been entered between the corporate debtor and SBI which has reached to a conclusion on 25.11.2019. JR Agro Tech Private Limited is a separate entity. The rejoinder was filed vide Diary No. 01359/01 dated 09.05.2022 wherein it is stated that Tribunal vide order dated 10.01.2020 granted interim relief to the applicant and directed the respondent not to alienate its immovable properties.

JUDGMENT in CP (IB) No. 196/Chd/Pb/2019

4. The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by Sachin Garg, Proprietor of M/s Deepak Traders (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of J.R.D International Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

5. The Corporate Debtor, namely, J.R.D International Limited, is a Company incorporated on 25.02.2010 under the provisions of the Companies Act, 1956 with CIN No.U15400PB2010PLC033640 with its registered office at Gurdaspur, Punjab, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure

A2.

6. The facts of the case, briefly, as stated in the petition are that the Operational Creditor had been supplying paddy to Corporate Debtor since 2015 at three different locations i.e. Punjab, Haryana and Delhi and several invoices were raised. The Corporate Debtor had been making payments on FIFO basis. The payment terms were seven days from the date of invoice. However, after October 2018 Corporate Debtor stopped making payments. The last payment of Rs. 1,00,000/- was received on 08.10.2018 and the last invoice was raised on 22.12.2017.

7. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 3,75,61,798.31/- (Rupees Three Crores Seventy Five Lakhs Sixty One Thousand Seven Hundred Ninety Eight Paise Thirty One Only) including 24% p.a. interest up to 30.11.2018, principal amount Rs. 1,84,09,930/-. The default occurred on 08.10.2018 i.e. when last payment was made by Corporate Debtor. Copy of Calculation and Worksheets (Annexure A 7) , Ledger with Interest Calculation (Annexure A 8), Invoices (Annexure A 9), Corporate Debtor acknowledged the debt by making confirmation of balance payable in their own accounts for the Haryana Account till 31.03.2018 (Annexure A 10), Form 26 AS (Annexure A 11), Claim Admission Letter by IRP (Annexure A 12) and Bank Statement (Annexure A 13) are attached with the main petition.

8. A demand notice is stated to be issued by the operational creditor on 28.12.2018 and the same has been delivered to the corporate debtor vide registered post as the postal receipt and tracking report is attached with the main petition at Annexure A4. The corporate debtor gave reply dated 15.01.2019 wherein it is mentioned that the raw material supplied was not up

to the mark and money recovered from the market has already been paid. There was no arrangement between the parties and no TDS has been deposited.

9. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Dairy No. 3798 dated 31.07.2019. The corporate debtor has filed reply vide diary No. 1528 dated 25.02.2020, wherein it is stated that the Corporate Debtor is not liable to pay any amount claimed by the applicant and has no *locus standi* to file the present petition. The arrangement between the parties was an understanding like a joint venture. When the applicant supplied the material, the respondent upon receipt found it to be of inferior quality which led to the losses. The demand notice served was defective as the amount of debt in question pertains to the transactions is outside the purview of limitation as the amount is not at all due. The Corporate Debtor has deducted tax on payment on commissions under Section 194H on a due basis and commissions were added to the cost of goods. The goods supplied were defective and even after intimation were not lifted by the respondent. The TDS deducted was on an accrual basis. There was a pre-existing dispute between the parties as the amount is false as dues are on the ground of rejected paddy and intimation of rejection was given. There is an acknowledgment of the debt by way of the ledger has not been issued by the corporate debtor and the rubber stamp has been forged. The paddy supplied was of poor quality as it contained broken paddy mixed with waste material to increase the weight. After settling the account between the parties and after adjusting an amount of rejected paddy of

Rs.1,84,09,930/- , the total outstanding amount had been paid. The whole matter is more of the nature of the Rendition of Accounts and Settlement of Balances amongst parties. The corporate debtor suggests reconciling the accounts amicably.

10. The rejoinder was filed vide Diary No.00213/2 dated 09.05.2022 and was re-filed on 17.05.2022, wherein it is stated that there has been no arrangement between both the parties. The Corporate Debtor frivolously tried to create pre-existing dispute by raising quality issues regarding raw materials. There has been no intimation to the petitioner regarding the quality issue of the raw material supplied. The letters/reports annexed were never supplied and are forged. The corporate debtor has acknowledged the balance amount by making confirmation of the balance payable in their own accounts for Haryana Account till 31.03.2018. The respondent deducted TDS on a due basis for the commission to be paid to the petitioner, however, such commission was added to the cost of goods supplied by the petitioner. The respondents stopped making payments after last invoice was raised on 22.12.2017. There was no intimation regarding the rejection of paddy supplied by the petitioner. The invoices raised are well within the limitation as last invoice was raised on 22.12.2017 and the last payment was received on 08.10.2018, corporate debtor stopped making payments after October 2018. The respondent never approached the petitioner for settlement.

11. The short written submissions have been filed by the petitioner vide Diary No.00213/4 dated 29.11.2022 and by the respondent corporate debtor vide Diary No.00213/3 dated 25.07.2022.

12. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

13. The first issue for consideration is whether the demand notice dated 28.12.2018 and the same has been delivered to the corporate debtor vide registered post as the postal receipt and tracking report are attached with the main petition at Annexure A4. The corporate debtor gave a reply to the demand notice. Therefore, the demand notice was duly served.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit under Section 9(3)(b) by learned counsel for the operational creditor that there is no pre-existing dispute between the parties at all. Till date, the petitioner had not received any payment against the unpaid operational debt.

Although, it is pleaded by Corporate Debtor that the goods were of inferior quality and were rejected. However, there is no cogent and convincing evidence present on the record that any such intimation was given by Corporate Debtor to petitioner before issuance of Demand Notice.

Moreover, the operational creditor has submitted that there has been no intimation to the petitioner regarding the quality issue of the raw material supplied.

It is seen from the records that the corporate debtor has acknowledged the balance amount by making confirmation of the balance payable in their own accounts for the Haryana Account till 31.03.2018. Further, the respondent deducted TDS on a due basis for the commission to be paid to the petitioner. It shows that the amount was due, amounts to debt and default on the part of the corporate debtor, is established.

15. The other issue for consideration is whether this application is filed within limitation. A demand notice issued on 28.12.2018 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. 08.10.2018 i.e. when last payment was made by Corporate Debtor. This application was filed vide Diary No. 1238 on and was re-filed on 15.04.2019 vide Diary No.1929. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

16. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 3,75,61,798.31/- (Rupees Three Crores Seventy Five Lakhs Sixty One Thousand Seven Hundred Ninety Eight Paise Thirty One Only) including 24% p.a. interest up to 30.11.2018, principal amount Rs. 1,84,09,930/-. Copy of Calculation and Worksheets (Annexure A 7) , Ledger with Interest Calculation (Annexure A 8), Invoices (Annexure A 9), Corporate Debtor acknowledged the debt by making confirmation of balance payable in their own accounts for the Haryana Account till 31.03.2018 (Annexure A 10), Form 26 AS (Annexure A 11), Claim Admission Letter by IRP (Annexure A 12) and Bank Statement (Annexure A 13) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore by the respondent-corporate debtor.

17. It is noted that the corporate debtor has failed to payback 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 that from the aforesaid discussed facts that the liability of the corporate debtor is

undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

18. 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 CIR Process in the case of the Corporate Debtor, **J.R.D. International Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

IA No. 645/2023

19. In Part-III of Form No. 5, Mr. Suresh Kumar Bansal Interim Resolution Professional (IRP) has been proposed by the petitioner. However, vide IA No. 645/2023, Mr. Parvinder Singh has been proposed as new IRP. Form 2 dated 06.03.2023, Form B along with the certificate of registration issued by Insolvency and Bankruptcy Board of India has been submitted. The Law Research Associate of this Tribunal has checked the credentials of Mr. Parvinder Singh and there is nothing adverse against him. Therefore, IA No. 645/2023 is allowed and stands disposed of accordingly. In view of the above, we appoint Mr. Parvinder Singh, Registration No. IBBI/IPA-001/IP-P01603/2019-2020/12468, E-mail: caparvinder03@gmail.co, Mobile No. +91-9814798374, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Parvinder 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.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required

under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. 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.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those

authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) 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

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

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, if any, 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 the corporate debtor under Section 33 as the case may be.

23. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

24. A copy of this order be communicated to both the 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.

25. This petition is accordingly admitted. Consequently, CA No. 1224/2019 renders infructuous.

Sd/-

(Subrata Kumar Dash)
Member (Technical)
June 12, 2023
VN/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)