

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

CP (IB) No.97 /Chd/Pb/2019

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

In the matter of :

Nilkamal Limited, having its registered
office at Survey No. 354/2 & 354/3, Nr.
Rakholi Bridge, Silvassa,
Khanvel Road, Vasona, U.T. Dadra &
Nagar Haveli-396230

...Applicant/Operational Creditor

Versus

U.I. Beverages Pvt. Ltd.,
having its registered office at
B-XX-550, Pearl Palace, Ghumar Mandi,
Ludhiana-141001, Punjab.

...Respondent/Corporate Debtor

Judgement delivered on: 02 .03.2020

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

For the Petitioner : Mr. Gurpreet Singh, 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. Nilkamal Limited (**Operational Creditor**), for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of U.I. Beverages Pvt. Ltd., (**Corporate Debtor**). The address of operational creditor is Survey No. 354/2 & 354/3, Nr. Rakholi Bridge, Silvassa, Khanvel Road,

Vasona, U.T. Dadra & Nagar Haveli-396230. There is also an affidavit in support of the contents of the application is from pages 14 to 16 of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules. U.I. Beverages Pvt. Ltd., (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated on 12.11.2013 under the provisions of Companies Act, 2013 with nominal share capital of ₹7,40,00,000/- and paid up share capital of ₹5,98,91,500/-. The CIN of the respondent-corporate debtor is U15549PB2013PTC038092 and its registered office is situated at B-XX-550, Pearl Palace, Ghumar Mandi, Ludhiana-141001, 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 Page-6A of the petition.

2. The facts of the case, briefly, as stated in the petition, are that the petitioner-operational creditor was in business with the corporate debtor and the corporate debtor placed an order on the operational creditor for the purchase of plastic crates. It is stated that the operational creditor had supplied plastic crates to the corporate debtor. The debt became due from the respective dates of the invoices. The corporate debtor is stated to have issued cheques for the partial discharge of its liability which were dishonoured. Further, vide e-mail dated 13.10.2015 (Annexure A-2), the corporate debtor assured the payment of the balance amount and vide letter dated 16.01.2016 (Annexure A-3), the corporate debtor admitted its liability along with 18% interest for delay in payment. Memorandum of Understanding dated 01.03.2016 (Annexure A-4) was also executed between the Corporate Debtor and the operational creditor where the corporate debtor had admitted the liability and also confirmed issuance of cheques and admitted interest for delay in payment @ 18% per annum. The operational

creditor raised various invoices to the Corporate Debtor against the supplied materials which are at Annexure A-8 (page Nos. 61 to 71). It is submitted that the operational creditor requested the corporate debtor vide letter dated 14.02.2017 (Annexure A-9) to issue 'C' Form in respect of supplies made to the operational creditor against their Purchase Order No. UIB/15-16/36 dated 06.07.2015 along with Debit Note for ₹ 4,23,794/- but the corporate debtor did not issue Form 'C' and consequently Debit Note amount of ₹ 4,23,794/- has also become due. It is stated that corporate debtor started defaulting and failed to make payments against various invoices and the date from which the debt fell due is stated to be w.e.f. 19.05.2015 onwards i.e. from the dates of respective invoices. As per Part-IV of Form 5, the amount claimed to be in default is ₹33,86,063/-, plus admitted interest @ 18% per annum from the date of the respective invoices until the date of payment plus ₹ 4,23,794/- towards the applicable Central Sales Tax in lieu of 'C' Form which was not provided by the corporate debtor. Computation of amount in default is annexed at Annexure A-6 of the petition.

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

4. A demand notice in Form No.3 is stated to be issued on 11.09.2018 (Annexure A-11 of the petition). The demand notice was accompanied by the copy of computation in tabular form, duly issued invoices in the name of the corporate debtor, dishonoured cheques, E-mail dated 13.10.2015, letter dated 16.01.2016 and Memorandum of Understanding dated 01.03.2016. Copies of these enclosures are attached at pages 19 to 71 of the petition. The corporate debtor, vide this

demand notice, was called upon to repay the total unpaid operational debt (in default) of ₹33,86,063/-, plus admitted interest @ 18% per annum from the date of the respective invoices until the date of payment plus ₹ 4,23,794/- towards the applicable Central Sales Tax in lieu of 'C' Form which was not provided by the corporate debtor, within 10 days from the receipt of the notice. The copy of demand notice is at page 76-81 of the petition. The demand notice was duly delivered on the respondent-corporate debtor on 17.09.2018 and the Speed Post receipt in respect of the demand notice is attached at page-82 & 83 of the petition.

5. The corporate debtor has chosen not to reply to the above stated demand notice dated 11.09.2018.

6. It is deposed by the Operational Creditor that they have not received any reply to the demand notice dated 11.09.2019 till now from the corporate debtor. It is also deposed that there is no dispute of unpaid operational debt pending between the parties in any court of law and no notice has been given by the corporate debtor relating to a dispute of the unpaid operational debt. The affidavit regarding no dispute raised by the corporate debtor is from pages 88 to 90 of the petition. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 11.09.2018 and not made any outstanding payment and hence this petition.

7. In Part III of Form 5, the operational creditor has proposed Mr. Rajeev Bhambri, bearing Registration No. IBBI/IPA-002/IP-N00152/2017-2018/10399 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form No. 2 and is placed at page 91-92, in which he has stated that he is currently not serving as Interim Resolution Professional/Resolution

Professional/Liquidator in any proceeding. It is also stated that there are no disciplinary proceedings pending against him with the Board or ICSIIPA.

8. Notice of this petition was issued to the Corporate Debtor on 18.03.2019 to show cause as to why this petition be not admitted. Affidavit of service supported by tracking report and postal receipt was filed vide Diary No. 1437 dated 22.03.2019. The tracking report at page-4 of the affidavit states that the article is out for delivery. However, time being short, one more opportunity was granted to the corporate debtor vide order dated 25.03.2019 and the petitioner was directed to serve another notice intimating the date of hearing. Further, affidavit of service was filed vide Diary No. 2163 dated 29.04.2019 alongwith tracking report and postal receipt which shows that the notice was served on the corporate debtor on 01.04.2019.

9. There has been no representation on behalf of the corporate debtor on various dates nor they filed any reply inspite of affording them various opportunities vide orders dated 30.08.2019, 23.10.2019 and 18.12.2019.

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 11.09.2018 was properly served. The demand notice dated 11.09.2018 was sent at the address as per the master data at Page No. 6-A of the petition in which the registered office is shown at B-XX-550, Ghumar Mandi, Ludhiana, Punjab-141001. The postal receipt in respect of the Demand Notice is at page-82 (Annexure A-12) of the petition. It is observed that no reply has been received in respect of the above demand notice from the side of corporate debtor.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. Since there has been no representation from the side of corporate debtor, therefore, there lies no question of raising dispute by the corporate debtor. 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—

(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, operational debt (in default) is ₹33,86,063/-, plus admitted interest @ 18% per annum from the date of the respective invoices until the date of payment plus ₹ 4,23,794/- towards the applicable Central Sales Tax in lieu of ‘C’ Form which was not provided by the corporate, within 10 days from the receipt of the notice. Copy of Bank Account Statement of the operational creditor is at page 40 to 60 of the petition. The copy of invoices has been filed at Annexure A-8 of the petition. Moreover, demand notice in Form No. 3 was also sent on 11.09.2018 stating that the amount due from the respective dates of the invoices starting from 30.05.2015 from the corporate debtor to the operational creditor, is ₹33,86,063/-, plus admitted interest @ 18% per annum from the date of the respective invoices until the date of payment plus ₹ 4,23,794/- towards the applicable Central Sales Tax in lieu of ‘C’ Form which was not provided by the corporate, within 10 days from the receipt of the notice. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 07.02.2019 (page 88-90 of the petition) has been placed on record by the operational creditor stating that said demand notice dated 11.09.2018 has not been replied and there is no dispute of unpaid operational debt pending between the parties and no notice has been given by the corporate debtor relating to a dispute

of the unpaid operational debt. 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 aforesaid amount due as mentioned in the statutory notice 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 above mentioned facts, 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 **U.I. Beverages Pvt. Ltd.** and declare 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. The Law Research Associate of this Tribunal has checked the credentials of Mr. Rajiv Bhambri and there is nothing adverse against him.

22. In view of the above, we appoint Mr. Rajiv Bhambri, Registration No. IBBI/IPA-002/IP-N00152/2017-2018/10399, Mobile No. 9915710010, E-mail: rajiv.bhambri@gmail.com, address: SCO # 9, 2nd Floor, Jandu Towers, Miller Ganj, Ludhiana-141003, as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Rajiv Bhambri 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)

March 02, 2020
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