

**Before the National Company Law Tribunal,  
Chandigarh Bench  
Corporate Bhawan, Plot No.4B, Sector 27-B, Madhya Marg,  
Chandigarh.**

No: NCLT/CHD/Reg/cc | <sup>794</sup>~~393~~

Date: 18-12-19

CP (IB) No. 279/Chd/HP/2019  
Under section 9 of the  
Insolvency & Bankruptcy code, 2016

In the matter of:

**M/s Bansal Traders, A Partnership Firm  
(Through : Anand Bansal, Partner)**

...Petitioner/Operational Creditor

Vs

**BBN Foods Hi-Tech Processing Pvt. Ltd.**

... Respondent/Corporate Debtor

To

BBN Foods Hi-Tech Processing Pvt. Ltd.  
Plot No. 11, Industrial Area,  
Bilaspur, Himachal Pradesh-177005

Please find enclosed herewith a certified copy of order dated 17.12.2019,  
for your information and necessary action.

  
Asstt. Registrar  
for Registrar

NCLT, Chandigarh Bench

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

**CP (IB) No.279/Chd/HP/2019**

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

**In the matter of :**

**M/s Bansal Traders, A Partnership Firm**  
(Through: Anand Bansal, Partner)  
having its office at  
Shop No.5, New Grain Market,  
Hoshiarpur – 146001, Punjab

...Petitioner/Operational Creditor

Versus

**BBN Foods Hi-Tech Processing Private Limited**  
having its registered office at  
Plot No.11, Industrial Area,  
Bilaspur, Himachal Pradesh - 177005

...Respondent/Corporate Debtor

**Judgement delivered on: 17 .12.2019**

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

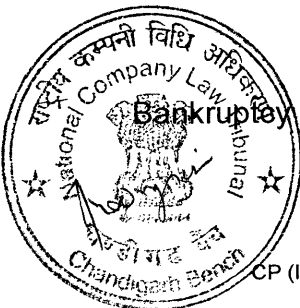
For the Petitioner : Mr. Nahush Jain, Advocate

For the Respondent : Ms. Niharika Sohal, 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 M/s Bansal Traders (**Operational Creditor**), a partnership firm, through its partner Mr. Anand Bansal, for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s BBN Foods Hi-Tech Processing Private Limited (**Corporate Debtor**). The Permanent Account Number of the operational creditor as mentioned in Part-I of Form-5, is AAAFB7296F and the address of its office is Shop No.5, New Grain Market, Hoshiarpur – 146001, Punjab. The petitioner-operational creditor has authorized Mr. Anand Bansal, Partner to file petition on its behalf. The copy of the Authority Letter dated 22.03.2019 by the Partners of Operational Creditor is at Annexure A-3 of the petition. There is also an affidavit in support of the contents of the application is from pages 12 to 14 of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s BBN Foods Hi-Tech Processing 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 ₹65,00,000/- and paid up share capital of ₹60,45,000/-. The CIN of the respondent-corporate debtor is U15419HP2001PTC024726 and its registered office is situated in Bilaspur 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 A-2 of the petition.

The facts of the case, briefly, as stated in the petition, are that

the petitioner-operational creditor is engaged in the business of food grain

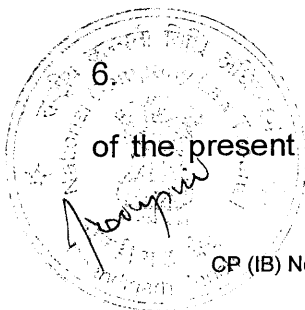


merchants and commission agents. It is stated that business transactions with Corporate Debtor started in April 2008, wherein petitioner used to supply wheat to the Corporate Debtor and business was being carried on bill to bill basis. It is also stated that as per the terms, payments were to be made within 7 days as mentioned in the invoices. Copy of invoices are placed as Annexure A-5. It is stated that to clear the outstanding against the pending bills, cheques were issued and were dishonoured upon presentation. Copies of cheques issued and dishonour memo is attached as Annexure A-7. Further, it is stated that the Corporate Debtor agreed to settle and pay the outstanding amount and the first payment of ₹4000/- was made vide NEFT on 08.04.2016 to the Operational Creditor. 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 24.03.2019 (Annexure A-6 of the petition). The demand notice was accompanied by the copy of ledger account, duly issued invoices in the name of the corporate debtor and copy of bank statement of Operational Creditor to substantiate the said date of default. Copies of these enclosures are attached at pages 62 to 86 of the petition. The corporate debtor vide this demand notice was called upon to repay the total unpaid operational debt (in default) of ₹16,77,610/- (inclusive of interest) within 10 days from the receipt of the notice.

6. It is deposed by the Operational Creditor that till the date of filing of the present application there is no dispute communicated by the Corporate

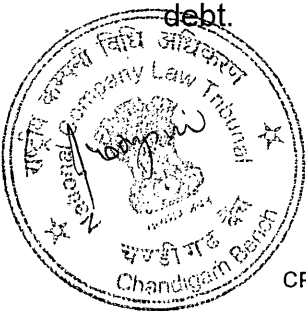


Debtor for the unpaid operational debt and no payment has been received during this period and no reply to the said demand notice has been received at all. It is also deposed that there is no pre-existing dispute between the parties at all with regards to the unpaid operational debt. The affidavit is appended with the petition as Annexure A-8.

7. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 24.03.2019 nor made any outstanding payment and hence this petition.

8. Notice of this petition was issued to the Corporate Debtor on 13.08.2019 to show cause as to why this petition be not admitted. It is stated that notice sent through speed post could not be served and substituted mode of service was exercised upon the Corporate Debtor. Thereafter, notice of this petition was issued to the Corporate Debtor vide newspaper publication in "Punjab Kesri" (Hindi) Bilaspur Edition on 15.09.2019 and "Times of India" Chandigarh Himachal Edition on 17.09.2019. The affidavit of service containing newspaper clippings was placed on record vide Diary No.4856 dated 17.09.2019.

9. On the last date of hearing, the learned counsel on behalf of the respondent submitted that she was instructed to convey that the Corporate Debtor admits the liability of debt payable to the petitioner company and that the Corporate Debtor is not in a position to clear the said debt, the CP may be admitted as the respondent-corporate debtor is not in a position to clear the debt.



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

11. The first issue for consideration is whether the demand notice in Form No.3 dated 24.03.2019 was properly served. The demand notice dated 24.03.2019 was sent at the address as per the master data at Page No.34 of the petition in which the registered office is shown as Plot No.11, Industrial Area, Bilaspur, Himachal Pradesh – 177005 and other addresses as well. The speed post and courier receipts are found to be attached with Annexure A-7. The tracking reports are also appended along with the postal receipts. It is submitted that the Corporate Debtor has chosen not to reply to the demand notice dated 24.03.2019.

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 on the last date of hearing, learned counsel for the respondent has admitted its liability and submitted that 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,—*

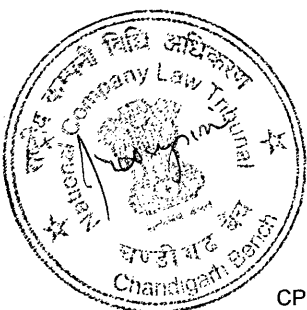
*(a) the application made under sub-section (2) is complete;*



- (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:-

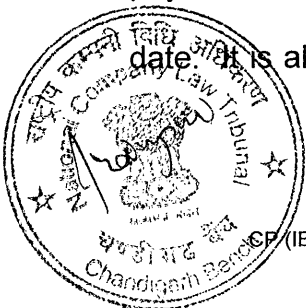
*"51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(ii)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in 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 ₹16,77,610/- (inclusive of interest). It is stated that a payment of ₹4,000/- was received on 08.04.2016, which is also stated to be the date of default, thereby reducing the liability to ₹16,73,610/- due to the operational creditor. Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.04.2008 to 31.03.2016 (page 62 to 71 of the petition) has been filed. The copy of invoices has been filed at Annexure A-5 of the petition. Moreover, demand notice in Form No.3 was also sent on 24.03.2019 stating that the amount due as on 08.04.2016 from the corporate debtor to the operational creditor is ₹16,77,610/- (including Principal amount of ₹9,81,810/- + interest as calculated and shown in ledger). As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 05.04.2019 (Annexure A-8 of the petition) has been placed by the operational creditor stating that despite service of the demand notice dated 24.03.2019, till the date of filing of the present application there is no dispute communicated by the Corporate Debtor for the unpaid operational debt and no payment has been received during this period and no reply to the said demand notice has been received at all. It is also deposed that there is no pre-existing dispute between the parties at all with regards to 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

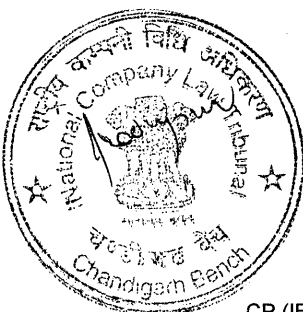


satisfied. The applicant-operational creditor states that from the abovementioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

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 BBN Foods Hi-Tech Processing 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;



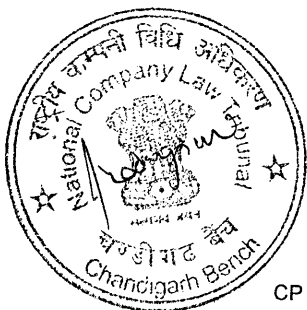
- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

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”

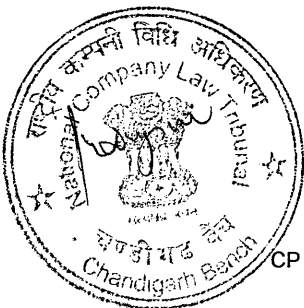
Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

23. In this regard a letter bearing File No. 25/02/2019-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. Gurdev Bassi appearing at Serial No.67 of the panel to be appointed as Interim Resolution Professional.

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

25. In view of the above, we appoint Mr. Gurdev Bassi, Registration No.IBBI/IPA-001/IP-P01633/2019-2020/12504, Mobile No.9357052828, E-mail: [ipgurdevbassi@gmail.com](mailto:ipgurdevbassi@gmail.com), as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Gurdev Bassi shall be in accordance with the provisions of Section 16(5) of the Code;

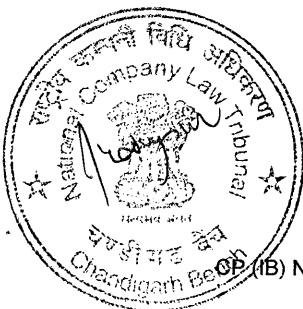


- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the 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. Setni)  
Member (Technical)

—sd—

(Ajay Kumar Vatsavayi)  
Member (Judicial)

Dec. <sup>17<sup>th</sup></sup>, 2019  
Anchal



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