

**IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI (COURT NO. IV)
Company Petition No. IB- 987/ND/2018**

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

MR. ANIL MANGLA

Proprietor of M/s ANIL TRADERS

...Applicant/Operational Creditor

VERSUS

M/s DEVIRAM RESTAURANTS PRIVATE LIMITED

...Respondent/Corporate Debtor

Pronounced on: 16.07.2019

CORAM:

DR. DEEPTI MUKESH,

HON'BLE MEMBER (J)

SH. PRADEEP R. SETHI

HON'BLE MEMBER (T)

For the Applicant: **Mr. Rakesh Kumar, Adv.**
 Mr. Aashish Khattar, Adv.
 Ms. Chetna Bisht, Adv.

For the Respondent:

MEMO OF PARTIES

MR. ANIL MANGLA

Proprietor of M/s ANIL TRADERS

Having its registered office at:

B.O. 16/04, Acharya Puri, Opp. Ganga Apartment

Mata Road, Near Haryana Roadways Workshop

Gurgaon

...Applicant/ Operational Creditor

VERSUS

M/s DEVIRAM RESTAURANTS PVT. LTD

Having its registered office at:

44, F/9, 3rd Floor Kishangarh,

Vasant Kunj New Delhi- 110070

ALSO, AT:

Shop No.88, Eross Mall Sector 49& 50

Gurgaon

...Respondent/ Corporate Debtor

ORDER

1. The present application is filed under Section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Anil Mangla (for brevity 'Applicant') proprietor of M/s Anil Traders ,vide Authority letter dated 28.07.2018, with a prayer to initiate the Corporate Insolvency process against M/s Deviram Restaurants Private Limited (for brevity 'Respondent').

2. The Applicant, the Operational Creditor namely Mr. Anil Mangla is a Sole Proprietor of M/s Anil Traders, having its registered office at 16/04, Acharya Puri, Opp. Ganga Apartment Mata Road, Near Haryana Roadways Workshop Gurgaon.

3. The Respondent, the Corporate Debtor namely M/s Deviram Restaurants Private Limited is a company incorporated on 20.10.2016 under the provisions of Companies Act, 1956 with

CIN No. U55209DL2016PTC307351, having its registered office at 44, F/9, Third Floor, Kishangarh, Vasant Kunj, New Delhi-110070. The Authorised Share Capital of the respondent company is Rs. 1,00,000/- and Paid Up Share Capital of the company is Rs. 1,00,000/- as per Master Data of the company.

4. It is the case of the applicant that Respondent company approached the applicant for purchase of various goods and raw material such as fortune soya oil, permal rice, parman ghee etc. It was specifically agreed that upon receiving the goods by respondent and raising of invoices by applicant, the entire payment for such invoices shall be made in a timely manner. As per this arrangement, the Respondent placed various purchase orders dated 02.01.2018, 24.01.2018, 02.02.2018, 28.02.2018, 05.03.2018 and 08.03.2018 for a supply of varieties of above-mentioned products. The Applicant supplied the goods as per the orders placed by Respondent and raised invoices against the said supply.

5. The said tax invoices were duly acknowledged by the Respondent and part payments were made, first due date is 02.02.2018, the details of which are as follows:

SUMMARY OF DUES	
INVOICE NO. AND DATE	AMOUNT DUE (In Rs.)
G 17-18/5752 dated 02.01.2018	1,25,118.00
G 17-18/6607 dated 25.01.2018	42,966.00
G 17-18/6852 dated 02.02.2018	1,10,268.00
G 17-18/7786 dated 28.02.2018	38,189.00
G 17-18/7987 dated 05.03.2018	76,335.00
G 17-18/8096 dated 08.03.2018	4,410.00
TOTAL	3,97,286.00
Less: AMOUNT RECEIVED	37,549.00
OUTSTANDING AMOUNT	3,59,737.00

6. In spite of various requests made and reminders sent by the Applicant, the Respondent never bothered to reply.

7. On failure to pay the outstanding dues by the Respondent, the applicant sent a demand notice dated 29.06.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the

respondent asking it to make the entire payment of Rs. 3,80,880.12/- (Rupees Three Lakhs Eighty Thousand Eight Hundred and Eighty and paise Twelve only) inclusive of interest within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Respondent.

8. Despite the demand notice sent under Section 8 of the Code, the Respondent failed to pay the amount demanded, neither raised any notice of dispute nor replied to the said notice. Hence this application, seeking to unfold the process of CIRP.

9. The applicant has stated that total debt due and payable is Rs. 3,97,286/- (Rupees Three Lakhs Ninety-Seven Thousand Two Hundred and Eighty- Six only) which includes Principal amount of Rs. 3,59,737/- and interest of Rs. 21,143.12/- @18% p.a. from 02.02.2018 to 06.08.2018.

10. Respondent though was given various opportunities, failed to file reply. On 28.05.2019, the right to file reply was closed.

11. It is pertinent to note that the applicant has placed on record all the tax invoices, stating that the respondent itself had acknowledged the said invoices. Once the debt shown as due, it is for respondent to prove that there are no outstanding dues to be paid to the applicant. But the respondent has not filed any reply till date. This Tribunal is constrained to proceed ex parte against the Corporate Debtor. Section 8 notice and the present application were duly served on the Corporate Debtor and proof of service is filed by the applicant. The Corporate Debtor has neither paid nor disputed the claim raised by the applicant.

12. The applicant has attached the copy of Bank statements for the period 01.01.2018 to 31.07.2018 issued by Oriental Bank of Commerce in compliance with the requirement of Section 9(3)(c) of the IBC 2016.

13. The registered office of respondent is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.

14. In view of above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.

15. The Applicant has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Rajiv Malik having registration no. IBBI/IPA-002/IP-N00391/2018-2019/12115 and email address is iprmaalik2009@gmail.com and contact number is 9810234731, as the IRP of the Respondent. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

16. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) shall follow in relation to the Respondent prohibiting proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in vogue.
17. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.
18. A copy of the order shall be communicated to the Applicant as well as to the Respondent above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry.

Sd/-
(PRADEEP R. SETHI)
MEMBER (TECHNICAL)

Sd/-
(DR. DEEPTI MUKESH)
MEMBER (JUDICIAL)