**THE NATIONAL COMPANY LAW TRIBUNAL**
**"CHANDIGARH BENCH, CHANDIGARH"**
**(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)**
**(through web-based video conferencing platform)**

**CP (IB) No. 31/Chd/Hry/2021**

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

**In the matter of:**

**Mohd Alauddin**
having Proprietorship concern of
National Sales Corporation
with its registered office at
106-107, First Floor, TC Jaila Tower-3
Plot No. B4, BN A-1, Local Shopping Centre
Delhi-110058

…Petitioner-Operational Creditor

Vs.

**M/s. PNC Enterprises Private Limited**
Plot No. 76D, Udyog Vihar,
Phase 4 Gurugram, Gurgaon-122001

…Respondent-Corporate Debtor

**Judgement delivered on: 17.05.2022**

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

For the Petitioner-Operational Creditor : Mr. Arun Kumar, Advocate

For the respondent-Corporate Debtor : Mr. Gaurav Pathak, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

## JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by Mohd. Alaudin, Proprietor of (National Sales Corporation) (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its Proprietor Mr. Mohd. Alauddin, with a prayer to initiate the Corporate Insolvency Resolution Process (**CIRP**) in case of M/s. PNC Enterprises Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor namely, PNC Enterprises Private Limited, is a Company incorporated on 14.07.2008 under the provisions of Companies Act, 1956 with CIN No. U51221HR2008PTC069195 with its registered office at Plot No. 76D, Udyog Vihar, Phase-4, Gurugram HR- 122001 IN. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure P-3.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor was approached by the corporate debtor for the supply of raw milk and various invoices were raised which were duly received and acknowledged.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 1,02,98,659 along with interest @ 18% p.a. from the date of default is pending against the corporate debtor and the date on which default occurred is 12.10.2019. Copy of statement of dues and copy of ledger account of corporate debtor, for the period from dated 01.04.2018 to 31.10.2020 as maintained in the books of the petitioner is attached with the main petition and marked as Annexure P-5. Copy of the bank statement of the operational creditor from May 2019 to October 2020 is attached with the

petition as Annexure P-6. Copy of the various retail invoices is attached with the main petition as Annexure P-4.

5. A demand notice in Form 3 dated 09.01.2020 is stated to be issued to the operational creditor by registered post on 13.01.2020 and the same has been delivered to the operational creditor.

6. In Part-III of Form No. 5, Mr. Ranjeet Kumar Verma, Registration No. IBBI/IPA-002/IP-N00301/2017-18/10859 has been proposed as Interim Resolution Professional (IRP) by the petitioner. Form No. 2 dated 25.11.2020 submitted by the proposed IRP is also enclosed with the petition, in which he has stated that he is serving as a IRP/RP/Liquidator in one proceedings. It is also stated that there are no disciplinary proceedings pending against the professional with the Board or with the Indian Institute of Insolvency Professionals of ICAI.

7. Accordingly, order dated 07.04.2021, a notice of this petition was issued to the corporate debtor to show cause as to why this petition be not admitted.

8. It is submitted by the respondent-corporate debtor in its reply vide Diary No. 01931/2 dated 08.12.2021 denied the averments made by the petitioner. However, as per the order dated 13.04.2022 of this Adjudicating Authority, it is stated by learned counsel for the respondent-corporate debtor that he is having limited instructions that due to the financial crunch respondent-corporate debtor is unable to pay the debt.

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

10. The first issue for consideration is whether the demand notice in Form 3 dated 09.01.2022 was properly served. The demand notice was received as per the tracking report mentioned at Annexure P-2 of the main petition. In view of the same, it is held that the demand notice has been duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is pleaded by the petitioner that no notice has been received to the demand notice dated 09.01.2020 from the corporate debtor. It is also pleaded that there is no dispute of unpaid operational debt pending between the parties in any court of law or any other authority. The same has been inferred from the affidavit in terms of Section 9(3)(b) of I&B Code, 2016. The affidavit is attached to the main petition. It implies that there is no pre-existing dispute in relation to the debt claimed as per Part IV of Form 5.

12. The other issue for consideration is whether this application is filed within limitation. The period of limitation would begin from the date of default mentioned in Part IV, Form V i.e. 12.10.2019. This application was initially filed on 22.12.2020 and thereafter re-filed on 05.01.2021 vide Diary No. 1931. Therefore, this Adjudicating Authority finds that this application was filed within limitation.

13. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹1,02,98,659/-. The operational creditor has supplied goods to the corporate debtor and raised invoices attached as Annexure P-4. Ledger accounts maintained by the operational creditor have

been attached at Annexure P-5. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one crore.

14. It is noted that the corporate debtor has failed to make payment of 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 from the abovementioned facts that the liability of the corporate debtor is undisputed and admitted when Ld, counsel for respondent-corporate debtor stated that due to the financial crunch corporate debtor is unable to pay back the debt. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit.

15. 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 respect. 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, PNC Enterprises Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. 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.

17. 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.

18. 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.

19. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ranjeet Kumar Verma and there is nothing adverse against

him. In view of the above, we appoint Mr. Ranjeet Kumar Verma, Registration No. IBBI/IPA-002/IP-N00301/2017-18/10859, E-mail: ranjeet@ranjeetcs.com, Mobile No. 9999678009 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Ranjeet Kumar Verma 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 the constitution of the Committee; and

vii.) The Interim Resolution Professional is directed to send regular progress reports to this Tribunal every fortnight.

20. The petitioner is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs 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.

21. 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.

| | |
|---|---|
| Sd/- | Sd/- |
| **(Subrata Kumar Dash)** | **(Harnam Singh Thakur)** |
| **Member (Technical)** | **Member (Judicial)** |

May 17, 2022
PB/ASH