

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**

C.P. (IB) 286/MB/2024

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

Deepak Kalananad Jha

Having its office address at:

Ground Floor, Shop No. 9,
Monica Tower CHSL, Bhayandar (East),
Thane – 401 105.

E-mail Id: Dipak.jha7140@gmail.com

Contact No.: +91 7678001219

... Petitioner/ Operational Creditor

Versus

Dhruv Wellness Limited

[CIN: L74900MH2015PLC263089]

Having its registered address at:

207, Royal Apartment, Kasam Baug,
Opp. Bachani Nagar, Jai Bhavani Lane,
Malad(E), Mumbai – 400 097.

...Corporate Debtor/ Respondent

Order Pronounced on: 18.02.2025

Coram:

Charanjeet Singh Gulati
Hon'ble Member (Technical)

Lakshmi Gurung
Hon'ble Member (Judicial)

Appearances:

For the Operational Creditor: CS Nithish Bangera

For the Corporate Debtor: PCS Vijay Tiwari

Per: SHRI CHARANJEET SINGH GULATI, MEMBER (T)

1. The present **Company Petition (IB)-286(MB)/2024** has been filed on 13.04.2024 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**Code**') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Deepak Kalanand Jha (hereinafter referred to as '**Operational Creditor**') for initiating Corporate Insolvency Resolution Process (hereinafter referred to as '**CIRP**') against Dhruv Wellness Limited (hereinafter referred to as '**Corporate Debtor**'), concerning the default in repayment of an outstanding debt of **Rs. 4,08,81,916/-** (*Rupees Four Crores Eight Lakhs Eighty-One Thousand and Nine Hundred and Sixteen Only/-*) as on 28.03.2024.

Brief facts of the case:

2. The Operational Creditor, a sole proprietor dealing in cosmetics and general items, approached the Corporate Debtor, a listed company, for the supply of bulk products. Following discussions, the Operational Creditor was appointed as a vendor of the Corporate Debtor, evidenced by a purchase order dated 15.03.2019.
3. The purchase order stipulated the supply of various products: specified products at fixed price ranges, and unidentified products at a price of 15-20% less than the MRP (excluding GST). The Payment terms as given in the purchase order stipulated immediate payment upon delivery. A copy of the purchase order is annexed as Exhibit-"D" to the petition.

4. The Operational Creditor states that it discontinued business elsewhere and dedicated all its resources to supplying the Corporate Debtor. The products supplied included FMCG, Ayurvedic, Cosmetic, and General Products.
5. Pursuant to the purchase order, the Operational Creditor supplied products to the Corporate Debtor, evidenced by 36 invoices and delivery challans, with a total value of Rs. 5,81,22,064/- (Rupees Five Crores Eighty-One Lakhs Twenty-Two Thousand and Sixty-Four Only). Contrary to the agreed-upon immediate payment terms, the Corporate Debtor remitted only Rs. 1,72,40,148/-. A copy of the ledger statement for the financial years 2018-2019 and 2019-2020 is annexed as Exhibit- “E Colly” to the petition.
6. Despite accepting the delivered products and invoices, the Corporate Debtor failed to remit full payment, breaching the terms of the purchase order. Consequently, the Operational Creditor issued a letter dated 31.05.2019, discontinuing further supply until the outstanding balance was paid in full, and demanding immediate payment of the entire amount due. A copy of this letter is annexed as Exhibit-“F” to the petition.
7. Following the issuance of a notice, the Corporate Debtor remitted a total of Rs. 3,67,534/- towards the outstanding dues. Particularly, Rs. 3,02,533/- was paid on 01.06.2019, Rs. 5,001/- on 06.07.2019, and Rs. 60,000/- on 27.08.2019, all deposited into Operational Creditor’s account maintained with Axis Bank as 917020086115644. While the Corporate Debtor consistently confirmed the outstanding balances for the financial years ending 31.03.2020, 31.03.2021, and 31.03.2022 (confirmations for 31.03.2020, 31.03.2021 and 31.03.2022 are annexed as Exhibit- “G” of the petition), subsequent requests for payment have been ignored. Furthermore, the Corporate Debtor has

since refused to confirm balances, which the Operational Creditor submits demonstrates bad faith.

8. Subsequently, the Operational Creditor issued a demand notice under Section 8(1) of the Insolvency and Bankruptcy Code, 2016, in Form 3, to the Corporate Debtor on 28.03.2024. The service of the demand notice was affected via speed post on the same date and was delivered to the corporate debtor on 30.03.2024. The applicant's affidavit under Section 9(3)(b) of the Code states that no communication, denial, or dispute was received from the Corporate Debtor in response to the demand notice. All invoices (duly accepted), challans, and e-way bills for the products supplied by the Operational Creditor to the Corporate Debtor are annexed as Exhibit- "N" to the petition. The Operational Creditor has enclosed copy of the Statement of Account in respect of Account Number: 1286000100263834 maintained with Punjab National Bank for period 01.04.2023 to 31.03.2024, at Exhibit- "P" to the Petition. This statement depicts the amounts received so far from the corporate debtor and substantiates the ledger account maintained by the Operational Creditor.
9. It is reiterated that the Section 9 application is within the limitation period because the Corporate Debtor confirmed the outstanding balance on 31.03.2020, 31.03.2021, and 31.03.2022. Therefore, the application has been filed within three years of 31.03.2022. The applicant further states that the default amount does not pertain to the period covered under Section 10A of the Insolvency and Bankruptcy Code, 2016, and thus the application is not in contravention of that section.
10. The aggregate amount of default as on 28.03.2024 is **Rs. 4,08,81,916/-**
(Rupees Four Crores Eight Lakhs Eighty-One Thousand and Nine

Hundred and Sixteen Only/-) which includes principal amount and date of default is 31.05.2019 (**'said default'**).

Reply of the Corporate Debtor extracted in brief:

11. The Corporate Debtor by virtue of an Affidavit in Reply dated 22.08.2024 states that Dhruv Wellness Limited is a company limited by shares and incorporated under the Companies Act, 2013. It is engaged in the business of pharmaceuticals, specifically general, ayurvedic, and cosmetic products.
12. The Corporate Debtor, submits that the COVID-19 pandemic and its economic repercussions had severely impacted its business. The Corporate Debtor claims that pre-existing financial vulnerabilities, including unsustainable debt, were exacerbated by the pandemic, leading to disruptions in access to materials, personnel, and operations. This has, in turn, negatively affected the Respondent's financial health and operational continuity.
13. Consequently, the Corporate Debtor, despite its willingness, is unable to pay the Petitioner the claimed sum of Rs. 4,08,81,916/-. Upon learning of the filing of the present petition, the Respondent attempted to contact the Petitioner to explore settlement options via email which is annexed at Exhibit-A and Exhibit-B of the reply, but received no response. The Respondent maintains that it has been severely debilitated by the pandemic and is therefore unable to meet its obligations to the Petitioner.

Analysis and Findings

14. It is noticed that various Invoices during the period from 21.03.2019 to 31.05.2019 have been raised by the Operational Creditor on the

Corporate Debtor aggregating to an amount of Rs. 5,81,22,064/-. On perusal of Ledger Account of the Operational Creditor in the books of accounts of the Corporate Debtor which is annexed as Exhibit- “E” to the application, it is seen that Corporate Debtor has made payment to the tune of Rs. 1,72,40,148/- during the period from 28.03.2019 to 27.08.2019 on 26 occasions against the above invoices and the last payment was made by the Corporate Debtor on 27.08.2019.

15. Further, the balance confirmation letters dated 31.03.2020, 31.03.2021 and 31.03.2022 was acknowledged and duly signed by the Corporate Debtor. The Corporate Debtor acknowledged receipt of the notice of the present company petition and subsequently proposed a settlement offer. The following excerpts from emails sent by the Corporate Debtor to the Operational Creditor, as provided in its Affidavit-in-Reply dated 22.08.2024, is reproduced as under:

a. Exhibit- “A” - E-mail dated 24.07.2024 at 10.59 A.M.,

The Corporate Debtor attached two cheques for Rs. 25 Lakhs and Rs. 26 Lakhs, respectively, stating:

“

xxx

....we are ready to amicable settle the subject matter at lumpsum of Rs. 51.00 Lakhs on an immediate basis, which shall be a win-win situation for both the parties. Please kindly withdraw your application immediately. We shall carry business again together. There were bad time in the past, which I am on the verge of coming over. In order to provide confidence to you, I am also attaching cheque of Rs. 51 Lacs to be paid to you.

xxx”

b. Exhibit- “B” - E-mail dated 24.07.2024 at 11.02 A.M.,

The Corporate Debtor attached a single cheque for Rs. 51 Lakhs, reiterating as under:

“

xxx

we are ready to amicable settle the subject matter at lumpsum of Rs. 51.00 Lakhs on an immediate basis, which shall be a win-win situation for both the parties. Please kindly withdraw your application immediately. We shall carry business again together. There were bad time in the past, which I am on the verge of coming over. In order to provide confidence to you, I am also attaching cheque of Rs. 51 Lacs to be paid to you.

xxx”

This proposed settlement offer, as further detailed in the Corporate Debtor’s Affidavit-in-Reply dated 22.08.2024, further substantiates the Corporate Debtor's acknowledgment of the debt.

16. As per section 18 of the Limitation Act 1963 a fresh period of limitation starts from the date of the acknowledgement if it is done within the limitation period. The relevant extract of which is reproduced below:

Section 18 of the Limitation Act.

18. Effect of acknowledgment in writing. —

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in

writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

17. From perusal of the record and the documents relied upon by the Petitioner, it is clear that there is an admitted financial debt in respect of which default has been committed by the Corporate Debtor and further the petition under Section 9 of the Code is filed within the period of limitation period and the default amount is in excess of Rs. 1 Crore and is above the threshold limit mandated under Section 4(1) of the Code. Further, no pre-existing dispute between the parties have been brought to our notice. Accordingly, we are satisfied that the present Petition is maintainable.
18. We are supported by the decision of Hon'ble Supreme Court in ***Innovative Industries Limited vs. ICICI Bank and Anr, (2018) 1 SCC 407***, wherein it was held as follows:

“28. ... The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days’ receipt of a notice from the adjudicating authority.

...

30.On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to

satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is “due” i.e. Payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.”

(emphasis supplied)

ORDER

19. The petition bearing CP (IB) – 286 (MB)/2024 filed by **Deepak Kalanand Jha**, the Operational Creditor, under section 9 of the IBC read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution Process against **Dhruv Wellness Limited**, the Corporate Debtor, is **admitted**.

20. The Petitioner/Operational Creditor has proposed name of an Insolvency Professional to be appointed as Interim Resolution Professional (IRP). However, we deem it appropriate to appoint IRP from the from the panel of Insolvency Professionals maintained with Insolvency and Bankruptcy Board of India (IBBI). This bench hereby **appoints Mr. Ashok Mittal, Registration No. IBBI/IPA-001/IP-P02549/2021-2022/13889 as the proposed Interim Resolution Professional (IRP)** having **e-mail ashokmittal2020@gmail.com** to carry out the functions as mentioned under the Insolvency and Bankruptcy Code, 2016.

21. There shall be a moratorium under section 14 of the IBC, in regard to the following:

- i. 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;
- ii. Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- iii. 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;
- iv. The recovery of any property by an owner or lessor where such property is occupied by or in possession of the Corporate Debtor

22. Notwithstanding the above, during the period of moratorium:

- i. The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period;
- ii. That the provisions of Sub-Section (1) of Section 14 of the Code shall not apply to: -
 - a. such transactions as may be notified by the Central Government in consultation with any operational sector regulator;

b. a surety in a contract of guarantee to a Corporate Debtor.

23. The order of moratorium shall have effect from the date of pronouncement of this order till the 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.
24. The public announcement of the Corporate Insolvency Resolution Process shall be made immediately as specified under section 13 of the Code.
25. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP in terms of Section 17 of the Code. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
26. The Operational Creditor shall deposit a sum of Rs. 3,00,000/- (Rupees Three Lakhs Only/-) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims. The amount so deposited shall be interim finance and paid back to the applicant on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
27. The Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Tribunal within seven days from the date of receipt of a copy of this Order.

28. The Registry is further directed to communicate this order to the Operational Creditor, the Corporate Debtor and the IRP immediately by registered post/speed post and e-mail immediately, and in any case, not later than two days from the date of this Order.
29. The Registry is also directed to send a copy of this order to the Insolvency and Bankruptcy Board of India (IBBI) for their record.
30. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.
31. Accordingly, this Petition is **Admitted**.

Sd/-

CHARANJEET SINGH GULATI
(MEMBER TECHNICAL)

Sd/-

LAKSHMI GURUNG
(MEMBER JUDICIAL)

Akshita, L.R.A.