

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**NEW DELHI BENCH- IV**

**IB No. 199/ND/2018**

**IN THE MATTER OF:**

**M/s. H.V.R. Industries Private Limited  
Having registered office at:  
Front Room, D-76 (S/F) New Multan Nagar,  
Paschim Vihar, New Delhi-110056**

**...PETITIONER/ OPERATIONAL CREDITOR**

**VERSUS**

**M/s. Bindal and Bindal Private Limited  
CIN No. U31909DL2000PTC104271  
HAVING ITS REGISTERED OFFICE AT:  
Kila-3/1, Ground Floor, Shanti Kunj,  
Behind D-4, Ram Mandir**

**... RESPONDENT / CORPORATE DEBTOR**

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

**Order delivered on: 10.03.2022**

**CORAM:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

**MS. SUMITA PURKAYASTHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**Per: Sh. DHARMINDER SINGH, MEMBER-JUDICIAL**

The present Petition is filed under the Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter, The Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter, Rules) by, M/s H.V.R Industries Private Limited (hereinafter "applicant"), with a prayer to initiate the Corporate Insolvency

Resolution Process against M/s Bindal and Bindal Batteries Private Limited  
(hereinafter, Respondent/Corporate Debtor).

2. As per averments made in the petition that the Corporate Debtor approached the applicant company to supply related to chemicals on credit. The applicant supplied the goods on credit 17.02.2014 till 03.10.2014 which were duly received by the Corporate Debtor. It is stated that the Corporate Debtor made part payments towards the invoices raised and last part payment was made on 14.01.2015.
3. The applicant further stated that the corporate debtor issued three cheques totaling Rs. 25,00,000/- towards part payment but the said cheques got dishonored vide banker's memo dated 20.07.2015. Proceeding under Section 138 of Negotiable Instruments ACT has already been initiated against the corporate debtor.
4. As per part-IV the corporate debtor is liable to pay Rs. 55,02,334/- which is pending to be paid by corporate debtor to the applicant.
5. The applicant sent a demand notice under Section 8 of the Code at the registered office of the corporate debtor on 28.12.2017, however the said demand notice returned to its origin with a reason "SHIFTED". The applicant vide clarification dated 17.01.2022, has placed reliance on the order passed by Hon'ble Supreme Court in the matter of *State of Madhya Pradesh Vs. Hiralal & Ors. (1996) 7 SCC 523* and also placed reliance of *Kotak Mahindra Bank Limited Vs. Hermonite Associates Limited 2011 (161) CC 214* and submitted that there should be presumption of service in case of notice sent to the registered office returned back with a remark 'closed office' or 'left without address'.



6. Upon issuance of notice, Ld. Counsel for the respondent appeared and filed reply to the present petition raising the following objections against the admission of the present petition:

- i.** The Corporate Debtor has admitted liability of Rs. 3,10,789/- towards the applicant and claimed that nothing further is payable to applicant as adjustments of scrap batteries supplied by Corporate Debtor to applicant was to be made.
- ii.** The respondent has placed copy of debit note dated 14.10.2014 alongwith receiving of battery scrap dated 04.10.2014 to support its claim. The corporate debtor also claimed that the cheques were given only for the purpose of security. The corporate debtor also denies receiving Demand Notice.

7. The petitioner has filed rejoinder to the reply of respondent and submitted as follows:

- i.** The applicant has denied the allegations of corporate debtor and submitted that the corporate debtor is stating wrong rates and has already given cheques as a part payment to discharge its liability.
- ii.** The applicant denied the fact that scrap batteries were supplied by the Corporate Debtor and adjustments is to be made from the operational debt. It has been pointed out that in case some scrap batteries were supplied it should have been made through proper invoice or G.R and no such supporting documents has been placed by corporate debtor.

  
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iii. In respect of limitation the applicant submitted that the cheques were dishonored on 20.07.2015 and the present petition is filed within 3 years from 20.07.2015, hence, the application is not barred by limitation.

8. We have heard Ld. Counsel for the parties. We have perused the averments made in the application, reply, and rejoinder and written submissions filed by the parties. The corporate debtor has already admitted its liability to pay Rs. 3,10,789/- to the applicant even after alleged adjustments of the Scrap batteries. As far as the objection regarding non-receiving of Demand Notice is concern, the applicant has already proved that the due service of the Demand Notice can be legally presumed as the notice was returned with a remark "SHIFTED".

9. In the facts it is seen that the applicant clearly comes within the definition of Operational Creditor as the Corporate Debtor itself has admitted the fact of receiving goods supplied by the applicant. On a bare perusal of Form -5 filed under Section 9 of the Code read with Rule 4 of the Rules shows that the form is complete and there is no infirmity in the same.

10. An application under Section 9 of the Code is acceptable so long as the debt is proved to be due and there has been occurrence or existence of default. In respect of applications filed before 24.03.2020 what is material is that the default is for at least Rs.1 Lakh. In view of Section 4 of the Code, the moment default is of Rupees one lakh or more, the application to trigger Corporate Insolvency Resolution Process under the Code is maintainable. The corporate debtor has failed to show that there is no debt or default in existence so as to avoid the provisions of the Code.

11. In view of the aforesaid discussion, since the corporate debtor already issued a cheque in order to clear its liability and also admitted its liability to pay Rs. 3,10,789 which is more than Rs. 1 lac, the claim of applicant deserves to be allowed.

12. The applicant has not proposed the name of an IRP. Therefore, this bench appoints Mr. Anshuj Dhingra as the Interim Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA-002/IP-N01152/2021-22/13842 and email id- anshujdhingra@gmail.com. IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.

13. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional namely, Mr. Anshuj Dhingra to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

14. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional

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immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

15. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(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 Financial 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.”*

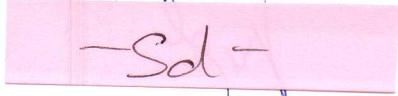
16. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during

the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

17. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

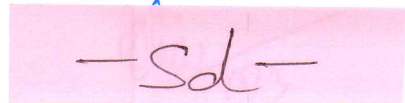


18. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana at the earliest possible but not later than seven days from today.



**(SUMITA PURKAYASTHA)**

**MEMBER (T)**



**(DHARMINDER SINGH)**

**MEMBER (J)**