

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI (COURT NO. IV)**

**Company Petition No. IB- 543/ND/2019**

(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:**

**AVNEET GOYAL**

**PROP. M/s R.B. ENTERPRISES**

**...Applicant/Operational Creditor**

**VERSUS**

**M/s BLACK DIAMOND PULSES PRIVATE LIMITED**

**...Respondent/Corporate Debtor**

**Pronounced on: 07.11.2019**

**DR. DEEPTI MUKESH**

**HON'BLE MEMBER (Judicial)**

**SHRI HEMANT KUMAR SARANGI**

**HON'BLE MEMBER (Technical)**

**For the Applicant:** Mr. Anurag Gupta, CA

**For the Respondent:**

## **MEMO OF PARTIES**

**AVNEET GOYAL**

**PROP. M/s R.B. ENTERPRISES**

Having its office at:

4064, Naya Bazar,

Delhi-110006

**...Applicant/ Operational Creditor**

### **VERSUS**

**M/s BLACK DIAMOND PULSES PRIVATE LIMITED**

Having its registered office at:

2131/1, Nai Basti, Narela,

Delhi-110040

**SH. PHOOL CHAND**

Director of M/s Black Diamond Pulses Private Limited

Having its registered office at:

2131/1, Nai Basti, Narela,

Delhi-110040

**SH. RAHUL GOEL**

Director of M/s Black Diamond Pulses Private Limited

Having its registered office at:

2131/1, Nai Basti, Narela,

Delhi-110040

**...Respondents/Corporate Debtors**

## **ORDER**

### **DR. DEEPTI MUKESH, MEMBER (J)**

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. Avneet Goyal (for brevity 'Applicant'), sole proprietor of M/s R.B. Enterprises with a prayer to initiate the Corporate Insolvency process against M/s Black Diamond Pulses Private Limited (for brevity 'Corporate Debtor').
2. The Applicant, the Operational Creditor namely Mr. Avneet Goyal is a sole proprietor of M/s R.B. Enterprises with PAN No. AADPG4230D, having his office at 4064, Naya Bazar, Delhi-110006.
3. The Respondent namely M/s Black Diamond Pulses Private Limited is a company incorporated on 29.04.2008 under the provisions of Companies Act, 1956 with CIN No. U15310DL2008PTC177407, having its registered office at 2131/1, Nai Basti, Narela, Delhi-110040. The Authorised Share Capital of the Respondent company is Rs. 30,00,000/-

and Paid Up Share Capital of the company is Rs. 30,00,000/- as per Master Data of the company.

4. It is the case of the Applicant that Corporate Debtor approached the applicant for purchase of Dal Masoor. It was orally agreed that upon receiving the goods by Respondent and raising of respective invoices by applicant, the entire payment for such invoices shall be made by the Corporate debtor in a timely manner and in case of delay in making payment, it was specifically agreed that the Corporate debtor will pay the interest as per market rate of association which is 18% p.a. The Corporate debtor placed two purchase orders for a supply of Dal masoor. The Applicant supplied the goods on delivery credit basis and raised invoices against the said supply, the details of which are as follows:

<b>Invoice No.</b>	<b>Date</b>	<b>Qty.</b>	<b>Rate</b>	<b>Invoice Value (Rs.)</b>
1679	17.07.18	450 Katta	@ 3500	Rs. 7,96,579/-
1680	18.07.18	275 Katta	@3500	Rs. 4,70,551/-
	<b>TOTAL</b>			<b>12,67,130/-</b>

5. The aforesaid goods were delivered along with the respective invoices and were duly received by the Corporate Debtor without any demur/ complaint. The Applicant requested the Corporate Debtor to remit payment and clear all the outstanding dues at earliest.
6. On failure to pay the outstanding dues by the Corporate debtor, the applicant sent a demand notice dated 18.07.2018 under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Corporate debtor asking them to make the entire payment of Rs. 12,67,130/- (Rupees Twelve Lakhs Sixty- Seven Thousand One Hundred and Thirty only) along with interest @ 18% p.a. within 10 days from receipt of the notice, failing which the applicant shall initiate the Corporate Insolvency Resolution process against the Corporate debtor. The said notice was served on the Corporate debtor vide email dated 26.07.2018 at the registered email address as reflected in master data.
7. Despite the receipt of demand notice under Section 8 of the Code, the Corporate debtor 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.

8. The applicant has filed an affidavit under Section 9(3)(b) stating that no notice of dispute from the Corporate debtor is received.
9. The applicant has stated that total debt due and payable is Rs. 12,67,130/- (Rupees Twelve Lakhs Sixty- Seven Thousand One Hundred and Thirty only) along with interest @18% p.a. from date of default i.e. 18.07.2018 till filing of present application i.e. 28.02.2019.
10. The Corporate debtor has filed its reply and raised objections that no order as claimed by applicant has ever been placed by the Corporate debtor with the Applicant and no goods were ever supplied by the Applicant and there is no contract between them. It is further submitted that the documents attached with the application are false and fabricated.
11. It is the case of the Corporate debtor that the Applicant has raised the invoices on 18.07.2018 and sent the legal notice also on the same date i.e. 18.07.2018. Further there is no agreement regarding the payment of interest @18% p.a. in case

of default. Therefore, the debt amount as mentioned in application is not payable by the Corporate debtor.

12. It is pertinent to note that the applicant has placed on record all the tax invoices and proof of service of demand notice on the registered email address of the Corporate debtor. There is no documentary evidence on record to show that any dispute was ever raised against the demand notice nor any correspondence is placed on record with respect to the demand notice. The Corporate debtor has not brought forward any evidence in support of the said contention that the invoices of the applicant are forged and fabricated, nor any document to show the pre-existing dispute or any proceedings pending for the said so called fabrication of invoices. It is further seen that the said dispute is raised for the first time after Section 9 application is filed without any substantial supporting evidence.
13. Once the debt shown as due, it is for Corporate debtor to prove that there are no outstanding dues to be paid to the applicant. There has been much cloud in the submission of the Corporate debtor. Therefore, without any specific details, material

particulars and evidence of the facts on record of the existence of a dispute cannot be sustained.

14. In **“Innoventive Industries Ltd. (Supra)”**, the Hon’ble Supreme Court held that pre-existing dispute is the dispute raised before demand notice or invoices was received by the ‘Corporate Debtor’. Any subsequent dispute raised while replying to the application cannot be taken into consideration to hold that there is a pre-existing dispute.
15. In **“Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 SCC On Line SC 1154”**, Hon’ble Supreme Court held:

*“40..... 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.”*

In the present case, there is no such dispute which is pre-existing, albeit a hypothetical or illusory dispute has been raised by the ‘Corporate Debtor’ and the same is a moonshine defense.

16. The registered office of Corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
17. The present application is filed on 28.02.2019 which is within the period of limitation.
18. 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.

19. The Operational creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoints Mr. Mahesh Taneja having registration No. IBBI/IPA-002/IP-N00739/2018-2019/12326 and email address is [maheshtaneja111@yahoo.in](mailto:maheshtaneja111@yahoo.in) and contact number is 9968489222, 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.
20. 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.
21. In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.
22. The applicant/Operational Creditor shall deposit a sum of Rs. 2 lakhs in a separate account towards the immediate expenses

to be incurred and accounted for by the IRP. The amount shall be reimbursed to Operational Creditor after the COC has approved the expenses of the IRP before appointing Resolution Professional.

23. The registry is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this application must be notified.

Sd/-

**(SH. HEMANT KUMAR SARANGI)**  
**MEMBER (TECHNICAL)**

sd/-

**(DR. DEEPTI MUKESH)**  
**MEMBER (JUDICIAL)**