NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)

CP (IB) No.223/Chd/Pb/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of :

Shri Vardhman Rice Mills Private Limited
(Through Director, Sh. Ram Bhaj Jain)
having its registered office at
LD-1, Pitampura, Delhi – 110034
PAN : AADCC6222G

…Petitioner/Operational Creditor

Versus

J J Solvex Private Limited
having its registered office at
Bhawanigarh Road, Samana,
District Patiala, Punjab - 147101

…Respondent/Corporate Debtor

Judgement delivered on: 10.02.2020

Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)

For the Petitioner : Mr. Vaibhav Sahni, Advocate proxy counsel for Mr. Nahush Jain, Advocate

For the Respondent : Ms. Swati Saluja, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGEMENT

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short hereinafter referred to as '**Rules**') by Shri Vardhman Rice Mills Private Limited **(Operational Creditor),** through its Director Mr. Ram Bhaj Jain, for initiating Corporate Insolvency Resolution Process **(CIRP)** in the case of M/s J J Solvex Private Limited **(Corporate Debtor)**. The Corporate Identity Number (CIN) of the operational creditor as mentioned in Part-I of Form-5, is U01403DL2009PTC188059 and the address of its registered office is LD-1, Pitampura, Delhi DL - 110034. There is an affidavit in support of the contents of the application which is from pages 10 to 12 of the petition. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. M/s J J Solvex Private Limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the provisions of Companies Act, 2013 with authorized share capital of ₹1,00,00,000/- and paid up share capital of ₹71,00,000/-. The CIN of the respondent-corporate debtor is U15141PB1993PTC013005 and its registered office is situated in Patiala in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure A-2 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the petitioner-operational creditor has supplied Paddy to the Corporate Debtor

from 24.06.2017 to 27.06.2017 and raised the invoices/bills accordingly. Copy of invoices and transportation/bilty particulars are placed as Annexure A-5 & A-6 respectively. It is stated that the principal amount of ₹5,72,532/- is still outstanding against the said invoices/bills and have remained unpaid till date. It is also stated that the said debt fell due from the respective due dates of invoices (i.e. 14 days from date of invoice) as mentioned in the calculation sheet. Copy of the calculation sheet is at Annexure A-7 of the petition. As per Part IV of Form 5, the total amount claimed to be in default is ₹6,96,985/- (inclusive of ₹1,24,453/- as interest @18%).

4. It is stated that the respondent-corporate debtor have failed to discharge its obligations towards the applicant-operational creditor, inasmuch as have failed to make the payment due to the applicant-operational creditor.

5. A demand notice in Form No.3 dated 01.10.2018 is stated to be served upon the Corporate Debtor by speed post (Annexure A-9 of the petition). The demand notice was accompanied by the copy of duly issued invoices in the name of corporate debtor, transportation/bilty particulars, calculation sheet and ledger account of the Operational Creditor to substantiate the said date of default. Copies of these enclosures are attached at pages 23 to 49 of the petition. The corporate debtor vide this demand notice was called upon to repay the total unpaid operational debt (in default) of ₹6,96,985/- (principal amount of ₹5,72,532/- and interest @18% thereon of ₹1,24,453/- till 23.09.2018 respective due date of invoices) within 10 days from the receipt of the notice. Copy of postal receipt is at page 55 of the petition.

6. The corporate debtor in its reply dated 26.10.2018 to the demand notice dated 01.10.2018 (Annexure-10 of the petition) has not denied

its liability towards the corporate debtor and stated its inability to clear the debt owing to acute liquidity crunch. The Corporate Debtor also requested one month time to clear the entire outstanding and requested to do not take any harsh action towards them which can harm their reputation in the market.

7. It is deposed by the Operational Creditor that till the date of filing of the present application no payment has been received during this period and the reply received in any case was sent after the stipulated period of 10 days. It is also deposed that there is no pre-existing dispute between the parties at all with regards to the unpaid operational debt. The affidavit is appended with the petition from pages 58 to 59.

8. It is submitted that the respondent-corporate debtor failed to comply with the demand notice dated 01.10.2018 nor made any outstanding payment and hence this petition.

9. In Part III of Form 5, the operational creditor has proposed Mr. Vishawjeet Gupta, bearing Registration No.IBBI/IPA-002/IP-N00215/2017-18/10667 as the Interim Resolution Professional. The consent of the proposed IRP is furnished in Form No. 2 is placed at Annexure A-4, in which he has stated that he is not currently serving as an Interim Resolution Professional in any of the proceedings. It is also stated that there are no disciplinary proceedings pending against the proposed Interim Resolution Professional with the Insolvency and Bankruptcy Board of India or with the Institute of Insolvency Professionals of ICSI.

10. Notice of this petition was issued to the Corporate Debtor on 30.05.2019 to show cause as to why this petition be not admitted.

11. On the last date of hearing, the learned counsel on behalf of the respondent submitted that the Corporate Debtor has no objection if, CP is admitted as Corporate Debtor is not in a position to pay the debt to the petitioner.

12. We have heard the learned counsel for the corporate debtor and operational creditor and have also perused the records.

13. The first issue for consideration is whether the demand notice in Form No.3 dated 01.10.2018 was properly served. The demand notice dated 01.10.2018 was sent at the address as per the master data at Page No.14 of the petition in which the registered office is shown as Bhawanigarh Road Samana, Distt. Patiala, Punjab - 147101. The postal receipt is found to be attached with Annexure A-9 at page 55 of the petition. It could also be seen that the Corporate Debtor has replied vide letter dated 26.10.2018 (Annexure A-10) to the demand notice dated 01.10.2018.

14. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor has neither filed any reply to the petition nor has disputed the liability towards the operational creditor. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor. It is also observed that on the last date of hearing, learned counsel for the respondent has admitted its liability and submitted that this CP may be admitted.

15. The provisions of Section 9(5)(i) of the Code are as follows:-

> *"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

(a) the application made under sub-section (2) is complete;

(b) there is no payment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against
any resolution professional proposed under sub-section (4), if any."

16. The Hon'ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited,*** **(2018) 1 SCC 353*, Civil Appeal No. 9405 of 2017***, held as under:-

"51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(ii)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. 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.”*

17. We have gone through the contents of the application filed in Form No.5 and find the same to be complete. As discussed above, there is an total unpaid operational debt (in default) of ₹6,96,985/- (principal amount of ₹5,72,532/- and interest @18% thereon of ₹1,24,453/- till 23.09.2018 respective due date of invoices). Copy of Ledger Account of the corporate debtor in the books of the financial creditor for the period of 01.04.2017 to 31.03.2018 (Annexure A-8 of the petition) has been filed. The copy of invoices has been filed at Annexure A-5 of the petition. Copy of Bank Statement of Operational Creditor has been filed as Annexure A-11. Moreover, demand notice in Form No.3 was also sent on 01.10.2018 stating that the amount due from the corporate debtor to the operational creditor is ₹6,96,985/- (including Principal amount of ₹5,72,532/- + interest @18% thereon of ₹1,24,453/- till 23.09.2018 respective due date of invoices). As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 23.04.2019 (at pages 58 to 59 of the petition) has been placed by the operational creditor stating that demand notice issued on 01.10.2018 by speed post. It is also stated that a reply dated 26.10.2018 to the said demand notice was sent by Corporate Debtor, where the Corporate Debtor while admitting the transactions, tried to gain time on account of its inability to pay the debt due to the petitioner. We have held above that the demand notice in Form No.3 was properly delivered by the Operational Creditor and no pre-existing dispute is proved.

18. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till

date. It is also observed that the conditions under Section 9 of the Code stand satisfied. The applicant-operational creditor states that from the abovementioned fact it is clear that the liability of the respondent-corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lac by the respondent-corporate debtor.

19. 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 CIRP process in the case of the Corporate Debtor M/s J J Solvex Private Limited and direct moratorium and appointment of Interim Resolution Professional as below.

20. 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.

21. 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.

22. 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.

23. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vishawjeet Gupta and there is nothing adverse against him. In view of the above, we appoint Mr. Vishawjeet Gupta, Registration No. IBBI/IPA-002/IP-N00215/2017-18/10667, R/o #51, Adarsh Enclave, Dhakoli, Distt. Mohali Punjab – 160104, Mobile No.9815284474, E-mail: vishawjeetgupta@gmail.com, as the Interim Resolution Professional with the following directions: -

i.) The term of appointment of Mr. Vishawjeet Gupta 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 constitution of the Committee; and vii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/-	Sd/-
(Pradeep R. Sethi)	(Ajay Kumar Vatsavayi)
Member (Technical)	Member (Judicial)

Feb. 10, 2020
Anchal