

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH**

CP 4538 (IB)/MB/2018

Under Section 9 of the I&B Code, 2016

In the matter of

Uday Yeshwant Nayak

...Operational Creditor/ Applicant

v/s

Ghodawat Consumer Product LLP

...Corporate Debtor/Respondent

Order Dated 10th October 2019

Coram: Hon'ble Member (Judicial): Mr V.P. Singh

Hon'ble Member (Technical): Mr Rajesh Sharma

For the Applicant: CA Vishal G. Jain.

For the Respondent: Adv. Prathamesh Bhargude, Ranjit D. Shinde.

Per V.P Singh, Member (Judicial)

ORDER

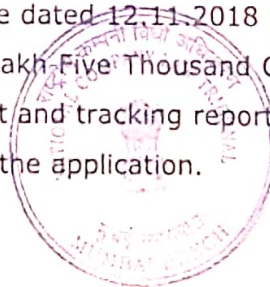
1. This is an application being CP 4538/2018 filed by **Uday Yeshwant Nayak**, Operational Creditor/Applicant, under section 9 of Insolvency & Bankruptcy Code, 2016 (**I&B Code**) against **Ghodawat Consumer Product LLP/** Corporate Debtor, for initiating Corporate Insolvency Resolution Process (**CIRP**) claiming a default of ₹9,05,000/- (Rupees Nine Lakh Five Thousand Only) for the services rendered by the Applicant to the Corporate Debtor during the period of employment of the Applicant .
2. This application is filed by Mr Vishal Jain, the Chartered Accountant of the Applicant being duly authorised, vide Letter of Authority dated 30.11.2018, which is annexed to the Application.
3. The Applicant submits that he was appointed as the Head of Sales and Marketing- Rice Division (Grade-National Sales Head B-1) on a pay scale of Rs. 36,00,000/- per annum vide appointment letter dated 11.04.2016. Copy of the appointment letter is annexed to the application.



4. The Applicant resigned from the employment of the Corporate Debtor vide email dated 11.3.2017, and the said resignation was accepted by the Corporate Debtor vide reply email dated 14.3.2017. However, the Corporate Debtor required the applicant to comply with the conditions which were not possible to be performed, vide the email mentioned above. Copies of the resignation relating email and the reply email are annexed to the application.
5. The Applicant states that despite completing the work allotted to him and handing over the work vide email dated 15.04.2017, the corporate debtor failed to clear his dues. The Table of computation of the default claimed is reproduced hereinbelow.

Gross Salary for March 2017, due on 10.04.2017	₹2,50,000/-
Gross Salary for April 2017 due on 10.05.2017	1,25,000/-
Annual performance Incentive due on 10.05.2017	6,00,000/-
Liquidated Damages, 3 months basic pay @ 1,00,000/- or part thereof. (Part= Ratio of 14 days short served to 60 days notice period (25 days short served less 11 days PL)	70,000/-
Total amount in default	9,05,000/-

6. The Applicant has demanded his payments vide reminder emails dated 24.06.2017, 10.07.2017, 02.10.2017 and 20.03.2018. Copies of the reminder emails mentioned above are annexed to the application.
7. The Applicant issued Demand Notice dated 12.11.2018 demanding a sum of ₹9,05,000/- (Rupees Nine Lakh Five Thousand Only). Copies of the demand Notice, postal receipt and tracking report establishing the proof of service are annexed to the application.



8. The Applicant has filed an affidavit in compliance of section 9(3)(b) of the Code, dated 23.11.2018, stating that the applicant has received an invalid notice of dispute by the Corporate Debtor and has further stated that the Corporate Debtor has not made any payments towards the outstanding dues.
9. The Corporate Debtor responded to the Demand Notice dated 12.11.2018 vide reply dated 23.11.2018. The Corporate Debtor in its reply has attempted to deny the due amounts on flimsy and spurious grounds. The said reply appears to be an afterthought, just to create a defence, on receiving the Demand Notice. The Corporate Debtor has failed to point out a pre-existing dispute about the services received from the applicant. Copy of the reply notice dated 23.11.2018 is annexed to the application.
10. The Counsel for the Corporate Debtor in its affidavit in reply states that the Applicant has not served a notice period of 2 months and has only served for 1 month and 5 days after the notice, and therefore the Corporate Debtor is not liable to make the said payment. Further, it is not the Corporate Debtor, but the Company has suffered losses due to the Applicant's inefficiency. However, it appears to be an afterthought to deny the Applicant his salary for the period he has worked.
11. We have heard the parties and perused the record.
12. On perusal of the appointment Letter of the Applicant along with the Salary Structure; the Resignation relating Email; the Reply Email and the Email reminders issued by the Applicant seeking his dues; it appears that the Corporate Debtor's has spurious defence to show an existing dispute, which is an attempt to deny an employee his legitimate dues.
13. It is established that there is an operational debt as per section 5(21) of the Code, 2016 and default of more than Rupees One Lakh is proved. The corporate debtor has not placed any document on record to establish the pre-existing dispute. It is pertinent to mention that the Hon'ble Supreme Court in the case of "*Mobilox Innovations Private Limited v. Kirusa Software Private Limited*, (2018) 1 Supreme Court Cases 353, held:



"All that the adjudicating authority is to see at the stage of admitting/rejecting the application 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 authority does not need to be satisfied that the defence is likely to succeed so long as the dispute is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application, Moreover the existence of the dispute and /or the suit or arbitration proceeding must be pre-existing i.e It must exist before the receipt of the demand notice or invoice"

14. In the light of the decision mentioned supra, and the facts of the Application in hand, it is observed that no dispute was in existence before the receipt of Demand Notice. The application has been filed well within limitation. The application is complete hence deserves to be admitted.
15. The Applicant has proposed the name of **Mr. Anurag Jain** a registered insolvency resolution professional bearing Registration No. **(IBBI/IPA-001/IP-P01049/2017-18/11732)** to act as **Interim Resolution Professional**, to carry out the functions as mentioned under I&B Code along with declaration of the proposed IRP, in Form 2, that no disciplinary proceeding is either pending or initiated against him.
16. The Application under section Section 9 of I&B Code, 2016 filed by the Operational creditor for initiation of CIRP in prescribed Form No.5, as per the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 and is complete. The existing operational debt of more than rupees One lakh against the corporate debtor and its default is also proved. Accordingly, the petition filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.



ORDER

This Application filed under Section 9 of I&B Code, 2016, filed by **Uday Yeshwant Nayak**, against **Ghodawat Consumer Product LLP**, for initiating corporate insolvency resolution process is at this moment **admitted**. We further declare moratorium u/s 14 of I&B Code with consequential directions as mentioned below:

- I. That this Bench as a result of this prohibits:
 - 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 activity 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 possession of the corporate debtor.
- II. That 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.
- III. That the provisions of sub-section (1) of Section 14 of I&B Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IV. That the order of moratorium shall have effect from the date 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 of I&B Code or passes



an order for the liquidation of the corporate debtor under section 33 of I&B Code, as the case may be.

V. That the public announcement under section 13 of the theI&B Code regarding initiation of corporate insolvency resolution process should be made immediately.

VI. That this Bench at this moment appoints **Mr Anurag Jain**, a registered insolvency professional is having Registration Number **(IBBI/IPA-001/IP-P01049/2017-18/11732)** as Interim Resolution Professional to carry out the functions as mentioned under I&B Code. The fee payable to IRP/RP shall comply with the IBBI Regulations/Circulars/Directions issued in this regard.

17. The Registry is at this moment directed to immediately communicate this order to the Financial Creditor, the Corporate Debtor, and the Interim Resolution Professional even by way of email or WhatsApp. **Compliance report of the order by Designated Registrar is to be submitted immediately.**

Sd/-
RAJESH SHARMA
Member (Technical)

Sd/-
V.P. SINGH
Member (Judicial)

10th October 2019



Certified true copy
of cost
18/10/19
B. A. Patel
Deputy Registrar
National Company Law Tribunal
Mumbai Bench