

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

**CP (IB) No.361/Chd/Pb/2018**

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

**In the matter of:**

Sh.Gunit Pal Singh Sidana, Sole Proprietor,  
 M/s Sidana Enterprises, a Proprietorship Firm,  
 having its office at # 22, Friends Industrial Estate,  
 Opp. Aarti Steels, Focal Point, Sherpur, Ludhiana,  
 Punjab – 141 003.

....Petitioner/Operational Creditor.

Versus

M/s Bhandari Hosiery Exports Limited,  
 Having its registered office at Bhandari  
 House, Village Meharban, Rahon Road,  
 Ludhiana - 141 007.

...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. Harsh Garg, Advocate

For the Respondent : 1) Mr. S.P.Sharma, Advocate  
 2) Mr.Arpit Jain, Practising Company  
 Secretary.

**Per: Pradeep R. Sethi, Member (Technical)**

**JUDGEMENT**

The instant application is filed by Sidana Enterprises  
 (**Sidana**), a proprietorship firm through its sole proprietor Shri Gunit Pal Singh  
 Sidana under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**)

read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Bhandari Hosiery Exports Ltd. (**Bhandari Hosiery**). The application is signed by Shri Gunit Pal Singh Sidana sole proprietor of Sidana Enterprises. His affidavit verifying the contents of the application is at page 17 of the petition. As per the master data at Annexure 1 of the petition, the registered office of Bhandari Hosiery is in Ludhiana. Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. It is stated in part IV of Form No.5 that various chemicals and dyes were supplied by Sidana to Bhandari Hosiery on verbal orders placed by the Directors of Bhandari Hosiery with a promise to make payment for each invoice soon after delivery of goods. It is stated that Sidana and Bhandari Hosiery were in trade with each other from 2014 onwards and that Bhandari Hosiery used to make payment on bill to bill basis and has cleared the payments of all other invoices except for the ones ranging from 19.01.2016 to 24.06.2016 and till today an amount of Rs.2,20,116/- qua these invoices is still due. The first date of default is stated to be 19.01.2016. It is submitted that to the surprise of Sidana, an undated letter was sent by Bhandari Hosiery to Sidana in the month of June, 2018 vide which it was alleged that the chemicals which were supplied to Bhandari Hosiery two years ago were found to be defective and thereby, a debit note to the extent of Rs.2,15,753/- were issued by Bhandari Hosiery unilaterally. It is stated that since Bhandari Hosiery disputed the legitimate outstanding amount and finding no other alternative, Sidana sent a demand notice dated 20.08.2018 and notice of dispute dated 28.08.2018 was received from Bhandari Hosiery claiming that there was a pre-

existing dispute. It is submitted that the dispute raised by Bhandari Hosiery is a sham and moonshine defence and that during the entire trading process between Sidana and Bhandari Hosiery and even two years thereafter, no dispute regarding the quality was ever raised by Bhandari Hosiery and nor are any details given regarding material claimed to be defective.

3. In Part III of Form No.5, no Interim Resolution Professional (IRP) has been proposed.

4. Vide order dated 14.11.2018, Sidana was directed to file affidavit stating therein that the debit note of May, 2018 sent by Bhandari Hosiery was not received by Sidana and whether any purchase order was raised by Sidana for supply of goods. In compliance thereof, Sidana filed affidavit vide diary No.4541, dated 26.11.2018 stating that no debit note was ever received by Sidana and only an undated letter was received from Bhandari Hosiery in the month of June, 2018 and that Bhandari Hosiery only raised the orders for purchase of goods verbally and had never sent any written purchase orders.

5. Vide order dated 07.12.2018, notice of the petition to Bhandari Hosiery to show cause as to why the petition be not admitted was directed to be issued.

6. The reply was filed vide diary No.4723, dated 12.09.2019. In para 3 of the reply, it was stated that Sidana being a proprietorship concern has no locus-standi to file the present petition and that no suit can be instituted by a sole proprietorship concern in its name and since the petition is instituted in the name of the proprietorship concern, it was to be dismissed. Vide order

dated 29.10.2019, it was concluded that the details given in Form 5 that the application is from M/s Sidana Enterprises, a proprietorship concern through its sole proprietor Mr.Gunit Pal Singh Sidana is not an illegality, but at best may be called to be not in proper order and thereby the application can be said to be incomplete for the purpose of Section 9 (5) (ii) (a) of the Code. In view of the proviso of Section 9 (5) (ii), notice was given to the applicant to rectify the defect in giving the name of the operational creditor in Form 5 within seven days.

7. The compliance affidavit was filed vide diary No.6135, dated 05.11.2019 and amended Form 5 was filed in which the operational creditor was shown as “Shri Gunit Pal Singh Sidana, Sole Proprietor, M/s Sidana Enterprises, a proprietorship concern.” The other details in the amended Form 5 are stated to be the same as given in the Form 5 originally filed.

8. The replication was filed vide diary No.5464, dated 10.10.2019.

9. We have heard and considered the arguments of the learned counsel for Sidana and Bhandari Hosiery and have also perused the record carefully.

10. The main issue involved in the present case is whether a notice of dispute has been received by Sidana and the application is required to be rejected on this ground. In **“Mobilox Innovation Private Limited Vs. Kirusa Software Private Limited (2017) 140 CLA 123 (SC)**, it has been held in para 40 thereof as under:

*“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) (2) (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.”*

11. The facts of the present case are being examined with reference to the judgment of the Hon'ble Supreme Court (supra).

12. Admittedly, before issue of the demand notice dated 20.08.2018 under Section 8 of the Code, Bhandari Hosiery had sent an undated letter to Sidana in the month of June, 2018 stating as follows:-

*We had purchased some chemicals in past years from you. The said chemicals were found to be defective and with usage of this defective material, our fabric cloth became defective & unusable.*

*We inform you that you supplied us deliberately & intentionally defective material causing great business loss to us. We had approached and apprised you number of times about the defective material supplied by you to us and about the losses caused to us. But you have never taken the matter seriously. Now we are debiting to your account of Rs.2,15,753.00.*

*So through this letter, we request you to approach the company and settle the dispute about the losses. In case you do not approach the company within seven days of receipt of this notice, the matter will proceed in accordance with clause 7 of our Purchase Order.*

*Kindly plan your visit and inform us accordingly.*

13. It is pleaded by Sidana that the last material supplied to Bhandari Hosiery was in June, 2016 and the dispute regarding the quality of chemicals was raised for the first time after two years in June, 2018 and that the details regarding the material claimed to be defective and when it was supplied, was not mentioned.

14. In the reply filed by diary No.4723, dated 12.09.2019, Bhandari Hosiery has submitted that Sidana used to send defective chemical and excess rates of chemical for which the debit notes for deduction of excess rates charged and for defective material were duly entered by Bhandari Hosiery in its books of account, but for the reasons best known to Sidana, it never entered the difference of rates and amount debited for defective chemicals in its books of account. Reference has been made to debit note for Rs.636/- debited in the account of Sidana by Bhandari Hosiery on 15.05.2014 and to similar debits on 29.06.2015 (Rs.573/-), 09.07.2015 (Rs.343/-), 16.04.2016 (Rs.721/-), 05.05.2016 (Rs.1442/-), 14.05.2016 (Rs.721/-), 28.05.2016 (Rs.721/-), 27.06.2016 (Rs.848/-). It is submitted in the reply that Sidana has only accounted for the first debit note of Rs.636/-.

15. We find that the debit notes contain complete details of excess rates charged and the bill number. For example, the debit of 27.06.2016 of Rs.848/- gives the details as "Being the amount debit in your account due to excess rate in this qty 100 kg @ 8/- AGT Bill No.003227, dated 24.06.2016."

16. Seen in the above context, the undated letter received by Sidana from Bhandari Hosiery in June, 2018 does not give any details

whatsoever of the particular consignment, which was found to be defective. We may add here that in the replication, Sidana has stated that the dispute regarding difference of rates was raised for the first time in the reply and that in the earlier letter received in June, 2018 and the reply to the notice of demand did not make any reference to deduction of excess rates charged and that there is no explanation, how Bhandari Hosiery assessed the figure of Rs.2,15,783/-.

17. In the undated letter received in June, 2018, Bhandari Hosiery has stated that the chemicals supplied were found to be defective and with usage of this defective material, the fabric cloth became defective and unusable. However, no evidence to support this contention has been filed. Moreover, the letter states that Sidana was apprised number of times about the defective material supplied and the losses caused, but no evidence in this regard has been adduced.

18. It has been pleaded by Bhandari Hosiery that Sidana has wrongly stated in its petition that the chemicals were supplied to Bhandari Hosiery on verbal order placed by the Directors. It is submitted that the copies of some of the invoices attached with the petition contained the number of the purchase orders. It is also submitted that it was agreed between Sidana and Bhandari Hosiery that in case of defective or inferior quality of chemicals, Sidana was either to replace the chemical or Bhandari Hosiery would not only hold the payment, but also deduct the total amount raised through various invoices for the defective chemical supply and for the losses suffered and that

due to the aforesaid reasons, Bhandari Hosiery stopped the payment of Sidana.

19. The copies of some of the purchase orders have been placed at Annexure A-11 (Colly) of the reply. The learned counsel for Bhandari Hosiery has not brought to our attention any clause in the purchase order by which Sidana was required to replace defective or inferior quality of chemicals/ Bhandari Hosiery had the right not only to hold the payment, but also deduct the total amount raised through various invoices for the defective chemical supply and for the losses suffered. No contract stipulating the above conditions has been brought to our notice.

20. In the undated letter received in June, 2018, it is finally stated that in case Sidana does not approach Bhandari Hosiery within seven days of receipt of the notice, the matter will be proceeded in accordance with clause 7 of the purchase order. However, clause 7 of the purchase order only states that the discrepancies, if any, should be brought to notice immediately in writing, but not exceeding three days of the approval of the purchase order. Therefore, the action proposed to be taken as per the undated letter received in June, 2018 is not clear.

21. In view of the above discussion, we conclude that the dispute sought to be raised on the basis of undated letter received in June, 2018 is a patently feeble legal argument or an assertion of fact unsupported by evidence and is spurious, hypothetical or illusory. Therefore, the pre-existence of the dispute cannot be accepted.

22. Section 9 (5) (i) of the Code is as under:-

- (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.*

23. As regards the application in Form No.5, the only objection taken by Bhandari Hosiery was in respect of the petition being instituted in the name of the proprietorship concern. We have discussed above that this objection was considered and vide order dated 29.10.2019, opportunity was given to Sidana to rectify the defect in the application and the defect was rectified vide diary No.6135, dated 05.11.2019. The copies of invoices as well as the ledger account of Bhandari Hosiery in the books of Sidana have been enclosed with the petition to show that debt of Rs.2,20,116/- is outstanding and in default. It is discussed above that demand notice dated 20.08.2018 was sent by Sidana under Section 8 of the Code and notice of dispute was received vide letter dated 28.08.2018. We have discussed that the notice cannot be treated as a notice of pre-existing dispute. There is no proposal for appointment of IRP and, therefore, the pendency of disciplinary proceedings pending against the proposed Resolution Professional does not arise.

24. The conditions provided for in Section 9 (5) (i) of the Code are satisfied in the present case. We therefore, admit the application and direct

the initiation of CIRP in the case of Bhandari Hosiery Exports Limited. Directions regarding moratorium and appointment of IRP are given below.

25. 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 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.

26. 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

27. 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.

28. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for corporate insolvency resolution process is made by an operational creditor and –

*“a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*  
*b) xxxxx”*

29. Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

30. In this regard a letter bearing **File No.25/02/2020-NCLT dated 07.01.2020** has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of **letter No. IBBI/IP/EMP/2019/01 dated 31.12.2019** along with the guidelines and the

panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.01.2020 to 30.06.2020. **We Select Mr.Davinder Singh Gandhi appearing at Serial No.5 of the panel to be appointed as Interim Resolution Professional.**

31. The Law Research Associate of this Tribunal has checked the credentials of **Mr.Davinder Singh Gandhi** and there is nothing adverse against him. In view of the above, we appoint **Mr.Davinder Singh Gandhi**, bearing Registration No.IBBI/IPA-001/IP-P00345/2017-2018/10646, 127, Panchsheel Vihar, Barewal Chungi Road, Ludhiana, Punjab – 141012, e-mail id [davindersinghgandhi@gmail.com](mailto:davindersinghgandhi@gmail.com) as the Interim Resolution Professional with the following directions:-

- i) The term of appointment of **Mr.Davinder Singh Gandhi** 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 financial 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/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Pronounced in open Court.

Sd/-  
(Pradeep R. Sethi)  
Member (Technical)

February 10, 2020  
Ashwani