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

CP (IB) No. 254/Chd/Hry/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

<u>In the matter of :</u>

Abhimanyu Jaiswal
Sole Proprietor of S.R. Electronics
having its office at
Near Sarna Hotel, Mela Maidan Road,
Lakhimpur Kheri – 262701
Uttar Pradesh

…Petitioner/Operational Creditor

Versus

SPG Global Distribution Private Limited
having its registered office at
B-363, 364 & 365, Nehru Ground, NIT,
Faridabad, Haryana – 121001

…Respondent/Corporate Debtor

Judgement delivered on: 06.12.2019

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

For the petitioner-Operational Creditor : Mr. Rahul Srivastava, Advocate

For the respondent-corporate debtor : Mr. Anshul Sharma, Advocate

<u>Per: Ajay Kumar Vatsavayi, Member (Judicial)</u>

<u>JUDGEMENT</u>

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 Abhimanyu Jaiswal Sole Proprietor of S.R. Electronics (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of SPG Global Distribution Private Limited (**Corporate Debtor**). The PAN Card Number of the operational creditor is AVPPJ8391R and the address of its registered office is Near Sarna Hotel, Mela Maidan Road, Lakhimpur Kheri-262701, Uttar Pradesh. There is also an affidavit filed by Mr. Abhimanyu Jaiswal in support of the contents of the application. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. SPG Global Distribution 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 ₹47,96,750/-. The CIN of the respondent-corporate debtor is U52100HR2011PTC043937 and its registered office is situated in Faridabad in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at page No. 27 of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the corporate debtor is a vendor of ZTE mobiles and the operational creditor is a distributor-retailer. The operational creditor was stated to be appointed as the super-stockist of the corporate debtor pursuant to which the corporate debtor was required to supply ZTE Mobiles to the operational creditor as per the request/demand by the operational creditor from time to time. Further, the operational creditor placed orders for ZTE Mobiles phones and made advance

payments towards supply of ZTE mobiles. However, there has been a failure on part of the corporate debtor to supply the said mobiles.

4. It is stated that on account of the failure by the corporate debtor to supply the mobile phones to the operational creditor, the corporate debtor undertook to repay the said amounts. In this regard, the operational creditor addressed an email dated 28.02.2018 to the corporate debtor confirming the understanding between the parties that the corporate debtor would repay the entire amounts and acknowledging the receipt of the cheques issued by the corporate debtor in that regard. In response, the corporate debtor addressed an e-mail dated 08.03.2018 confirming that they had issued 2 cheques amounting to ₹18,55,543/- towards payment of dues. However, both the cheques were dishonoured due to insufficiency of funds upon representation and the same was communicated to the corporate debtor.

5. Accordingly, the corporate debtor furnished a copy of the ledger account maintained by it in respect of the transactions with the operational creditor certifying the amounts due and payable and undertook to clear all dues with interest at the earliest. It is to be noted that the said ledger account clearly shows the total amount due as ₹22,78,208/- and the corporate debtor issued four cheques between the period 11.06.2018 and 02.07.2018 for the aggregate sum of ₹22,78,708/- towards discharge of its liability. It is stated that the cheques were again dishonoured due to insufficiency of funds.

6. It is submitted that the operational creditor time and again has requested the corporate debtor to clear its dues, but in vain.

7. It is stated that the corporate debtor in order to avoid its liability did not respond to the phone calls and e-mails from the operational creditor and consequently, the operational creditor was forced to issue demand notice dated 17.12.2018 under Section 8 of the Code as prescribed in Form 3. Vide this demand notice the corporate debtor was called upon to pay the total debt of ₹22,78,708/- in order to clear its liability towards the operational creditor. The demand notice was stated to be accompanied by bank account statement, ledger statements, copy of e-mails dated 28.02.2018 and 08.03.2018, copy of cheques issued pursuant to e-mails, copy of authorization vide e-mail dated 12.12.2018, super stockist agreement between operational creditor and the corporate debtor. The postal receipts alongwith the tracking reports showing successful delivery of the demand notice are appended with Annexure H of the petition.

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

9. Notice of this petition was issued to the Corporate Debtor on 06.06.2019. Mr. Anshul Sharma, the learned counsel filed memo of appearance on behalf of the respondent-corporate debtor.

10. The respondent has filed short reply vide Diary No. 5178 dated 27.09.2019, wherein it is specifically stated in Para No. 8 that as per the ledger account maintained by the respondent-corporate debtor in respect of the petitioner was certified and provided to applicant on 26.06.2018 acknowledging the existing debt and liability was of ₹22,78,708/-.

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

12. The first issue for consideration is whether the demand notice in Form No. 3 dated 17.12.2018 was properly served. The demand notice dated 17.12.2018 was sent at the address as per the master data at Page No. 27 of the petition in which the registered office is shown as B-363, 364 & 365, Nehru Ground, NIT, Faridabad, Haryana – 121001. Also, the postal receipts alongwith the tracking reports showing successful delivery of the notice are found to be attached with Annexure H of the petition. Therefore, the statutory demand notice was duly delivered upon the corporate debtor.

13. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent in its reply dated 27.09.2019, wherein it is specifically stated in Para No. 8 that as per the ledger account maintained by the respondent-corporate company in respect of the petitioner was certified and provided to applicant on 26.06.2018 acknowledging the existing debt and liability was of ₹22,78,708/-. Thus, there is no dispute as to the liability between the corporate debtor and the operational creditor.

14. 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."*

15. 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."*

16. 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 unpaid operational debt amounting to ₹22,78,708/-. Copy of Ledger Account of the operational creditor in the books of the corporate debtor for the period of 01.04.2017 to 26.06.2018 (Annexure F of the petition) has been filed showing outstanding amount of ₹22,78,708/-. The copy of the super-stockist agreement between the operational creditor and the corporate debtor is marked as Annexure J of the petition and the perusal of the agreement clearly shows the contractual agreement between the operational creditor and the corporate debtor. It is to be noted that the respondent in its short reply has admitted its liability towards the operational creditor but has objected to the calculation of the interest, claiming to be on the higher side. Thus, there is no dispute as to liability between operational creditor and corporate debtor.

17. It has been proved beyond doubt that the corporate debtor has failed to make payments of the aforesaid amount due as mentioned in the statutory notice till date. As a statutory requirement under Section 9(3)(c) of the Code, an affidavit dated 03.04.2019 has been placed by the operational creditor stating that no notice is given by the respondent-corporate debtor in terms of Section 8(2)(a) of the Code and the corporate debtor has not brought the notice the existence of any dispute in relation to the unpaid operational debt.

18. 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. The above-iterated chronology of developments makes it abundantly clear that the corporate debtor by refraining from clearing their dues

towards the operational creditor is deliberately not adhering to the terms and conditions contained in the super-stockist agreement (Annexure J of the petition). 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 SPG Global Distribution Pvt. Ltd. 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. 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) x x x x x”*

24. 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.

25. In this regard a letter bearing File No.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 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 01.07.2019 to 31.12.2019. We select Mr. Divyanshu Mishra appearing at Serial No. 66 of the panel to be appointed as Interim Resolution Professional.

26. The Law Research Associate of this Tribunal has checked the credentials of Mr. Divyanshu Mishra and there is nothing adverse against him. In view of the above, we appoint Mr. Divyanshu Mishra, Registration No. IBBI/IPA-002/IP-N00782/2019-20/12479, Mobile No. 91679-44198, E-mail: divyanshurp@gmail.com as the Interim Resolution Professional with the following directions: -

i.) The term of appointment of Mr. Divyanshu Mishra 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)

December 06^{th}, 2019 Pronounced in open court Sd/- 06/12/2019

Yashpal