

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

CP (IB) No. 23/Chd/Pb/2019

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

In the matter of :

M/s Amsons India
Through its authorised signatory
Mr. Kartar Singh,

Address 1:
SCO-375, 2nd Floor, Sector 32-D,
Chandigarh.

Address 2:
1537/1, Deep Complex,
Hallomajra, Chandigarh.

...Petitioner/Operational Creditor

Versus

M/s Rainbow Denim Limited,
having its registered office at
Village Chaundheri, Post Office Dappar,
Chandigarh-Ambala National Highway,
Tehsil Rajpura, District Patiala, Punjab.

...Respondent/Corporate Debtor

Judgement delivered on: 9.12.2019

**Coram: HON'BLE CHIEF JUSTICE (RETD.) M.M.KUMAR, PRESIDENT
HON'BLE MR. PRADEEP R. SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Surjeet Bhadu, Advocate

For the Respondent : Mr. P.R. Singhania, Advocate

Per: Pradeep R. Sethi, Member (Technical)

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 M/s Amsons India through its authorised signatory Mr. Kartar Singh (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of M/s Rainbow Denim Limited, (**Corporate Debtor**). Ms. Sureshwati, Sole Proprietor of M/s Amsons India has authorised Mr. Kartar Singh (Annexure-I) to file and sign this petition on behalf of the Operational Creditor. There is also an affidavit filed by Mr. Kartar Singh in support of the contents of the application (Page 19-22). The application has been filed in Form 5 as prescribed in Rule 6 (1) of the Rules.

2. The corporate debtor is a company incorporated under the provisions of Companies Act, 1956 with authorized share capital of ₹27,00,00,000/- and paid up share capital of ₹13,28,37,430/-. The CIN of the respondent-corporate debtor is L18101PB1999PLC022452 and its registered office is situated in District 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 corporate debtor is at Annexure II of the petition.

3. The facts of the case, briefly, as stated in the petition, are that the Operational Creditor is engaged in the business of trading in chemical products. It is stated that the Operational Creditor had business relations with the Corporate Debtor since long and has been supplying chemicals and

related items upon the request of the Corporate Debtor. It is also stated that the Corporate Debtor had issued a balance confirmation letter as on 31.12.2017 showing balance outstanding in the books of the Corporate Debtor, owed to the Operational Creditor of Rs.91,36,815/-. Copy of the confirmation letter dated 20.01.2018 is annexed as Annexure IV. It is also stated that the Operational Creditor upon the request of the Corporate Debtor issued balance confirmation document as on 30.06.2018 showing the balance of Rs.92,01,324/- in the books of the Operational Creditor receivable from the Corporate Debtor and the same was confirmed by the Corporate Debtor. Copy of the balance confirmation document is marked as Annexure V.

4. It is submitted that the policy of the Corporate Debtor is to make payments partially and keep substantial balance pending. It is also stated that the Operational Creditor requested the Corporate Debtor to clear the outstanding as the Operational Creditor is a small proprietary firm and cannot withstand capital blockage of Rs.80-90 Lacs.

5. It is also stated that when the corporate debtor failed to discharge its obligations towards the operational creditor, despite various promises to pay the balance due, the operational creditor issued demand notice dated 21.08.2018 under Section 8 of the Code in prescribed Form 3 for payment of the liability of Rs.91,36,815/- relating to sale of goods from financial year 2015-16 to financial year 2018-19 within ten days from the receipt of the demand notice. The date of default is stated to be January, 2018.

6. In reply to the above demand notice, the Corporate Debtor denied that the amount of Rs.91,36,815/- is due and payable to the

Operational Creditor as the same is subject to reconciliation of the running account being maintained between the parties since the year 2009. It is also stated that the Corporate Debtor has been suffering losses from the past and been referred to the erstwhile Board for Industrial and Financial Reconstruction (**BIFR**) and that vide BIFR order dated 27.12.2012, sanction was granted for a scheme of revival in favour of the Corporate Debtor. The Operational Creditor was also requested not to take the matter further as the same would disrupt the business and jeopardise the interests of the Corporate Debtor.

7. It is stated that the Operational Creditor had issued the earlier demand notice dated 21.08.2018 for the balance as it stood on 30.06.2018. However, certain transactions took place in the month of July to September, 2018, which could not be mentioned in the earlier demand notice. Therefore, the Operational Creditor again issued demand notice in Form 3 dated 24.09.2018 through speed post and the same is not stated to be delivered. The Operational Creditor is stated to have delivered demand notice dated 24.09.2018 through e-mail dated 28.09.2018 on the registered e-mail id as well as the other e-mail ids of the Corporate Debtor and the same is reported to have been delivered successfully. The demand notice is stated to have mentioned the liability of Rs.87,24,423/- on account of sale of goods towards the Corporate Debtor. Copy of the e-mail is found attached with the petition as Annexure VIII of the petition.

8. It is stated that no payment has been received by the Operational Creditor despite successful service of demand notice in Form 3 through e-mail on 28.09.2018 and hence this petition has been filed in which the total amount due is shown as Rs.87,24,423/-. In Part III of Form No.5, the Operational Creditor has not proposed the name of any Interim Resolution Professional (IRP).

9. Notice of this petition was directed to be issued to the Corporate Debtor on 21.01.2019.

10. The Corporate Debtor has filed reply vide Diary No. 2428 dated 14.05.2019, wherein it is specifically stated in Para No. 5 that it has no sustainable grounds of making any objection on merits to the outstanding dues of the petitioner except some running accounts reconciliation difference. It is also submitted that the Corporate Debtor has been incurring losses and is under severe financial difficulties. It is also mentioned that the manufacturing activities at its plant at Lalru have been suspended since 25.03.2019 and the Company is not in a position to make payments to its creditors due to lack of liquidity.

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 24.09.2018 was properly served. The demand notice dated 24.09.2018 was sent by speed post at the address as per the

master data at Annexure II of the petition in which the registered office is shown as Village Chaundheri, Post Office Dappar, Chandigarh-Ambala National Highway, Tehsil Rajpura, District Patiala, Punjab. It is stated that the demand notice was not delivered to the registered address of the Corporate Debtor and the same was served vide e-mail dated 28.09.2018 (Annexure VIII of the petition), which is stated to have been delivered successfully. The Corporate Debtor has not filed reply in response to the said demand notice. However, the receipt of the notice in Form No.3 is not challenged by the Corporate Debtor. 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 14.05.2019, has stated that it has no sustainable grounds of making any objection on merits to the outstanding dues of the petitioner except some running accounts reconciliation difference. It is observed that the Corporate Debtor has nowhere in its reply and submissions denied its liability towards 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. 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 ₹87,24,423/-. Copy of Ledger Account of the Corporate Debtor in the books of the Operational Creditor for the period of 01.04.2015 to 06.09.2018 (Annexure III) has been filed showing outstanding amount of ₹87,24,423/-. The copy of the confirmation letter dated 20.01.2018 by the Corporate Debtor is attached as Annexure IV and copy of balance confirmation documents executed by the Operational Creditor and confirmed by the Corporate Debtor is marked as Annexure V of the petition. It is to be noted that the respondent in its reply has not denied its liability towards the operational creditor and has only expressed its inability to discharge the liability to the creditors due to financial difficulty. Thus, there is no dispute with regard to the liability between corporate debtor and operational creditor.

16. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 29.10.2018 has been placed on record by the

operational creditor stating that the operational creditor has not received notice of existence of dispute from the Corporate Debtor nor is the operational creditor aware of any suit / arbitration in respect of the disputed amount. It is also deposed that the Corporate Debtor has not replied to the Form 3 dated 24.09.2018. It is also stated that the Corporate Debtor has not paid the outstanding operational dues mentioned in the petition.

17. No IRP has been proposed and therefore, the question of pendency of disciplinary proceedings against the proposed IRP does not arise.

18. 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 CIRP in the case of the Corporate Debtor M/s Rainbow Denim Limited and direct moratorium and appointment of Interim Resolution Professional as below.

19. 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.

20. 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.

21. 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.

22. 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”

23. 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.

24. 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. Dharmendra Kumar Bhasin appearing at Serial No. 69 of the panel to be appointed as Interim Resolution Professional.

25. The Law Research Associate of this Tribunal has checked the credentials of Mr. Dharmendra Kumar Bhasin and there is nothing adverse against him. In view of the above, we appoint Mr. Dharmendra Kumar Bhasin,

Registration No. IBBI/IPA-002/IP-N00816/2019-20/12564, Mobile No. 9877932667, E-mail: cmadkbhasin@gmail.com as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Dharmendra Kumar Bhasin 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. A copy shall also be sent to ROC for compliance.

Pronounced in open Court under Rule 151 (1) of NCLT Rules since Hon'ble President is not sitting in the Bench today.

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

Sd/-
(Chief Justice M.M. Kumar)
President, NCLT,
Camp at Chandigarh

December 9, 2019
Ashwani