

**THE NATIONAL COMPANY LAW TRIBUNAL  
CHANDIGARH BENCH, CHANDIGARH  
(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(through web-based video conferencing platform)**

**CP (IB) No.262/Chd/Pb/2020**

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

**In the matter of :**

**Sidharth Nayyar, Proprietor of  
Woolways Exports**

having its registered office at  
217, Industrial Area-A, Cheema Chowk,  
Ludhiana -141008  
PAN-AWUPN2639Q

...Petitioner/Operational Creditor

Versus

**S.Nanda Industries Private Ltd.**

having its registered office at  
Vill Bajra Rahon Road,  
Ludhiana, PB 14007

...Respondent/Corporate Debtor

**Judgement delivered on: 18.11.2021**

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)  
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

**Present through Video Conferencing :-**

For the Petitioner : Ms. Niharika Sohal, Advocate.

For the Respondent : Mr. Rakesh Kumar, Advocate

**Per: Subrata Kumar Dash, Member (Technical)**

**JUDGEMENT**

The instant **application/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 Sidharth Nayyar, Proprietor of Woolways Exports (**Operational Creditor**) for initiating Corporate Insolvency Resolution Process (**CIRP**) in the case of S.Nanda Industries Private Limited (**Corporate Debtor**). The registered address of the operational creditor is 217, Industrial Area-A, Cheema Chowk, Ludhiana-141008. There is an affidavit in support of the contents of the application which is from pages 15 to 17 of the applicant. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. S.Nanda Industries 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 ₹2,00,00,000/- and paid up share capital of ₹18,98,15,00/-. The CIN of the respondent-corporate debtor is U17117PB1994PTCO14189 and its registered office is situated in Ludhiana which lies 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 Annexure A-2 available in the petition.

3. The facts of the case, briefly, as stated in the petition, are that the operational creditor has advanced a loan amount of ₹2,00,00,000/- (Two Crores Only). Thereafter, both the parties have entered into a Memorandum of Understanding on 29.03.2013 (Annexure-P4) wherein it was agreed that amount will be adjusted against the purchase of goods from the Corporate Debtor. It is also agreed that if there is any balance amount left, it should be settled on or before 31.03.2018 failing which the Corporate Debtor has to pay

12% interest on the balance amount w.e.f. 01.04.2018. After the arrangement, the Operational Creditor transferred amounts in parts to the Operational Creditor on different dates. Therefore, Corporate Debtor has failed in making payment at the matter was referred for the Arbitration. An award was passed by Sole Arbitrator on 13.02.2020 directing the Corporate Debtor to deposit the amount due towards the Operational Creditor. Copy of Arbitration Award is attached as Annexure P-8. In Part IV of Form 5, the amount claim to be in default is stated to be ₹1,49,17,356/- (including ₹32,63,172/- as interest @ 12% per annum). The date of default is stated to be 01.04.2018.

4. A demand notice in Form 3 is stated to have been served upon the Corporate Debtor by e-mail and as well as by speed post on 13.08.2020 (Annexure P-7 of the petition). The corporate debtor vide this demand notice was called upon to repay the total unpaid operational debt (in default) of ₹1,49,17,356/- (including ₹32,63,172/- as interest @ 12% per annum) within 10 days from the receipt of the notice. The demand notice was accompanied by Memorandum of Understanding (MOU) dated 29.03.2013, Arbitration Award dated 13.02.2020 and details of transaction/calculation sheet. The copy of e-mail sent at registered e-mail address of the Corporate Debtor and original postal receipt along with tracking report showing delivery of demand notice to Corporate Debtor is part of Annexure A-7 of the petition.

5. It is deposed by the petitioner with affidavit that the Operational Creditor has neither received any response to demand notice nor any dispute has been raised by unpaid operational debt.

6. It is submitted that the respondent-corporate debtor failed to comply with the demand notice and has not made any outstanding payment and hence this petition.

7. In Part V of Form 5, the amount of the Corporate Debtor is secured by the way of security having exclusive lien over industrial plot bearing No.B-XXIII-2505/1-A, Built over Plot No. 836 min, measuring 239-1/2 sqyds, situated at Industrial Area-A, Cheema Chowk, Ludhiana.

8. In Part-III of Form 5, the Operational Creditor has proposed Mr. Pawan Sharma, bearing Registration No. IBBI/IPA-002/IP-N00779/2019-2020/12463 as Interim Resolution Professional. The consent of Mr. Pawan Sharma (proposed Interim Resolution Professional) is furnished in Form 2 and the same is placed at Annexure P-3 of aforesaid application. It has been stated in Form 2 that no disciplinary proceedings are pending against him with the Board or ICSI of Insolvency Professionals Agency.

9. Notice of this petition was received by the Corporate Debtor on 04.01.2021 and Corporate Debtor has filed a reply vide Diary No.0165/1 dated 21.09.2021. The reply of the Corporate Debtor is reproduced as below:-

*“4. That it is most humbly stated that the answering respondent has faced huge amount of losses in the past due to which the operations of the plant have been stopped.*

*5. That it is further submitted that this Hon'ble Tribunal may kindly consider the difficulty of the answering respondent and its incapacity to pay the liability to the petitioner as per the memorandum of Understanding dated 29.03.2013 and Arbitral Award dated 13.02.2019 in the present matter and other liabilities as well.”*

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

11. The first issue for consideration is whether the demand notice in Form No.3 was properly served. The demand notice was sent by e-mail at the registered e-mail address of the Corporate Debtor. The demand notice is also sent at the registered address of Corporate Debtor as well as at the address mentioned in the MOU. Original postal receipts along with tracking reports showing duly service of demand notice is part and parcel of Annexure P-7 in the petition.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The respondent corporate debtor has filed reply and admitted the incidence of debt towards Operational Creditor. Thus, there is no dispute as to the liability of the corporate debtor towards the operational creditor.

13. 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 a total unpaid operational debt (in default) of ₹1,49,17,356/- (including ₹32,63,172/- as interest @ 12% per annum). It is observed that Operational Creditor has advanced a loan amounting to ₹2,00,00,000/- (Two Crores Only). After the financial assistance, a Memorandum of Understanding (MOU) was executed between the parties and it was agreed that aforesaid amount will be adjusted towards the supply of goods. Moreover, in case, the amount has not been settled till 31.03.2018 an interest of 12% per annum will be paid on the balance amount. It is mentioned in the application that Corporate Debtor has failed in making any payment in whole or part towards dues of operational debt. Thereafter, Petitioner-Operational Creditor has issued demand notice in Form 3 (Annexure P-7) which was duly received by the Corporate Debtor. An affidavit

dated 22.10.2020 has been furnished by the petitioner stating that no response to demand notice has been received nor any notice of dispute has been received by Operational Creditor. Based on documents on record, 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.

14. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. The petitioner-operational creditor states that from the abovementioned facts 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 Crore by the respondent-corporate debtor.

15. In this context, a reference is made to the following observations of the Hon'ble Supreme Court in the case of **Mobilox Innovations Private Limited Vs. Kims a Software Private Limited**, reported in **MANU/SC/1196/2017: AIR 2017 SC 4532:**

*"25. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

*(i) Whether there is an "operational debt" as defined exceeding Rs.1 lakh? (See Section 4 of the Act)*

*(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*

*(iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?"*

16. In the present application all the aforesaid requirements have been satisfied. It is seen that the application preferred by Operational Creditor is complete in all respect. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the Operational Creditor. 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 CIR Process in the case of the Corporate Debtor, M/s S.Nanda Industries Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

17. 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.

18. 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.

19. 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.

20. The Law Research Associate of this Tribunal has checked the credentials of Mr. Pawan Sharma and there is nothing adverse found against him. In view of the above, we appoint Mr. Pawan Sharma bearing Registration No.IBBI/IPA-002/IP-N00779/2019-2020/12463, e-mail: [pawansharmairp@gmail.com](mailto:pawansharmairp@gmail.com), Mobile No.9814304159/7009855007/0164-2220060, r/o #21859, Power House Road, Bathinda, Punjab – 151001 as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Pawan Sharma 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.

21. The Operational Creditor is directed to deposit an amount of ₹2,00,000/- (Rupees Two Lakhs) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the Operational Creditor to be recovered as the CIRP cost.

22. 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/-  
(Subrata Kumar Dash)  
Member (Technical)

Sd/-  
(Harnam Singh Thakur)  
Member (Judicial)

November 18<sup>th</sup>, 2021  
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