

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

**CP (IB) No. 382/Chd/Pb/2019**

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

**In the matter of:**

**Satnam Packaging**

Through its partner  
Shri Paramjit Singh  
having its registered office at  
7 KM Stone, Chandigarh Road,  
Hisar (Haryana)- 125001

...Petitioner-Operational Creditor

Vs.

**Nuway Organic Naturals India Limited**

having its registered office at  
N.H. 1, Mile Stone 232, Delhi-Amritsar  
Village Devi Nagar, Rajpura, Punjab-140401

...Respondent-Corporate Debtor

**Judgement delivered on: 08.06.2023**

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)  
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-  
Operational Creditor : Mr. Nahush Jain, Advocate

For the Respondent-  
Corporate Debtor : Mr. Yashpal Gupta, Advocate

**Per: Harnam Singh Thakur, Member (Judicial)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Satnam Packaging** through its partner Mr. Paramjit Singh (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Nuway Organic Naturals India Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, **Nuway Organic Naturals India Limited**, is a Company incorporated on 10.07.1995 under the provisions of the Companies Act, 1956 with CIN No: L22012PB1995PLC016755 with its registered office at: N.H. 1, Mile Stone 232, Delhi-Amritsar, Village Devi Nagar, Rajpura, Punjab-140401. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-I.

3. The facts of the case, briefly, as stated in the petition are that The operational creditor is engaged in the business of supplying raw materials like food grains, straws, empty bottles etc. The Operational Creditor supplied material i.e. Nakku, husk, pet bottles, packaging materials, caps to Nuway Organic Naturals India Limited on credit and there was a running account between the parties. The Operational Creditor sought payment which remaining unpaid from its bill duly submitted to Corporate Debtor along with interest 18% from the due date of payment on 09.07.2016 till 04.07.2019 or till the date of payment.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 4,08,28,069/- (Rupees Four Crores Eight Lakhs Twenty-Eight Thousand Sixty-Nine Only) Principal amount and interest @18% p.a from 09.07.2016 till 04.07.2019 or till the date of payment. The default occurred on 09.07.2016 i.e. when the last amount of Rs. 5,00,000 was credited on 08.07.2016. Copy of Bank Statement (Annexure-III), Ledger Account (Annexure-IV), First Information Report (Annexure-V), and Accounts Statement (Annexure-VII) are attached with the main petition.

5. A demand notice was issued on three dates i.e. 16.05.2019, 15.06.2019 and 17.06.2019 by the operational creditor through speed post and the same has been delivered to the corporate debtor as the tracking report and postal receipts are attached with the main petition (Page No. 108 to 116). However, no reply to the demand notice has been received from the corporate debtor till date.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service was filed vide Dairy Nos. 122 dated 07.01.2020. The corporate debtor has filed a reply vide diary No.00280/1 dated 07.12.2021 wherein it is stated that the applicant has no locus standi due to pre-existing disputes between the parties as the applicant has filed a Civil Suit before Civil Judge, Senior Division, Hissar bearing Civil Suit No. 1178/2019 for the rendition of accounts and same is still pending. The applicant is not clear himself about the pending amount. Mr. Raminder Singh, one of the partners of the applicant was vice president of the respondent and alleged invoices were

raised. Mr. Raminder Singh in connivance with other partner, namely, Mr. Paramjeet Singh hatched the conspiracy and raised fictitious invoices. The respondent issued debit notes to the petitioner against poor quality material and the same has been duly accepted by the petitioner.

7. The petitioner-operational creditor has filed rejoinder by Diary No. 00280/2 dated 20.06.2022, wherein it is stated that the Civil Suit was filed because legal proceedings against the Corporate Debtor were not ordered to be stayed and the Corporate Debtor has not filed any reply to the demand notice till the filing of the petition/application before this Authority. There is no dispute regarding the amount claimed from the Corporate Debtor.

8. The short written submissions have been filed by the petitioner vide Diary No. 00280/3 dated 14.10.2022 and by respondent-corporate debtor vide Diary No.00280/4 dated 30.01.2023.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice dated 16.05.2019, 15.06.2019 and 17.06.2019 were served by the operational creditor through speed post and the same has been delivered to the corporate debtor as the tracking report and postal receipts are attached with the main petition (Page No. 108 to 116). However, no reply to the demand notice has been received from the corporate debtor till date. Therefore, a demand notice was duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit under Section 9(3)(b) by the operational creditor that there is no notice given by

corporate debtor relating to a dispute of the unpaid operational debt. It is further deposed that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities except the F.I.R. dated 28.07.2017.

It is seen from the records that there is a pre-existing dispute between the parties as the applicant has filed a Civil Suit before Civil Judge, Senior Division, Hissar bearing Civil Suit No. 1178/2019 for the rendition of accounts and same is still pending. The demand notice was served on three different dates i.e. 16.05.2019, 15.06.2019 and 17.06.2019 by the operational creditor through speed post. The reliance can be placed upon the decision of Hon'ble Supreme Court in the case of "**Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Limited- 2017 1 SCC OnLine SC 353**", wherein it was held that 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, as the case may be. The Hon'ble Supreme Court further observed, *inter alia* :

*"33. The scheme under Sections 8 and 9 of the Code, appears to be that an operational creditor, as defined, may, on the occurrence of a default (i.e., on non-payment of a debt, any part whereof has become due and payable and has not been repaid), deliver a demand notice of such unpaid operational debt or deliver the copy of an invoice demanding payment of such amount to the corporate debtor in the form set out in Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Form 3 or 4, as the case may be (Section 8(1)). Within a period of 10 days of the receipt of such demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of the pendency of a suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such dispute (Section 8(2)(a)). What is important is that 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, as the case may be".*

Further, it is stated by the respondent-corporate debtor that the respondent issued debit notes to the petitioner against poor quality material and the same has been duly accepted by the petitioner.

Although, no debit note has been placed on record by the corporate debtor yet. It is pertinent to note that an FIR No.43 dated 28.07.2017 was got registered by Mr. Raminder Singh, one of the partners of the petitioner/operational creditor against the Directors of the corporate debtor namely Sh. Manminder Singh Narang, his wife Smt. Anchal Narang and daughter Ms. Prabhjot Kaur about the said pending amount of Rs.4,12,17,541 (Rupees Four Crores Twelve Lakhs Seventeen Thousand Five Hundred Forty One only). Apart from this, the said partner of the petitioner/operational creditor filed a Civil Suit for rendition of account on 12.07.2019, the period when the present petition was being filed. Be that as may, the filing of Civil Suit for rendition of accounts shows that there was a pre-existing dispute between the parties regarding the claim or counter-claims including debit notes. Thus, it can be safely concluded, there is a pre-existing dispute between the parties with respect to the amount claimed by the petitioner/operational creditor and the affidavit under Section 9(3)(b) filed by the petitioner carries no meaning.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 16.05.2019, 15.06.2019 and 17.06.2019 by the operational creditor was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. Rs. 4,08,28,069/- (Rupees Four Crores Eight Lakhs Twenty-Eight Thousand Sixty-Nine Only) Principal amount and interest @18% p.a from

09.07.2016 till 04.07.2019 or till the date of payment. This application was filed vide Diary No. 3226 on 05.07.2019 and was re-filed vide Diary No.3747 dated 30.07.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. As a sequel to the above discussion and the facts as well as circumstances that since there is a pre-existing dispute between the parties regarding the amount claimed by the petitioner, the petition is not maintainable and liable to be rejected, in terms of Section 9 of IBC, 2016. The petition consequently stands dismissed, however, with no order as to costs.

-sd-  
(Subrata Kumar Dash)  
Member (Technical)

-sd-  
(Harnam Singh Thakur)  
Member (Judicial)

June 08, 2023  
SM/TB