

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)**

CP (IB) No.78/Chd/J&K/2020

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

In the matter of:

Ms. K. Nagavalli,
Employee of M/s UNICO Leather Product Pvt. Ltd.
R/o 21/18, Budhur Nagar, Killachur,
Village Pallikonda, Tamil Nadu- 635804
Email:- nagavallik6@gmail.com

...Applicant-Operational Creditor

Versus

M/s UNICO Leather Product Pvt. Ltd.
Regd. Office at Phase I, Lane 4, SIDCO Industrial Area,
Bari Brahmana, Jammu and Kashmir- 181133

...Respondent-Corporate Debtor

Judgment delivered on: 06 .09.2022

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

For the Operational Creditor : Mr. Shrey Goel, Advocate
For the Corporate Debtor : Mr. Nitin Sherwal, Advocate, proxy
for Mr. Himanshu Gupta, Advocate

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as the '**Rules**') by an employee of M/s UNICO Leather

Product Pvt. Ltd., namely, Ms. K. Nagavalli (for short hereinafter referred to as the '**operational creditor/petitioner**') for initiating Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against M/s UNICO Leather Product Pvt. Ltd. (for short hereinafter referred to as the '**corporate debtor/respondent**'). The present petition has been filed in Form 5 as prescribed in Rule 6 (1) of the Rules. The petition is supported by affidavit of Ms. K.Nagavalli and the same is at page 19 of the petition.

2. The corporate debtor, namely, M/s UNICO Leather Product Private Limited is a company incorporated on 29.08.1986 under the Companies Act, 1956, having CIN U18209JK1986PTC002898 and its registered office is at Phase 1, Lane 4, Sidco Industrial Area, Bari Brahmana Jammu, JK- 181133. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor has been annexed as Annexure 1 of the main petition.

2. The brief facts, as stated in the petition, are that the corporate debtor had engaged the operational creditor as an employee in the company, in the year 1990 and the operational creditor continued working with the corporate debtor till the month of June 2018. It has been stated that the operational creditor received only 50% of the salary in the month of November and December, 2017 and thereafter, the corporate debtor stopped paying the operational creditor for the month of January 2018 till June 2018. It has been further stated that the corporate debtor has also not paid the bonus amounting to Rs.26,747/-, earned leave wages amounting to Rs.5,676/-, notice pay amounting to Rs.12,412/-, gratuity amounting to Rs.1,78,080/, total amounting to Rs.2,22,913/-. Still further, it has been stated that the operational creditor was not terminated by the corporate debtor and that

the operational creditor herself stopped going to her job due to non-payment of salary for the past six months.

3. In the compliance affidavit filed vide Diary No.00062/01 dated 07.01.2021, the operational creditor has deposed that she had received a total salary of Rs.1,63,154/- in the year 2017 and that she received only 50% salary for the month of November 2017 and December, 2017. A copy of account statement of the petitioner/operational creditor has been annexed as Annexure A-1 with the compliance affidavit. Further, it has been stated that the corporate debtor failed to remit the outstanding PF from June, 2016 and ESI Contribution from January 2017. The table depicting the calculation of the due amount, as is being claimed by the petitioner, is as under:-

A. Wages Outstanding

Nov. 2017 (50%)	Dec. 2017 (50%)	Jan. 2018	Feb. 2018	Mar. 2018	Jun. 2018	Total
6,763	4,518	10,510	9,060	10,329	10,871	52,051

B. Other Perquisites

Bonus	Earned Leave Wages	Notice Pay (One Month Salary)	Gratuity as on 30.06.2018	Total
26,747	5,674	12,412	1,78,080	2,22,913

Total A + B = Rs.2,74,964/-

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs.2,74,964/ (Rupees Two Lacs Seventy Four Thousand Nine Hundred and Sixty Four only) and date on which default occurred is 01.11.2017.

5. It is averred that since, the respondent/corporate debtor failed to make the payment within the due time, as such, the petitioner/operational creditor issued a demand notice in Form 3 dated 26.11.2019, which was sent through registered post at the registered address and Chennai office of the corporate debtor. The demand notice sent through registered post at the registered office was returned by the corporate debtor, however, the registered post sent at the Chennai office was received by the corporate debtor on 03.12.2019. However, no reply to the demand notice has been stated to be filed. Copy of demand notice has been annexed as Annexure V and copies of postal and tracking receipts have been annexed as Annexure VI.

6. Notice of this petition was issued to the corporate debtor vide order dated 03.12.2021 to show cause as to why this petition be not admitted. Respondent/corporate debtor filed its reply vide Diary No.00062/4 dated 15.07.2022, through its Authorized Signatory Mr. S.Sekar, who has been authorized by the respondent/corporate debtor, through the Board Resolution dated 02.05.2022, which has been annexed with the reply. In the reply submitted by the corporate debtor, it has been categorically stated by the respondent/corporate debtor that the transactions with the petitioner/operational creditor are not denied, however, because of the COVID-19 pandemic and its consequent effect, the respondent/corporate debtor incurred huge losses and was not able to turn around. Further, it has been stated that on account of ever mounting losses and liabilities, it is no more possible for the respondent/corporate debtor to pay any money to the petitioner/operational creditor and thus, it has been prayed by the respondent/corporate debtor that CIRP may be initiated against the respondent/corporate debtor in the best interest of all the stakeholders.

7. We have heard the learned counsel for the petitioner and learned counsel for the respondent and have gone through the records carefully.

8. The first issue for consideration is whether the demand notice in Form 3 dated 26.11.2019 was properly served. The petitioner has placed copies of the registered postal receipts, and tracking reports which reflects that the same was delivered at the Chennai office of the corporate debtor.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The petitioner/operational creditor has filed a separate affidavit wherein it has been deposed that the respondent/corporate debtor failed to bring to notice an existence of a dispute or a pendency of a suit or arbitration proceedings filed before the service of the demand notice. Further, it has been deposed that the petitioner/operational creditor did not receive any payment or notice of dispute regarding the pending amount from the respondent/corporate debtor. Thus, there is no pre-existing dispute between the parties. Not only this, as noted above, the respondent/corporate debtor has categorically admitted its liability and has not disputed any of the claim made by the petitioner/operational creditor. Rather the corporate debtor by admitting the default on its part has itself prayed that in the best interest of all stakeholders, CIRP proceedings be initiated against it.

10. The other issue for consideration is whether this application was filed within limitation. A perusal of the case file shows that this application was filed vide Diary No.7395 on 24.12.2019, whereas the date of default is 01.11.2017, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

11. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹2,74,964/-. As noted above, the operational creditor has provided the details of the debt due and has also annexed her account statements. More so, the amount claimed by the operational creditor has not been denied or disputed by the respondent/corporate debtor and in fact, the same has been admitted by the respondent/corporate debtor. Accordingly, the petitioner/operational creditor proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. 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. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default which is above threshold limit.

13. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Accordingly, we appoint Mr. Krishan Vrind Jain as the Interim Resolution Professional in the matter of M/s UNICO Leather Product Private Limited, whose name appears at Serial No.52 of the list provided by the Insolvency and Bankruptcy Board of India, which is valid till 31.12.2022.

14. In the present petition, all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects.

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 petitioner. 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 in the case of the corporate debtor, M/s UNICO Leather Product Pvt. Ltd.

15. We also direct 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; and
- 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.

16. 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.

17. 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.

18. The Law Research Associate of this Tribunal has checked the credentials of Mr. Krishan Vrind Jain and there is nothing adverse against him. In view of the above, we appoint Mr. Krishan Vrind Jain, Registration No.IBBI/IPA-001/IP-P00284/2017-2018/10528 E-mail: jainkv@gmail.com Mobile No.9417009490 as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Krishan Vrind Jain 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.) This Adjudicating Authority further directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. The IRP is directed to make a specific mention of any non-compliance in this regard in his status report filed before this Bench and move an application seeking appropriate remedy, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and by completing the resolution process in a time-bound manner.
- vii.) 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 the 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

viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

19. The petitioner is directed to deposit an amount of ₹30,000/- (Rupees Thirty Thousand Only) 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 petitioner to be recovered as the CIRP cost.

20. This petition is accordingly allowed and admitted.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a 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)

September, 06th, 2022
MK