

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

**CP (IB) No.191/Chd/Hry/2018**

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

**In the matter of:**

**M/s Aayush Trading Company**

Anaaj Mandi, NIGDHU, Karnal, Haryana  
through its Sole Proprietor Anirudh Kumar,  
S/o Dharmpal, R/o H.No.61,  
Mandir Ke Pass, Bhukhapuri (19),  
Nilokheri, Karnal, Haryana-132117

...Petitioner-Operational Creditor

Versus

**M/s Monika Freshway Foods Private Limited**

having its registered office at  
Shop No.6, New Grain Market, Nigdu,  
Karnal, Haryana-132157

...Respondent-Corporate Debtor

**Judgment delivered on 28.11.2018**

**Coram: Hon'ble Mr.Justice R.P.Nagrath, Member (Judicial)  
Hon'ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Petitioner : 1. Mr. Vibhu Agnihotri, Advocate  
2. Mr Shivam Grover, Advocate

For the Respondent : Mr. Shiv Kumar, Advocate

**Per: Justice R.P.Nagrath, Member (Judicial)**

**JUDGMENT (Oral)**

This petition has been filed by M/s Aayush Trading Company, a sole proprietorship concern through Mr. Anirudh Kumar, the Sole Proprietor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating insolvency resolution process

against the respondent-corporate debtor. The application has been filed in Form 5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity 'the Rules'). The contents of the application are supported by affidavit as at Annexure-IV.

2. The respondent-corporate debtor was incorporated in 03.11.2008 under the Companies Act, 1956 with the authorised share capital of ₹1,00,00,000/- and its paid-up capital of ₹51,73,860/-. The master data of the respondent-corporate debtor is at Annexure-II(v). Its registered office is in District Karnal in the State of Haryana and therefore the matter falls within the territorial jurisdiction of this Tribunal.

3. The facts of the case, briefly stated are, that the petitioner is engaged in the business of Commission Agent whereas the respondent which is running Rice Mills and Export approached the Operational Creditor to buy paddy from it on regular basis. The respondent purchased the paddy from the petitioner by various transactions from 04.10.2013 to 04.11.2015 and the invoices of the same issued by the petitioner in the name of respondent-corporate debtor are at Annexure-II(iv) from pages 93 to 105 of the paper book.

4. It is further stated that on various dates the respondent-corporate debtor paid certain amounts to the petitioner details of which have been given and last such payment was made on 04.11.2015 to the tune of ₹1,59,121/- by cheque. When the matter was listed on 09.07.2018, adjournment was requested for the petitioner to have been instructions whether the petitioner is maintaining the ledger account. By diary No.2676 dated 25.07.2018 the petitioner filed the additional affidavit along with its ledger accounts from the years 2013-14 to 2015-16 and the last payment as described above is entered in the ledger account for the year 2015-16. It is

further submitted that no payment was made by the respondent-corporate debtor thereafter. The petitioner has also relied upon the TDS Certificate issued by the respondent-corporate debtor for an amount of ₹445 on 30.11.2015.

5. The learned counsel for the petitioner however submitted that originally also the petitioner had filed the financial statements of the ledger account of the respondent-corporate debtor from the years 2012-13 to 2016-17 but that was the consolidated ledger account in relation to the financial as well as the operational debt. Subsequently, the petitioner had filed the separate ledger account only of the operational debt as discussed above.

6. It is stated in the application that there was an amount of ₹9,85,408/- due towards the principal amount and petitioner has also claimed the interest at the rate of 18% per annum with effect from 30.11.2015 to 25.05.2018.

7. The petitioner sent a demand notice dated 24.05.2018 to the respondent-corporate debtor which is at Annexure-I(i) in Form-3 giving details of the transactions and stating the amount outstanding which was sent along with necessary documents i.e. ledger account, bank account statements, balance sheets and Form-I receipts against the sale of paddy. The notice was sent by registered post to the respondent-corporate debtor. The postal receipt is at Annexure-I(ii). Notice was delivered to the respondent-corporate debtor on 30.05.2018 as per the tracking report at page 64 of the paper book. Copy of the notice was also sent to the Director of the Company and the same was also delivered as per the tracking report.

8. Notice of this petition was issued to the respondent-corporate debtor to show cause as to why this petition be not admitted. Appearance was made by the respondent-corporate debtor and reply has also been filed

virtually admitting the claim of the petitioner. There is categorical admission of outstanding amount towards the operational debt to the tune of ₹9,85,408/- . It is admitted that the respondent-corporate debtor tried to settle the account but could not do despite efforts. The respondent-corporate debtor believes that undergoing restructuring is the best possible way to continue the business further.

9. We have heard the learned counsel for the parties and perused the record quite carefully.

10. When the matter was listed on 27.07.2018, the petitioner had filed affidavit vide diary No.2676 dated 25.07.2018 stating that from the beginning the separate ledger accounts in respect of advances made to the respondent-corporate debtor and sale of paddy were maintained by the petitioner. While issuing the notice of this petition the petitioner was also directed to file a specific affidavit to the effect that the petitioner is maintaining right from the beginning, separate ledger accounts in respect of the operational and the financial debt. In compliance of the above mentioned order an affidavit vide diary No.2941 dated 10.08.2018 along with the ledger account and certificate from the Chartered Accountant (Annexure-IX and X respectively) were filed.

11. From the aforesaid discussion and perusal of Form-5 in which the application has been filed, we find the same complete in all respects.

12. The petitioner has proposed the name of Mr. Tarun Batra, to be appointed as Interim Resolution Professional. The written communication furnished by Mr. Tarun Batra in Form-2 is at Annexure-V. We have perused the written communication and we find the same to be in order. It is certified that there are no disciplinary proceedings pending against him with the

Board. Further, that he is not serving as Interim Resolution Professional/Resolution Professional/ Liquidator in any proceedings.

13. From the aforesaid discussion we admit the instant petition. The matter be listed on 04.12.2018 for passing the formal order of declaring moratorium and appointment of the Interim Resolution Professional.

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

Sd/-  
(Justice R.P.Nagrath)  
Member (Judicial)

Nov., 28, 2018  
Anchal