

**NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH**

CP (IB) No.48/Chd/Pb/2018

Under Section 9 of IBC, 2016

In the matter of

Shri Seo Pal,
Proprietor of
Banarasi Dass & Sons
2376, Mandi Extension, Narela
Delhi -110040

..Petitioner-Operational Creditor

Vs.

Quality Rice Exports Pvt.Ltd.
Having its registered office at
Nial Bye Pass Road,
Patran, Punjab.

..Respondent-Corporate Debtor

Order delivered on : 28.02.2018

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

Hon'ble Mr.Pradeep R.Sethi, Member (Technical)

For the Petitioner- Financial Creditor	: 1. Mr. J.K.Hoon, Advocate 2. Mr. Hari Om, Advocate 3. Mr.G.S.Sarin, Practising Company Secretary
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For the Respondent- Corporate Debtor	: Mr.Lalit Singla, Advocate
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ORDER (Oral)

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

Notice of this petition to respondent-corporate debtor. Mr. Lalit Singla, Advocate who is present for the respondent accepts notice on behalf of the respondent and has filed resolution of Board of Directors dated 25.02.2018 authorising him to appear for the company and to execute necessary formalities

and documents as required on behalf of the company along with the aforesaid resolution. He has also filed memo of appearance. Learned counsel for respondent submits that the petitioner company neither want to file reply / objections to this petition, nor oppose prayer for admission.

2. The petition under Section 9 of Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') was earlier filed having CP (IB) No.11/Chd/Pb/2018 but that petition was withdrawn due to technical defects in as much as the demand notice issued under Section 8 of the Code had not been delivered to the corporate debtor which was a mandatory requirement. Mr. Lalit Singla, Advocate for the respondent submits that when the said petition was pending, the respondent-corporate debtor did not file any objection/reply to the said petition nor the same was opposed on merits.

3. The petitioner is the sole proprietor of M/s Banarasi Dass & Sons. This petition 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) for initiating corporate insolvency resolution process against the respondent-corporate debtor.

4. The respondent was incorporated on 07.07.2006 as a company under the Companies Act, 1956 and allotted CIN U15310PB2006PTC030468. It has authorised share capital of ₹5 crores and paid-up capital of ₹2,58,68,260/. The registered office of the corporate debtor is at Patran, Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

5. The facts of the case as stated are that the petitioner-operational creditor is a grain merchant and has been supplying paddy to the respondent which

is a rice mill and as such the paddy was being supplied for milling of the rice. The transactions between the operational creditor and the corporate debtor during the period 10.05.2014 to 15.01.2015 were of a total value of ₹2,87,51,689.05. There was also an acknowledgement of the debt by Mr. Vineet Bansal, one of the directors of the corporate debtor in respect of the aforesaid amount out of which an amount of ₹1.25 crores was remitted to the petitioner and the balance outstanding amount was still ₹1,62,51,689.05. Apart from that, the petitioner has claimed interest over the outstanding amount. The corporate debtor is stated to have failed to pay the outstanding amount despite serving of a legal notice dated 10.03.2016.

6. The petitioner filed a suit for recovery in the Hon'ble High Court of Delhi in CS(COMM) 410 of 2016. The Hon'ble High Court of Delhi decreed the suit of the petitioner for an amount of ₹1,62,51,689.05 along with pendent-lite and future interest of 9% per annum simple interest from the date of serving of legal notice i.e. 10.03.2016 till realisation of the suit amount and also along with cost of the suit vide judgement dated 29.08.2017 Annxure-P6. The respondent-corporate debtor having not filed the written statement, the defence of respondent was struck off by the Hon'ble High Court. Learned counsel for respondent submits fairly that the corporate debtor did not appeal against the judgement of Hon'ble High Court of Delhi decreeing the suit of the petitioner.

7. For enabling the operational creditor to file petition under Section 9 of the Code, the operational creditor is required to serve a demand notice to the corporate debtor in terms of Section 8 of the Code. Notice is required to be sent in the manner prescribed in Rule 5 of the Rules. The demand notice under

Section 8 of the Code is dated 03.02.2018 Annexure-P11 which was sent to the respondent-corporate debtor as well as to all its directors. The demand notice was sent in Form No.3 as prescribed under the Rules and along with the demand notice all the invoices relating to the transactions between the parties were also sent. Copy of the judgement and decree of the Hon'ble High Court of Delhi was also attached with the demand notice sent to the respondent-corporate debtor. The petitioner had also sent another demand notice in Form No.4 which is at page 155 of the paper book. The demand notice was sent by speed post as well as by electronic mail at the addresses of all the directors and also delivered by hand and there is acknowledgement receipt of the demand notice delivered by hand on 05.02.2018 by the director of the respondent-corporate debtor. Under Rule 5(2) of the Rules, the notice can be sent at the registered office of the corporate debtor by hand or registered post or speed post with acknowledgement due or by electronic mail service to the whole time director or designated partner or key managerial personnel, if any, of the corporate debtor. The postal receipt showing the dispatch of the notice by registered post is at page 170 of the paper book. Learned counsel for petitioner submits that the notice was delivered to the two directors of the corporate debtor as per the tracking report at pages 172 & 174. In any case, the relevant document is relating to delivery by hand and also by electronic mail to the company at the address available on the master data as well as by e-mail to the directors of the company. Learned counsel for petitioner further submits that as per the record, these mails were delivered and did not bounce back. Copies of the emails under which notice was sent along with documents are at pages 159 to 169 of the paper book.

8. The contents of the application are supported by an affidavit of Mr. Seo Pal, Proprietor of the petitioner-operational creditor.

9. The instant petition was filed on 26.02.2018 after the expiry of 10 days from the delivery of the notice to the corporate debtor.

10. The next question would be whether the petitioner has complied with the mandatory requirements of Section 9(3)(b) and 9(3)(c) of the Code. Learned counsel for petitioner refers to para 3 of the affidavit of petitioner which states that the petitioner did not receive any notice of dispute from the corporate debtor nor the outstanding amount has been paid. The petitioner has also filed copy of statements of account of the petitioner in which the amount of debt is being normally credited. The petitioner has also filed certificate from Axis Bank (Annexure P12), the financial institution where the petitioner is maintaining the account that no credit of the amount has been given in the account of the petitioner on behalf of the respondent-corporate debtor for the period 01.01.2018 to 16.02.2018. This aspect otherwise is not disputed by the respondent-corporate debtor.

11. The petitioner, being an operational creditor, is not bound to propose the name of the Resolution Professional to be appointed as Interim Resolution Professional. The petitioner, however, has filed Form 2, written communication from Ms. Mandeep Gujral, registered Resolution Professional giving all the necessary particulars as required in the form and that she is presently not serving as IRP/RP/Liquidator in any proceedings. It is also stated by her that there are no proceedings pending against her with the Insolvency

and Bankruptcy Board of India (IBBI) or ICSI. Having perused the form, we find the same to be in order.

12. Sub-section (5) of Section 9 of the Code reads as under: -

“(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 repayment 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.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub-clause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.”

13. We find that all the compliances have been made and the application is complete and the petition deserves to be admitted. In view of the above, the instant petition is admitted declaring moratorium for prohibiting all of the following in terms of Section 14(1) of the Code: -

- (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 Securitisation and Reconstruction of Financial 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.

14. It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, if continuing, shall not be

terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

15. 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.

15. The matter be listed on 08.03.2018 for passing of the formal order of appointment of Interim Insolvency Resolution Professional with further directions. Copy of this order be communicated to both the parties.

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

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

February 28, 2018
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