

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

CP (IB) No.3/Chd/Hry/2018

Under Section 9 of IBC, 2016.

In the matter of:

Resfeber Labs Private Limited

having its registered office at
Shri Krishna Akshaya Mansion, No.9
1st Phase, 27th Main, 100 Feet Road,
1st Stage, BTM Layout,
Bengaluru, Karnataka-560068.

... Petitioner-Operational Creditor

Vs.

Bookawheel Technologies Private Limited

having its registered office at
7th floor, Plot 14A, Viom Building,
Sector 18, Maruti Industrial Complex,
Gurgaon, Haryana -122015.

...Respondent-Corporate Debtor

Order delivered on: 05.03.2018.

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

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

For the petitioner: Mr.G.S. Sarin, Practising Company Secretary for
Mr. Kushagra Mahajan, Advocate.

For respondent : None.

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

ORDER (Oral)

The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred here-in-after as the ‘Code’) by Resfeber Labs Private Limited, for initiating insolvency resolution process against the respondent-corporate debtor. The application has been

filed in Form No.5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules') by the Operational Creditor.

2. The petitioner company was incorporated as a company under the Companies Act, 1956 having been allotted CIN U74999KA2014PTC094506. The petitioner company passed a Board resolution dated 27.11.2017 for triggering the insolvency resolution process against the corporate debtor under the Code and authorised Mr. Pranav Goel, Director and Mr. Abhishek Chauhan, Manager-Institution Business and Mr. Manish Gupta, VP-Operations of the company severally to file the petition, sign and verify notices, petitions, to do all the necessary acts in the progress of the case. The application has been filed by the petitioner through Mr. Abhishek Chauhan, one of the authorised representative of the company.

3. The respondent-corporate debtor was incorporated as a company on 12.09.2011 under the Companies Act, 1956 having been allotted the CIN U74900HR2011PTC055926 with the authorised share capital of ₹3.00 crores and paid up capital of ₹2,60,00,000/-. The registered office of the respondent-corporate debtor is at Gurgaon (Gurugram) in the State of Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The respondent-corporate debtor was originally incorporated with its registered office at Delhi under a different name, but the name of the company was changed w.e.f. 23.12.2014. Its registered office was shifted to Gurgaon (Gurugram), Haryana on 30.06.2015.

4. The certificate of incorporation is the part of Annexure-1 at page 24 of the paper book and the subsequent registration certificate with the change

of name of the company is at page 25. The certificate with change of the address is at page 28 of the paper book. With the certificate of incorporation, Memorandum of Association of the company has also been annexed.

5. The petitioner company provides mini truck services for intra-city pickups and deliveries in India. It also provides platform for logistics support solutions, such as order management, real-time tracking, logistics management, fleet management etc. Both the parties had entered into an agreement dated 20.09.2016 for supply of certain logistic services to the respondent by the petitioner. The logistic services included providing of vehicles accompanied with drivers on monthly contract basis for delivery of goods of the corporate debtor. Copy of the agreement is at Annexure-3. It was specifically provided in the agreement that payment was to be made monthly within 15 days of submission of bills as per the log book maintained by the petitioner-company and counterchecked by the corporate debtor. The respondent-corporate debtor placed requests for services from the petitioner-company and the documents in proof of delivery of consignment to the corporate debtor by the petitioner are at Annexure-4 (colly).

6. The respondent is said to have committed default having failed to pay the outstanding amount in respect of services rendered from October 2016 to February 2017, despite the fact that the invoices were raised and the respondent having promised to make the payments. The amount in default is said to be ₹4,35,912/-. The computation chart in tabular form to show the outstanding amount is at Annexure-5. This amount pertains to the transactions between the parties from 08.11.2016 to 22.02.2017 relating to 19 invoices issued to the respondent-corporate debtor. The total amount of the invoices is

₹5,85,912/-, out of which the respondent has paid only ₹1,50,000/- on 12.01.2017 as lump sum against the total outstanding amount. The default is said to have been committed in respect of specific invoices termed as 'defaulted invoices' which are at Annexure-6 (colly) as per the information given in Col.1 of Part IV of the application.

7. It is further stated that the petitioner-company initiated for amicable settlement of the payments but the respondent-corporate debtor failed to respond. On 12.05.2017, the petitioner-company received an e-mail from the respondent stating that from the second week of June 2017 the outstanding payments would be made in instalments over 3 months, post May 2017. The petitioner company, considering the past experience and as a matter of caution, requested the corporate debtor to issue post-dated cheques based on the commitment made in the e-mail dated 12.05.2017 but there has been no response. Copy of the e-mail correspondence exchanged between the parties is at Annexure P-8 (colly).

8. The petitioner company sent demand notice to the respondent on 19.06.2017 as per Form No.3 prescribed under Section 8(1) of the Code read with Rule 5 of the Rules, but no reply was received. Therefore, the petitioner-company filed CP(IB) No.89/Chd/Hry/2017 before this Tribunal. The petitioner has placed on record copy of the order passed on that petition on 12.10.2017 Annexure-10 which is at page 174 of the paper book which says that in view of the demand notice having not been sent through one of the modes provided in Rule 5(2) of the Rules, the petitioner was permitted to withdraw the petition with liberty to file fresh one on the same cause of action.

9. Thereafter, the petitioner company sent another demand notice Annexure-11 under Section 8(1) of the Code read with Rule 5 of the Rules to the corporate debtor. The demand notice dated 14.11.2017 in Form No.3 of the Rules was sent by Regd. AD on 15.11.2017 and delivered to the corporate debtor on 18.11.2017 (Annexure-11).

10. When the matter was listed on 15.11.2017, petitioner was directed to file tracking report of the Postal Department along with his own affidavit showing that the demand notice was delivered to the corporate debtor on 18.11.2017 as alleged. The affidavit of compliance was filed by Mr. Kushagra Mahajan, Advocate for the petitioner which is dated 12.01.2018 vide diary No.105 by attaching copy of the tracking report of the Postal Department, Palam Road showing the postal article was delivered to the corporate debtor on 18.11.2017.

11. It is stated further that the petitioner-company neither received any response to the demand notice till the filing of this petition nor there is any record of dispute of debt pending in any suit, arbitration or similar proceedings.

12. On filing of this petition in this Tribunal on 20.12.2017, the petitioner-company dispatched copy of this petition along with entire paper book to the respondent-corporate debtor by speed post on 22.12.2017 as per the postal receipt at page 303 of the paper book in order to comply with the provisions of Rule 6(2) of the Rules.

13. Notice of this petition was directed to be issued to the respondent-corporate debtor by speed post as well as at the e-mail address of the corporate debtor available on the master data. Learned counsel for petitioner filed his own affidavit of service vide diary No.297 dated 25.01.2018 along with postal receipt

showing the dispatch of the notice by speed post on 19.01.2018 and the delivery report of the Post Office Annexure-1 (colly) showing that the document was delivered to the respondent-corporate debtor on 24.01.2018.

14. It is further stated in the affidavit that the notice sent at the e-mail address available on the master data of the corporate debtor was not delivered as per the report on the email Annexure A-2 but we find that service of notice by speed post, one of the modes directed is sufficient proof of due service of the respondent. There was no representation on behalf of respondent on 31.01.2018 for which notice was issued and even today. The record of the earlier CP (IB) No.89/Chd/Hry/2017 which was withdrawn on 12.10.2017 has also been called. That record also shows that the respondent was served in the said petition as per the affidavit of service filed by the authorised representative of the company with the tracking report showing that the respondent was served on 21.06.2017. The said earlier petition was, however, withdrawn because of technical defects with permission to file fresh petition on the same cause of action as evident from the order dated 12.10.2017 as at page 174 of the paper book.

15. We have heard Mr.G.S.Sarin, practising company secretary on behalf of Mr.Kushagra Mahajan, Advocate for the petitioner and perused the records quite carefully with their able assistance.

16. The petition under Section 9 of the Code can be filed after the expiry of 10 days from the date of delivery of demand notice or notice demanding payments under sub-section (1) of Section 8 of the Code. It has been proved that the demand notice was delivered to the respondent-corporate debtor on 18.11.2017 and this petition has been filed much after the expiry of

10 days' period from the date of delivery of the demand notice. This petition has also been filed in the prescribed form, thereby complying with the requirement of Section 9(2) of the Code.

17. It is mandatory for the petitioner to comply with the provisions of Section 9(3)(b) of the Code which says that the applicant has to file the affidavit that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt. There is the affidavit dated 14.12.2017 of the authorised representative of the petitioner-company at page 19 of the paper book stating that the corporate debtor has neither made any payment nor issued any notice of dispute as per the requirement of sub-section (2) of Section 8 of the Code. It is rather stated that the petitioner-company has not received any response from the corporate debtor to the demand notice.

18. Next question would be whether the petitioner is able to show that the respondent owes the debt to the petitioner. There is overwhelming evidence in this regard. This is established from the various invoices under which the services were rendered to the corporate debtor under the agreement entered into between the parties. The petitioner has filed copy of the defaulted invoices Annexure-6 (colly) and sent copies thereof to the respondent-corporate debtor along with the demand notice. The petitioner has also filed the documents pertaining to the proof of delivery of consignment to the corporate debtor as at Annexure-4 (colly). These documents include the receipt issued by the Transport Company whereunder the goods were sent to the respondent. Copies of the log book of the vehicles under which the goods were sent are also attached and the vehicle numbers have also been mentioned.

19. The respondent sent e-mail Annexure-8 dated 12.05.2017 to the petitioner which is at page 166 of the paper book wherein it was stated that the company was passing through tough times. In the past 2-3 months the respondent company has taken some course correction and results are encouraging. The company has reduced the losses and very soon it will be a profitable company. It was also stated that the company in recent meeting on last Wednesday decided to pay the vendors in instalments and it has now started breathing. It was also stated that the company has every intention to pay the petitioner company each and every penny. It is further stated that from the second week of the date of this email, the respondent company would start releasing payments and shall pay the money in 3 months.

20. Along with the demand notice the petitioner-company sent copy of the agreement, invoices, working for computation of default amount, email communication between the parties and particulars of delivery of the consignment as mentioned in the demand notice against Col.No.7 of the document Annexure-11. The petitioner has also relied upon the documents of deduction of Income Tax at source in respect of the consignments sent to the respondent. The document of deduction of tax on the service rendered is at Annexure-9.

21. In order to comply with the requirements of Sl.No.7 of Part V of Form 5, the petitioner has also filed copy of statement of its bank account where the deposits are made and credits received normally by the operational creditor in respect of the debt of the corporate debtor. Copy of the bank statements are at pages 271 to 301 which pertains to various bank transactions entered into by

the petitioner company also reflecting the amount credited in the account of the petitioner for the period from 13.01.2017 to 03.12.2017.

22. In this case, the petitioner has also complied with the requirements of Section 9(3)(c) of the Code by filing certificate from HDFC Bank where it is maintaining its account. The Bank has certified that no amount has been credited in the account of the petitioner from the respondent-corporate debtor for the period from 13.01.2017 to 03.12.2017 and it is stated by the petitioner that no amount has been deposited out of the outstanding amount despite service of demand notice which is supported by the affidavit of the authorised representative of the petitioner.

23. It is settled proposition that the petitioner-operational creditor is not bound to propose the name of Resolution Professional for being appointed as Interim Resolution Professional as evident from sub-section (4) of Section 9 and Section 16(3) of the Code. Therefore, the Interim Resolution Professional is to be appointed by this Tribunal.

24. 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.

25. We find that the application is complete in all respects and that there is no payment of unpaid operational debt and further that the petitioner has attached copy of the invoices with the demand notice sent to the corporate debtor which was delivered duly and that no notice of dispute has been received by the petitioner from the corporate debtor.

26. In view of the above, instant petition deserves to be admitted. The instant petition is admitted declaring moratorium prohibiting all of the following in terms of sub-section (1) of Section 14 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.

27. It is further directed that the supply of essential goods or services to the Corporate Debtor, 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.

28. The 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.

29. We propose to appoint Mr. Brij Nandan Kalra, Regn No. IBBI/IPA-003/IP-N00014/2016-17/10103; email:bnkalra1954@gmail.com; Mobile No. 9878704134 as Interim Resolution Professional from the panel of IRPs forwarded to this Tribunal by IBBI relating to the matters of Punjab, Haryana and Chandigarh. Registrar of this Tribunal is directed to intimate aforesaid IRP

by e-mail, SMS asking him to furnish consent along with necessary declaration and disclosure statement as per the provisions of IBBI Regulations immediately with a direction to the IRP to file the documents within 2 days.

30 List the matter on 08.03.2018 in order to monitor the compliance by the designated Registrar. A copy of this order be communicated to both the parties.

Sd/-

(Pradeep R.Sethi)
Member (Technical)
Adjudicating Authority

Sd/-

(Justice R.P.Nagrath)
Member (Judicial)
Adjudicating Authority

March 05, 2018
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