

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

CP (IB) No. 15/Chd/Hry/2019

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

In the matter of :

Jai Bhagwan Raghbir Chand,
10, New Grain Market,
Shahbad Markanda,
Haryana.

... Applicant-Operational Creditor

Versus

M/s Nath Solvent Extractions Pvt. Ltd.,
192 K.M. Stone, G.T. Road,
Mohra,
Ambala Cantt, Haryana.

... Respondent-Corporate Debtor

Judgement delivered on: 18.05.2020

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant : Mr. Vishal Aggarwal, Advocate

For the respondent : Mr. Vivek Aggarwal, Advocate.

Per: Pradeep R. Sethi, Member(Technical)

JUDGEMENT

The instant application is filed by Jai Bhagwan Raghbir Chand (**Jai Bhagwan**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**Code**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the matter of of Nath Solvent Extractions Pvt. Ltd. (**Nath Solvent**). The application

is signed by Shri Raghbir Chand, Proprietor, Jai Bhagwan. His affidavit verifying the contents of the application is at pages 16 and 17 of the petition.

2. As per the master data of Nath Solvent (Annexure-A of the petition), the registered address is Village Mohra, Ambala Cantt. Therefore, jurisdiction lies with this Bench of the Tribunal.

3. In Part IV of the application, it is stated that Jai Bhagwan is a proprietorship firm engaged in the business of supplying sun flower seeds, mustard seeds etc. and was making supplies to Nath Solvent, long time for which proper invoices/bills were raised, supposed to be cleared immediately on receipt and on failure to do so, interest @18% per annum would be applicable. It is stated that the last delivery was made on 03.08.2016 and ₹24,10,170.96 is due from Nath Solvent. It is stated that interest of ₹7,00,000 was paid by Nath Solvent for FY 2016-17 and that for FY 2017-18, Nath Solvent deposited TDS of ₹22,240 but the interest was not paid.

4. The total amount outstanding is stated to be ₹32,76,147 including ₹24,10,170.96 on account of amount due plus ₹4,16,002.11 towards interest due up to 15.09.2018 and a sum of ₹2,36,432 for the year 2015-16 and ₹2,13,542 for the year 2016-17 as dues of Sales Tax for having failed to furnish Form D-1.

5. It is stated that demand notice under Section 5 of the Code in the prescribed Form 3 dated 18.09.2018 was issued calling upon Nath Solvent to pay the sum of ₹32,76,147.07 but Nath Solvent refused to accept the notice. A copy of the packet containing the notice as well report of the postal authorities is stated to be enclosed at Annexures A-7 and A-8 of the petition.

6. Affidavit under Section 9(3)(b) of the Code has been filed at page 18 of the petition. It has been affirmed therein that Jai Bhagwan did not receive any reply to the demand notice dated 18.09.2018 and that there is no dispute of unpaid operational debt pending between the parties in any court of law and no notice has been given by Nath Solvent relating to a dispute of the unpaid operational debt.

7. In Part III of the application, Jai Bhagwan has not proposed the name of any Interim Resolution Professional (**IRP**).

8. Vide order dated 31.01.2019, notice of the petition was directed to be issued to Nath Solvent. Nath Solvent has filed reply by Diary No.5287 dated 01.10.2019. Rejoinder has been filed by Jai Bhagwan vide Diary No.5498 dated 11.10.2019.

9. We have carefully heard and considered the arguments of the learned counsel for Jai Bhagwan and Nath Solvent and have also perused the record. It has been argued by learned counsel for Nath Solvent that Jai Bhagwan defrauded Nath Solvent by purchasing the seeds at a lower price and selling the same to Nath Solvent at a higher price to earn more commission. Reference in this regard has been made to letters dated 18.07.2016 and 16.03.2017 sent by Nath Solvent to Jai Bhagwan. It is also pleaded that there was no agreement to pay interest @18% per annum, in the eventuality of non-clearance of the invoice.

10. The learned counsel for Jai Bhagwan has argued that no evidence of sending the two letters of the years 2016 and 2017 to Jai Bhagwan has been placed on record and therefore, a false and lame plea has been taken by Nath Solvent. It is pleaded that Nath Solvent has not given the time period

for which the price was allegedly inflated and no any details have been given as to how the same is said to be inflated.

11. The learned counsel for Jai Bhagwan has pleaded that in the reply filed by Nath Solvent, the debt was duly admitted and that necessary Sales Tax was also deposited by them. We find that in the reply, Nath Solvent has filed the ledger account of Jai Bhagwan in its books for FY 2016-17 and 2017-18. The balance shown therein as on 31.03.2017 and 31.03.2018 is ₹38,60,000 and ₹22,10,000 respectively. The ledger account filed by Jai Bhagwan (Annexure A-2 of the petition) shows balance as on 31.03.2017 and 31.03.2018 of ₹38,60,006.96 and ₹24,10,170.96 respectively. Therefore, almost the same balances are being shown by Nath Solvent in its books of account and to that extent, the debt can be said to be almost fully acknowledged. The explanation that Nath Solvent had no other option but to make entries in its books on the basis of information supplied by Jai Bhagwan negatives the claim of Nath Solvent that it was defrauded by supply at higher values.

12. It has been held in para No.40 of **Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software Pvt. Ltd. (Civil Appeal No.9405 of 2017)** by the Hon'ble Supreme Court as under:-

“40. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation

and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

13. The above discussion shows that the dispute sought to be raised in the present case is a patently feeble legal argument or an assertion of fact unsupported by evidence. The dispute is also not shown to have truly existed in fact and is spurious, hypothetical or illusory. We therefore, reject the contention of Nath Solvent that a dispute truly existed in the present case.

14. In the application, Jai Bhagwan has claimed amounts of ₹2,36,432 and ₹2,13,542 for the years 2015-16 and 2016-17 as dues of Sales Tax for failure of Nath Solvent to furnish Form D-1. In the rejoinder, Jai Bhagwan has stated that after verification, the department has accepted the contention of Jai Bhagwan and exempted Jai Bhagwan from depositing ₹4,16,002.11 and therefore, the amount of ₹4,16,002.11 alongwith interest is not being claimed.

15. As regards the amount of interest included by Jai Bhagwan in the debt due, the issue may be examined by the IRP while verifying the claims submitted.

16. Section 9(5)(i) of the Code is as follows:-

(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.”

17. We find that the application under Section 9(2) of the Code is complete. We have already discussed above that in its account books, Nath Solvent has accepted almost the complete amount claimed to be in default. The dispute sought to be raised by Nath Solvent has been examined in detail above and rejected. No Interim Resolution Professional (IRP) has been proposed by Jai Bhagwan in the application.

18. The requirements of Section 9(5)(i) of the Code are satisfied . We therefore, admit the application for initiation of CIRP in the matter of M/s Nath Solvent Extractions Pvt. Ltd. The order for moratorium and appointment of IRP are being issued below.

19. We declare the 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 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.

20. 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

21. 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.

22. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also, the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for Corporate Insolvency Resolution Process is made by an operational creditor and –

“a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;
b) x x x x x”

23. Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

24. In this regard a letter bearing File No.25/02/202020-NCLT dated 07.01.2020 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2019/01 dated 31.12.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.01.2020 to 30.06.2020. We select Mr. Krishan Rajesh Chaudhary appearing at Serial No. 13 of the panel to be appointed as Interim Resolution Professional.

25. The Law Research Associate of this Tribunal has checked the credentials of Mr. Krishan Rajesh Chaudhary and there is nothing adverse against him. In view of the above, we appoint Mr. Krishan Rajesh Chaudhary, Registration No. IBBI/IPA-001/IP-P00684/2017-2018/11161, E-mail: krajeshchaudhary@gmail.com, M: 9899417444 as the Interim Resolution Professional with the following directions:

26. The following directions are issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Krishan Rajesh Chaudhary, Registration No. IBBI/IPA-001/IP-P00684/2017-2018/11161, E-mail: krajeshchaudhary@gmail.com, M: 9899417444 as Interim Resolution Professional.
- ii) The term of appointment of Mr. Krishan Rajesh Chaudhary shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) 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;

- iv) 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;
- v) 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;

- vi) 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;
- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial position of the corporate debtor constitute a Committee of Creditors and shall file a report, certifying 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 reports as per Rule 15 of the Regulations thereafter.

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

28. Accordingly, the petition CP (IB) No.15/Chd/Haryana/2019 is admitted.

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

May 18th, 2020.
Arora