

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH  
AT NEW DELHI**

**Company Petition no. (IB)-210(ND)/2017**

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

In the matter of:

PR International

.....Operational Creditor

Versus

GTHS Retails Pvt. Ltd.

...Corporate Debtor

**Judgment delivered on: 03/08/2017**

**CORAM:**

**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**MR. S.K.MOHAPATRA, MEMBER (TECHNICAL)**

**For Operational Creditor: Sachin Jain, Advocate**

**Isha Aggarwal, Advocate**

**For Corporate Debtor: None**



**Per: S. K. Mohapatra, Member (Technical)**

**ORDER**

(Reserved on 31.07.2017)

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rule, 2016 (for brevity 'the Rule') with a prayer for initiation of Corporate Insolvency process in respect of Respondent corporate debtor.
2. In brief, the corporate debtor is a company incorporated on 06.06.1994 under the provisions of the Companies Act, 1956. It is the case of the operational creditor that Purchase Order No. 1121 was issued by Corporate Debtor to the operational Creditor for Rs. 10,80,000.00, on 15.11.2016 for supply of various descriptions of goods. Thereafter Corporate Debtor further issued three more purchase orders no. 1299 dated 10.01.2017 for Rs. 5,45,000, no. 3199 dated 10.02.2017 for Rs. 22,00,000 and no. 3200 dated 10.02.2017 for Rs. 9,20,000/- for supply of various description of goods. Copies of the said purchase orders issued by corporate debtor to the operational creditor have been placed on record.

3. The Operational Creditor supplied the goods as per the specifications defined by the corporate debtor in the said Purchase Orders for which various invoices were issued between 29.11.2016 till 08.03.2017. It is submitted that the goods supplied were duly accepted and acknowledged by the Corporate Debtor by putting its stamp and signature on the invoices and no dispute regarding quality of goods or any breach of representation was ever raised by the corporate debtor. Copies of the duly accepted invoices have been placed on record.
4. It is further submitted that the corporate debtor has made payments in respect of three invoices viz Invoice No. 9771 for Rs. 7,999/-, invoice no. 9772 for Rs. 3, 74,568 and invoice no. 9789 for RS. 4500. The corporate debtor has also made part payment of Rs.1,70,000/- out of Rs. 3,51,901/- in respect of invoice no. 9785. All the payments are duly reflected in the concerned ledger account. However, remaining 10 invoices as detailed in the application, though acknowledged by the corporate debtor, remained unpaid.
5. It is further submitted that the Corporate Debtor issued five cheques to the Operational Creditor which were bounced on 15.05.2017. Subsequently, another nineteen cheques were also dishonoured due to the specific directions of "Stop Payment" issued by the Corporate Debtor to its bank. It has been represented that in admission of the liability the Corporate Debtor further issued various

post-dated cheques to the Corporate Debtor. Copies of cheques issued by corporate debtor have been placed on record alongwith the copies of return memos.

6. Operational Creditor has claimed that an amount of Rs. 24, 69, 082.35 (Principal amount of Rs. 23, 64, 444 and interest of Rs. 104638.35 as on 05.07.2017), is due from the corporate debtor. It is submitted that as per the terms of duly acknowledged invoices, interest is to be charged @ 24% p.a after expiry of due date of payment.
7. The Operational Creditor issued a demand notice dated 14.06.2017 under rule 5 of the Rules 2016, on the registered address of Corporate Debtor as available on official website of Ministry of Corporate Affairs. The demand notice was returned un-served on 19.06.2017 on the ground of incomplete address. It is further submitted that on enquiry from the landlord of the premises, it surfaced that the corporate debtor has left the rented premises which was its registered address.
8. The Operational Creditor in compliance of Rule 5 of the Rules 2016 has sent a demand notice dated 14.06.2017 on the registered email address of the Corporate Debtor. The same was duly served on 16.06.2017 but Corporate Debtor neither sent any reply nor made any payment to the Operational Creditor within 10 days of the receipt of said demand notice. The application under section 9 of the Code, was





filed on 07.07.2017 after expiry of more than 10 days from the date of delivery of demand notice as required under 9 (1) of the Code.

9. The matter came up for hearing for the first time on 18.07.2017, when directions were issued for service of notice to the corporate debtor. An affidavit of proof of service of notice dated 29.07.2017 has been placed on record by the operational creditor in which it has been affirmed that notice of hearing has been duly served to the director of the corporate debtor through dasti and speed post. Receipt of dasti, duly signed and acknowledged by Mr. Harsh Vikas Manchanda, director of corporate debtor has been placed on record. Despite service, no one appeared on behalf of the corporate debtor.
10. It is further submitted in the affidavit dated 29.07.2017, that neither any dispute in the nature of suit or arbitration was ever pending between the parties nor any notice of dispute has been given by the corporate debtor till the date of the affidavit.
11. A certificate dated 28/07/2017 issued by the HDFC Bank, has been placed on record in which it has been confirmed that no cheques from corporate debtor has been deposited between 05/04/2017 to 24/07/2017 in the account of the Operational Creditor. The operational creditor has filed relevant bank account statement duly certified by HDFC Bank. In addition a certificate, from the Chartered Accountant dated

05.07.2017 has been furnished certifying that the corporate debtor has made last payment amounting to Rs. 1,00,000/- on 04.04.2017 and no payment has been made in the bank accounts, given at Annexure-A of the operational creditor, after 4/4/2017 till the date of issuance of the certificate.

12. In view of the above, we are satisfied that the present application is complete and the Operational Creditor is entitled to claim its dues towards the goods supplied to the corporate debtor and there has been a default in payment of the operational debt. Therefore, on fulfilment of the requirements of section 9 (5) (i) (a) to (d) of the Code, the present application is admitted.

13. A moratorium in terms of section 14 of the Code is being issued prohibiting the following:

- 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;
- transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
- 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;

- 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:

(a) 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.

(b) The provisions of sub-section (1) of section 14 of the Code shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

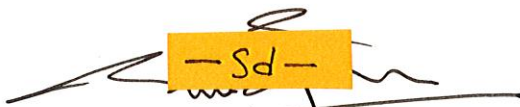
15. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process as per Sub-Section (4) of section 14 of the Code.

16. Since the operational creditor has not proposed name of any Insolvency Professional, a reference is made to the IBBI for recommending the name of an Insolvency Professional.



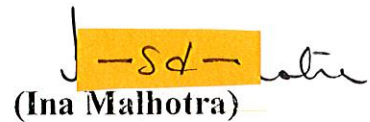
17. List the matter on receipt of the recommendation from IBBI, in any case, however latest by 16/08/2017 for appointment of IRP u/s 16 (1) of the Code.

Copy of the order be communicated to both the parties.



(S. K. Mohapatra)

**Member Technical**



(Ina Malhotra)

**Member Judicial**