

IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH,  
Court-VI  
NEW DELHI

Company Petition no. (IB)- 2028(ND)/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

Sunita Dhingra ( Proprieto of)  
**M/s Dhingra Trading Co.**  
**Through its Authorized Representative:**

1. Sumit Dhingra  
Registered office:  
9518, Gali No.13,  
Multani Dhanda, Pahar Ganj,  
New Delhi- 110002.

.....Applicant

Versus

**M/s Amazing India TV Pvt. Ltd.**  
Registered Office:  
S-141, Second Floor Room No : 201 School Block,  
Shakarpur Delhi East Delhi DL 110092.

.....Respondent

*Judgment Delivered on: 05.03.2020*

**CORAM:**

**SHRI ABNI RANJAN KUMAR SINHA, MEMBER (JUDICIAL)**

**DR. V. K. SUBBURAJ, MEMBER (TECHNICAL)**



**For the petitioner: Mr. Vikram Singh Baid, Advocate**

**For the Respondent: None.**

**ORDER**

**DR. V. K. SUBBURAJ, HON'BLE MEMBER (TECHNICAL)**

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 Rules') with a prayer for initiation of Corporate Insolvency process in respect of Respondent operational debtor.
2. The applicant M/s Dhingra Trading Co. is a proprietorship firm of Sunita Dhingra Pan AAGPD3298P and Aadhar no. 818305834233 having its registered office at 9518, Gali no. 13, Multani Dhanda, Pahar Ganj, New Delhi – 110055. Also at: 2582, Sir Syed Ahmad Road, Darya ganj, New Delhi – 110002.
3. The Operational Debtor M/s Amazing India TV Pvt. Ltd. Identification number U74300DL2010PTC209133 having its registered office at S-41, second floor, Room no: 201 School Block, Shakarpur, East Delhi – 110092.



4. The Applicant has filed under section 9 of the Code, 2016 and seeking to initiate corporate insolvency resolution process of the Operational Debtor M/s Amazing India TV Pvt. Ltd. (hereinafter referred to as “Operational Debtor”) on the ground that the operational debtor is indebted and is unable to pay its admitted, acknowledged and undisputed outstanding sum of Rs. 51,30,000/- along with interest @ 18% p.a. till the actual date of payment against delivery of product ‘Chairs’.
5. That the Operational debtor had approached the M/s Dhingra Trading Co. (hereinafter referred to as “Operational Creditor”) and placed an order for supply of 50,000 chairs @ Rs 90/- per chair at the office of the Operational Creditor. It is further submitted that cost of the chairs was taxable @ 14% service tax. Moreover, the operational Creditor had agreed to provide the aforesaid commodities on the assurance of timely payments.
6. Consequently the consignment of ‘Chairs’ were dispatched from the Operational Creditors office through Transport Company and was duly delivered to operational debtors. Accordingly, the operational creditors raised bill of Supply/Invoices against the commodities delivered totalling to the amount of Rs. 51,30,000/-. The operational debtor did not make payment and sought time to make payment.



7. That after various perusals, the operational debtors, handed over 3 cheques for Rs. 25,00,000/-, Rs. 5,00,000/-, and Rs. 10,00,000/- and assured the operational creditor that the cheques could be presented for encashment. When the operational creditor went with cheques to encash it, the abovementioned cheques were dishonoured. The operational creditor informed the operational debtor against dishonoured cheques.
8. That after being aggrieved from the inactions of the operational debtors in making the default payment, the operational creditor filed a complaint under section 13 of N.I Act, 1881 before the Ld, Chief Metropolitan Magistrate, Karkardooma Courts for the dishonour of cheques. That apart from the 3 cheques totalling Rs. 40,00,000 due from the bounced cheques, the operational debtor owes a total of Rs. 51,30,000/- to the operational creditor.
9. That being aggrieved of the aforementioned facts, the operational creditor sent a demand notice according to the provisions of the act, dated 09.07.2019 which was duly delivered to the operational debtor but were returned with the comment 'refused'
10. In the light of the submissions raised on behalf of the petitioner, we have gone through the averments made in the applications as well as documents enclosed with the applications and we find that demand notice was duly delivered upon the respondent on its registered mail id, but no reply was sent by the respondent and in this regard, the applicant



has filed an affidavit under Section 9 (3) (b) of the Code and in para of the affidavit, he mentioned this fact that there is no dispute whatsoever raised within the prescribed period of days from the date of receipt of the said notice.

11. At this juncture we would like to refer Section 8 and 9 of the Insolvency and Bankruptcy Code, 2016 and same are quoted below.

- a) the application made under sub-Section (2) is complete;**
- b) there is no [payment] 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.**

12. From the perusal of the aforesaid provision we find that in pursuant to the corporate-debtor after the receipt of the demand notice is required to raise the dispute within ten days from the receipt of demand notice either the 'existence of dispute' or show the documents that the payment of the unpaid operational-debt has already been made. And if the corporate-debtor fails to raise the 'existence of disputes' and documents showing the payment has not been paid operational-debt



then the operational-creditor has right to file an application under Section 9 of the Insolvency and Bankruptcy, Code, 2016. In the light of the aforesaid when we considered the case then we find that in this case no reply to the demand notice was sent by the corporate-debtor. Therefore, we are of the considered view that corporate-debtor has failed to raise any 'existence of disputes' and show that the operational-debt raised by the operational-creditor has been paid. So under such circumstances we have no option, but to pass the order under Section 9(5) (i) if the application is complete and from the perusal of the application we find that the application is complete and there is no payment of unpaid operational-debt and no notice of dispute has been raised by the operational-creditor or there is no record of dispute in the information utility.

13. Therefore, on fulfilment of requirements of Section 9 (5) (i) (a) to (d) of the Code, the present application is admitted.

14. In terms of sub-section (6) of Section 9 of the Code the Corporate Insolvency Resolution Process in respect of respondent corporate debtor shall commence from the date of this admission order.

15. The petitioner has not proposed any name of IRP. Accordingly, we appoint Mr. Rajiv Malik, having registration number IBBI/IPA-002/IP-N00391/2018-2019/12115 with email-id [iprmaalik2009@gmail.com](mailto:iprmaalik2009@gmail.com) as an Interim Resolution Professional.



16. The petitioner is directed to pay a sum of Rupees two lakhs to the Interim Resolution Professional to meet the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.
17. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
18. We also declare moratorium in terms of Section 14 of the Code, which shall have effect from the date of this order till the completion of Corporate Insolvency Resolution Process as per sub-section (4) of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

*“(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."*

19. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.



20. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.
21. Let the copy of the order be communicated to the Operational Creditor and the Corporate Debtor in accordance with Section 9 (5) (i) of the Code. The office is also directed to communicate a copy of the order additionally to the Interim Resolution Professional and the Registrar of

Companies, NCT of Delhi and Haryana at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(DR. V.K.SUBBURAJ)

MEMBER (TECHNICAL)

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(SHRI ABNI RANJAN KUMAR SINHA)

MEMBER (JUDICIAL)