

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

**CP (IB) NO. 34/Chd/J&K/2017**

**Under Section 9 of IBC, 2016**

**In the matter of:**

M/s. Shiv Pooja Traders through its proprietor Pawan Choudhary having its registered office at Railway Crossing, Bari Brahmna, Samba, J&K.

...Applicant/Operational Creditor.

Versus

Jammu Paper Pvt. Limited having its registered office at SIDCO Industrial Complex Phase-II, Bari Brahmna, Samba, J&K.

... Respondent/Corporate Debtor.

**Order delivered on: 10.07.2017**

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

For the Applicant: Mr. Nonu Khera, Advocate.

For the Corporate Debtor: None.

**Order (ORAL)**

This petition has been filed by the 'Operational Creditor' under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short, hereinafter referred to as the 'Code') for initiating insolvency resolution process against the respondent-Corporate Debtor. The petitioner is a sole proprietorship concern and the application has been filed in Form No. 5 prescribed under the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules'). The contents of the application are supported by the affidavit of Mr. Pawan Chaudhary, the sole proprietor of the petitioner.



2. The petitioner sent a demand notice in Form No. 4 Annexure-I (a) dated 20.03.2017 along with all the invoices of the goods supplied to the respondent. The invoices are at page 9 to 68 of the Paper Book and forming part of the documents at Annexure-I (a). It is stated in the notice that if the respondent fails to make the payment of the amount of debt to the tune of ₹47,41,942.70 within 10 days of the receipt of the notice, the petitioner may initiate insolvency resolution process. This notice was sent by registered post on 22.03.2017 and as per the Track Report at page-69 of the Paper Book, the notice along with copies of invoices was delivered to the Corporate Debtor on 23.03.2017. The learned counsel for the petitioner submits that by way of abundant caution, another legal notice dated 23.03.2017 Annexure-I (b) was sent to the Corporate Debtor at its registered office which was also sent by registered post on 23.03.2017 and as per the Track Report of the postal department (at page No. 72 of the Paper Book) the item was delivered to the Corporate Debtor on 24.03.2017.

3. The instant application in Form No. 5 was filed after expiry of 10 days requisite period. The registered office of the respondent-corporate debtor is in Jammu, in the State of J&K, which falls within the territorial jurisdiction of this Tribunal. As per Section 1(2) the Code extends to the whole of India except that Part-III of the Code does not extend to the State of Jammu and Kashmir and Part-III relates to insolvency resolution and bankruptcy for individuals and partnership firms. The petitioner has not proposed the Interim Resolution Professional.

*Accepted*

**The facts:**

4. The petitioner had business dealings with respondent-Corporate Debtor and supplied rice husk and saw dust to the respondent during the period from the year 2005 till 04.02.2015. The petitioner is maintaining regular books of accounts of the transactions with the respondent/Corporate Debtor and as per Annexure-II (b) for the period from 01.04.2013 to 04.02.2015, the outstanding amount of the debt is shown as ₹47,41,942.70. The respondent also supplied copy of its own ledger account for the period 01.04.2013 to 30.08.2014 at pages 109-A to 109-L of the Paper Book acknowledging the outstanding amount due to the petitioner to be ₹56,72,055.70. This is exactly the outstanding amount as on 30.08.2014 reflected in the ledger account of the respondent being maintained by the petitioner at page No. 106 of the Paper Book. Thereafter, the respondent paid ₹10 lacs by way of RTGS transfer in the account of the petitioner on 24.09.2014 as also reflected in the ledger account of the respondent being maintained by the petitioner. The deposit of ₹10 lacs in the Bank Account of the petitioner on 24.09.2014 is fortified from the Statement of Account of the petitioner issued by State Bank of India, Bari Brahmna, Samba, Jammu as at Page 218 of the Paper Book.

5. All these facts were detailed in the legal notice dated 16.11.2016 (Annexure I(c) sent to the Managing Director and other Directors of the company at the address of Registered Office of the company for which various track reports of Postal Department are from Page 83 to 99 of the Paper Book and most of these notices were duly delivered to the addressee.

6. Learned counsel for petitioner further refers to the letter of acknowledgement of debt dated 11.06.2014 issued by Mr. S.C. Dogra, the

Managing Director of the respondent company in his own hand as at Page 292-A of the Paper Book. It was admitted that the outstanding amount of debt as on 09.06.2014 was ₹60,15,478.70 towards the petitioner for supplying rice husk to the respondent company. It was stated in the acknowledgement that the respondent company was unable to make the payment because of certain issues. It was undertaken to pay back the amount with interest @ 12% per annum. Managing Director of respondent, however, requested the petitioner to continue the business with the respondent-corporate debtor on the basis of the aforesaid assurance in writing.

7. Learned counsel further submits that subsequent to 24.09.2014 after the respondent made payment of ₹10 lacs, all the other transactions upto 04.2.2015 entered into between the parties were paid by the respondent bill-wise as reflected in the Ledger Account but the previous balance was still outstanding.

8. I have heard learned counsel for petitioner and perused records quite extensively with his assistance. When the matter was listed for the first time on 30.06.2017 following defects were noticed:

- i) Sr.No.6 of Part V of the Application Form is required to be corrected with regard to the provision of law, contract or other document under which the operational debt has become due, as discussed.
- ii) The petitioner has even not filed the copy of certificate from the financial institutions maintaining the accounts of the petitioner/ operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor in terms of clause 3(c) of Section 9 of the Code.

*@ 09/10*

9. Notice of these defects was accepted by learned counsel for the petitioner. It was directed to remove these defects within seven days. Learned counsel for petitioner submits that petitioner has complied with the aforesaid directions and filed fresh form of relevant page. The certificates from State Bank of India, dated 24.07.2017 and dated 04.07.2017 from J&K Bank, both Bari Brahmana Branch where the petitioner is maintaining its account have been attached as Annexure II (b) and II (c), respectively. It is certified by the State Bank of India that no amount has been deposited by the respondent-corporate debtor in account of the operational creditor towards the outstanding debt of ₹47,41,942.70 paise from 05.01.2015 till date. To the same effect is the certificate issued by J&K Bank; that no amount has been deposited by the respondent in the account of petitioner for the period from 04.2.2015 to 03.07.2017. The documents have been filed with the affidavit of Mr. Pawan Choudhary, the sole proprietor of the petitioner.

10. Along with the additional affidavit of Pawan Choudhary, proprietor of the petitioner dated 05.07.2017, copy of postal receipt dated 15.05.2017 regarding despatch of copy of the petition along with entire Paper Book has been filed along with the Track Report of postal department showing that the article was delivered on 17.05.2017.

11. When the matter was listed on 30.06.2017 it was directed that notice of the hearing be issued to the respondent for 10.07.2017 by attaching copy of the petition by Speed Post at the Registered Office of the respondent. The original postal receipt dated 05.07.2017 is filed along with another affidavit of compliance deposed by the Proprietor of the petitioner.

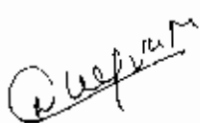
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The track report of the Post Office upto 05.7.2017 is attached at Annexure IV(c) of the additional affidavit.

12. Learned counsel for petitioner also recorded his statement separately to the effect that the postal article was returned to the sender, the addressee having refused it. Learned counsel for petitioner filed the track report and also the envelope containing copy of the petition and the entire paper book with report purportedly made by the postal employee on 06.07.2017 that the addressee refused to accept the said article. Let these documents be taken on record.

13. Learned counsel for petitioner also refers to copies of the Sales Tax Returns with VAT Audit Report for the years 2013-14 and 2014-15 Annexure II(c) and Balance Sheet of the petitioner for the years 2013-14, 2014-15 and 2015-16 Annexure II(d) which reflect these transactions between the parties.

14. From the aforesaid discussion, it is held that the application is in order, being filed in the prescribed format and the defects noticed having been removed. The application has been filed after sending the Demand Notice to the respondent –corporate debtor in terms of Section 8 of the Code. All the necessary documents have been attached with the petition as required by the provisions of the Code and the Rules framed thereunder. The respondent has not appeared despite the copy of the petition along with Paper Book having been duly delivered in terms of Rule 6(2) of the Rules, nor the respondent even appeared to contest the petition despite the notice of hearing being sent through Speed Post which was refused and the refusal amounts to valid service.



15. Sub-section 5 of Section 9 of the Code reads as under:-

*"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."*

16. The learned counsel for petitioner also referred to an affidavit of the Proprietor of the petitioner dated 13.05.2017 at page 293-A of the Paper Book that the petitioner has not received any notice of dispute from the corporate debtor in respect of any unpaid operational debt. Despite delivery of the copy of application with entire Paper Book the respondent did not choose to file any Caveat. Refusal of notice of hearing further indicates that the respondent has nothing to bring forward to dispute the demand of debt in default. Moreover, there is a clear admission of the outstanding debt in the nature of acknowledgement executed by the Managing Director of the respondent in his own hand writing.

*Disputed*

17. In view of the above, the instant petition deserves to be admitted.

The petition is admitted declaring moratorium with following directions:-

- i) That the Bench hereby prohibits the institution of suits or continuation of pending suits or proceedings against the 'Corporate Debtor' including execution of any judgement, 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- ii) 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.
- iii) That 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."

18. Since the name of the Interim Resolution Professional has not been proposed, it is directed that a reference be made to the Insolvency and Bankruptcy Board of India (IBBI) for recommending the Insolvency

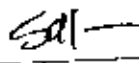




Professional who will act as Interim Resolution Professional. The reference be made in terms of sub-section (3) and (4) of Section 16 of the Code.

19. The matter be now listed on 19.07.2017 for awaiting recommendations from IBBI regarding the name of Interim Resolution Professional and further directions shall follow thereafter.

20. Copy of this order be communicated to the petitioner and respondent-Corporate Debtor.

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

10.07.2017  
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