

**In the National Company Law Tribunal,  
“Chandigarh Bench, Chandigarh”  
(Exercising the powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)**

**CP (IB) No.117/Chd/CHD/2017**

**Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with Rule 6  
of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority)  
Rules, 2016.**

In the matter of:

M/S HAJURA SINGH BHIM SINGH,  
Registered Office at Shop No.131,  
New Anaj Mandi, Jind (Haryana) -  
126102

....Petitioner-Operational Creditor.

Versus.

M/S BEST FOODS LIMITED,  
Having its Registered Office at  
Flat No.2867/2, Housing Board Flats,  
Sector – 49, Chandigarh – 160047 INDIA.

....Respondent-Corporate Debtor.

**Order delivered on 02.02.2018.**

**Coram: HON'BLE MR. JUSTICE R.P.NAGRATH, MEMBER (JUDICIAL).**

For the Petitioner/Operational  
Creditor:

Mr.Deepankur Sharma, Advocate.

For the Respondent/Corporate  
Debtor:

1) Mr.Arun Saxena, Advocate  
2) Mr.Praveen Gupta, Advocate

**Judgment**

This petition has been filed by M/s Hajura Singh Bhim

Singh, a sole proprietorship concern claiming itself to be the 'operational

creditor', under Section 9 of the Insolvency & Bankruptcy Code, 2016 (for short to be referred here-in-after as the 'Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules) for initiating the insolvency resolution process against the respondent-corporate debtor. The petitioner has been granted the license as a commission agent by the Executive Officer-cum-Secretary, Market Committee, Jind in the State of Haryana under the Punjab Agricultural Produce Market Act, 1961 and the Rules framed thereunder. Copy of the license is at Annexure A-1 which shows that it was issued on 01.04.2003 and is being renewed from time to time. Lastly the license was renewed upto 31.03.2018.

2. Application has been filed by the petitioner in Form No.5 as prescribed in sub-rule (1) of Rule 6 of the Rules. The respondent company was incorporated on 25.03.2003 and is having the authorised share capital of ₹1,92,00,00,000 and paid up share capital of ₹1,91,40,00,000/-. It has its registered office at Chandigarh, therefore, the matter falls within the jurisdiction of this Tribunal. The respondent is exporter of rice and paddy.

3. The facts of the case briefly stated are that the respondent-corporate debtor placed the order for purchase of paddy from petitioner. The paddy was supplied to the respondent during the paddy season from 21.11.2014 to 21.12.2014. The total quantity of paddy sold to the respondent was 1683 quintals (Qtls) for the total price of ₹47,26,788.34. The corporate debtor is alleged to have made part payment of ₹39,52,749/- against the invoices raised by the operational creditor. Out of the above

payment, an amount of ₹27,76,786/- was paid as the principal amount and ₹11,75,963/- towards the interest as per the agreed terms. The petitioner-operational creditor is a commission agent and a middleman who used to procure the paddy from farmers to be supplied as per the demand in the open auction. As a commission agent, the petitioner was to get 2.5% of commission from every transaction. Along with that, the operational creditor was also to receive 18% interest per annum on the pending payments. The 'operational creditor' has already made the payment to the farmers of his own. The invoices raised by the petitioner include the amount paid to the farmers, commission of the operational creditor, labour and association commission.

4. It is further stated that the respondent-corporate debtor used to deposit the TDS on the amounts paid towards interest @ 18% per annum, which it was liable to pay, apart from 2.5% of the commission earned by the operational creditor.

5. The respondent-corporate debtor committed default in making further payment of the outstanding amount. However, it issued cheques to the operational creditor, which were dishonoured. The petitioner made several attempts to recover the amount and also initiated the proceedings against the corporate debtor under section 138 of Negotiable Instruments Act.

6. The amount of debt and default is stated to be ₹25,77,097/-. The petitioner has attached computation of default in the tabulated chart as at Annexure A-3, which includes the interest amount of ₹6,22,020/-.

7. The corporate debtor issued Form VAT-D2 dated 22.06.2016 admitting the receipt of the 1683 Qtls of paddy for a total amount of ₹47,26,788.34 from M/s Hajura Singh Bhim Singh, Jind. Copy of Form VAT-D2 is at Annexure A-2. The form is dated 22.06.2016.

8. The petitioner sent a demand notice dated 15.08.2017 (in fact no date is mentioned on the notice itself) Annexure A-8 in Form No.3 as prescribed in clause (a) of sub-rule (1) of rule 5 of the Rules giving all the details to which the corporate debtor sent a reply dated 30.08.2017, which is at Annexure A-9. After sending this notice, the petitioner earlier filed a petition under Section 9 of the Code bearing CP (IB) No.79/Chd/CHD/2017, which was withdrawn on 25.10.2017 because of the technical defect in the notice. The Tribunal permitted the withdrawal of the petition with liberty to file the fresh petition on the same cause of action. Copy of the order of this Tribunal in the earlier petition is at Annexure A-10.

9. Thereafter the petitioner sent another demand notice dated 26.10.2017 (Annexure A-11) in form No.3 of the Rules containing detailed particulars, which have also been furnished in the application in Form No.5 in the instant petition. Along with the notice under Section 8 of the Code, the petitioner also attached the copy of Form VAT-D2, computation of default, the invoices, vide which the goods were sold to the respondent and the list of 23 invoices. This notice was sent by speed post vide postal receipt dated 27.10.2017.

10. The fact that the demand notice was served upon the respondent is not disputed. The petitioner, however, received a letter from the respondent on 06.11.2017, in which the respondent had shown his

readiness to settle the matter, but on their own terms. The petitioner referred to this document Annexure A-12 as the letter dated 03.11.2017, but this document itself shows that it is dated 26.10.2017. The petitioner filed copy of postal receipt under which the aforesaid letter was sent by speed post to the petitioner. The copy of postal receipt at page 114 of the paper book is dated 03.11.2017 and the tracking report of the postal department relating to the status of this correspondence shows that the same was delivered to the petitioner on 06.11.2017.

11. The petitioner also attached reply dated 05.11.2017 to the demand notice dated 26.10.2017. The reply received by the petitioner is at Annexure A-13, along with the previous letter of the respondent dated 26.10.2017 containing the details of the terms for full and final settlement. The petitioner attached postal receipt under which the reply dated 05.11.2017 was sent by the respondent to the petitioner which is at page 125 of the paper book showing that it was dispatched on 07.11.2017 and delivered to the petitioner on 09.11.2017 as per the track report at page 126 of the paper book.

12. It is further stated that the petitioner sent rejoinder to the above reply vide letter dated 09.11.2017 (Annexure A-14).

13. The instant petition was thus filed on 17.11.2017 after expiry of 10 days of the service of demand notice under Section 8 of the Code.

14. On filing of this petition, copy thereof was dispatched to the corporate debtor by speed post on 29.11.2017 at the registered office of the company in order to comply with the requirement of sub-rule (2) rule 6 of

the Rules. The copy of the postal receipt dispatching the copy of petition by speed post is at Annexure A-18.

15. Notice of this petition was sent to the respondent-corporate debtor by speed post as well as at the email address of the corporate debtor available on the master data of the company. The petitioner filed the affidavit of service by attaching the postal receipt, tracking report and the copy of the email, which was sent at the email address available on the master data.

16. The respondent-corporate debtor filed the reply contents of which are supported by the affidavit of Shri Dinesh Gupta, Managing Director of the respondent-corporate debtor. With the reply the resolution of the Board of Directors of the respondent-corporate debtor dated 26.08.2017 giving consent for filing reply to the petition filed by the petitioner-operational creditor under the Code against the respondent-corporate debtor is attached. Any one of the Director of the company was given the authority to file the reply/application to the Tribunal and to do all the necessary acts in defending the case. Any one of the Director of the company was further authorised to appoint M/s Saxena and Saxena Law Chambers, Advocates for representing the corporate-debtor before the Tribunal. The corporate-debtor has filed the reply through the aforesaid law firm M/s Saxena and Saxena Law Chambers, Advocates and Mr.Dinesh Gupta, Managing Director has given the power of attorney.

17. In reply on merits, it is stated that the respondent-corporate debtor is engaged in the business of processing of rice and that the raw material being the paddy is purchased from the Mandi (Market) through

various Pacca Arthias only. The respondent appointed Bhardwaj & Co. and Mangat Ram Pawan Kumar as Pacca Arthias/agents for purchase of paddy from Jind Mandi (Market). All the purchases were made by Pacca Arthias on behalf of the corporate debtor from Kaccha Arthias. If the goods supplied to the corporate debtor were of inferior quality, the Pacca Arthias were responsible for the settlement of Account with respect to any deductions on account of bad quality and substandard goods supplied. It is stated that there is no direct dealing for procurement of the paddy between the petitioner-operational creditor and the respondent-corporate debtor. The respondent relied upon few of such Stock Transfer Challans showing that all the purchases were made through the Pacca Arthia, which are annexed as Annexure R-3 from pages 14 to 32 pertaining to the paddy season 2014.

18. The respondent has admitted the receipt of demand notice issued by the operational creditor under Section 8 of the Code. It is stated that the respondent sent a reply to the said notice dated 26.10.2017 in which the 'operational creditor' disputed the contention that there is any term Pacca Arthia prevalent in the Mandi (Market). It is further stated that there are two sorts of dealings between the respondent and the Pacca Arthia and those are direct and indirect. Copy of the letter dated 09.11.2017 sent by the petitioner to the reply of the corporate debtor is attached as Annexure R-1.

19. It is further alleged that it was an understanding that the corporate debtor would hand over the cheques of the Kaccha Arthias to the Pacca Arthias and the quality issues in respect of the goods supplied, were

intimated to the Pacca Arthia and appropriate deductions were made intimating thereby that there was no direct dealing with the Kaccha Arthias. Pacca Arthias would charge a brokerage of 1% on every bulk purchase in Jind Mandi and the corporate debtor was to pay 2.5% commission to the kaccha Arthias. Similarly, the corporate debtor also used to pay the commission of 2.5% for purchase of the paddy directly to the Kaccha Arthias and accordingly the TDS was deducted. Copy of the Ledger Account of the Pacca Arthias in the books of the respondent-corporate debtor along with the TDS Certificates are enclosed at Annexure R-4 (Colly). The TDS Certificates with respect to Kaccha Arthias i.e. the petitioner, which have been relied upon by the petitioner are not disputed.

20. The other main allegation is that there was a dispute of the quality of the goods raised by the respondent-corporate debtor. According to the respondent, the goods supplied to the respondent vide the disputed invoices/bills were of inferior quality, which resulted in the less production of rice. Issue of supply of inferior quality of the paddy was also discussed with the Pacca Arthias. Since no action was taken on the various representations made by the company, the corporate debtor made the deductions towards the inferior quality of the paddy supplied. The deductions made are to the tune of ₹9,35,650/- and those facts are contained in reply dated 26.10.2017 of the corporate debtor sent to the operational creditor.

21. Accordingly, a letter dated 26.10.2017 was sent to the operational creditor intimating the amount of quality cut deduction as part of the full and final reconsideration and settlement letter. Copy of the



invoices of quality cut along with the full and final settlement are at Annexure A-5 (Colly).

22. It is further stated that the operational creditor has not filed its ledger account being maintained in respect of the corporate debtor. However, the corporate debtor sent a copy of its ledger account along with reply to the demand notice. Copy of the ledger account is annexed with the reply as Annexure R-2 (colly) for the period from 01.04.2014 to 31.03.2017.

23. I have heard the learned counsel for the parties and carefully perused the record.

24. For initiating the corporate insolvency resolution process, the operational creditor has to first of all issue a demand notice as required by Section 8 of the Code. After the expiry of 10 days' period of demand notice, the application can be filed before the Adjudicating Authority in case, the operational creditor does not receive the payment or notice of dispute in terms of sub-section (2) of Section 8 of the Code as per the provisions of sub-section (1) of Section 9 of the Code. So far as the compliance of the service of demand notice is concerned, there is no dispute as already observed. The demand notice initially was sent in terms of Section 8 of the Code in Form No.3 and 4 as prescribed by rule 5 of the Rules. Reply to the said notice Annexure A-9 is dated 30.08.2017, which shows that the demand notice was received by the corporate debtor on 21.08.2017. That petition had to be withdrawn because the notice was sent by the petitioner's counsel in view of the law then prevalent.

25. It is admitted that the petitioner sent another demand notice in Form No.3 which is dated 26.10.2017 Annexure A-11 (Colly) and

reply to this demand notice sent by the respondent is dated 05.11.2017  
Annexure A-13.

26. The petitioner has filed various bills raised on the corporate debtor for sale of the paddy and copy of these bills/invoices are from 21.11.2014 to 21.12.2014 from pages 52 to 74 of the paper book. All these bills are issued by M/s Hajura Singh Bhim Singh, which is a proprietorship concern. The total value of 1683 Qtls of the paddy comes to ₹47,26,788.34.

27. It is admitted by the corporate debtor in Form VAT-D2 dated 22.06.2016 Annexure A-2, which is a declaration of VAT Dealer while making purchases in pursuance of sale in the course of export outside the territory of India. This declaration, which is issued by the respondent-corporate debtor is not a disputed document. The purchases made by the respondent from the petitioner are to the tune of ₹47,26,788.34 during the financial year 2014-15. The details of invoices under which the goods were purchased, are mentioned on the back of the document Annexure A-2 reflecting the purchase of 1683 Qtls of paddy of the aforesaid value. Even as per the ledger book of the respondent, the total sale price of the paddy purchased from the petitioner has been shown to be ₹47,26,788.34.

28. The matter revolves around the only contention as to whether there is a dispute which may result in the rejection of the application. So far as the compliance of sub-section (3) of Section 9 of the Code is concerned, the respondent has not raised any issue to challenge the maintainability of the application on this ground.

29. There is an affidavit dated 11.11.2017 filed by the proprietor of the petitioner concern that the respondent-corporate debtor has sent a reply dated 09.11.2017 to the demand notice relating to the dispute of unpaid operational debt and a frivolous ground has been taken to delay and defeat the claim and wriggle out of the Code. Rather, the claim of the operational creditor was admitted by the corporate debtor for a number of times by different modes. The question that would require adjudication is whether the reply of the respondent-corporate debtor amounts to a dispute within the definition of the said term as per sub-section (6) of Section 5 of the Code.

30. The petitioner has attached computation of default at Annexure A-3, which states that the total amount received by the petitioner-operational creditor from the respondent-corporate towards the outstanding amount is ₹27,76,786/- towards the principal and details of the payment received are also mentioned in the certificate from the Bank of India where the petitioner is maintaining the account, which is at Annexure A-15. Various payments have been received by the petitioner-operational creditor from 13.02.2015 to 29.03.2017. The petitioner has also filed copy of the statement of account of the petitioner concern maintained with the Bank of India which is at Annexure A-4.

31. Under Section 9 (4) of the Code, the operation creditor may propose a resolution professional to act as an interim resolution professional. For operational creditor admittedly it is not mandatory to propose the name of interim resolution professional to act as interim

resolution professional and in such matters, the Tribunal has to proceed in accordance with clause (a) of Section 16 (3) of the Code.

32. The only question that remains to be discussed is whether there is a dispute raised by the operational creditor.

33. There are 12 invoices under which the paddy was sold to the respondent-corporate debtor as mentioned on the back of VAT-D2 admittedly issued by the respondent. The respondent has filed copies of certain invoices to support the contention that the petitioner is a Kaccha Arthia and Pacca Arthia i.e. commission agents are M/s Mangat Ram Pawan Kumar and Bhardwaj & Co. The respondent filed so many invoices to support this contention, which are from pages 14 to 32 (Annexure R-3 (Colly)) and out of these, only the invoices at pages 23 and 32 pertain to the paddy purchased from Hajura Singh Bhim Singh, but rest of the invoices in question have not been filed by the respondent. In any case, if Mangat Ram Pawan Kumar was a Pacca Arthia, his role was over on payment of 1% of the commission to that firm whereas the outstanding amount in respect of the purchase made from the petitioner is the same as per the version of both the parties.

34. The respondent had been making the payment of interest to the petitioner admittedly in respect of the outstanding payment and deducting the tax at source for which the documents attached are at Annexure A-6 at page 76 of the TDS Form 26AS, which is required under Section 203AA of Income Tax Act for the assessment year 2015-16 relevant to the financial year 2014-15. Huge amount was credited towards

the interest in favour of the petitioner from 21.11.2014 to 31.03.2015. The amount credited in the account of the petitioner by way of payment of interest on 31.03.2015 is ₹6,42,182/- and the tax deducted at source is ₹64,219/-. For the assessment year 2017-18 with respect to the financial year 2016-17, the amount credited towards the interest in favour of the petitioner by the respondent is ₹5,98,000/-, over which the Tax of ₹59,800/- was deducted. Had there been a quality issue, there was no question of making these payments in the years 2015 and 2016 towards the interest over the outstanding amount.

35. Not only this, the respondent had also issued the cheques in favour of the petitioner. Annexure A-7 is the cheque dated 15.01.2017 for an amount of ₹4,29,877/- and the dishonoured cheque memo of the Bank is also annexed at page 83 of the paper book. Reference to another cheque dated 28.02.2017 for ₹1,93,445/- has also been made which was also dishonoured. Page 86 is the copy of the cheque dated 25.04.2017 for ₹1,93,445/-, which was also dishonoured and the other cheque is dated 30.06.2017 for ₹3,09,273.31 at page 88 of the paper book, which had also bounced. All these cheques are in the name of Hajura Singh Bhim Singh. The learned counsel for respondent vehemently contended that these were the post-dated cheques issued by way of security and it is further contended that the proceedings for the dishonoured cheques are continuing and are pending before the Magistrate under Section 138 of Negotiable Instruments Act. There is no document relied upon by the respondent that it intimated the petitioner ever before sending the reply to the demand notice raising issue of quality of the material or that the cheques handed over to the

petitioner were all post-dated, which contention is to be weighed in the background of the respondent making payment to the petitioner till 29.03.2017.

36. It would be quite interesting to refer to the debit notes relied upon by the respondent. Page 42 of the reply refers to the supply of 40 bags of the paddy on 30.11.2014 and the rate of the paddy is mentioned as ₹2770/- per qtl, but ₹900/- per qtl is deducted towards poor quality. The interesting feature is that in all these debit notes name of agent is mentioned as M/s Mangat Ram Pawan Kumar and in a few debit notes, agent's name is M/s Bhardwaj & Co., but the name of the supplier is mentioned as Hajura Singh whereas VAT-D2 Form and the cheques issued by the respondent-corporate debtor is mentioned as Hajura Singh Bhim Singh as further evident from the cheque dated 30.06.2017 at page 88 of the paper book. In the debit note at page 43 of the paper book of reply, the deduction of the supplies of different quality is made @ ₹600/- per Qtl due to high moisture; on the next page is the deduction made @ ₹800/- per Qtl for the low quality; at page 45, the deduction is @ ₹700/- per Qtl for the High Immature, so on and so forth. Adopting of such a procedure is totally unacceptable. In the Mandis i.e. the Market Committee, the purchases are made by the Rice Mills in respect of the paddy on 'as is where is basis'. This is not an agency like Food Corporation of India or the Department of Food & Supplies, which analysis the quality of the rice to be supplied by the Rice Millers for Custom Milling of the rice, based on instructions of the government and the agreements in writing.

37. Coming to the issue as to whether these documents or the reply to the demand notice would constitute a dispute as defined in sub-section (6) of Section 5 of the Code, which reads as follows

*“dispute; includes a suit or arbitration proceedings relating to-*

- (a) the existence of the amount of debt;*
- (b) the quality of goods or service; or*
- (c) the breach of a representation or warranty.”*

38. For the first time, an issue was raised by the corporate debtor with regard to the quality of the goods in the reply dated 30.08.2017 to the earlier demand notice based on which a petition was filed, but on technical defect, the same was withdrawn. Before that there was absolutely no whisper by the respondent to challenge the claim of the petitioner on the ground of quality or any other issue. The respondent has rather shown in its ledger account the amount lying outstanding against the petitioner to the tune of ₹95,870/- as on 31.03.2017. The payments of ₹5,38,200/-, ₹2,38,821/- and ₹1,93,445/- are entered to have been made to the petitioner on 04.05.2015, 20.01.2017 and 29.03.2017 respectively. What was the occasion for the respondent to make over-payment to the petitioner despite relying upon its so called ledger account and the debit notes relating to the quality cut. Phrase quality cut has been very carefully used, but the above defence must fall to the ground as there is not an iota of evidence in nature of any communication, emails, letter to the alleged Pacca Arthias raising any grievance for about three years of the conclusion of the transaction of supply of the paddy.

39. In this reply, the pendency of the criminal proceedings under Section 138 of the Negotiable Instruments Act at the instance of the petitioner are admitted. The correctness of VAT-D2 Form is also admitted in this reply. There is reference to a discussion made so many times with regard to the quality of the paddy and that the petitioner never came for final settlement. Though a reference to the cheques as security cheques has been mentioned in this reply, but this allegation was not reiterated in the reply filed to the instant petition.

40. Thereafter the respondent sent a letter dated 26.10.2017 Annexure A-12 showing an amount of ₹9,35,650/- towards the quality-cut and there was statedly an outstanding balance of ₹95,870.72, which is again much after the issuance of the demand notice. The aforesaid objections have also been raised in the reply to the present demand notice dated 05.11.2017 Annexure A-13. Though this reply to the demand notice purports to be dated 05.11.2017, but the same was posted to the petitioner vide postal receipt dated 07.11.2017 as per the postal receipt at page 125 and delivered to the petitioner on 09.11.2017 as per the tracking report at page 126 of the paper book.

41. It would be important at this stage to refer to **“Mobilox Innovations Private Limited Versus Kirusa Software Private Limited” (2018) 1 SCC 353** of the Hon’ble Supreme Court. The Hon’ble Supreme Court held as under:-

*“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.”*

42. The Hon'ble Supreme Court held that within a period of 10 days of the receipt of the demand notice or copy of invoice, the corporate debtor must bring to the notice of the operational creditor the existence of a dispute and/or the record of pendency of the suit or arbitration proceeding filed before the receipt of such notice or invoice in relation to such a dispute. What is important is that the existence of the dispute and/or the suit or arbitration proceeding must be pre-existing – i.e. it must exist before the receipt of the demand notice or invoice, as the case may be.

43. This above principal laid down by the Hon'ble Supreme Court puts it obligatory on the Adjudicating Authority to see as to whether

there is plausible defence which requires further investigation and that the dispute is not a patently feeble, legal argument or an assertion of facts unsupported by evidence. The Hon'ble Supreme Court further held that it is important to separate grain from the chaff and to reject a spurious defence, which is mere bluster.

44. Similarly the Hon'ble Supreme Court held in **“Innoventive Industries Ltd. Vs. ICICI Bank and Ors.” Civil Appeal Nos.8337-8338 of 2017**, decided on 31.08.2017, that the Scheme of Section 7 of the Code stands in contrast with the scheme under Section 8 of the Code, where an operational creditor is on the occurrence of a default, to first deliver a demand notice of unpaid debt to the operational creditor in the manner provided in sub-section (1) of Section 8 of the Code. Further under Section 8 (2) of the Code, the corporate debtor within a period of 10 days from the receipt of the demand notice or copy of invoice mentioned in Section (1) **bring to the notice of the operational creditor the existence of a dispute or record of pendency of a suit or arbitration proceedings which is pre-existing i.e. before such notice or invoice was received by the corporate debtor (emphasised supplied).**

45. As already observed in this case, the respondent had been making regular payments of the interest as well as the principal to the petitioner-operational creditor about three years after the transaction was completed, but raised an issue with regard to the quality-cut only after the first demand notice under Section 8 of the Code was sent. The present cannot be considered to be a case where the dispute has been raised before the receipt of the demand notice.

46. It is not the case of the respondent that it has settled the accounts of the present transaction with the Pacca Arthias nor it is averred in defence that Pacca Arthias filed any proceedings against the petitioner nor even the respondent has taken any proceedings against the petitioner except making the regular payments and is coming up with such plea, which on the face of it, deserves to be out rightly rejected. Then no document to show that the debit notes were ever set to the petitioner nor any other communication was sent to the petitioner, who has paid the price of the paddy to the farmers from whom it was procured. This is what should be understood as correct interpretation of the term dispute, while separating grain from the chaff and to reject the spurious defence, which is merely a bluster.

47. In view of the above, the application deserves to be admitted. The application is, therefore, admitted and the moratorium is declared for prohibiting all 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.

48. 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.

49. 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.

50. The petitioner has not proposed the name of any resolution professional to act as interim resolution professional. The operational creditor is not bound to propose such name in view of sub-section (4) of Section 9 of the Code. As per Section 16 (3) clause (a) of the Code, the reference is required to be made to the Insolvency and Bankruptcy Board of India for recommending the name of the resolution professional. Now the Insolvency and Bankruptcy Board in India has furnished the panel of the insolvency resolution professionals to be appointed in terms of Section

16 (3) of the Code. That panel was forwarded to this Tribunal vide letter dated 10.01.2018 sent by the Insolvency and Bankruptcy Board in India. From the said panel, I propose to appoint Mr. Atul Kumar Kansal, registration number IBBI/IPA-001/IP-P00035/2016-17/10088 as the Interim Resolution Professional. According to the instructions received vide letter dated 22.01.2018, the Designated Registrar of this Tribunal shall intimate to Mr. Atul Kumar Kansal to furnish his declaration and disclosure statement as per the provisions of IBBI Regulations strictly in accordance with the said letter.

51. List the matter for further directions with regard to the appointment of Interim Resolution Professional on 08.02.2018 with the report of Designated Registrar of this Tribunal.

Copy of this order be supplied to both the parties forthwith.

Sd/-  
(Justice R.P.Nagrath)  
Member (Judicial)  
Adjudicating Authority

Pronounced.  
February 02, 2018.  
Ashwani