

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
“CHANDIGARH BENCH, CHANDIGARH”**

**CP (IB) No. 111/Chd/Pb/2017**

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

**In the matter of:**

M/s Kapil Dev Kansal,  
Commission Agents,  
Shop No.13, New Grain Market,  
Barnala (Punjab)

...Petitioner-Operational Creditor

Vs.

Yashoda Cotton & General Mills  
(P) Ltd. having its registered office at  
C/o M/s Dhani Ram Birbal Dass,  
Old Cinema Road,  
Barnala, (Punjab)148101 N

...Respondent-Corporate Debtor

**Order delivered on : 28.11.2017**

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

For the petitioner : Mr. Rakesh Bhatia, Advocate.

For the respondent. : Mr. Sourabh Goel, Advocate.

**JUDGEMENT(ORAL)**

This petition is filed by the 'Operational Creditor' under section 9 of the Insolvency and Bankruptcy Code, 2016 in Form 5 as prescribed in rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the Rules) for initiating the insolvency resolution process against the corporate debtor. The applicant is proprietor of M/s Kapil Dev Kansal, Commission Agents and there is affidavit filed by Kapil Dev Kansal aforesaid in support of the contents of the application.

2. The respondent-corporate debtor was incorporated as a company on 25.03.2008 and allotted CIN No. U1712/Pb-2008PTC031787. Its authorized share capital is ₹1,00,00,000 with paid up capital of ₹87,88,380/-. The corporate debtor has its registered office in District Barnala, Punjab and, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The respondent purchased goods for the period from 18.02.2015 to 01.03.2016 of the total value of ₹2,94,217.24 out of which some payments were made and the amount due is stated to be ₹2,77,906.92. Otherwise there was running account of transactions between the parties and an amount of ₹16,311.57 was adjusted in the first invoice No.168 of 18.02.2015 when the corporate debtor had issued a cheque of ₹3,00,000/- of the payment of outstanding bills on 10.11.2015.

4. This petition has been filed after the expiry of 10 days period from the service of Demand Notice in Form 3 Annexure P-4 as prescribed in rule 5(1)(a) of the Rules. With the Demand Notice copies of the statements of account of the corporate debtor being maintained by the petitioner for the Financial Years 2014-15, 2015-16 and 2016-17 alongwith three invoices No.172, 194 and 195 were also sent. The Demand Notice was sent by Speed Post on 16.10.2017 which was delivered to the corporate debtor on 17.10.2017 as per the document Annexure-4 (colly) page 40 of the Paper Book. Service of the Demand Notice has also not been disputed by the learned counsel for the corporate debtor. Alongwith this petition the petitioner has also attached copy of the invoices Annexure-2 under which the goods were delivered to the respondent. Copies of the bank statements have also been filed. The petitioner has also relied upon the ledger account from pages 37 to 39

contending that the entries of all the transactions and the amounts of the bills and various payments received. Copy of this Account Statement was also sent to the corporate debtor alongwith Demand Notice.

5. When the matter was listed on 13.11.2017 the following defects were noticed:-

- “(i) That the certificate from the financial institute i.e. State Bank of India maintaining the accounts of the operational creditor is not in accordance with the requirement of the provisions of the I&B Code, 2016.
- (i) That the copy of the notice annexed with the petition and copy of the document sent to the corporate-debtor are unsigned.”

6. The defects were required to be removed within seven days. The petitioner filed documents alongwith the affidavit of the petitioner on 20.11.2017.

7. Alongwith this affidavit photo copy of the Demand Notice signed by the proprietor of the petitioner has been attached and the learned counsel for the corporate debtor has not disputed this contention proposition of fact. The petitioner has also attached copy of the certificate dated 17.11.2017 issued by the State Bank of India where the account of the petitioner is being maintained and the bank has certified that there has been no deposit in this account from the corporate debtor for the period from 16.10.2017 till date, 16.10.2017 is the date on which the Demand Notice was despatched to the corporate debtor.

8. Notice of this petition was issued to the respondent-corporate debtor. Mr. Sourabh Goel, Advocate was present for corporate debtor and

accepted the notice. In the reply to the petition it is stated that the respondent is not in a position to make payment of outstanding amount. Learned counsel for the respondent however submits that the petitioner has not come with clean hands because the petitioner was fully aware of the financial position of the corporate debtor which had promised the petitioner to make payment in due course.

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

10. The petitioner has also proposed the name of Mr. Manjul Mittal having registration No.IBBI/IPA-001/IP-P00061/2016-2017/10139 to act as the Interim Resolution Professional by submitting written communication in Form 2. The necessary particulars required have been furnished by the Resolution Professional. It is stated that there are no disciplinary proceedings pending against him and he has not been appointed as Interim Resolution Professional/Resolution Professional in any case so far. On perusal of the document it is revealed that the same is in order. The petitioner has also filed his affidavit dated 17.11.2017 to the effect that no notice of dispute of the outstanding amount has been given by the corporate debtor in respect of the unpaid debt. The petitioner has complied with the necessary requirements of Section 9(3)(b) and 9(3)(c) of the Code.

11. In view of the aforesaid discussion the application being complete and admittedly there is no objection about the unpaid debt and that Demand Notice was duly served in terms of the Rules, the instant petition is admitted declaring the moratorium under Section 14(1) 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 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.

12. 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 regular.

13. The matter be now listed on 07.12.2017 for passing formal order of appointment of the Interim Resolution Professional.

14. Copy of this order be communicated to both the parties.

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

November 28, 2017  
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