

**IN THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"**

CP(IB) No. 223/Chd/Hry/2018

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

In the matter of:

Shri Amit Kansal,

Proprietor at M/s. Amar Nath & Sons,
having its principal place of business
at Shop No. 141, New Grain Market,
Kurukshetra, Haryana

...Applicant-Operational Creditor

Vs.

M/s. R P Basmati Rice Limited,

having its registered office at
Village Madanpurg, GT Road,
Karnal, Haryana.

...Respondent-Corporate Debtor

Judgement delivered on : 16.11.2018

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

For the petitioner : Mr. G.S. Sarin, Practising Company Secretary.

For the respondent : Mr. Abhinav Sabharwal, Practising Company Secretary.

Per: R.P. Nagrath, Member (Judicial).

JUDGEMENT (Oral)

The instant petition has been filed by Mr. Amit Kansal, proprietor of M/s. Amar Nath & Sons, the Operational-Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') in Form 5 as prescribed under Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for short 'the Rules') for initiating the Corporate Insolvency Resolution Process.

2. The respondent-corporate debtor was incorporated on 31.08.2001 with authorised share capital of ₹5,00,00,000/- and paid up share capital of ₹4,10,87,800/-. The registered office of the corporate debtor is located in Karnal District of Haryana State and therefore, the matter falls within the territorial jurisdiction of this Tribunal. The contents of the application are supported by the affidavit of the petitioner at page 86 of the paper book.

3. The facts of the case, briefly stated, are that the petitioner is a commission agent and deals in the sale and purchase of paddy. The respondent is a Rice Mill and manufacturing rice and allied products. In the year 2014, the respondent-corporate debtor approached the operational creditor for supply of paddy. The petitioner supplied paddy to the respondent vide four invoices dated 12.10.2014, 16.10.2014 (two) and 17.10.2014 amounting to ₹ 4,06,492/-. The invoices of supply of paddy are at Annexure-II(c). However, the respondent-corporate debtor defaulted in making the payment of price of paddy. Apart from the aforesaid supply, the respondent had also been purchasing the paddy through the petitioner as a commission agent to the tune of ₹20,61,271/- for which the payment was made by the respondent. The payment of four bills – one dated 12.10.2014, two dated 16.10.2014 and one dated 17.10.2014 has not been made. The amount in default is claimed to be ₹ 3,68,542/- as out of total amount of the bills of ₹4,06,492/-, part payment of ₹37,950/- was made to the petitioner.

4. The petitioner sent demand notice dated 04.06.2018 Annexure-I in Form 3 as prescribed under Rule 5(1) of the Rules with details of the transactions and the supporting documents and also another Demand Notice also dated 04.06.2018 in Form 4. The demand notice was delivered to the

corporate debtor by hand as per acknowledgement at Annexure-I(A) and another by Speed Post vide postal receipt dated 06.06.2018 at page 35 of the paper book and the tracking report attached shows that the item was still in transit. When the matter was listed on 30.07.2018, the petitioner was directed to file latest tracking report which was filed vide Diary No. 3121 dated 23.08.2018 at Annexure A-6 of the compliance affidavit. The tracking report at page 43 shows that the demand notice was delivered to the respondent-corporate debtor on 06.08.2018.

5. Notice of this petition was issued to the respondent-corporate debtor. When the matter was listed on 10.10.2018, Mr. Abhinav Sabharwal, Practising Company Secretary appeared for the respondent. Mr. Sabharwal sought time to file authority with resolution of Board of Directors of the company in his favour. Otherwise, it was stated by Mr. Sabharwal that the company would not be opposing the instant petition. As per the office report, the Memo of Appearance along with the Resolution of Board of Directors of the respondent-company has been filed by Diary No. 4112 dated 23.10.2018. The resolution of the company is dated 01.10.2018 in favour of Mr. Anuj Singal, the Director of the company who has given the authority to represent the company before this Tribunal.

6. The reply/objection has not been filed by the respondent and Mr. Abhinav Sabharwal, authorised representative of corporate debtor stated that reply is not to be filed by the respondent nor the respondent opposes the petition. It is submitted that the respondent is in financial crisis but the amount claimed to be in default in the petition is not disputed.

7. We have heard the authorised representatives of both the parties and perused the record carefully.

8. It will be relevant to refer to the ledger account of the respondent being maintained by the petitioner in the regular course of business, copy of which is at Annexure-II(E). The transactions between the parties commenced in October, 2014 and these are the ledger accounts from the financial years 2014-15 to 2017-18. As per latest financial statement for the year 2017-18, the last payment was made by the respondent-corporate debtor to the tune of ₹2 lacs on 16.11.2017 for starting fresh period of limitation being the part payment of the amount. Even part payments are also recorded in the ledger account for the year 2016-17 and there are six entries of part payments beginning from 12.08.2016 to 26.01.2017. The payment made on 26.01.2017 reflects sale of vehicle by the respondent to the petitioner for a value of ₹5.50 lacs which fortifies the submission on behalf of the respondent that it has fallen into financial crisis. The debt is also acknowledged by the respondent in its ledger account of the petitioner being maintained by the respondent as at Annexure-II(F). The outstanding amount shown in this ledger account as on 16.11.2017 was ₹ 3,61,325/-. The amount of default claimed in the instant case is ₹3,68,542/- being principal amount. If there is any discrepancy, the Resolution Professional may determine the exact amount in default.

9. The petitioner has also stated in his affidavit that no notice of dispute has been received by the petitioner in order to comply with the requirement of Section 9(3)(b) of the Code.

10. The certificate from the Financial Institution i.e. Punjab National Bank where the credits are received from the respondent has also been filed

at Annexure-III(A). The certificate dated 11.07.2018 confirms that no amount has been credited in the bank account of the petitioner by the respondent since 04.06.2018 which is the date of demand notice. Copy of bank account statement has also been filed by the petitioner at Annexure A-III(B). The requirements of various provisions of Section 9 of the Code have been fulfilled and this is a case where no dispute is raised by the respondent to the operational debt.

11. The petitioner has also proposed the name of Mr. Harvinder Singh, registered professional bearing Registration No. IBBI/IPA-001/IP-P00463/2017-18/10806 in Part-III of the application to be appointed as the Interim Resolution Professional and the written communication in Form 2 is at Annexure-V in which the requisite particulars and declarations have been furnished. We have perused Form 2 and found the same in order.

12. In view of the above, we admit this petition filed by the operational creditor under Section 9 of the Code. The matter be now listed on 29.11.2018 for passing of formal order of declaring moratorium and for appointment of Interim Resolution Professional.

Sd/-
(Pradeep R. Sethi)
Member (Technical)

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

November 16, 2018
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