

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

**CP (IB) No. 47/Chd/Chd/2021
Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Universal Cartons Solutions Private Limited

having their registered office at
Lake Plaza, Opposite Nehru Stadium Margao,
Goa 403602.
CIN No. U74950GA1995PTC001913

...Petitioner-Operational Creditor

Vs.

Bansadari Bottlers Private Limited

having its registered office at
SCF 247, 1st Floor, Motor Market Manimajra,
Chandigarh 160101, India.
CIN No. U15511CH1992PTC012786

...Respondent-Corporate Debtor

Judgement delivered on: 03.02.2023

**Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner- : Mr. Jivesh Malik, Advocate
Operational Creditor
For the Respondent-
Corporate Debtor : Mr. Ajay Bhagwati, Advocate

Per: Harnam Singh Thakur, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Universal Cartons Solutions Private Limited** through its General Manager (Finance), Mr. Raghuvir Mardolker (for brevity 'Operational Creditor' / 'Petitioner'),

with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Bansadari Bottlers Private Limited** (for brevity '**Corporate Debtor**' / '**Respondent**').

2. The Corporate Debtor, namely, Bansadari Bottlers Private Limited, is a Company incorporated on 02.12.1992 under the provisions of Companies Act, 1956 with CIN No. U15511CH1992PTC012786 with its registered office at SCF 247, 1st Floor, Motor Market Manimajra, Chandigarh 160101, India. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure A.

3. The facts of the case, briefly, as stated in the petition are that from August, 2016 to January, 2017 the Corporate Debtor purchased moncartorns and paper board cartoons as packaging material from Operational Creditor. The invoices amounting to Rs. 33,35,557 were raised and were to be paid within ninety days from the date of invoice, else an interest @ 30% p.a. was to be charged on the same. The Corporate Debtor failed to clear the said dues. Upon the receipt of legal notice dated 25.07.2017 sent by Operational Creditor, the Corporate Debtor approached the Operational Creditor for reconciliation through meeting held on 19.12.2017 wherein the representatives of the Corporate Debtor confirmed and acknowledged their liability to pay the Operational Creditor. However, Corporate Debtor failed to pay the outstanding dues.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 33,35,557/- (Rupees Thirty Three Lakhs Thirty Five Thousand Five Hundred and Fifty Seven Only) along with interest @

30% p.a under the invoices till 25 November, 2020 i.e. Rs. 69,37,018 (Rupees Sixty Nine Lakhs Thirty Seven Thousand and Eighteen Only). Total Rs.1,02,72,574 (Rupees One Crore Two Lakhs Seventy Two Thousand Five Hundred and Seventy Four Only) along with further interest @30% p.a. on Rs. 33,35,557/- (Rupees Thirty Three Lakhs Thirty Five Thousand Five Hundred and Fifty Seven Only) from November 26,2020 till realisation from Corporate Debtor. The default occurred on 23.04.2017 i.e. last invoice raised on 23.01.2017 and the payment for the same fell due on 23.04.2017. Copy of purchase orders (Annexure-D), invoices (Annexure-A), minutes of the meeting dated 19.12.2017 (Annexure-F), Ledger Accounts Statement reflecting the balance outstanding principal amount due to be paid by Corporate Debtor (Annexure-I) is attached with the main petition.

5. A demand notice in Form 4 is stated to be issued by the operational creditor on 24.11.2020 and the same was attempted to be delivered by the postal authorities to Corporate Debtor, however, the same could not be served at registered address due to the reason 'Door Locked' and 'No such person in the address'. However, demand notice through email was duly served on the Corporate Debtor on 30.11.2020 and no delivery failure in respect of the same had been received (Annexure-H). The corporate debtor had failed to respond or to make any payments in pursuance of the same.

6. Notice of this petition had been issued to the corporate debtor to show cause as to why this petition be not admitted. The corporate debtor has filed reply vide Diary No. 02063101 dated 03.01.2022, wherein it is stated that the claim of applicant does not belong to Jagatjit Industries

Limited as per Reconciliation Agreement dated 19.12.2017. As per the Article 3.13 of the agreement, the raw material procured by respondent was directly for purpose of manufacturing IMFL (Indian Made Foreign Liquor), the same was to be purchased by respondent on behalf of Jagatjit Industries Ltd. Jagatjit Industries Ltd. were beneficial owners of such raw material procured/provided by respondent. The Corporate Debtor was not liable to pay any amount as claimed by Operational Creditor. In the documents attached to the petition, amount was manipulated by adding higher rate of interest @ 30% on principal amount. The said amount is beyond purview of IBC, 2016 and Limitation Act. It is further submitted that the Operational Creditor had no locus standi to file present petition. In the reconciliation meeting between applicant and Jagatjit Industries, respondent agreed for the debt of Rs.33,35,557 (Rupees Thirty Three Lakhs Thirty Five Thousand Five Hundred and Fifty Seven Only) due from the said party to the agreement i.e. Jagatjit Industries and not from the respondent. The Demand Notice was defective on grounds of limitation as the same is time barred since 23.01.2020. The Applicant did not initiate any action for recovery of invoice amount due to show that the material had been transferred from Applicant's firm. It is further submitted that the consideration document does not bear signatures of any directors/authorized signatory of corporate debtor. Therefore, the above contentions show that there is a pre-existing dispute.

7. The rejoinder was filed vide Diary No.02063/2 dated 02.06.2022, wherein it is stated that it is denied that the claim of Operational Creditor had nothing to do with Corporate Debtor as the same belonged to Jagatjit Industries Ltd. as per the consideration agreement dated 19.12.2017. The

Corporate Debtor clearly admitted the claim of Operational Creditor. In the meeting between Operational Creditor and Mr. K.K. Kohli who represented Corporate Debtor i.e. Basandari Bottlers Private Ltd. Jagatjit acknowledged and admitted the total amount of Rs. 33,35,557/- (Rupees Thirty Three Lakhs Thirty Five Thousand Five Hundred and Fifty Seven Only) payable by Basandari Bottleners Pvt. Ltd. The contract manufacturing agreement dated 11.03.2014 was a contract between Corporate Debtor and a third party i.e Jagatjit. The purchase orders were raised by the Corporate Debtor in its name and goods were supplied by Operational Creditor. According to Section 18, Limitation Act, 1963 it states that *“where before the expiration of the prescribed period in respect of any right, an acknowledgement of liability in respect of such right has been made in writing against whom such right is claimed or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when acknowledgement was so signed.”* The Corporate Debtor acknowledged its payment liability through Jagatjit, from whom the Corporate Debtor derived his liability under Agreement made on 19.12.2017. A fresh period of limitation has begun from the said date. The Corporate Debtor had failed to produce any evidence to show that pre-existing dispute was ever brought to the notice of Operational Creditor.

8. The short written submissions have been filed by Petitioner-Operational Creditor vide Diary No.02063/4 dated 05.08.2022 and by Respondent-Corporate Debtor vide Diary No.02063/5 dated 30.08.2022.

9. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice dated on 24.11.2020 was served upon Corporate Debtor. Notice was attempted to be delivered by the postal authorities to Corporate Debtor, however, the same could not be served at registered address due to the reason 'Door Locked' and 'No such person in the address'. However, demand notice through email was duly served on the Corporate Debtor on 30.11.2020 and no delivery failure in respect of the same had been received (Annexure-H). Therefore, demand notice was duly served.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit under Section 9 (3)(c) by the operational creditor that Corporate Debtor had failed to bring to the notice of the Operational Creditor an existence of a dispute or the pendency of a suit or arbitration proceedings filed before the service of demand notice in respect of the unpaid operational debt. It is further deposed that the Corporate Debtor had failed to pay the unpaid debt as specified in the demand notice sent by the Operational Creditor. The Operational Creditor had not received any payment or a notice of dispute regarding the pending amount from the Corporate Debtor. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

12. The other issue for consideration is whether this application is filed within limitation. Therefore, the period of limitation would begin from the date of default i.e. 19.12.2017 i.e. when the Corporate Debtor acknowledged its payment liability through Jagatjit, from whom the Corporate Debtor derived its liability under the Agreement made on 19.12.2017. Even if we ignore the

said agreement dated 19.12.2017, then also the date of default can also be taken as 23.04.2017 i.e. when the last invoice was raised on 23.01.2017 and the payment for the same fell due after 90 days i.e. on 23.04.2017. This application was filed vide Diary No. 02063 on 18.12.2020 and was re-filed on 29.12.2020. The period from 15.03.2020 till 28.02.2022 stands excluded by virtue of order dated 27.04.2021 passed by Hon'ble Supreme Court in **"In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020.** Operative portion of order passed by Hon'ble Apex Court on 27.4.2021 is as follows:-

"We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders."

Further in M.A. 21 of 2022, Hon'ble Supreme Court held:-

"In continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings".

Therefore, this Adjudicating Authority finds that this application is filed well within the time of limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) principal amount of Rs. 33,35,557/-

(Rupees Thirty Three Lakhs Thirty Five Thousand Five Hundred and Fifty Seven Only) along with interest @ 30% p.a under the invoices till 25 November, 2020 i.e. Rs. 69,37,018 (Rupees Sixty Nine Lakhs Thirty Seven Thousand and Eighteen Only). Total Rs.1,02,72,574 (Rupees One Crore Two Lakhs Seventy Two Thousand Five Hundred and Seventy Four Only) along with further interest @30% p.a. on Rs. 33,35,557/- (Rupees Thirty Three Lakhs Thirty Five Thousand Five Hundred and Fifty Seven Only) from November 26,2020 till realisation from Corporate Debtor. Copy of purchase orders (Annexure-D), invoices (Annexure-A), minutes of the meeting dated 19.12.2017 (Annexure-F), Ledger Accounts Statement reflecting the balance outstanding principal amount due to be paid by Corporate Debtor (Annexure-I) is attached with the main petition.

14. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is more than the threshold limit.

15. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after demand made by the petitioner. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, **Bansadari Bottlers**

Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Ankur Bansal and there is nothing adverse against him. In view of the above, we appoint Mr. Ankur Bansal Registration No.IBBI/IPA-003/ICAI-N-00370/2021-2022/13820,E-mail:ip.caankur@gmail.com,Mobile No. +91-9988251003, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Ankur Bansal shall be in accordance with the provisions of Section 16(5) of the Code; subject to his written consent to be filed within 7 days of this order;
- ii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate

Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;

iii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;

iv.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

v.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained

under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this

purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. We declare the moratorium in terms of sub-section (1) of Section 14 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 Securitization and Reconstruction of Operational 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.

18. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational

sector regulator and to a surety in a contract of guarantee to a corporate debtor.

19. 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.

20. The petitioner is directed to deposit an amount of ₹80,000/- (Rupees Eighty Thousand Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

21. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

22. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

February 03, 2023
VN/TB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)