

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

**IA No. 528/2024
and
CP (IB) No.657/Chd/Pb/2019**

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

In CP (IB) No. 657/Chd/Pb/2019

Monika Garg

Sole proprietor of Aggarwal Enterprises
House No. 94, Near Shiv Park
C-Block, Sirsa, Haryana-126066

...Petitioner-Operational Creditor

Vs.

M/s Ahuja Cotspin Pvt. Limited

CIN No. U17119PB2010PTC034482

Registered Address:

B-VI-I, Kucha No.1, Madhopuri
Ludhiana, Punjab-141008

Factory At:

Village Bhattian, Kohara Road,
Machiwara, District-Ludhiana
Punjab

...Respondent-Corporate Debtor

In IA No. 528/2024

M/s Ahuja Cotspin Pvt. Limited

CIN No. U17119PB2010PTC034482

Registered Address:

B-VI-I, Kucha No.1, Madhopuri
Ludhiana, Punjab-141008

Factory At:

Village Bhattian, Kohara Road,
Machiwara, District-Ludhiana
Punjab

...Applicant -Corporate Debtor
Vs.

Monika Garg
Sole proprietor of Aggarwal Enterprises
House No. 94, Near Shiv Park
C-Block, Sirsa, Haryana-126066

...Operational Creditor

Judgment delivered on: 12.06.2024

Coram: Hon'ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon'ble Mr. L.N. Gupta, Member (Technical)

For the Petitioner- Operational Creditor : Mr. Pulkit Goyal, Advocate
Ms. Swati Saluja, Advocate

For the Respondent-Corporate Debtor : Mr. Anand Chhibbar, Senior
Advocate
Mr. Vaibhav Sahni, Advocate

Per: Harnam Singh Thakur, Member (Judicial)
L.N. Gupta, Member (Technical)

JUDGMENT in CP (IB) No. 657/Chd/Pb/2019

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **Monika Garg (for brevity 'Operational Creditor'/ 'Petitioner')**, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **M/s Ahuja Cotspin Private Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor is a Company incorporated on 06.12.2010 under the provisions of the Companies Act, 1956 with CIN No. U17119PB2010PTC034482 with its registered office at Madhopuri Ludhiana

Punjab-141008. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as **Annexure III**.

3. It is averred that the operational creditor is a cotton merchant and commission agent and supplied cotton to the corporate debtor. According to their purchase orders and several invoices were raised having principal amount of Rs. 1,69,37,569 and 18% interest of Rs. 22,14,223 from the date of invoices.

4. The operational creditor sent the demand notice dated 27.05.2019 on 29.05.2019 in Form 3 & 4 and the same were delivered to the corporate debtor vide registered post. The postal receipts are attached as Annexure-I with the petition. The corporate debtor gave reply dated 08.06.2019 to the demand notice denying the claim and further stating the pre-existing dispute between the parties with respect to the GST shown in the invoices and its non-payment to the GST department. Further, it is submitted that no authority letter has been annexed with the demand notice and it is a matter of civil nature. The company is not insolvent and has sufficient funds and asset base to fulfill its commitments. The corporate debtor company manufactures cotton yarn and has two units in Ludhiana with an annual turnover of more than Rs. 300 crores and export sales of more than 50 crores. The company has a net profit after serving its debt. The operational creditor supplied cotton for Rs. 37.80 crore upto September 2018 through authorised agent Mr. Naresh Sharma and cotton for Rs. 1.53 crore till December 2018 was supplied under another family firm M/s Shree Cotton Company. On 25.02.2019, the raid was conducted by the GST department for the cotton

supplied by the operational creditor without GST payment, as a result, the department seized the records and forced the corporate debtor to debit the GST Credit standing in the books of accounts of the company as well to deposit the amount in electronic credit ledger. Further, they directed to stop the payment of Rs. 20 lakhs to the operational creditor and deposit the said amount in the GST department's account. The documents were requested vide email dated 28.05.2019 by the corporate debtor from the operational creditor in order to present them before the GST authorities. Therefore, the demand notice dated 27.05.2019 was sent on 29.05.2019 to the operational creditor after the email dated 28.05.2019 was sent by the corporate debtor.

5. It is submitted by the operational creditor that a raid was conducted on some cotton suppliers and summons were issued. However, the operational creditor submitted the whole GST amount and filed all returns but the Intelligence Officer, Directorate General of GST Intelligence (DGGI) did not initiate any legal case against the operational creditor.

6. According to the petitioner, the default occurred on 13.09.2018 i.e. when the last invoice no. 202 for Rs. 23,11,017 alongwith interest of Rs. 2,78,082 was outstanding. Copy of KYC documents of the corporate debtor (Annexure IV), invoices (Annexure V), bill wise summary of outstanding dues and interest calculation (Annexure VI), ledger account of the corporate debtor in the account books of operational creditor for the Financial Year 2018-19, till 19.05.2019 (Annexure VII), GST Return for the F.Y 2017-18 2018-19 due (Annexure VIII), Bank Accounts of the operational creditor (Annexure IX) are attached with the main petition. The copy of Civil Writ

Petition No. 21444/2019 and its reply have been submitted vide IA No. 1497/2022, Dairy No. 02427 dated 04.10.2022.

7. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavit of service has been filed vide Diary Nos. 994 dated 05.02.2020. The reply was filed by corporate debtor vide Dairy No. 00419/2 dated 11.10.2021 wherein it is stated that:-

7.1. There is suppression of material facts and respondent is a solvent company with sufficient funds and turnover of Rs. 300 crores. The respondent is in a position to honour the claim. However, there is existence of dispute with regard to the amount of debt as there is a unilateral demand of interest of 18% on debt amount on the basis of the invoices.

7.2. Further, the invoices do not bear the signature/ acknowledgment of the respondent. Furthermore, there is breach of representation and warranty as per Section 5(6)(c) of the Code. The GST raid was conducted on the premises of the respondent and the records were seized. The respondents were directed to stop the payment to the applicant and the GST dues were transferred to the respondent as these were not paid by the applicant. The tax liability of Rs. 20 lakhs fell upon the respondent and there is an ongoing litigation under GST instituted by DG intelligence against the respondent.

7.3. The Respondent filed a civil writ petition WP 21444 of 2019 before the Hon'ble Punjab and Haryana High Court against the Directorate General of GST Intelligence praying for a direction restraining the GST

department from taking any coercive measure against the Respondent and its directors and to further refund a sum of Rs. 1,03,80,000.00p to the Respondent which has been wrongly recovered from the Corporate Director and its directors.

7.4. In the said CWP 21444 of 2019, by an order dated 14/08/2019, the Hon'ble High Court issued notice and, in the interim, had directed the GST department to take no coercive steps against the petitioner-Company and its Director. This blanket interim order was withdrawn by an order dated 05/02/2021 however, the GST department was directed to investigate this matter strictly as per law.

7.5. Moreso, the respondent called authroised agent of the Applicant to provide all the requisite documents pertaining to payment of GST, however, the applicant failed to do the same. As a result, the payments were stopped in consent with Mr. Naresh Sharma (Authorised agent of Applicant).

8. The rejoinder was filed by operational creditor vide Dairy No. 00419/3 dated 04.05.2022 wherein it is stated that:-

8.1. The respondent has mentioned a turnover of 300 crores and still not paying the legitimate dues. The goods were supplied on the request of the corporate debtor and demand of 18% per annum interest from the date of the bill is mentioned on the invoices itself. The invoices are backed by the e-way bills and the dispute regarding the signature/ acknowledgment of the respondent was never raised before the filing of the present petition. There is no dispute regarding the quantum of the amount rather the corporate debtor itself admitted the receiving of

goods worth Rs. 37.80 crore upto September 2018 and thereby from other family firm upto December 2018 of Rs. 1.53 crore. The operational creditor has paid all the GST dues and filed returns for the same (Annexure R1). There is no existence of dispute prior to the filing of present petition on account of representation and warranty as per Section 5(6)(c) of the Code. The corporate debtor never raised any dispute regarding the quality of the goods.

8.2. Further, the raid was conducted by the GST officials on some cotton suppliers and issued summon to the operational creditor. However, no legal action was taken against the operational creditor as he had paid all the GST amounts and filed the returns. The corporate debtor has not provided any proof of demand or payment of Rs. 20 lakhs to the GST department. Even if Rs. 20 lakhs is deducted from the whole outstanding amount, still there is default of Rs. 1,49,37,569/- on part of the corporate debtor which proves debt and default.

8.3. Furthermore, the ongoing litigation before Hon'ble Punjab and Haryana High Court is between the corporate debtor and the GST department and operational creditor is not a party to it. The corporate debtor has not provided any document to substantiate the GST dispute on account of supplies. There was no such conversation with the Mr. Naresh Sharma regarding the withholding the payments to the operational creditor on non-production of the relevant documents.

9. The short written submissions are filed by the petitioner vide Diary No.00419/4 dated 25.05.2022 and by the corporate debtor vide Dairy No. 00419/5 dated 22.12.2022 reiterating the above-mentioned facts.

10. We have heard the learned counsel for the petitioner and have perused the records.

11. The first issue for consideration is whether this application is filed within limitation. A demand notice issued dated 27.05.2019 in Form 3 & 4 attached as (Annexure-I) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default on 13.09.2018 i.e. when the last invoice no. 202 for Rs. 23,11,017 alongwith interest of Rs. 2,78,082 became outstanding). This application was filed vide Diary No. 6372 on 15.11.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation period of 3 years.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by learned counsel for the petitioner by way of affidavit filed under Section 9(3)(b) dated 15.11.2019 that there is no dispute in terms of Section 8(2)(a) of the Insolvency and Bankruptcy Code, 2016 forwarding record of pendency of the suit or arbitration proceeding filed by the corporate debtor before the receipt of demand notice dated 27.05.2019 nor any payment in terms of Section 8(2) of the Code, 2016 has been received by the operational creditor.

13. The contention of the corporate debtor that there is a pre-existing dispute between the parties with regard to the payment amount due to the GST department on behalf of the operational creditor and subsequently, the dues of Rs. 20 lakhs were transferred to the corporate debtor. Further, it is contended that the GST department had asked the corporate debtor to stop any payments further to operational creditor. This contention of the corporate debtor is not much convincing as the amount was paid by the operational

creditor to the GST department for which the copy of the GST return has been filed by the operational creditor as Annexure R-1 of the rejoinder.

14. It is further submitted by the corporate debtor that the Civil Writ Petition is pending before the Hon'ble Punjab and Haryana High Court bearing no WP 21444 of 2019 against the Directorate General of GST Intelligence for not taking any coercive measure against the respondent and to refund the sum of Rs. 1,03,80,000.00p to the respondent wrongly recovered from the corporate debtor and its directors. The GST department replied to the writ petition stating that the bogus purchases are made through intermediaries including the name of the operational creditor.

However, this contention of the corporate debtor is devoid of legal force as the litigation pending before the Hon'ble Punjab and Haryana Court bearing CWP No. 21444 of 2019 pertains to the GST dues recoverable from the corporate debtor which has no relevance with the present petition and the operational creditor is not a party to that litigation. Even for the sake of arguments, Rs. 20 lakhs recovered by the GST department from the corporate debtor is to be paid on behalf of the operational creditor in the said Writ petition and assuming that said claim is true then also the corporate debtor owes Rs. 1,69,37,567/- plus interest towards the operational creditor and after deducting a sum of Rs. 20 lakhs, still there will be a liability of Rs. 1,49,37,569/- on the corporate debtor which is above the threshold limit of rupees one lakh (now rupees one crore) and the present petition is maintainable under Section 9 of the Code.

15. Further, it is contended on behalf of the corporate debtor that the dispute regarding the GST dues arose much prior to the issuance of the

demand notice dated 27.05.2019 and the invoices issued do not bear the signature/acknowledgment of the respondent, therefore there is a pre-existing dispute between the parties. On the other hand, it is submitted on behalf of the operational creditor that no dispute was ever raised by the corporate debtor before the issuance of demand notice. Further, the respondent has not denied the receipt of cotton and its liability towards the supply. The invoices are backed by the e-way bills.

However, it is seen from the records that the demand notice was issued on 27.05.2019 and there is no cogent and convincing evidence placed on record to show that the corporate debtor had raised any issue of the pre-existing dispute with regards to the GST dues with the operational creditor prior to the issuance of the demand notice. It is at much later stage, when the demand notice was issued and only in the reply dated 08.06.2019 to the demand notice, the issue was raised by the corporate debtor. Even the Civil Writ Petition bearing no 21444 of 2019 was filed on 08.08.2019 i.e. much after the issuance of demand notice. The reliance can be placed upon the judgment of Hon'ble Supreme Court **Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited (2018) 1 SCC 353** wherein it was held that:

“40. It is clear, therefore, 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.

43.*We have seen that a “dispute” is said to exist, so long as there is a real dispute as to payment between the parties that would fall within the inclusive definition contained in Section 5(6).*

45. *Going by the aforesaid test of “existence of a dispute”, it is clear that without going into the merits of the dispute, the appellant has raised a plausible contention requiring further investigation which is not a patently feeble legal argument or an assertion of facts unsupported by evidence. The defense is not spurious, mere bluster, plainly frivolous or vexatious. A dispute does truly exist in fact between the parties, which may or may not ultimately succeed, and the Appellate Tribunal was wholly incorrect in characterizing the defense as vague, got-up and motivated to evade liability”.*

(Emphasis Supplied)

Thus, it can be safely concluded that there is no pre-existing dispute between the parties.

16. Another contention of the corporate debtor with regards to the quantum of the debt and the unilateral demand of interest of 18% on debt amount cannot be considered as the invoices placed on record clearly show, *“interest 18% will be charged from the date of bill”*. Therefore, this contention of the corporate debtor is devoid of legal force.

17. 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) of Rs.1,91,51,792/- (One Crore Ninety One Lakhs Fifty One Thousand Seven Hundred and Ninety Two Rupees) (Principal amount Rs. 1,69,37,569/-) still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount

despite repeated reminders by the petitioner-operational creditor. The default is evident from the KYC documents of the corporate debtor (Annexure IV), invoices (Annexure V), bill wise summary of outstanding dues and interest calculation (Annexure VI), ledger account of the corporate debtor in the account books of operational creditor for the Financial Year 2018-19, till 19.05.2019 (Annexure VII), GST Return for the F.Y 2017-18 2018-19 due (Annexure VIII), Bank Accounts of the operational creditor (Annexure IX) attached with the main petition.

Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (now rupees one crore) by the respondent-corporate debtor.

18. In the present petition all the requirements of Section 9 of IBC i.e. debt, default and no dispute between the parties 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 a default in payment of the claimed operational debt even after the 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, **M/s Ahuja Cotspin Private Limited** and 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.

19. In Part-III of Form No. 5, Ms. Priya Bhushan Sharma, Interim Resolution Professional (IRP) has been proposed by the petitioner. We appoint Ms. Priya Bhushan Sharma, Registration No. IBBI/IPA-001/IP-P00351/2017-18/10652, E-mail: bhushansharma@hotmail.com, Mobile No. +91- 9878029920 from the list provided by the Insolvency and Bankruptcy Board of India. The Law Research Associate of this Tribunal has checked the credentials of Ms. Priya Bhushan Sharma and there is nothing adverse against her. This Adjudicating Authority further directs that:

- i.) The term of appointment of Ms. Priya Bhushan Sharma be in accordance with the provisions of Section 16(5) of the Code,
- 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 the 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 the 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 a 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 the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of the constitution of the Committee; and

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

20. 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 the 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.

21. 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.

22. The petitioner is directed to deposit an amount of ₹4,00,000/- (Rupees Four lakhs 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.

23. 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.

24. This petition is accordingly admitted.

IA No. 528/2024

25. The present application has been filed by the corporate debtor against the operational creditor for impleadment of Directorate General of GST Intelligence, RK Puram as party/respondent in the present company petition.

26. The brief facts of the application are that there is an alleged pre-existing dispute between the parties for the GST dues, which are stated to have been paid by the applicant-corporate debtor, but are not paid back by the respondent-operational creditor as the burden of the same fell on the respondent, for which there is an ongoing litigation under GST laws instituted by the DG Intelligence against the present applicant, who has also filed a

civil writ petition WP 21444 of 2019 before the Hon'ble Punjab and Haryana High Court against the Directorate General of GST Intelligence praying for a direction restraining the GST Department from taking any coercive measure against the present applicant and its Directors and to further refund a sum of Rs. 1,03,80,000/- to the applicant, which have been wrongly recovered from the Corporate Director and its directors. In the said CWP 21444 of 2019 vide an order dated 14.08.2019, the Hon'ble High Court issued notice and, in the interim, had directed the GST Department to take no coercive steps against the applicant company and its Directors. Later, this interim order was withdrawn vide order dated 05.02.2021, however, the GST department was directed to investigate this matter strictly as per law. It is stated that the demand notice dated 27.05.2019 in the Section 9 filed by the Respondent was issued much after the existence of the dispute. Therefore, it is necessary to implead the 'Directorate General of Intelligence, RK Puram' as party in the present matter.

27. It is submitted by the corporate debtor that the Civil Writ Petition is pending before the Hon'ble Punjab and Haryana High Court bearing no WP 21444 of 2019 against the Directorate General of GST Intelligence for not taking any coercive measure against the respondent and to refund the sum of Rs. 1,03,80,000.00p to the respondent wrongly recovered from the corporate debtor and its directors. The GST department replied to the writ petition stating that the bogus purchases are made through intermediaries including the name of the operational creditor.

After hearing Ld. counsel for the parties and in view of the facts, we hold that this contention of the corporate debtor is devoid of legal force as the litigation

pending before the Hon'ble Punjab and Haryana Court bearing CWP No. 21444 of 2019 pertains to the GST dues recoverable from the corporate debtor which has no relevance with the present petition and the operational creditor is not a party to that litigation. Even for the sake of arguments, Rs. 20 lakhs recovered by the GST department from corporate debtor is to be paid on behalf of the operational creditor in the said Writ petition and assuming that said claim is true then also the corporate debtor owes Rs. 1,69,37,567/- plus interest towards the operational creditor and after deducting a sum of Rs. 20 lakhs, still there is a liability of Rs. 1,49,37,569/- on the corporate debtor which is above the threshold limit of rupees one lakh (now rupees one crore) and the present petition is maintainable under Section 9 of the Code.

28. Thus, in our considered view, the Directorate General of GST Intelligence, RK Puram is not a necessary and proper party in the present petition and issue involved in the present petition under Section 9 of the Code has been decided without impleading the Directorate General of GST Intelligence, RK Puram as party.

29. Therefore, in view of the above and the reasons mentioned in the main petition, which is already dismissed, present IA 528/2024 renders infructuous and is disposed of accordingly.

Sd/-
(L.N. Gupta)
Member (Technical)
June 12, 2024

Sd/-
(Harnam Singh Thakur)
Member (Judicial)