

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

CP (IB) No.56/Chd/Hry/2018

**Under Section 09 of the
Insolvency and Bankruptcy
Code, 2016.**

In the matter of:

M/s PAN Chemicals Inc.
Through its proprietor
Ramji Lal,
Plot No.45, Industrial Area,
Phase-I, Chandigarh (U.T.)
PAN No.ABKPL6008J

...Operational Creditor.

Vs.

M/s Sainath Texport Ltd.,
Cabin No.6, SCO 27,
Swastik Vihar, M.D.C.,
Sector - 5, Panchkula
Haryana.

...Respondent-Corporate Debtor.

Order delivered on:16.04.2018

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

For the petitioner: Mr. Atul V. Sood, Advocate.

For the respondent: Mr. Rajiv Gupta, Advocate.

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

JUDGEMENT(Oral)

This petition has been filed by M/s PAN Chemicals Inc. for initiating the insolvency resolution process against the respondent-corporate debtor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code'). The petitioner is a proprietorship concern with Mr. Ramji Lal as the sole proprietor who claims himself to be the

Pradeep R. Sethi

operational creditor and filed the application in Form 5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules').

2. The respondent-corporate debtor was incorporated as a company on 26.03.2010 under Companies Act, 1956 having nominal share capital of ₹26,00,00,000/- and paid up share capital of ₹24,48,00,000/- and has been allotted CIN No.U17100HR2010PLC040298. The registered office of the corporate debtor is at Panchkula in the State of Haryana and, therefore, the matter falls within the territorial jurisdiction of this Tribunal. The contents of the application are supported by affidavit of Mr. Ramji Lal, sole proprietor of the proprietorship concern.

3. The facts, briefly stated, are that the operational creditor deals in supplying aluminium cable 4 COIR E-Bond 3.20 x 350mm, Argun Welding Set- Modi TIG 300A, Superbond 3.20 x 450M, Castmonel 4.00x300MM, Gas Regulator ACCT.10645100038, Grinding Wheel, Cutting Wheel 5", Welding holder, Hose Pipe, Grinder 5" BOSH and as per the purchase orders/requests of the corporate debtor, the material was supplied to it.

4. The total amount of the bills for which the supply was made to the respondent-corporate debtor is ₹6,71,816.93 (Rupees six lac seventy one thousand eight hundred sixteen and ninety three paise only). According to the petitioner, the respondent-corporate debtor has not paid the amount in respect of any of the bills/invoices.

5. Before filing this petition the respondent-corporate debtor was sent Demand Notice in terms of Section 8 of the Code by attaching copy of the

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invoices as well as copy of the ledger account of the corporate debtor being maintained in the books of account of the petitioner showing that the transaction took place from 02.03.2011 to 19.08.2013 and copies of the ledger account of the respondent maintained by the petitioner is at Annexure A-6(colly) . According to the petitioner the respondent also settled the account and acknowledged the outstanding amount to the tune of ₹6,71,816.93.

6. The petitioner sent Demand Notice in Form 4 to the respondent- corporate debtor Annexure A-8 (colly) dated 08.12.2017 by registered post. Copy of the postal receipt is at Annexure A-8 and it was delivered to the corporate debtor on 13.12.2017 as per the tracking report which is part of the document at Annexure A-8. It is also stated that the petitioner sent all the invoices relating to the transactions between the parties and also the ledger account of the respondent being maintained by the petitioner. Copies of invoices for all the transactions sent to the respondent-corporate debtor are at page 51 to 65 of the Paper Book. It is contended that though the last transaction between the parties is dated 19.08.2013, the respondent acknowledged the balance outstanding amount which is claimed in the instant petition in writing signed by the respondent-corporate debtor. Copy of the Acknowledgement dated 16.03.2015 is at Annexure A-7 which was confirmed by the respondent on 21.03.2015. This application has been filed with the plea that the outstanding amount in default is ₹6,71,816.93 though the further interest @18% per annum was also claimed. The contents of the application are supported by the affidavit of the proprietor of the petitioner-company.

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7. The petitioner has also filed the affidavit at pages 13/14 of the Paper Book stating that the respondent has not given any notice of the dispute in respect of this debt nor even paid the amount despite issuance of the notice, in order to comply with the requirements of Section 9(3)(b) of the Code. The petitioner also filed copy of the Bank Statement maintained with Kotak Mahindra Bank as at Annexure A-5 (colly).

8. Earlier the petitioner had filed petition No. CP(IB)/01/Chd/Hry/2018 under Section 9 of the Code before this Tribunal. However, it was filed before the expiry period of 10 days of delivery of the Demand Notice. In view of the above, the earlier petition was withdrawn with liberty to file fresh one on the same cause of action. Copy of the order dated 26.02.2018 is at Annexure-9. It was also submitted on behalf of the respondent during pendency of the earlier petition that the respondent was not to file reply/objections to the said petition.

9. When the matter was listed on 13.03.2018 notice of the petition was issued to the respondent-corporate debtor. Mr. Rajiv Gupta, Advocate, learned counsel for the respondent-corporate debtor had put in his appearance and stated that the respondent does not intend to file reply/objections to the instant petition.

10. It was also noticed that the petitioner had not filed complete statement of bank accounts nor the certificate from the banks where the accounts are being maintained to the effect as to whether any payment has been received from the corporate debtor in the said account towards the unpaid operational debt. It was further observed that the petitioner has not filed copy

Rajiv Gupta
Advocate

of the ledger account up-to-date, and the document relating to the summary of the transactions. Notice of these defects was given to the petitioner and learned counsel for the petitioner accepted notice on behalf of the petitioner. It was directed that the defects be removed within seven days.

11. When the matter was listed on 09.04.2018 learned counsel for the petitioner submitted that the banks are not issuing the requisite certificate as required by Section 9(3)(c) of the Code. However, learned counsel sought adjournment for making necessary compliances. Vide diary No.1012 dated 03.04.2018 complete copy of the statements of Bank accounts of the operational creditor maintained with Kotak Mahindra Bank since the period 01.06.2012 and with ICICI Bank since 19.08.2011 are at Annexures-A and B, respectively with this additional affidavit.

12. During course of arguments learned counsel for the petitioner handed over affidavit dated 15.04.2018 of the sole proprietor of the petitioner with the copies of the statements of bank account for the period 08.12.2017 onwards which are at Annexures A & B of this affidavit and both ICICI Bank and Kotak Mahindra Bank have certified that no payment of the unpaid debt has been made by the corporate debtor in the account of the operational creditor till date. These affidavits and the documents are taken on record.

13. We have heard the learned counsel for the parties and perused the record. Copy of the ledger account of the respondent-corporate debtor maintained by the operational creditor is at Annexure A-6 (colly) showing fourteen transactions of sales from 02.03.2011 to 09.08.2013. The total value is ₹6,71,816.93 and the respondent admitted the aforesaid outstanding

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amount acknowledging the unpaid debt in the document Annexure A-7 dated 16.03.2015 bearing signature of the respondent-corporate debtor having been appended on 21.03.2015.

14. Sub-section (5) of Section 9 reads as under:-

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, —

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if —

(a) the application made under sub-section (2) is incomplete;

(b) there has been repayment of the unpaid operational debt;

(c) the creditor has not delivered the invoice or notice for payment to the corporate debtor;

(d) notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or

(e) any disciplinary proceeding is pending against any proposed resolution professional:

Provided that Adjudicating Authority, shall before rejecting an application under sub clause (a) of clause (ii) give a notice to the

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applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.

15. The application filed by the operational creditor is complete in all respects and the defects pointed out have been removed. Learned counsel for the respondent submits that the corporate debtor is not to raise any objections. The petitioner has also filed with this petition copies of all the invoices of sales. The petitioner has also complied with the requirements of Section 9(3)(b) and 9(3)(c) of the Code.

16. As per sub-section (4) of Section 9 and Section 16 of the code it is optional for the operational creditor to propose the name of Resolution Professional to be appointed as the Interim Resolution Professional. In the instant case the petitioner has filed the written communication Annexure A-3 in Form No.2 furnished by Mr. Vikas Garg, registered with Insolvency and Bankruptcy Board of India. His registration number is IBBI/IPA002/IP-N00189/2017-18/10506. The Resolution Professional has furnished all the required information giving his consent disclosing that he is not serving as Interim Resolution Professional, Resolution Professional or Liquidator in any case so far. It is also certified that there are no disciplinary proceedings pending against him with the Board or ICSI Insolvency Professional Agency (ICSI IPA).

17. In view of the above the instant petition deserves to be admitted.

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18. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of 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.

19. 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) of Section 14 of the Code shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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20. The order of moratorium shall have effect from the date of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under subsection(1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

21. The matter be posted on 23.04.2018 for passing formal order to appoint Interim Resolution Professional with further directions.

Copy of this order be communicated to both the parties.

Sd/-

(Pradeep R. Sethi)
Member(Technical)

Sd/-

(Justice R.P. Nagrath)
Member (Judicial)

April 16, 2018
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