

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

CP (IB) No.121/Chd/Pb/2018

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

In the matter of:

M/s RPG Industrial Product Pvt. Ltd.
 having its registered office at
 1st Floor, 4 Shankar Vihar,
 Vikas Marg, New Delhi-110092
 (CIN No. U25190DL2000PTC106438)

...Petitioner-Operational Creditor

Versus

M/s Sahil International Pvt. Ltd.
 having its registered office at
 Chamber No.104, Pushpa Chamber,
 1st Floor, Jiwan Tower, Patel Nagar,
 Civil Line, Opp. Old DMC Ludhiana,
 Punjab-141001

...Respondent-Corporate Debtor

Judgement delivered on 21.01.2019

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

For the Petitioner : 1. Mr. Pradeep Nauharia, Advocate
 2. Mr. Arvinder Singh Chauhan, Advocate

For the Respondent : Mr. Akaant Kumar Mittal, Advocate

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

JUDGMENT

This petition has been filed by M/s RPG Industrial Product Pvt. Ltd. a company incorporated under the Companies Act, 1956 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be

referred hereinafter as the 'Code') for initiating the Corporate Insolvency Resolution Process (CIRP) against the respondent-corporate debtor. The application has been filed in Form-5 as prescribed in Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 (for brevity 'the Rules'). The petitioner-company passed a Resolution dated 27.03.2018 (Annexure-6) authorising Mr. Mohit Kumar Manglik to sign and verify the petition under Section 9 of the Code and to do all the necessary acts in the progress of the case. There is affidavit of Mr. Mohit Kumar Manglik aforesaid in support of the contents of the application.

2. The respondent-company was incorporated on 01.03.1996 under the Companies Act, 1956 with authorised share capital of ₹50,00,000/- only and paid up share capital of ₹25,04,000/-. It has its registered office at Ludhiana in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The facts of the case, briefly stated, are that the petitioner-operational creditor is carrying on the business of Polyester Staple Fiber (PSF) and the respondent-corporate debtor was carrying on the trading business of Fiber and Yarn in the State of Punjab. The respondent-corporate debtor approached the petitioner-operational creditor to act as consignment agent for the sale of PSF in the State of Punjab. The parties entered into a Consignment Agreement dated 01.02.2014 Annexure-2 in this regard and as per the agreement the petitioner-operational creditor was the Consignor and the respondent-corporate debtor was Consignee w.e.f. 01.02.2014. The petitioner-operational creditor used to send the material to the respondent-corporate debtor according to the market demand as intimated by the respondent-corporate debtor from time to time to be sold by the respondent-

corporate debtor on account of operational creditor in Ludhiana or elsewhere in the State of Punjab and for the services rendered by the corporate debtor commission was paid as per the Consignment Agreement dated 01.02.2014 and the payments were made by the respondent-corporate debtor on the running account basis. The goods were supplied to the respondent-corporate debtor vide various invoices from 04.02.2014 to June 2014. The invoices along with goods receipt (GRs) are from pages 50 to 286 of the paper book.

4. The details of these transactions as entered in the ledger account of the respondent-corporate debtor being maintained by the petitioner-operational creditor regularly have been annexed for each of the financial year from 01.04.2013 to 31.03.2014 and 01.04.2014 to 31.03.2015. The payments also used to made by the respondent-corporate debtor from time to time as duly entered in the books of account of the petitioner-operational creditor and the last payment was made by the respondent-corporate debtor on 04.05.2015 to the tune of ₹2,00,000/- as entered in the ledger account for the year 2015-2016. The principle amount outstanding as per the ledger account for the year 2015-2016 and 2016-2017 is to the tune of ₹50,79,896/- which is claimed to be default in the instant case. Copies of all these ledger accounts are from pages 44 to 49 of the paper book. Thereafter, the calculation of the interest has been made at the rate of 24% per annum over the principal amount outstanding which comes to ₹47,37,684/- and this is how the amount claimed in the instant petition has been calculated at ₹98,17,580/-. As per ledger account the interest calculated is for the period from 01.04.2017 to 29.12.2017 (page 44 of the paper book).

5. All these documents were sent to the respondent-corporate debtor by a demand notice in Form-3 with computation chart and the copy of demand notice dated 29.12.2017 which is at page 39 of the paper book. The demand notice was sent by speed post (Annexure-1) to the respondent-corporate debtor and the same was delivered as per the tracking report on 03.01.2018. The postal receipts and tracking report are part of the document Annexure-1 at pages 37 & 38 of the paper book.

6. It is stated that the respondent-corporate debtor has neither replied to the demand notice nor made the payment of outstanding amount nor even raised any dispute before the issuance of the demand notice. Before that however the respondent-corporate debtor issued 4 cheques in favour of the petitioner-operational creditor each of amount of ₹10,00,000/-. These cheques are dated 07.09.2014, 12.09.2014, 16.09.2014 and 20.09.2014. Three of the cheques were presented for payment but the cheques bounced. Copies of the cheques with dishonour memos are attached from pages 369 to 372 of the paper book out of which last cheque at page 373 was yet to be presented. The respondent-corporate debtor then requested the petitioner-operational creditor not to present the fourth cheque in the bank because of the deficiency of the funds and assured to make payment soon. Despite communications made by the petitioner-operational creditor and service of the demand notice the respondent-corporate debtor has defaulted in making payment.

7. On filing of this petition the petitioner-operational creditor also despatched copy of the application along with the entire paper book to the respondent-corporate debtor vide speed post on 08.05.2018 as per the postal receipts (Annexure-15) in order to comply with the requirement of Rule

6(2) of the Rules. When the matter was listed on 22.05.2018, the learned counsel for the petitioner also handed over the tracking report of delivery of copy of the application to the corporate debtor on 11.05.2018 which was taken on record.

8. Notice of this petition was issued to the respondent-corporate debtor to show cause why this petition be not admitted. The petitioner-operational creditor filed the affidavit of service vide Diary No.2537 dated 09.07.2018 and appearance was made on behalf of the respondent-corporate debtor.

9. The respondent-corporate debtor filed reply to the application raising preliminary objections, that the demand notice as required by Section 8 of the Code was not served. The demand notice is said to have been sent at the previous address of the corporate debtor which was changed prior to the date of purported demand notice. The change of address was in fact updated in the Ministry of Corporate Affairs database.

10. It is further stated that a dispute had arisen between the parties with regard to payment of the amount claimed to be in default. With regard to supply of material to the respondent-corporate debtor payments were made by the respondent-corporate debtor to the petitioner-operational creditor in due course. The petitioner-operational creditor is said to have concealed the payment made by the respondent-corporate debtor vide four cheques dated 11.09.2014, 27.12.2014, 24.01.2015 and 12.03.2015 total to the tune of ₹22,50,000/- in complete settlement of the accounts. In fact the petitioner-operational creditor has filed a criminal complaint against the respondent under section 406 of Indian Penal Code on the same set of allegations which

fact the petitioner has failed to disclose. Copy of the said complaint filed before the Court of Additional Chief Judicial Magistrate, Meerut is attached as Annexure R-1.

11. The other objection raised by the respondent-corporate debtor is that the instant petition is barred by limitation as the date of default as stated by the petitioner-operational creditor is 10.07.2014 and the instant petition has been filed on 08.05.2018 much after the expiry of period of 3 years.

12. On merits it is admitted that there were business dealings between the parties, but it is denied that the respondent-corporate debtor has failed to make payment of the material supplied by the petitioner-operational creditor. The execution of the Consignment Agreement dated 01.02.2014 is also admitted.

13. The petitioner-operational creditor has also filed the rejoinder reiterating the stand taken in the application and denying the contents of the reply. It is stated that the demand notice as per the tracking report at page 38 of the petition was delivered on 03.01.2018, the respondent-corporate debtor with some ulterior motive changed the registered office address on 12.01.2018 to avoid any consequences of non-payment of the operational debt, after receipt of the demand notice.

14. In support of the above contention, copy of Form INC-22 regarding change of the address filed with the Registrar of Companies is attached as Annexure-A with the rejoinder. This form filed on behalf of respondent-company is digitally signed on 18.01.2018 which is much after the date of service of the demand notice. Even the Board Resolution passed by the respondent-corporate debtor regarding change of address is dated

12.01.2018 as at page 29/30 of the rejoinder. The Resolution is to the effect of shifting of the registered office from 242, Industrial Area A, Ludhiana to Chamber No.104, Pushpa Chamber, 1st Floor, Jiwan Tower Patel Nagar, Civil Lines, Opp Old DMC, Ludhiana. There is copy of application dated 12.01.2018 by Mr. Varun Puri, the landlord of the new premises, which is also signed by Mr. Pankaj Singhania, Director of the respondent-corporate debtor submitting no objection, if the aforesaid address is registered in the name of the respondent-corporate debtor.

15. With regard to the issuance of 4 cheques to the tune of ₹22,50,000/-, it is stated that the petitioner-operational creditor has also been in the same line of business with associate/sister concern of the respondent-corporate debtor. The aforesaid 4 cheques were credited in the bank account of the petitioner-operational creditor on 11.09.2014, 27.12.2014, 24.01.2015 and 12.03.2015 respectively towards the dues of M/s Universal Woollen Mills, Ludhiana for the goods sold by the petitioner-operational creditor which happens to be the associate/sister concern of the respondent-corporate debtor. This information was given to the petitioner-operational creditor and further confirmed in March 2015 and certified by the authorised signatory of M/s Universal Woollen Mills for which the document Annexure-G has been annexed. M/s Universal Woollen Mills is a partnership firm and one of the partners of the firm is also a Director of the respondent-company. The copy of the Consignment Agreement dated 19.04.2013 entered into between the petitioner and M/s Universal Woollen Mills is at Annexure-H of the rejoinder. The aforesaid cheques were sent by the respondent-corporate debtor on the account of M/s Universal Woollen Mills and not towards payment as liability of petitioner.

16. It is further stated that the petitioner-operational creditor was maintaining different ledger accounts in respect of M/s Universal Woollen Mills, where the aforesaid amount was duly accounted for and shown as received from M/s Universal Woollen Mills. The petitioner-operational creditor shared the copy of the ledger account of M/s Universal Woollen Mills for the period from 01.04.2014 to 31.03.2015 which was duly confirmed by the authorised signatory of M/s Universal Woollen Mills at the year end. The statement of account of M/s Universal Woollen Mills is at Annexure-G of the rejoinder. Therefore, the defence plea regarding full and final settlement of the accounts by way of issuance of aforesaid 4 cheques is denied as incorrect. If issuance of the 4 cheques, last of which dated 12.03.2015 was towards the full and final settlement of the accounts, there was no question of the respondent-corporate debtor for paying the amount of ₹2,00,000/- by RTGS transfer in the account of the petitioner-operational creditor on 04.05.2015. It is also alleged that the filing of the criminal complaint has no relevance in the matter.

17. The respondent-corporate debtor wanted to file the sur-rejoinder but that prayer was not accepted with the observations made in the order dated 28.11.2018 that if fresh case has been pleaded that would not be considered on merits, while deciding the case.

18. We have heard the learned counsel for the parties and carefully perused the records.

19. The first issue for discussion is whether the demand notice as required by Section 8 of the Code was duly delivered to the respondent-corporate debtor. The respondent-corporate debtor has stated that the notice

was sent at the incorrect address because the registered office of the corporate debtor was changed prior to the date of purported demand notice and the change of address updated in the portal of the Ministry of Corporate Affairs. This defence was taken without support of the documents as already discussed while narrating facts of the case. Even the resolution for change of the registered office was passed by the respondent-corporate debtor much after the delivery of the demand notice. The tracking report at page 38 of the paper book shows that the demand notice was delivered to the respondent-corporate debtor on 03.01.2018 and there was no indication in the tracking report that the addressee has left the address. There is a presumption of correctness to the report of the postal authorities and same does not stand rebutted. We are therefore of the firm view that the demand notice was duly delivered to the respondent-corporate debtor at the registered address.

20. The other issue raised by the respondent-corporate debtor was that the petition is barred by limitation. It is stated that the petitioner-operational creditor claims that the default took place on 10.07.2014, whereas the petition was filed on 08.05.2018 after the expiry of three years. From the ledger account of the respondent-corporate debtor being maintained by the petitioner-operational creditor, it is evident that the respondent made payment of an amount of ₹2,00,000/- by RTGS transfer on 26.03.2015 prior to that the amount of ₹8,00,000/- was paid again by RTGS transfer on 27.11.2014 by RTGS transfer. The last payment of ₹2,00,000/- was made by the respondent on 04.05.2015 as per ledger entry at page 46 of the paper book. So on making part payments from time to time a fresh period of limitation would begin for limitation purposes. The instant petition was filed on 16.04.2018 which is well within limitation. The contention of the

respondent-corporate debtor that the petition is barred by limitation, therefore, cannot be sustained and this issue is also found in favour of the petitioner-operational creditor and against the respondent-corporate debtor.

21. The crucial issue raised during arguments was that there is existence of dispute between the parties and that the amount claimed to be in default was not due. We have already held that the demand notice was duly served upon the respondent-corporate debtor on 03.01.2018 but no reply thereto was sent. The respondent-corporate debtor has rather denied the receipt of the demand notice on the plea of change of address and the said plea has not been accepted. It is not the version of the respondent-corporate debtor that any time before the institution of this petition or service of the demand notice, the respondent-corporate debtor sent any communication to the petitioner-operational creditor raising the dispute which has now been attempted in the reply.

22. The controversy therefore has to be dealt with on the basis of the well settled principle on the subject as laid down by the Hon'ble Supreme Court in **Mobilox Innovations Private Limited Versus Kirusa Software Private Limited (2018), 1 SCC 353** held as under:-

“51. 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.”

23. The learned counsel for the respondent-corporate debtor contended that certain payments were made from the account of the respondent-corporate debtor by way of 4 cheques dated 11.09.2014, 27.12.2014, 24.01.2015 and 12.03.2015 total amounting to ₹22,50,000/- which have not been accounted for by the petitioner. However the outstanding amount as per the books of account maintained by the petitioner-operational creditor was ₹50,79,896/-. There is no communication by the respondent that the payment of ₹22,50,000/- was towards the full and final settlement of the claim against the corporate debtor. If that be the situation there was no occasion for the respondent-corporate debtor in depositing an amount of ₹2,00,000/- towards the part payment by RTGS transfer on 04.05.2015 which is much after the dates of all the aforesaid cheques.

24. The only and the proper course for the respondent was to file its own ledger account of the petitioner-operational creditor being maintained by the respondent-corporate debtor in the regular course of business. The same was not done for obvious reasons. The company which is incorporated under the Act is supposed to maintain the books of account.

25. The plea raised in the reply though not raised as a pre-existing dispute any time before the filing of the reply is satisfactorily and firmly answered in the rejoinder filed by the petitioner-operational creditor. It is stated that the petitioner-operational creditor has been in the same line of business with the sister concern of the respondent-company namely M/s

Universal Woollen Mills, Ludhiana. The amount of the 4 cheques to the tune of ₹22,50,000/- was credited in the books of account of the petitioner-operational creditor qua M/s Universal Woollen Mills. This information was given to the operational creditor and further confirmed at the end of March 2015 and the confirmation certificate issued by the authorised signatory of M/s Universal Woollen Mills, Ludhiana is attached as Annexure-G with the rejoinder. The entries of these 4 cheques are made in respect of the account of M/s Universal Woollen Mills on the relevant dates as at page 59 of the rejoinder which is signed by the petitioner-operational creditor as well as by the authorised signatory of M/s Universal Woollen Mills aforesaid. M/s Universal Woollen Mills is a partnership firm and one of the partners is director of the respondent-company. Both the partnership firm and the respondent-corporate debtor are working from the same premises.

26. It is further stated in the rejoinder that the total value of the goods sold to the respondent-corporate debtor is to the tune of ₹2,02,79,896/- and the payment received from the respondent-corporate debtor from 01.07.2014 to 31.03.2015 was to the tune of 1,50,00,000/-. The confirmation of the aforesaid account was made by the respondent-corporate debtor as per the document Annexure-I page 64 to 67 attached with the rejoinder and thereafter the further payment of ₹2,00,000/- was on 04.05.2015.

27. The learned counsel for the respondent has tried to raise the contention that these statements bear the forged signatures and are not genuine documents and thus do not depict the true picture. We are unable to accept this contention in view of the fact that the respondent-corporate debtor has not placed on record its own ledger account to contradict the documents which were already filed with regard to the outstanding balance.

28. In view of the above, we find that there is no scope for contending that there was existence of dispute between the parties with regard to the claim raised by the petitioner-operational creditor in this case. The affidavit of authorised representative of the respondent-corporate debtor as at page 28 of the petition states that the respondent has not replied to the demand notice and it has not issued any notice of dispute relating to the unpaid operational debt. Even the amount in default has not been paid. So there is compliance of Section 9(3)(b) of the Code.

29. The fact that the petitioner-operational creditor has filed the criminal complaint against Mr. Anil Singhania and Mr. Pankaj Singhania under Section 405, 406 etc of the IPC cannot be considered as raising of a dispute because that was a complaint filed by the petitioner-operational creditor before the Court of Additional Chief Judicial Magistrate, Meerut attached as Annexure R-1. All the essential ingredients of Section 9 sub-section (5)(i) of the Code are fulfilled. In view of the above we admit this petition under Section 9 of the Code and declare 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 Securitization 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.

30. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

31. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

32. Under sub-section (4) of Section 9 of the Code the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the Code says that where the application for corporate insolvency resolution process is made by an operational creditor and –

- “a) *no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency*

professional who may act as an interim resolution professional;

b) x x x x x”

Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.

33. In this regard a letter bearing File No. 25/02/2018-NCLT dated 28.12.2018 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/ EMP/ 2018/02 dated 25.12.2018 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.01.2019 to 30.06.2019. We select Mr. Mahesh Bansal appearing at Serial No. 76 of the panel to be appointed as Interim Resolution Professional.

34. The Law Research Associate of this Tribunal has checked the credentials of Mr. Mahesh Bansal and there is nothing adverse against him. In view of the above, we appoint Mr. Mahesh Bansal, Registration No. IBBI/IPA-002/IP-P00785/2017-2018/11341, Mobile No.9814117576, e-mail id: emmbec.consulting@gmail.com as the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Mahesh Bansal shall 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 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 Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the determination of the financial 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
- vii) The Interim Resolution Professional is directed to send progress report to this Tribunal every fortnight.

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

of this order to the Interim Resolution Professional at his email address forthwith.

Pronounced in open Court

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

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

Jan., 21, 2019
Anchal