

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No. 182/Chd/Hry/2020

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

In the matter of:

Dextra India Private Limited
through the Director Mr. Sunil Desai
with its registered office at
F-42, 2nd Floor,
East of Kailash
New Delhi 110 065

Correspondence Address:
Office No. 1, Seventh Floor,
Building No. 9, Solitaire Corporate Park,
Andheri - Ghatkopar Link Road,
Andheri (East)
Mumbai-400093

...Petitioner-Operational Creditor

Vs.

RCC Infraventures Limited
through the Director/Authorized Signatory
Mr. Ravi Kumar Jain
with its registered office at
14, Ground Floor, Vipul Agora,
M.G. Road, Sector 28, Gurgaon,
Haryana 122 001
CIN: U45400HR2011PLC048807

...Respondent-Corporate Debtor

Judgement delivered on: 28.09.2022

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

For the Petitioner-Operational Creditor : Mr. Amitabh Tewari, Advocate

For the Respondent-Corporate Debtor : Proceeded *ex parte* vide
order dated 30.06.2022

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 Dextra India Private Limited (for brevity '**Operational Creditor**'/ '**Applicant**'), represented by its Authorised Representative, Mr. Sunil Desai, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of RCC Infraventures Limited (for brevity '**Corporate Debtor**'/ '**Respondent**').

2. The Corporate Debtor, namely, RCC Infraventures Limited, is a Company incorporated on 16.05.2011 under the provisions of Companies Act, 1956 with CIN No. U45400HR2011PLC048807 with its registered office at 14, Ground Floor, Vipul Agora, M.G. Road, Sector 28, Gurgaon, Haryana-122 001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-J .

3. The facts of the case, briefly, as stated in the petition are that Corporate Debtor required supply of sonic tube assembly and cap (Goods) for its site at Maharashtra. M/s Dextra India Pvt. Ltd. (Operational Creditor) has given its quotation for supply of the said Goods. The Corporate Debtor has issued purchase orders upon the Operational Creditor. The Operational Creditor has sold, supplied and delivered Goods to the Corporate Debtor and accordingly raised invoices upon Corporate Debtor. Copy of Purchase Order issued by Corporate Debtor, outstanding invoices with ledger Account, record of default with information utilities are attached with the petition as Annexure-B, C & F respectively.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 18,41,043/- (Rupees Eighteen Lakhs Forty One Thousand Forty Three Only) (comprising of outstanding principal sum of Rs. 16,73,240/- and interest of Rs. 167,803/- upto 31st October 2019) together with further interest at the rate of 24% per annum from 1st November, 2019 on principal sum of Rs. 16,73,240/- till realization by Operational Creditor and the date on which default occurred is 18.05.2019 i.e. 30 days from the date of first outstanding invoice dated 18.04.2019.

5. A demand notice in Form 3 dated 13.11.2019 is stated to be issued to the Corporate Debtor and the same has been duly served. Copy of notice is appended with this application as Annexure-D . However, reply to the demand notice has been stated to be received on 30.11.2019 whereby they alleged that there are pre-existing disputes between operational creditor and corporate debtor.

6. Notice of this petition was issued to the corporate debtor vide order dated 10.12.2020 to show cause as to why this petition be not admitted. None appeared on behalf of the corporate-debtor. Thereafter as per order dated 12.04.2022 of this Adjudicating Authority, affidavit of service has been filed bearing diary No.00331/6 dated 22.04.2022. However, despite service, there was no representation from the respondent-corporate debtor and even no reply was filed. Therefore, respondent-corporate debtor has been set ex-parte. The short written submissions are also filed by Operational Creditor vide Diary No.00331/9 dated 23.08.2022.

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

8. The first issue for consideration is whether the demand notice in Form 3 dated 13.11.2019 was properly served. The petitioner has placed a copy of the notice which was delivered to the corporate debtor.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is to be noted that none appeared on behalf of the corporate debtor despite repeated service and has been set ex parte vide order dated 30.06.2022. It is deposed by way of affidavit by Operational Creditor that reply dated 30.11.2019 was received to its Demand Notice where Corporate Debtor has raised baseless, frivolous, sham and bogus dispute. Also, it is stated that no notice was given by the Corporate Debtor relating to a dispute of the unpaid operational debt. It shows that there is no pre-existing dispute.

10. The other issue for consideration is whether this application is filed within limitation. This application was filed on 24.02.2020 vide Diary No.1482. Whereas the date of default is 18.05.2019 i.e. 30 days from the date of first outstanding invoice dated 18.04.2019, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

11. 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. 18,41,043 (including interest). The operational creditor has sold, supplied and delivered goods to the corporate debtor and invoices attached as Annexure-C. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one

lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

12. It is noted that the corporate debtor has failed to make payment of 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 from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default which is above the threshold limit.

13. 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, M/s RCC Infraventures Limited and also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect and appoint Interim Resolution Professional as below:

- 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; and
- 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.

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

15. 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.

16. In Part-III of Form No. 5, Mr. Hemantprakash Shyamsunder Jain, Interim Resolution Professional has been proposed by the petitioner. The Form-2 wherein the written consent is submitted by the proposed Interim Resolution Professional is attached as Annexure-I of the main petition. The Law Research Associate of this Tribunal has checked

the credentials of Mr. Hemantprakash Shyamsunder Jain and there is nothing adverse against him. In view of the above, we appoint Mr. Hemantprakash Shyamsunder Jain , Registration No. IBBI/IPA-001/IP-P00883/2017-2018/11480,E-mail:hpsjca@gmail.com Mobile No. 98246-52366 as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Mr. Hemantprakash Shyamsunder Jain 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.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in

a time-bound manner. 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 and move an application seeking appropriate remedy, if required.

- 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.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to IRP after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of

any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximizing the value of the assets of the corporate debtor and completing the Resolution Process in a time-bound manner. 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 and move an application seeking appropriate remedy, if required.

- vii.) 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 first meeting of the Committee within seven days of filing the report of constitution of the Committee; and
- viii.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

17. The petitioner is directed to deposit an amount of ₹60,000/- (Rupees Sixty 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.

18. This petition is accordingly allowed and admitted.

19. 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.

Sd/- 28.09.22
(Subrata Kumar Dash)
Member (Technical)

Sd/- 28.9.22
(Harnam Singh Thakur)
Member (Judicial)

September 28, 2022
YP/TB