

NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH
CORPORATE BHAWAN, PLOT NO. 4-B
GROUND FLOOR, SECTOR- 27-B, MADHYA MARG
CHANDIGARH-160019

Ref: NCLT/Chd/Reg/ 866

Dated: 29/09/24

CP (IB) No. 223/Chd/Pb/2023
U/s 9 of IBC, 2016

In the matter of:

R.R. Enterprises

....Petitioner/Operational Creditor

Vs.

Genex Polyfab Ltd.

....Respondent/Corporate Debtor

To,

R.R Enterprises
Through Rohit Gupta
Harchand Mill Road,
Mandi Gobinda, Punjab-147301
Presently at Ward No. 2,
Near Civil Courts, Amloh-147203.

Please find enclosed herewith a certified copy of order dated 23.09.2024 for your information and necessary action.

 25/9/24
(Rattan Kaur)

Deputy Registrar
NCLT, Chandigarh Bench

Encl: Copy of order.



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

**CP (IB) No. 223/Chd/Pb/2023
Under Section 9 of IBC, 2016**

In the matter of C.P. (IB) No. 223/Chd/Chd/2023

R.R. Enterprises

Through Rohit Gupta
Harchand Mill Road
Mandi Gobinda, Punjab- 147301
Presently at Ward No. 2
Near Civil Courts, Amloh-147203

...Petitioner/Operational Creditor

Vs.

Genex Polyfab Limited

Having its registered office at
228-F, Near Janakpuri Chowk
Industrial Area-A, Ludhiana - 141001

...Respondent/Corporate Debtor

Judgement delivered on: 23.09.2024

**Coram: HON'BLE SH. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SH. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Petitioner: Mr. Yogesh Goel, Advocate

For the Respondent: Mr. Sushant Kareer

**Per: Sh. Harnam Singh Thakur, Member (Judicial)
Sh. Subrata Kumar Dash, Member (Technical)**

C.P. (IB) No. 223/Chd/Chd/2023





JUDGMENT

The present petition is filed by R.R. Enterprises, (hereinafter referred to as **"Operational Creditor/Operational Creditor"**) against Genex Polyfab Limited (hereinafter referred to as **"Corporate Debtor/Corporate Debtor"**) under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **"the Code"**), read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking initiation of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor on account of default in the payment of Rs. 27,47,62,631/- (Rupees Twenty-Seven Crore Forty-Seven Lacs Sixty-Two Thousand Six Hundred Thirty-One only), Rs. 11,02,93,189/- (Rupees Eleven Crore Two Lac Ninety-Three Thousand One Hundred Eighty-Nine only) towards Principal Amount and Rs. 16,44,69,442/- (Rupees Sixteen Crore Forty Four Lac Sixty-Nine Thousand Four Hundred Forty-Two only) towards interest calculated at 24% p.a., by the Corporate Debtor.

2. It is averred that the Operational Creditor is a Proprietorship firm, engaged in Trading in Raw Wool. The Corporate Debtor purchased Raw Cotton from the OC from January 2017, upon trust of making payment towards the goods duly received. The OC has used FIFO method, i.e., wherein all the payments made by the Corporate Debtor had been adjusted towards pending bills on that date. The details of the invoices raised are mentioned hereunder:

C.P. (IB) No. 223/Chd/Chd/2023





S. No.	Invoice No.	Date of Invoice	Invoice Amount	Outstanding Amount
1.	2962	06-Jan-17	18796500	18143439
2.	2963	07-Jan-17	18949250	18949250
3.	2964	09-Jan-17	18872500	18872500
4.	2965	10-Jan-17	18892750	18892750
5.	2966	11-Jan-17	18526250	18526250
6.	2977	12-Jan-17	16909000	16909000
Amount Outstanding				110293189

- i. The last payment was made by the Corporate Debtor on 11.09.2018. After continuous follow-up by the OC, the CD issued three Cheques dated 15.12.2022 against the outstanding amount.
- ii. A statutory demand notice dated 18.04.2023, under Section 8 of the Code was issued by the OC calling upon the CD to repay the unpaid Operational Debt in full within 10 days from the receipt of the said notice, which was duly delivered to one of the Directors of the CD, i.e., Mr. Kamal Aggarwal and the tracking report of the same has been attached to the note on maintainability of the petition, filed vide diary no. 02725/2 dated 23.11.2023. However, the CD failed to respond to the said demand notice.
- iii. The date of default as mentioned in Part IV of the petition is 30.12.2022.





3. Notice was issued to the Corporate Debtor as to why the said petition should not be admitted. However, no reply was filed by the CD and its right to file a reply was struck off vide order dated 07.05.2024.
4. The Operational Creditor has relied upon the following authorities, wherein the Hon'ble Supreme Court has held the acknowledgment of debt in balance sheets within the limitation period as extending the period of limitation period of 3 years afresh from the date of such acknowledgment:
- i. ***Axis Bank Limited vs. Naren Sheth and Another, Civil Appeal No. 2085 of 2022***, decided on 12.09.2023.
 - ii. ***Kotak Mahindra Bank Limited vs. Kew Precision Parts Private Limited and Other, Civil Appeal No. 2176 of 2020***, decided on 05.08.2022.
 - iii. ***Dena Bank (Now Bank of Baroda) vs. C. Shivakumar Reddy and Another, Civil Appeal No. 1650 of 2020***, decided on 04.08.2021
5. After hearing the parties and a careful perusal of the records produced before us, the date of default as mentioned in Part IV of the Petition is 30.12.2022 and the petition was filed on 22.08.2023, which is well within the period of limitation of three years. The registered office of the Corporate Debtor is situated in the state of Punjab; hence, the jurisdiction to preside over the matter lies with this Adjudicating Authority.





6. The moot question involved in the present case is whether the Operational Debt exists and Corporate Debtor defaulted in the payment of the same as claimed by the Operational Creditor.

It could be seen that the Corporate Debtor has admitted its liability of Rs. 11,02,93,189/- towards the Operational Creditor in its balance sheet for the FY 2021-2022, annexed as Annexure A1 to I.A. No. 1830/2024. Further, the Corporate Debtor has neither filed any reply to the present petition nor has produced any evidence in its defense. Thus, it can be safely concluded that the existence of the debt is not disputed by the Corporate Debtor nor any pre-existing dispute exists between the parties.

7. In the light of the discussion forgoing as well as the rival contentions and allegations, this Adjudicating Authority finds that the debt exists and default has occurred on account of the Corporate Debtor..

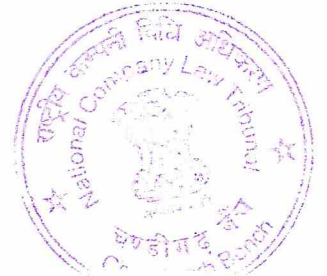
8. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which are above the threshold limit. 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, **Genex Polyfab Limited**, and also direct moratorium to take effect and appoint Interim Resolution Professional as below.





9. In Part III of Form No. 5, Mr. Vishwajeet Gupta, Interim Resolution Professional (IRP), has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vishwajeet Gupta, wherein his AFA Certification is valid upto 2024 and there is nothing adverse against him. In view of the above, we appoint Mr. Vishwajeet Gupta, Registration No. IBBI/IPA-002/IP-N00215/2017-18/10667, E-mail: vishawjeetgupta@gmail.com, Mobile No. 9815284474, as the Interim Resolution Professional with the following directions:

- i. The term of appointment of Mr. Vishwajeet Gupta 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 is 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 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 empaneled 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 the 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.

10. 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.

11. 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.

12. 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 the corporate debtor under Section 33 as the case may be.

13. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh 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.

14. A copy of this order be communicated to both 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.

15. This petition is accordingly admitted.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

September 23, 2024
ASG



Sd/-

(Harnam Singh Thakur)
Member (Judicial)

DD / DR / AR / Court Officer
National Company Law Tribunal
Chandigarh Bench, Chandigarh



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OF THE ORIGINAL