



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**JAIPUR BENCH**

**CORAM: SHRI DEEP CHANDRA JOSHI,**  
**HON'BLE JUDICIAL MEMBER**

**SHRI PRASANTA KUMAR MOHANTY**  
**HON'BLE TECHNICAL MEMBER**

**CP No. (IB)- 149/9/JPR/2019**

*(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

**IN THE MATTER OF:**

**MADHU SHARMA, PROPRIETOR**  
**M/S HINDCHEM CORPORATION**

**...Operational Creditor**

**Versus**

**SHUBH ALUMINIUM PVT LTD.**

**...Corporate Debtor**

**MEMO OF PARTIES**

**MADHU SHARMA PROP. M/S HINDCHEM CORPORATION**

Through Authorised Representative Suresh  
Sharma having registered office: 307,  
Linkway Estate, Above Greens Restaurant,  
New Link Road, Malad (W) Mumbai,  
Maharashtra - 400064

**...Applicant/ Operational Creditor**

**VERSUS**

**SHUBH ALUMINIUM PVT LTD.**

CIN: U27203RJ2012PTC039234  
Registered Office: 1, Link Road, Town  
Hall, Udaipur, Rajasthan- 313001

**... Respondent / Corporate Debtor**



**For the Operational Creditor :** Mitul Jain, Adv.  
**For the Corporate Debtor :** Prateek Gupta, Adv.  
Milan Negi, Adv.

**Order Pronounced On: -31.08.2022**

**ORDER**

**Per: Shri Deep Chandra Joshi, Judicial Member**

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code'/ 'IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by Ms. Madhu Sharma Proprietor of HindChem Corporation ('Applicant'), claiming to be an Operational Creditor with the prayer to initiate Corporate Insolvency Resolution Process ('CIRP') against M/s Shubh Aluminium Pvt. Ltd. ('Respondent'/ 'Corporate Debtor').
2. The registered office of the Applicant is situated at 307, Linkway Estate, Above Greens Restaurant, New Link Road, Malad(W), Mumbai, Maharashtra – 400064; and the Applicant involved in manufacturing and distribution of polyester chip. The Application has been filed by Ms. Madhu Suresh Sharma who is the proprietor of Hindchem Corporation. The application has been filed in Form 5 as prescribed in Rule 6(1) of (Application to Adjudicating Authority) Rules, 2016. As the affidavit was filed in the name of the proprietorship firm, the Applicant sought permission to amend the cause title and make necessary changes which was granted vide Order dated 27.08.2019.



3. The Respondent is a private limited Company registered with the Registrar of Companies, Jaipur, bearing CIN: U27203RJ2012PTC039234. The Registered Office of the Respondent is at, 1, Link Road, Town Hall, Udaipur, Rajasthan- 313001. The company's Authorized share capital is Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only), and paid-up share capital is Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs Only).
4. The facts of the case, briefly, as stated in the Application, show that the Applicant has been conducting business with the Respondent from time to time, wherein the Respondent approached the Applicant for the supply of polyester pet chips on an “on order” basis. The Operational Creditor supplied 26,400 Kgs of goods to the Corporate Debtor against which Invoice No. 401 dated 10.12.2016 amounting to Rs. 21,96,744/- was raised. Thereafter, the Operational Creditor supplied 17,600 Kgs of goods against which Invoice No. 468 dated 16.01.2017 amounting to Rs. 16,62,250/- was raised.
5. The Applicant submits that against the aforementioned two orders amounting to a total of Rs. 38,58,994/-, the Corporate Debtor has made part payments. The First Payment of Rs. 10,00,000/- was made on 10.12.2016 and thereafter the Corporate Debtor continued to make part payments between 10.12.2016 to 16.05.2018. The last payment of Rs. 24,000/- was made on 16.05.2018. In total the Corporate Debtor paid an amount of Rs. 28,61,872/- to the Operational Creditor but has failed to release any payment after 16.05.2018.



6. It is stated that before the issuance of demand notice, the Applicant preferred an e-mail to the Corporate Debtor dated 23.01.2019 demanding the balance payment of Rs. 9,97,122/- plus interest of 21% for delayed payments. As no response was received from the Corporate Debtor, the Applicant served a demand notice dated 27.02.2018 upon the Corporate Debtor under Section 8 of the Code. The Corporate Debtor in a response to Demand Notice preferred an e-mail on 20.03.2019 to the Applicant denying any amount outstanding on part of the Corporate Debtor.
7. The details of the outstanding amount along with date of default as mentioned in Part IV of the Application is as follows:

**PART IV**

<b>Particulars of Operational Debt</b>										
<b>The total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due</b>	<p>Total debt due is Rs. 9,97,122/- (Rupees Nine Lakh, Ninety-Seven Thousand, One Hundred and Twenty-Two Only) against the supply of material.</p> <p>The details of transactions is as follows:</p> <table border="1"><thead><tr><th><b>Invoice No.</b></th><th><b>Dated</b></th><th><b>Amount</b></th></tr></thead><tbody><tr><td>401</td><td>10.12.2016</td><td>Rs. 21,96,744</td></tr><tr><td>468</td><td>16.01.2017</td><td>Rs. 16,62,250</td></tr></tbody></table> <p><b>Total Amount</b> <span style="float: right;"><b>Rs. 28,58,994</b></span> Less Total Receipts <span style="float: right;">Rs. 28,61,872</span> <b>Balance Debit</b> <span style="float: right;"><b>Rs. 9,97,122</b></span></p> <p>Date from which debt fell due: 16.02.2017</p>	<b>Invoice No.</b>	<b>Dated</b>	<b>Amount</b>	401	10.12.2016	Rs. 21,96,744	468	16.01.2017	Rs. 16,62,250
<b>Invoice No.</b>	<b>Dated</b>	<b>Amount</b>								
401	10.12.2016	Rs. 21,96,744								
468	16.01.2017	Rs. 16,62,250								
<b>Amount claimed to be in default and the date on which the default occurred</b>	<p>Total amount of default – Rs. 15,10,151/-</p> <p>Principal amount - Rs. 9,97,122/- Interest amount - Rs. 5,13,029/- <b>Total</b> <span style="float: right;"><b>- Rs. 15,10,151/-</b></span></p> <p>Date from which debt fell due: 16.02.2017</p>									



8. Consequent to the notice issued by this Adjudicating Authority, the Respondent filed its Counter Affidavit vide Dairy No. 2491/2019 dated 24.10.2019 submitting that the Corporate Debtor disputed the existence of the debt vide e-mail dated 20.03.2019. Further the Corporate Debtor submitted that the Applicant in the Affidavit under Section 9(3)(b) of the Code has submitted false information regarding the notice of dispute. The Corporate Debtor has stated that a total payment of Rs. 28,61,872/- was paid to the Applicant against the entire material received and the sub-standard quality of material were returned.
9. The Applicant preferred a rejoinder vide Diary No. 2728/2019 dated 22.11.2019 whereby it has been contended that nothing within the meaning of the term 'dispute' as envisaged under Section 5(6) of the Code is pending. Along with the aforementioned the Applicant also submitted Written Submissions vide Diary No. 1147/2022 dated 18.04.2022 highlighting certain case laws and stating that no settlement till now has been proposed nor arrived at between the parties.
10. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur; therefore, this Adjudicating Authority has jurisdiction to entertain and try this application. The matter is within the purview of the Law of Limitation as the date of default mentioned is 16.02.2017, and the application was filed on 11.06.2019 which is well within the ambit of Law of Limitation.



11. It is also seen that the last payment was made on 16.05.2018 and in terms of Section 18 and Section 19 of the Limitation Act, 1963, a fresh period of limitation will be computed from the time when the acknowledgment of debt was so signed and when the last payment was made before the expiration of the prescribed period respectively. In the present matter, the last payment was made on 16.05.2018, hence, the limitation would be computed from the date of last payment. Therefore, the present application is well within limitation.
12. It is clear from the records that the goods were delivered to the Corporate Debtor and the same were duly received by the Corporate Debtor. The Corporate Debtor has also admittedly made payment towards the supply of goods. The Corporate Debtor has in its reply submitted that the sub-standard goods were returned whereas there is no documentary evidence to substantiate the same. Further the Corporate Debtor has failed to provide any proof regarding the existence of dispute before receipt of the Demand Notice under Section 8 of the Code. It is observed that issue regarding return of goods was only raised to establish a pre-existing dispute which cannot be allowed. Thus, it is clear that there is no dispute between the parties and there exists an outstanding operational debt which has not been repaid by the Corporate Debtor.
13. In *Mobilox Innovations Private Limited Vs Kirusa Software Private Limited*, para 34, the Hon'ble Supreme Court laid down what the Adjudicating Authority has to examine in an Application under Section 9. Para 34 is as



follows:-

*“34. Therefore, the adjudicating authority, when examining an application under Section 9 of the Act will have to determine:*

- (i) Whether there is an “operational debt” as defined exceeding Rs 1 lakh? (See Section 4 of the Act)*
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and*
- (iii) Whether there is existence of a dispute between the parties or the record of the 15 Company Appeal (AT) (Insolvency) No. 256 of 2021 pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?*

*If any one of the aforesaid conditions is lacking, the application would have to be rejected. Apart from the above, the adjudicating authority must follow the mandate of Section 9, as outlined above, and in particular the mandate of Section 9(5) of the Act, and admit or reject the application, as the case may be, depending upon the factors mentioned in Section 9(5) of the Act.”*

However, the defense has to be plausible and while not examining it on merits, it must not appear as a moonshine defense.

14. Therefore, in the present matter at hand, there is a clear debt, repayment of which has been defaulted by the Corporate Debtor and there appears to be no pre-existing dispute between the parties.
15. In view of the aforementioned, we are of the view that Corporate Insolvency Resolution Process be initiated against the Corporate Debtor.
16. The Applicant has named one Mr Mukesh Khathuria having Registration Number IBBI/IPA-001/IP-P012316/2018-19/11925 (email: [khathuria@hotmail.com](mailto:khathuria@hotmail.com)), duly registered with ICSI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Applicant has filed Consent in Form 2 under Insolvency and Bankruptcy



Board of India (Application to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the named IRP.

17. Consequences of commencement of CIRP shall be inter-alia as follows:
- (i) The IRP appointed by the Adjudicating Authority, Mr. Mukesh Khathuria, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.
  - (ii) Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.
  - (iii) The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 2,00,000/- (Two Lakhs Only) to the account of IRP within five days from the date of this order. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP as unfolding concerning the



Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

- (iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.
18. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Resolution Professional by all modes for information. The Registry is also directed to send a soft copy of the instant Application along with this order to the RP nominated herein on his e- mail.
19. Accordingly, CP No. (IB)- 149/9/JPR/2019 is admitted.

DEEP  
CHANDRA  
JOSHI

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**(DEEP CHANDRA JOSHI)**  
**JUDICIAL MEMBER**

PRASANTA KUMAR  
MOHANTY

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**(PRASANTA KUMAR MOHANTY)**  
**TECHNICAL MEMBER**