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

CP (IB) No. 277/Chd/Pb/2019
Under Section 9 of Insolvency and Bankruptcy Code, 2016.

In the matter of:

M/s Vijay Paints & Chemicals
having its registered office at
#418, Industrial Area-A, Ludhiana-141010,
through its Sole Proprietor Smt. Renu Seth.

…Petitioner-Operational Creditor

Vs.

M/s Hanson Petro Private Limited
has its registered office at
#774, Urban Estate, Phase-I,
Jalandhar, Punjab-144001.
CIN No.U51211PB1999PTC022502

…Respondent-Corporate Debtor

Judgement delivered on: 20.04.2023

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

For the Petitioner-Operational Creditor : Mr. Pulkit Goyal, Advocate
For the Respondent-Corporate Debtor : Mr. M.S. Gill, Advocate

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 **M/s Vijay Paints & Chemicals** through its Proprietor Smt. Renu Seth (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate

Insolvency Resolution Process (**CIRP**) in case of **M/s Hanson Petro Private Limited** (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, **M/s Hanson Petro Private Limited**, is a Company incorporated on 26.04.1999 under the provisions of Companies Act, 1956 with CIN No.U51211PB1999PTC022502 with its registered office at #774, Urban Estate, Phase-I, Jalandhar, Punjab-144001. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with the main petition and marked as Annexure 1.

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor is engaged in trading of Paints & Chemicals. Both the parties are trading with each other from last many years. A chemical i.e. Ethyl Acetate was supplied to Corporate Debtor by Operational Creditor and promised to make payment against each invoice soon after the delivery of goods. The payment was not received for the goods delivered between 16.03.2018 to 08.09.2018. The Corporate Debtor used to make payment by way of electronic transfer or through cheques against the raised invoices. However, no payment was received.

4. It is submitted by the petitioner in Form 5, Part IV that amount claimed to be in default is Rs. 7,91,121/- (Rupees Seven Lakh Ninety One Thousand One Hundred Twenty One Only/-). The default occurred on 16.03.2018 i.e. when first invoice No.B155 was issued for amount of Rs.88,560/-. Copy of invoices (Annexure 2), Ledger Account (Annexure 3), Statement of Account (Annexure 4) and Bank Certificate (Annexure 5) are attached with the main petition.

5. A demand notice dated 02.03.2019 was withdrawn by the petitioner and fresh demand notice dated 22.03.2019 in Form 3 & 4 is stated to be issued by the operational creditor vide registered post on 25.03.2019 and vide email dated 22.03.2019 and the same has been delivered to the corporate debtor vide email which did not bounced back. The delivery report, postal receipts, postal envelope and copy of email are attached at Annexure 6 & 7 with the main petition. The corporate debtor gave reply dated 15.04.2019 to demand notice dated 02.03.2019 wherein it is stated that the the chemical supplied was of poor quality. The lamination of the plastic rolls and pouches was delaminated. The balance quantity of about 70000 BOPP HDPE laminated bags are still lying in godown. Due to defective material supplied, there was loss of Rs. 10 lakhs . Mr. Puneet Seth assured to compensate for the loss by issuing the credit note worth the amount of the invoice.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The affidavits of service were filed vide diary Nos. 4066 dated 14.08.2019, 5059 dated 23.08.2019 and 00630/2 dated 26.04.2022. The corporate debtor has filed written statement vide diary No.7185 dated 16.12.2019, wherein it is stated that both parties have running account but dispute arose because of sub-standard supply of the raw material, which lead to the losses. The respondent reported back to the petitioner regarding defective raw material, petitioner did not respond immediately but later on deputed Mr. Puneet Seth, Proprietor of Punit Paints & Chemicals, agreed to issue credit notes for compensating the loss. Due to the failure in satisfactory finish product it not

only lead to loss of reputation but also inflected a huge financial loss. The respondent after sending the legal notice did not receive any reply and filed an application before Mediator, District Legal Services Authority, Dispute Resolution Center, Court Complex, Jalandhar (application form dated 20.04.2019-Annexure 6, D.D. No.416478 dated 20.04.2019) for which authority announced the order dated 12.06.2019 (Annexure 8). The mediation process being frustrated by the opposite party, the respondent choose to go for adjudication before Commercial Court, Jalandhar, for filing the suit dated 11.07.2019, recovery of damages of Rs. 10 lakh on account of supply of defective material. The fact that litigation is pending at the Commerical Court is not revealed to this Adjudicating Authority. The replication to written statement was filed by the petitioner vide diary No.1505 dated 24.02.2020, wherein it is stated that there is no dispute ever existed between the parties *qua* the quality of the goods, nor the Corporate Debtor has attached any proof showing that such dispute ever exist prior to the sending of the demand notice. The application filed before the Mediator, District Legal Services Authority, Dispute Resolution Center, Court Complex, Jalandhar only after receiving the petition under Section 9. The application filed before Commerical Court is against M/s Vijay Paints & Chemicals which is not a party to the present Company Petition. The rejoinder was filed by respondent vide Diary No.00630/01 dated 21.10.2021.

7. The short written submissions have been filed by petitioner vide Diary No.00630/3 dated 13.07.2022 and by respondent-corporate debtor vide diary No.00630/4 dated 25.01.2023,

8. We have heard the learned counsel for the petitioner as well as corporate debtor and have perused the records.

9. The first issue for consideration is whether the demand notice in Form 3 & 4 dated 22.03.2019 was properly served. A demand notice is stated to be issued by the operational creditor vide registered post on 25.03.2019 and vide email dated 22.03.2019 and the same has been delivered to the corporate debtor vide email which did not bounced back. The delivery report, postal receipts, postal envelope and copy of email are attached at Annexure 6 & 7 with the main petition. Therefore, demand notice was duly served. The corporate debtor gave reply dated 15.04.2019 to demand notice.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit by learned counsel for the Operational Creditor that the Corporate Debtor did not raise any dispute within the stipulated time or upto the date of filing this petition, nor did it raise any dispute qua the outstanding amount. Moreover, as per the knowledge of the petitioner Operational Creditor, even no dispute was pending or arose by the Corporate Debtor qua the outstanding amount even prior to the sending of the statutory demand notice dated 22.03.2019.

It is stated by the respondent that after sending the legal notice/reply dated 15.04.2019 did not receive any reply and filed an application before Mediator, District Legal Services Authority, Dispute Resolution Center, Court Complex, Jalandhar (application form dated 20.04.2019-Annexure 6, D.D. No.416478 dated 20.04.2019) for which authority announced the order dated 12.06.2019 (Annexure 8) and thereafter, the respondent choose to go for adjudication before Commercial Court, Jalandhar, for filing the suit dated 11.07.2019. However, it is seen from the records that the application filed before the Mediator, District Legal Services Authority, Dispute Resolution Center, Court Complex, Jalandhar only after filing of the present petition on 16.04.2019 and re-filed on 10.05.2019 under Section 9. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

11. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 22.03.2019 in Form 3 & 4 attached as (Annexure 6 & 7) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. 16.03.2018 i.e. when first invoice No.B155 was issued for amount of Rs.88,560/-. This application was filed vide Diary No.1956 on 16.04.2019 and was re-filed on 10.05.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

12. 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. 7,91,121/- (Rupees Seven Lakh Ninety One Thousand One Hundred Twenty One Only/-) is still pending which amounts to default, when corporate debtor avoided the payment of outstanding amount despite repeated reminders by petitioner-operational creditor. Copy of invoices (Annexure 2), Ledger Account (Annexure 3), Statement of Account (Annexure 4) and Bank Certificate (Annexure 5) are attached with the main petition. 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.

13. Although, respondent has raised dispute about the quality of goods and also pendency of litigation in Commercial Court. However, this contention of respondent-Corporate Debtor is devoid of legal force because there is no evidence on record to show that respondent-Corporate Debtor raised the quality dispute before serving demand notice. Even the litigation in the Commercial Court has been filed after reply to demand notice. Suit has been filed on 11.07.2019 whereas, demand notice was sent on 22.03.2019, and reply for the demand notice was filed on 15.04.2019. Thus, the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. In these circumstances, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

14. 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 Hanson Petro Private Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. In Part-III of Form No. 5, Mr. Nipan Bansal, Interim Resolution Professional (IRP) had been proposed by the petitioner. However, vide IA No.1759/2022 Mr. Mohit Chawla has been proposed as new IRP (Interim Resolution Professional). The Form 2 dated 21.09.2022 along with Certificate of Registration issued by IBBI and Form B is attached with the application. The Law Research Associate of this Tribunal has checked the credentials of Mr. Mohit Chawla, his AFA Certification is valid upto 01.12.2023 and there is nothing adverse against him. In view of the above, we appoint Mr. Mohit Chawla, Registration No.IBBI/IPA-001/IP-P00524/2017-2018/10949,E-mail:ipservices@embeegroup.in, Mobile No. +91-9888003303, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Mohit Chawla 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 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 are 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 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 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 empanelled 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 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 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 ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. 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.

17. 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 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.

18. 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.

19. The petitioner is directed to deposit an amount of ₹40,000/- (Rupees Forty 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.

20. 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.

21. This petition is accordingly admitted.

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

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

April 20, 2023
PRF/TB