NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH
COURT III

14. C.P.(IB)-623(MB)/2020

CORAM: SHRI H.V. SUBBA RAO, MEMBER (J)
SHRI CHANDRA BHAN SINGH, MEMBER (T)

ORDER SHEET OF THE HEARING OF MUMBAI BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON **28.04.2022**

NAME OF THE PARTIES: Mahavir Chemicals

V/s

NRW Polymers Pvt Ltd.

SECTION 9 OF INSOLVENCY AND BANKRUPTCY CODE, 2016

ORDER

Adv Smit Shah a/w Sanket Shah, counsel appearing for the Petitioner and Mr. Amit Tungare, counsel appearing for the Respondent are present through virtual hearing.

Heard the argument on both sides and the above Company Petition is admitted. Detail order would follow:

Sd/-	Sd/-
CHANDRA BHAN SINGH	H.V. SUBBA RAO
Member (Technical)	Member (Judicial)

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH COURT III

C.P. No. 623/IBC/MB/2020

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rule 2016)

In the matter of

M/S MAHAVIR CHEMICALS

Having registered office at: Shop No. A-3, Rughani Palace CHSL, Sarojini Naidu Road, Kandivali (West), Mumbai- 400067

......Operational Creditor

Vs

NRW POLYMERS PRIVATE LIMITED

(CIN: U25200MH1986PTC038630)

Registered office at: 52 Shri Krishan Niwas, New Silk Bazar Kalbadevi, Mumbai- 400002 &

A-210, 211, Road No.30, between Govt. Agrivulture & George Motors, Waghle Estate, Dist. Thane- 400604

.......Corporate Debtor

Order Dated: 28.04.2022

Coram:

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner: Adv Smit Shah a/w Sanket Shah, Advocate

For the Respondent: Mr. Amit Tungare, Advocate

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1. The above Company Petition is filed by *M/s Mahavir Chemicals (sole proprietary firm) through its proprietor Bhaumik G. Gandhi* hereinafter called as Operational Creditor seeking to initiate of Corporate Insolvency Resolution Process (CIRP) against *NRW Polymers Private Limited* as Corporate Debtor by invoking the provisions of Section 9 Insolvency and Bankruptcy code (hereinafter called "Code" read with rule 6 of Insolvency & Bankruptcy (Application to Adjudication Authority) Rules, 2016 for a Resolution of an unresolved Operational Debt of Rs. 29,58,104.28/-.
2. The Operational Creditor on multiple occasion supplied the goods (Chemicals) ordered by the Corporate Debtor and raised their respective invoices. The Corporate Debtor after receiving the delivery of the goods and invoices never raised any dispute or demur in regards of the quality/quantity and/or towards the amount of invoice.
3. As per the terms and condition of the Invoice, the Corporate Debtor supposes to make the payment immediately, but the Corporate Debtor failed to do so, hence in June, 2019 the Operational Creditor addressed 1st demand notice (Form-3) to the Corporate Debtor demanding to clear the amount outstanding of Rs. 29,14,576.37/- inclusive of principle and interest.
4. In July, 2019 the Corporate Debtor addressed an email to the Operational Creditor asking for the termination of the demand notice and gave their undertaking of making the payment and also asked to make fresh supply of the order placed by them. Accordingly, the Operational Creditor supplied the goods in the month of July, 2019 and raised invoice bearing invoice no. 000165 and 000265.

5. The Corporate Debtor replied to the Demand Notice dated 03.01.2020 and 24.01.2020 vide their letter dated 10.02.2020 received by the Advocate of Operational Creditor on 17.01.2020 and raised false dispute mixing up issues with other entity. Hence this petition.
6. The Corporate Debtor filed affidavit in reply in routine manner. The main contention of the Corporate Debtor is that there is a pre-existing dispute between the parties.
7. Heard the both sides and perused the record.
8. The learned counsel appearing for the Operational Creditor invited the attention of this Bench to page no.2, Para 'a' of the reply that reads as follows:

    "…It is agreed that the material was supplied by the Petitioner to the Respondents. It is also agreed that the payment was outstanding against such supply of materials. But it is also a matter of fact that the Petitioner had a genuine intention to pay for the materials supply. The bona fide of the Respondent can also be verified from the email it sent to the Petitioner on 02.07.2019 (Exhibit-G Page 58 of Petition) wherein it clearly mentioned that it intends to pay the dues and therefore, it also held settlement talks with Mr. Bhaumik Gandhi, Proprietor of the Petitioner on 09.07.2019. On that day, the Respondent issued on e cheque drawn on OBC Bank, Kalbadevi branch viz. Cheque No. 275811 dated 09.07.2019 for 1,68,504/- towards part of the outstanding payment with a condition that if the amount is transferred through NEFT, the cheque would be returned. Later, on request of Mr. Bhaumik Gandhi, the Respondent transferred the amount through NEFT on 12.07.2019. As per the terms agreed, Mr. Bhaumik Gandhi was supposed to return the aforesaid

cheque but for the reasons best known to him, he closes not to return the cheque and keep the custody of it with him so that he can deposit the same with bank again for realization of more amount than what was agreed. Clearly, the intention of the Petitioner was malafide and dishonest and against the terms mutually agreed to between the parties. The Respondent raised this dispute by stating that it still awaited the return of unclear cheque (Exhibit-G page 59 of the Petition). However, the Petitioner didn't bother to reply or comply with the terms agreed by it and purposely continued breaching the agreed terms. Therefore, it can be safely deduced that the Petitioner also admitted the foul play on its part. Clearly, it's a breach of the terms mutually agreed between the parties with respect to payment of the said debt and therefore, qualifies as a 'Dispute' in terms of the provisions of the code and therefore, the present petition is liable to be rejected pursuant to the provisions…"

By inviting the attention of this Bench to the above para, the counsel appearing for the Operational Creditor submitted that virtually there is no dispute with regard to "debt" and "default" and the Company Petition may be admitted.

9. Mr. Amit Tungare, learned counsel appearing for the Respondent/Corporate Debtor invited the attention of this Bench to the email dated 03.07.2019 annexed at page no. 100 to the Company Petition wherein it was mentioned that the Corporate Debtor has dispute with regard to quantum of the amount due and payable while admitting the supply of goods and tried to convince this Bench as if there is a pre-existing dispute between the parties. It is very hard to accept such argument since crystallization of exact amount is beyond the

scope of Section 7 Application. Except the above contention, no other contention has been raised by the Corporate Debtor. At the cost of repetition this Bench observes that the Corporate Debtor has virtually admitted the "debt" and "default" in this case and the debt is within limitation. Thus, the present Company Petition satisfies all the necessary legal requirements for admission. Hence, this Bench did not find any reasons to reject the above Company Petition. Accordingly, the above Company Petition is admitted by passing the following:

ORDER

a. The above Company Petition No. (IB) 623 (MB)/2020 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIR P) is ordered against NRW Polymers Private Limited.

b. Since the Operational Creditor has not suggested the name of any person to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints Mr. **Shailesh Bhalchandran Desai** (ip10362.desai@gmail.com) (Mobile No. 9821236897) Insolvency Professional, Registration No: IBBI/IPA-001/IP-P00183/2017-18/10362 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.

c. The Operational Creditor shall deposit an amount of Rs.5 Lakhs towards the initial CIRP costs by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.

d. That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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; the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
e. That the supply of essential goods or services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.
f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.

j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.

k. Accordingly, this Petition is admitted.

l. The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

Sd/-	**Sd/-**
CHANDRA BHAN SINGH **MEMBER (TECHNICAL)**	**H.V. SUBBA RAO** **MEMBER (JUDICIAL)**