

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

CP (IB) No.171/Chd/Pb/2022

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

In the matter of:

Tricon Dry Chemicals LLC

Having its offices at :

777, Post Oak Blvd, Suite 550, Houston, Texas-77056,
United States.

...Petitioner/Operational Creditor

Vs.

Supreme Polytubes Limited

Registered Office At:-

Bagrian Road, Dhuri, Sangrur, Punjab-148024

CIN: U25209PB2002PLC025653

...Respondent/Corporate Debtor

Judgement delivered on: 18.08.2023

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

For the Petitioner-Operational Creditor : Mr. Dushant Jog, Proxy Counsel
for Mr. Tarun Vir Singh Lehal,
Advocate.

For the Respondent-Corporate Debtor : Mr. Vishav Bharti Gupta, Advocates

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 **Tricon Dry**

Chemicals LLC (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Supreme Polyubes Limited (for brevity 'Corporate Debtor' / 'Respondent')**.

2. The Corporate Debtor, namely, **Supreme Polyubes Limited**, is a Company incorporated on 19.12.2002 under the provisions of the Companies Act, 1956 with CIN No. U25209PB2002PLC025653 with its Registered Office At:- Bagrian Road, Dhuri, Sangrur, Punjab-148024. Hence, the territorial jurisdiction lies with this Adjudicating Authority. A copy of master data of the corporate debtor is attached with the main petition and marked as Annexure-P14.

3. The facts of the case, briefly, as stated in the petition are that The debt originates from the purchase of PVC SI-67 (hereinafter referred to as the "Said Goods") by the Corporate Debtor from the Operational Creditor under Sales Contract bearing reference no. 298387 dated 29th April 2018 detailing the terms of sales agreed between the Operational Creditor and the Corporate Debtor. Pursuant thereto, the Operational Creditor sold, supplied, and delivered the said Goods to the Corporate Debtor vide Bill of Lading bearing no. MSCUVX221244 dated 22nd May 2018 and simultaneously the Operational Creditor raised invoice bearing no. 139424 dated 22nd May 2018 for a sum of USD 146,534.40 towards the supply of the said Goods. The payment term was agreed to be 120 days from the date of Bill of Lading and any delay in payment shall accrue interest at the rate equal to the lesser of 18% per annum or the maximum interest payable under law. The

Corporate Debtor has been delaying payment on one pretext or the other and has exchanged sufficient correspondences, inter-alia, citing technical problems with its bank financial constraints and credit issues among others, and time and again assuring to pay the overdue invoice along with the interest. The Operational Creditor has time and again demanded payment along with interest though the Corporate Debtor has extended only false assurance.

3.1. Vide letter dated 6th March 2019 that the Corporate Debtor acknowledging the debt of USD 154,934.40, inter-alia, cited an issue with the banking channel to remit money to the bank account of the Operational Creditor, and in the interim the Corporate Debtor requested the Operational Creditor, with the intent to secure the claim, to accept the outstanding amount of USD 154,934.90 equivalent in rupees as interest-free security in the associate entity of the Operational Creditor in India i.e. "Tricon Energy India Private Limited" (hereinafter referred to as the 'associate Indian entity') and assured to resolve issue with its bank within 120 days and remit the aforesaid amount to the Operational Creditor. It was further asserted by the Corporate Debtor that the outstanding amount of USD 154,934.90 equivalent in rupees will be deposited with the said associate Indian entity of the Creditor on or before 11th March 2019 and the said associate Indian entity will have to refund the said amount without interest only upon receipt of complete payment the Operational Creditor. However, the Corporate Debtor yet again only extended false assurances and did not deposit any money with the associate Indian entity of the Operational Creditor by 11th March

2019. Thereafter, aggravated and frustrated with the deceitful commitments and assurances of the Corporate Debtor, vide its email dated 27 September 2019 the Operational Creditor, inter- alia, notified the Corporate Debtor of its failed commitments where despite assurances the Corporate Debtor failed to either deposit the overdue payment along with interest with the associate Indian entity of the Operational Creditor or remit payment to the Operational Creditor. The Operational Creditor even notified that as on date of the above-referred email a significant amount of USD 113,748.30 along with interest of USD 13,948.97 was still due to be deposited as security with the associate Indian entity of the Operational Creditor. Being aggrieved by such inordinate delay and non-payment of the Operational Debt by the Corporate Debtor, the Operational Creditor issued a Demand Notice dated 11th September, 2021 issued under section 8 of the Insolvency and Bankruptcy Code, 2016 at the registered office of the Corporate Debtor demanding the Operational Debt seeking payment of the outstanding Operational Debt of USD 225,229.39 (United States US Dollar Two Hundred Twenty-Five Thousand Two Hundred Twenty and Thirty-Nine Cents Only). The said Demand Notice was received at the registered address of the Corporate Debtor through India Post on 20.09.2021 and the courier returned with remarks receiver refused delivery.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is USD 238,236.83 (United States Dollar Two Hundred Thirty-Eight Thousand Two Hundred Thirty-Six and Eighty-Three Cents Only) equivalent to Rs.1,80,80,626.86p (Rupees One

Crore Eighty Lakh Eighty Thousand Six Hundred Twenty-Six and Eighty Paise Only), calculated @ 1 USD = 75.8935 as on 17th March 2022 along with further interest. It is stated that the default has occurred on 19.09.2018, i.e. when the invoice bearing No.139424 dated 22.05.2018 was delivered vide Bill of Lading Bearing No.MSCUVX221244 dated 22.05.2018 fell due. Copy of Sales Contract Bearing Reference No.298387 dated 29th April 2018 (Annexure-P 2), The Bill of Lading Bearing No.MSCUVX221244 dated 22nd May 2018 (Annexure-P 3), The invoice Bearing No.139424 dated 22nd May 2018 (Annexure-P 4), and the demand notice dated 11.09.2021 (Annexure-P 13) are attached with the main petition.

5. A demand notice in Form 3 dated 11.09.2021 is stated to be issued by the operational creditor through speed post. The same has been delivered to the corporate debtor and the copy of postal and courier receipts along with delivery reports are attached as Annexure-P 13 of the petition. The corporate debtor had not replied to the demand notice till date.

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 corporate debtor has filed a reply vide Diary No.01081/3 dated 16.11.2022, wherein it is stated that the amount claimed operational creditor is disputed and not due to it by the operational debtor. The corporate debtor was regularly paying dues to the operational creditor. The corporate debtor had paid due amount in the account of the associate entity i.e. Tricon India of the operational creditor vide various cheques. The National Company Tribunal is not a money recovery Forum or a Civil Court meant to recover the alleged

dues of the operational creditor. After giving credit to the payments made by the corporate debtor to the operational creditor as reflected in the account statements of the corporate debtor, there is nothing which is due to the operational creditor by the corporate debtor. However, an affidavit has been filed by the Managing Director of M/s Supreme Polytubes Ltd-corporate debtor vide diary No.01081/7 dated 26.07.2023, wherein it has been deposed that due to lack of demand company has been unable to generate revenues which eventually led to huge losses. It has been further deposed that the company has been facing a very high liquidity crunch due to the non-materialization of receivables and has incurred defaults of other operational creditors also and the company is also not able to pay out the outstanding dues of Rs.1,80,80,626/- (Rupees One Crore Eighty Lac Eighty Thousand Six Hundred Twenty Six Only).

7. The rejoinder was filed vide Diary No.01081/4 dated 31.01.2023 wherein it is stated that the dispute raised by the corporate debtor in their reply has been raised for the very first time. The corporate debtor is only creating moonshine defense with malafide intentions just to avoid payment of the legitimate dues of the operational creditor. The corporate debtor has admitted its liability towards payment of the debt to the operational creditor. The corporate debtor vides its email dated 19.02.2019 (Annexed and marked as Annexure P-7 to the C.O.), inter alia, cited financial constrain and credit issues with its bank that has been sorted and assured to clear the outstanding payment before 31st March 2019 along with interest on delayed payment. The corporate debtor allegedly paid the entire outstanding debt

and there is only a sum of Rs.39,39,038/- that is due to the operational creditor that too on an alleged account of defective material, the corporate debtor has not paid the outstanding sum. The corporate debtor has not been provided the true statement of account. The corporate debtor's plea for some defective goods and dispute is an afterthought.

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

9. The first issue for consideration is whether the demand notice dated 31.01.2023 is stated to be issued by the operational creditor through speed post. The same has been delivered to the corporate debtor through speed post and the copy of postal and courier receipts along with delivery reports are attached as Annexure-P 13 of the petition. Therefore, a demand notice was duly served.

10. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit by the operational creditor that no notice is given by the corporate relating to any dispute of unpaid operational debt and there is no pre-existing dispute between the parties. It can be seen from the affidavit filed by the Managing Director of the corporate debtor by diary No.01081/7 dated 26.07.2023 that the corporate debtor admitted its liability to pay the outstanding principal amount of Rs. Rs.1,80,80,626/- (Rupees One Crore Eighty Lac Eighty Thousand Six Hundred Twenty-Six Only) of the petitioner and also expressed its inability to settle the same due to financial crunch.

11. The other issue for consideration is whether this application is filed within limitation. It is seen that the date of default is 19.09.2018, i.e. when the invoice bearing No.139424 dated 22.05.2018 was delivered vide Bill of Lading Bearing No.MSCUVX221244 dated 22.05.2018 fell due. Therefore, the period of limitation starts from 19.09.2018 and the present application is filed vide Diary No.01081 dated 25.05.2022. However, excluding the period of Covid-19, the period from 15.03.2020 till 28.02.2022 stands excluded by virtue of order dated 27.04.2021 passed by **Hon'ble Supreme Court in "In Re: Cognizance for Extension of limitation registered as Suo-Moto Writ Petition (C) No. 3/2020. Operative portion of order passed by Hon'ble Apex Court on 27.4.2021 is as follows:-**

"We also take judicial notice of the fact that the steep rise in COVID-19 Virus cases is not limited to Delhi alone but it has engulfed the entire nation. The extraordinary situation caused by the sudden and second outburst of COVID-19 Virus, thus, requires extraordinary measures to minimize the hardship of litigant-public in all the states. We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dated 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders."

Further in M.A. 21 of 2022, Hon'ble Supreme Court held:-

"In continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings".

Therefore, the present petition 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 admitted unpaid operational debt (in default) of Rs.1,80,80,626/- (Rupees One Crore Eighty Lac Eighty Thousand Six Hundred Twenty-Six Only) is still pending which amounts to default. The debt is evidenced from the documents such as Sales Contract Bearing Reference No.298387 dated 29th April 2018 (Annexure-P 2), The Bill of Lading Bearing No.MSCUVX221244 dated 22nd May 2018 (Annexure-P 3), The invoice Bearing No.139424 dated 22nd May 2018 (Annexure-P 4), and the demand notice dated 11.09.2021 (Annexure-P 13) which are attached with the main petition. The petitioner proved the debt, which is more than Rupees one crore.

13. It is also noted that the corporate debtor has failed to pay back the aforesaid amount due as mentioned in the statutory notice till date. The corporate debtor has also admitted its liability with regard to the payment of the outstanding amount. 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 is above the 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 and it is also admitted by the respondent/corporate debtor that the operational Debt for a sum of Rs.1,80,80,626/- (Rupees One Crore Eighty Lac Eighty Thousand Six Hundred Twenty Six Only) is pending. The

material on record clearly goes to show that the respondent committed a default in payment of the claimed operational debt even after the 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, Supreme Polyubes Ltd and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. In Part III of Form No. 5, Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Sandeep Kumar Chitkara and there is nothing adverse against him. In view of the above, we appoint Mr. Sandeep Kumar Chitkara, Registration No. IBBI/IPA-001/IP-P-01976/2020-2021/13084, E-mail:sandchit9@gmail.com, Mobile No. 7988649622, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Sandeep Kumar Chitkara 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 the inventory of assets of the Corporate Debtor;

i.) 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;

ii.) 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;

iii.) 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;

iv.) 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. A reference is made to the provisions of Section 128(5) of the Companies Act 2013, whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

v.) *“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”*

As per the Standard of Auditor (SA-230)

vi.) *“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report , or, if later, the date of the group auditor's report.”*

vii.) In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

viii.) 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.

ix.) 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.

x.) 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

xi.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

16. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial

Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect 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.
- e) 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 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.

- f) 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.

17. We direct the Financial Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

18. A copy of the order shall 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.

19. The petition is admitted accordingly.

sd/-

Subrata Kumar Dash)
Member (Technical)

August 18 , 2023

SD

sd/-

(Harnam Singh Thakur)
Member (Judicial)