

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

CP (IB) No. 329/Chd/Hry/2019

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

In the matter of :

M/s Grey Orange India Pvt. Ltd.,
Having its registered office at
D-30, 1st Floor, Dayanand Block,
Old Patparganj Road, Shakarpur,
New Delhi-110092.

Also at:

Ground, 1st & 2nd Floor,
Commercial Building,
Tower 1, Orient Bestech
Business Towers Complex,
Sector 34,
Gurgaon-122001 Haryana

... Applicant-Operational Creditor

Versus

Quickdel Logistics Pvt. Ltd.,
Having its registered office at
1101, 11th Floor, Spaze I Tech Park,
Tower A-2, Shona Road, Sector 49,
Gurgaon-122103 Haryana.

Also at:

Quickdel Logistics Pvt. Ltd.,
Plot No.31, Udyog Vihar,
Sector-18,
Gurgaon-122015 Haryana.

...Respondent-Corporate Debtor

Judgement delivered on: 28.01.2020

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant : 1. Mr. Mayank Pandey, Advocate

2. Mr. Rohan Mittal, Advocate.

For the respondent :
1. Mr. Ajay K Jain, Advocate.
2. Mr. Murari Kumar, Advocate
3. Mr. Vaibhav Narang, Advocate

Per: Pradeep R. Sethi, Member(Technical)

JUDGEMENT

The present application is filed by Grey Orange India Pvt. Ltd. (**Grey Orange**) under Section 9 of the Insolvency & Bankruptcy Code, 2016 (**Code**) read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules 2016**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) in the matter of Quickdel Logistics Pvt. Ltd. (**Quickdel**). The application is signed by Shri Sandeep Kumar, Senior Legal Counsel. His affidavit verifying the application is at page 185 of the petition. The Board resolution dated 28.02.2019 authorising Shri Sandeep Kumar, Senior Legal Counsel is at page 191 of the petition. The master data of Quickdel is at Annexure-A of the petition. The registered address of Quickdel shown therein is of Section 49, Gurugram. Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. It is stated in part IV of the application that Grey Orange is *inter alia* in the business of designing, manufacturing and deployment of advance robotic solution and software for warehouse automation and entered into agreement dated 03.07.2015 with Quickdel for supply, installation and commissioning of 6K GreyOrange Sortation System with components and accessories. It is submitted that for the supply of products and services by Grey Orange to Quickdel , Grey Orange raised regular invoices on Quickdel,

which have not been disputed by Quickdel till date and that Quickdel has issued a certificate of commissioning/hand over for successful commissioning of one of the systems in terms of the agreement on 05.08.2016. It is stated that on 23.06.2016, Grey Orange sent a letter to Quickdel informing that as per the account statement, ₹ 50,02,846 is receivable as on 31.03.2016 and asking for the confirmation of the amount owed. Reminder is stated to be sent on 01.08.2016 and on 02.08.2016, Quickdel confirmed that as on 31.03.2016, it owed an amount of ₹ 42,49,251 to Grey Orange. It is further stated that Shri Hemant Garg, Manager of Quickdel in two emails dated 19.05.16 and 11.08.2016 and Mr. Rajesh Chundi, CTO of Quickdel in his email dated 12.08.2016 acknowledged the successful automation of the system in terms of the agreement and approved the consequent obligation to release the due payment to Grey Orange. It is stated that legal notices dated 20.03.2017 and 04.04.2017 to Quickdel for recovery of the due amounts remained un-responded. The amount claimed to be in default is stated to be ₹42,49,251 and default in payment of the debt is stated to have occurred when Quickdel failed to make payments against each of the invoices raised by Grey Orange on or before the due dates set out in the agreement and respective purchase orders and on 02.08.2016 when Quickdel admitted through a written confirmation of the amount due to Grey Orange.

3. Demand notice is stated to be sent on 22.11.2018 for unpaid operational debt of ₹50,02,847 (Annexure-M of the petition) and reply received from Quickdel vide letter dated 13.12.2018 (Annexure N of the petition). A fresh Demand notice is again stated to be sent on 13.03.2019 demanding payment in respect of unpaid operational debt of ₹42,49,251 and the earlier

demand notice dated 22.11.2018 was withdrawn (Annexure-O of the petition). The reply dated 25.03.2019 is stated to be received (Annexure-P of the petition). Affidavit of no dispute under Section 9(3((b) of the Code is stated to be filed at page 177 of the petition.

4. In Part III of the application, Grey Orange has not proposed any Interim Resolution Professional (**IRP**).

5. Vide order dated 18.07.2019, notice of the petition was directed to be issued to Quickdel. Quickdel filed reply vide Diary No.4532 dated 03.09.2019. It was submitted that the petition is liable to be dismissed since Quickdel has paid all due and payable amount to Grey Orange and it is Grey Orange who has not followed the terms and conditions of the agreement of purchase and sale for equipment dated 03.07.2015 and there has been complete breach of the agreement by Grey Orange for not following the terms of warranty, service, installation, software upgradation etc. It is also submitted that specific disputes were raised by means of communication much before the demand notice dated 22.11.2018 and demand notice dated 13.03.2019.

6. The rejoinder has been filed by Diary No.5709 dated 17.10.2019. It has been stated that prior to the demand notice, Quickdel has never disputed the payment of the claimed amount and that Quickdel has confirmed on 02.08.2016 that it owed an amount of ₹42,49,251 as on 31.03.2016 to Grey Orange and again acknowledged its liability and agreed to pay the pending amount in its meeting with Grey Orange on 13.10.2016 and 30.10.2016.

7. We have carefully heard and considered the arguments of the learned counsel for Grey Orange and Quickdel and have also perused the record. The learned counsel for Quickdel has argued that there were various

disputes from the inception of the agreement dated 03.07.2015 and Quickdel continuously raised the same to Grey Orange time to time much before the demand notice dated 22.11.2018 and 13.03.2019 sent by Grey Orange under the Code. The learned counsel has relied on Mobilox Innovations Pvt Ltd. Vs. Kirusa Software (2018)1 Supreme Court Cases 353 and has referred to para 51 thereof reading as under:-

“51. It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

8. The learned counsel for Quickdel has referred to email dated 10.10.2015 (Annexure C-2 of the reply) informing Grey Orange that there are regular problems in the sorter and it is worst solution given by vendor. It is further stated in the email that it is better to move on manual work or request to send qualified engineer to start smooth working. We find that in the petition, reference is made to two emails dated 19.05.2016 and 11.08.2016 of Mr. Hemant Garg, Manager of Quickdel and email dated 12.08.2016 of Mr. Rajesh

Chundi, CTO of Quickdel acknowledging the successful automation of the system in terms of the agreement and approving the consequent obligations to release the due payment to Grey Orange. In the reply, Quickdel has claimed that the new management took over the control of Quickdel on 12.08.2016 and more than 350 employees resigned from Quickdel on 10/11.08.2016. It is further stated that from 20.05.2016 onwards, the operation of Quickdel was stopped and therefore, the purported emails claimed to be sent by the stranger employees of Quickdel shows the connivance with Grey Orange. It is submitted that Shri Rajesh Chundi the alleged employee had already resigned on 10.08.2016 and sending of the purported email on 12.08.2016 is contrary to the existing situation as admittedly the machine was not functional and therefore, no question arose to give confirmation. In the rejoinder, Grey Orange has pointed out that there is no resignation letter or any other document to support the averment made by Quickdel that Mr. Rajesh Chundi had resigned on 10.08.2016 and that in his email dated 12.08.2016, Shri Rajesh Chundi had merely approved relevant payment and it was Shri Hemant Garg, Manager at Quickdel who in two emails dated 19.05.2016 and 11.08.2016 acknowledged and certified the successful automation of the system in terms of the agreement and approved the consequential obligation to release the due payment to Grey Orange. It has been submitted in the rejoinder that the emails sent by Shri Hemant Garg are not controverted.

9. The email dated 10.10.2015 *supra* does not specify the details of the problems in the sorter claimed to be faced. Moreover, the later emails dated 19.05.2016, 11.08.2016 and 12.08.2016 *supra* show that successful automation of the system in terms of the agreement was accepted. The

objections raised by Quickdel in respect of the admissibility of the emails dated 19.05.2016, 11.08.2016 and 12.08.2016 *supra* are fully replied to by Grey Orange. Therefore, the claim of Quickdel that the email dated 10.10.2015 evidences pre-existing dispute cannot be accepted. The contention that debit note dated 15.03.2016 of ₹12727 was imposed upon Grey Orange for non-performance does not help Quickdel since the description in the debit note (Annexure C-3 of the reply) of "FA Item" is entirely different. Further, in view of the emails of Quickdel dated 19.05.2016, 11.08.2016 and 12.08.2016 *supra*, the delay in commissioning of the system becomes irrelevant. Moreover, as argued by the learned counsel for Grey Orange, no penalty was levied under clause 10(a) of the agreement for delay in commissioning the system.

10. Quickdel has referred to emails dated 08.09.2016, 01.10.2016, 06.10.2016 and 01.11.2016 (Annexure C-4 of the reply). These emails have reference to integrating the sorter with the new ERP. However, Quickdel has not been able to show that the integration of the software with new ERP was required to be made by Grey Orange under the terms of the agreement dated 03.07.2015. Similarly, the plea raised regarding sorter machine not being dismantled and installed at new location and cost of ₹24,00,000 burdened by the Hon'ble High Court is not relevant since the dismantling and installation at new location is not shown to be covered by the agreement dated 03.07.2015.

11. It is submitted by Quickdel that a request was made to the Economic Offences Wing (**EOW**), New Delhi on 07.02.2017 for registering FIR against Grey Orange and its Directors that the sorter machine never became operational to the satisfaction of Quickdel and Grey Orange deceived

Quickdel to pay a sum of ₹3.87 crores against the defective machine. In the rejoinder, Grey Orange has stated that it has never been contacted by EOW in relation to any complaint. Moreover, FIR dated 23.08.2017 filed by Quickdel at page 63 of its reply relates to complaint by Shri Krishna Mohan Chaudhary, AR of Jasper Infotech Pvt. Ltd. against Shri Abhijeet Singh former Executive Director, Quickdel and other known and unknown persons. The learned counsel for Quickdel could not point out any specific allegation therein relating to Grey Orange.

12. In para 7 iii of the reply, Quickdel has submitted that it has paid a total sum of ₹3,87,62,172 as full and final payment and no amount is due and payable to Grey Orange. However, the details of the amounts given therein stated to have been paid to Grey Orange total to only ₹3,77,07,762. The ledger account of Grey Orange in the books of Quickdel from 31.03.2015 to 01.03.2017 is given at Annexure C-9 (*colly*) of the reply. The difference between the amounts of ₹3,87,62,172 and ₹3,77,07,762 relate to the credit memo of ₹12,727 *supra* and two payments stated to be made on 27.05.2016 and 01.06.2016 of ₹5,65,415 and ₹4,83,216 with voucher nos. PBT16 MAY 00650 and PBT16 JUNE 00024 respectively. In the rejoinder, Grey Orange has stated that the payments were in respect of PO16 MAY00022 and PO16 JUNE00001 and did not relate to the claimed amounts in the application under PO15 JULY00033 and PO15 AUG00029. The averment made by Grey Orange in the rejoinder has not been rebutted by Quickdel. Therefore, even though the ledger account of Grey Orange in the computer of Quickdel is certified under Section 65B of Evidence Act, no reliance thereof can be placed upon it.

13. As discussed above, it is stated by Grey Orange that a letter was sent on 23.06.2016 to Quickdel informing that as per the account statement as on 31.03.2016, ₹50,02,846 is receivable from Quickdel and that on 02.08.2016, confirmation was received that as on 31.03.2016, Quickdel owed an amount of ₹42,49,251 to Grey Orange. Relevant email from Ms. Varsha Goel, Accounts Executive of Quickdel and copy of the written communication are stated to be filed at Annexures-E and F of the petition. In the reply, Quickdel has stated that after checking the record, it is submitted that no such letter even signed acknowledged by Grey Orange or its employee as alleged as per the records maintained by Quickdel and the same is forged and fabricated. In the absence of any evidence to support the contention, the genuineness of the emails and the confirmation (Annexure-F of the petition) is accepted.

14. In view of the above discussion, it is held that Quickdel has not been able to prove that a dispute truly exists in fact. The dispute sought to be raised is spurious, hypothetical and illusory and assertions of fact unsupported by evidence. The dispute sought to be raised is therefore, rejected.

15. During the course of the hearing, the learned counsel for Quickdel has submitted that the application under Section 9 of the Code was filed on 22.05.2019 and that the date of default is not specified in Part IV of the application and cannot be 02.08.2016 since on that date, the balance as on 31.03.2016 was confirmed. It was also pleaded that as per the purchase and sale agreement dated 03.07.2015, the commissioning of the system was to be completed by 14.09.2015 and taking this date into consideration, the application was not filed within limitation. The learned counsel for Grey

Orange argued that the acknowledgement on 02.08.2016 gave a fresh cause of action and therefore, the application under Section 9 of the Code was within limitation.

16. We find that Section 238A of the Code *inter alia* provides that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings before the Adjudicating Authority. The specific dates of default are not given in Part IV of the application. We have therefore, to accept the averment of the learned counsel for Quickdel that the limitation starts from 14.09.2015. The effect of the acknowledgement dated 02.08.2016 (Annexure-F of the application) is required to be examined. Section 18 of the Limitation Act, 1963 is as follows:-

18. Effect of acknowledgment in writing.—

(1) Where, before the expiration of the prescribed period for a suit of application in respect of any property or right, an acknowledgment of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgment was so signed.

(2) Where the writing containing the acknowledgment is undated, oral evidence may be given of the time when it was signed; but subject to the provisions of the Indian Evidence Act, 1872 (1 of 1872), oral evidence of its contents shall not be received.

Explanation.—For the purposes of this section,—

(a) an acknowledgment may be sufficient though it omits to specify the exact nature of the property or right, or avers that the time for payment, delivery, performance or enjoyment has not yet come or is accompanied by a refusal to pay, deliver, perform or permit to enjoy, or is coupled with a claim to set-off, or is addressed to a person other than a person entitled to the property or right;

(b) the word “signed” means signed either personally or by an agent duly authorised in this behalf; and

(c) an application for the execution of a decree or order shall not be deemed to be an application in respect of any property or right.

17. In the present case the acknowledgement of liability in writing is made before the expiration of the period for filing suit or application in respect of the claimed amount of ₹42,49,251. The acknowledgement dated 02.08.2016 is signed by Ms. Varsha Goel, Accounts Executive of Quickdel. No specific averment has been made that Ms. Varsha Goel, Accounts Executive was not authorized to sign the acknowledgement. Therefore, as per Section 18 of the Limitation Act, a fresh period of limitation is to be computed from the time when the acknowledgement was signed.

18. The argument of the learned counsel for Quickdel is that the acknowledgement relates to balance as on 31.03.2016 and therefore, a fresh period of limitation is to be computed from 31.03.2016. We may note that Section 18 of the Limitation Act, 1963 specifically states that a fresh period for limitation shall be computed from the time when the acknowledgement was signed. It has been held in **V.K.M. Electircal Stores v. Lakshmikanthamma (1968) 2 And 1 WR 567** that it is the date of signing of the balance sheet that starts a fresh period of limitation though the period for which the balance sheet as actually prepared was different.

19. In view of the above discussion, the plea that the application under Section 9 is not filed within limitation is not accepted.

Section 9(5)(i) is as under:-

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if, —

(a) the application made under sub-section (2) is complete;

(b) there is no repayment of the unpaid operational debt;

(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;

(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and

(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any.

20. No objections have been raised to the completeness of the application filed under Section 9(2) of the Code. As per discussion made above, it is concluded that there is unpaid operational debt and demand notice under Section 8 of the Code was delivered to Quickdel. The dispute sought to be raised is rejected as per discussion above. No IRP is proposed and therefore, the question of pendency of disciplinary proceedings against the IRP does not arise.

21. In view of the above discussion, we conclude that the requirements of Section 9 (5) (i) of the Code are satisfied in the present case and we admit the application for initiation of CIRP in the case of M/s Quickdel Logistics Private Limited. Directions for moratorium and appointment of IRP are given below.

22. 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 Financial 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.

23. 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 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

24. 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.

25. Under sub-section (4) of Section 9 of the Code, the operational creditor may propose the name of Resolution Professional to be appointed as Interim Resolution Professional but it is not obliged to do so. In the instant case also the operational creditor has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16(3)(a) of the code says that where the application for corporate insolvency resolution process is made by an operational creditor and –

- “a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;*
- b) xxxxx*

Sub-section (4) of Section 16 says that the Board shall, within ten days of the receipt of a reference from the Adjudicating Authority under sub-section (3), recommend the name of an insolvency professional to the Adjudicating Authority against whom no disciplinary proceedings are pending.”

26. In this regard a letter bearing File No.25/02/2020-NCLT dated 07.01.2020 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No.IBBI/IP/EMP/2019/01 dated 31.12.2019 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months from 01.01.2020 to 30.06.2020. We Select Mr. Somnath Gupta appearing at Serial No.1 of the panel to be appointed as Interim Resolution Professional.

27. The Law Research Associate of this Tribunal has checked the credentials of Mr. Somnath Gupta and there is nothing adverse against him.

28. The following directions are issued in respect of the appointment of the Interim Resolution Professional:-

- i) Appoint Mr. Somnath Gupta, registered insolvency professional bearing Registration No. IBBI/IPA-002/IP-N00042/2016-17/10081;email ID: somgupta_62@rediffmail.com, Address: 1019, Lane No.1, Ramsharnam Colony, Pathankot-145001, Punjab as Interim Resolution Professional.
- ii) The term of appointment of Mr. Somnath Gupta shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) 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;

- iv) 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;
- v) 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;
- vi) 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;
- vii) The Interim Resolution Professional shall after collation of all the claims received against the corporate debtor and the

determination of the financial 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

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

29. A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Pronounced in open court.

Sd/-

(Ajay Kumar Vatsavayi)
Member (Judicial)

Sd/-

(Pradeep R. Sethi)
Member (Technical)

January 28, 2020.
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