THE NATIONAL COMPANY LAW TRIBUNAL
"CHANDIGARH BENCH, CHANDIGARH"
(Exercising powers of Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)

CP (IB) No. 45/Chd/Pb /2019

Under Section 9 of Insolvency and Bankruptcy Code, 2016.

In the matter of:

M/s. Raj Steel Rolling Mills
with its registered office at
Plot No. 47, Sector 9-B,
Bhadla Road, Guru Ki Nagri,
Mandi Gobindgarh, Punjab-147301

…Petitioner-Operational Creditor

Vs.

M/s. Kaytx Industries Private Limited
with its registered office at
Mandi Gobindgarh, Distt. Fatehgarh Sahib
Fategarh Sahib, Punjab-147301

…Respondent-Corporate Debtor

Judgement delivered on: 15.07.2022

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. Karanveer Jindal, 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 Raj Steel Rolling Mills (**for brevity 'Operational Creditor' / 'Petitioner'**), represented by its Partner Mr. Vinod Kumar Gera, with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of M/s. Kaytx Industries Private Limited (**for brevity 'Corporate Debtor' / 'Respondent'**). Copy of Form A and C maintained under Section 59 of Indian Partnership Act, 1932, has been placed on record with the compliance affidavit filed vide Diary No. 00321/3 dated 04.05.2022 as Annexure 1.

2. The Corporate Debtor namely, M/s. Kaytx Industries Private Limited, is a Company incorporated on 20.10.2002 under the provisions of Companies Act, 1956 with CIN No. U27100PB2005PTC029106 with its registered office at Mandi, Gobindgarh Distt, Fatehgarh Sahib, PB-147301 IN. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of master data of corporate debtor is attached with main petition and marked as Annexure 1.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor was approached by the corporate debtor for supply of various steel items i.e. shapes, sections, flats and bars and various invoices were raised.

4. It is submitted by the petitioner in Form 5, Part IV that the principal amount i.e. ₹ 66,79,050/- claimed to be in default and total Rs. 74,02,917.00/-

(which is inclusive of 24% interest p.a. i.e ₹ 7,23,867/- from the date of default till date). Copy of invoices (Annexure 4). Copy of bank statement (Annexure 6). Copy of bank certificate (Annexure 7).

5. A demand notice in Form 3 dated 06.11.2018 was duly signed by the deponent being the partner of the petitioner firm and the post was mailed by the Chartered Accountant of the petitioner firm and this demand notice was duly served to the corporate debtor. The demand notice was duly delivered to the corporate debtor vide post on 17.11.2018. The copy of postal receipt and tracking report, vide which the demand notice was duly served to the corporate debtor, is attached with the petition as Annexure 9.

6. In Part-III of Form No. 5, Mr. Aditya Kumar, Registration No. IBBI/IPA-001/IP-P00338/2017-18/10609 has been proposed as Interim Resolution Professional (IRP) by the petitioner. Form No. 2 dated 26.12.2018 submitted by the proposed IRP is also enclosed with the petition, in which he has stated that he is not serving as a IRP/RP/Liquidator in any proceedings. It is also stated that there are no disciplinary proceedings pending against the professional with the Board or with Indian Institute of Insolvency Professionals of ICAI.

7. Accordingly, order dated 11.03.2019, notice of this petition issued to the corporate debtor to show cause as why this petition be not admitted.

8. The following averments submitted by the respondent-corporate debtor in its reply vide Diary No. 438 dated 16.11.2020;

1. *The material supplied by the Operational Creditor was rejected by the contractor i.e. Larsen and Toubro Limited due to substandard / poor quality of material supplied by the*

Operational Creditor. There are other rejections from other contractors as well qua the material supplied by the Operational Creditor and the details of the same would be submitted as and when directed by this Tribunal.

2. *There is a pre-existing dispute between the parties pertaining to the poor quality of material supplied by the Operational Creditor to the Corporate Debtor.*
3. *The Corporate Debtor has not received the demand notice under section 8 of the IBC, 2016, which is a pre-requisite for filing the petition under Section 9 of IBC, 2016. Therefore, the present case deserves to be dismissed on this ground only.*
4. *The captioned petition is not complete in as much as there was no authority with the Applicant to send the alleged notice under Section 8 of IBC, 2016. Hence, the alleged notice was defective and without any authority. Therefore, the whole case falls flat on its face and deserves to be dismissed.*
5. *The interest charged by the Corporate Debtor is also disputed as no interest was ever charged by the Operational Creditor from the Corporate Debtor for any delay in payments.*
6. *The demand notice is also defective and hence void as the principal amount claimed in the said demand notice and the date of default mentioned are contrary to the records*

attached therewith and hence, the complete proceedings are void ab initio.

7. *The demand notice was not sent by the authorized person as is evident from the alleged postal receipt annexed with the captioned petition. Also, the tracking report is unauthenticated and seems to be fabricated and manipulated.*

9. The following submissions has been averred by the operational creditor in its replication to the reply filed vide Diary No. 1506 dated 24.02.2020.

1. *No proof has been provided that the goods rejected by Larsen & Tourbo Ltd. were ever supplied by the petitioner operational creditor.*
2. *It is also denied that the goods supplied to the corporate debtor by the operational creditor were ever of sub standard quality and moreover the corporate debtor has never raised such dispute prior to filing of this reply.*
3. *It is stated that the demand notice was duly served to the corporate debtor vide post on 17.11.2018.*
4. *The preliminary objections raised by the respondent-corporate debtor are denied as the demand notice has been signed by one of the partner of petitioner-operational creditor who is duly competent to file notice under Section 8 of IBC, 2016.*

5. *The date of default has been rightly mentioned as 17.05.2018 as the corporate debtor has not made payment starting from the invoice dated 10.05.2018 and, a credit period of 7 days has been given thereafter.*
6. *As the corporate debtor has failed to make payments from invoice dated 10.05.2018 onwards, the date of default would start from 17.05.2018.*

10. Both the parties have filed short written submissions vide Diary No. 00321/01 dated 05.04.2022 and Diary No. 00321/2 dated 19.04.2022, respectively reiterating their respective stands taken in the petition, reply and replication. We have heard the learned counsel for the petitioner and corporate debtor and have perused the records.

11. The first issue for consideration is whether the demand notice in Form 3 dated 06.11.2018 was properly served. The demand notice was duly served upon respondent as per tracking report mentioned at Page 143-144 of the main petition. Therefore, it can be said that the demand notice has been duly served. Moreover, respondent corporate debtor in its reply has made submissions in Para 6 whereby, it has been stated that the corporate debtor has not received demand notice under Section 8 of the IBC, 2016. Also in Para 7, it has been stated the above said demand notice is defective. The above mentioned submissions prima facie appear contradictory in nature and raises the doubt.Therefore, the contention of learned counsel that demand notice was issued on a wrong address is not tenable. Moreover, the petition is signed by one of the partners which has been stated on affidavit filed vide Diary No. 00321/3 dated 04.05.2022, which satisfies the condition that demand notice and

the petition was duly signed by the Authorized Signatory. Thus, the objection raised by the Ld. counsel for the respondent on this point is invalid.

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is pleaded by the petitioner that no reply has been received to the demand notice dated 06.11.2018 from the corporate debtor. The Learned counsel for respondent has failed to point out as to if there was some pre-existing dispute regarding supplied material being sub-standard in the quality then it was pending in any court of law or before any other authority. Thus, it can be safely inferred from affidavit (page 19 of petition) under Section 9(3) (b) of I&B Code, 2016 that there is no pre-existing dispute in relation to the debt claimed as per Part IV of Form 5.

13. The other issue for consideration is whether this petition is filed within limitation. A demand notice dated 06.11.2018 in Form 3 attached as Annexure 8 was duly served on the corporate debtor through registered post. It is observed that neither any reply from the corporate debtor has been filed in lieu of the above stated demand notice nor any payment has been made. Therefore, the period of limitation would begin from the date of default i.e. 17.05.2018. This petition was filed on 07.01.2019 vide Diary No. 56. Therefore, this Adjudicating Authority finds that this petition was filed within limitation.

14. We have gone through the contents of the petition 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. 74,02,917.00/- (which is inclusive of 24% interest p.a. i.e ₹ 7,23,867/- from the date of default till date). The operational creditor has supplied goods to the corporate debtor and raised invoices

attached as Annexure 4. Ledger accounts maintained by the operational creditor have been attached at Annexure 5. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. Thus, the conditions under Section 9 of the Code stand satisfied. 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.

15. 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. Kaytx Industries Private Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

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, 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 Law Research Associate of this Tribunal has checked the credentials of Mr. Aditya Kumar and there is nothing adverse against him. In view of the above, we appoint Mr. Aditya Kumar, Registration No. IBBI/IPA-001/IP-P00338/2017-18/10609,E-mail:aditya@ashwaniassociates.in, Mobile No. 9810868515 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Aditya Kumar 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 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

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

viii.) The personnel of the corporate debtor, its promoters or any other person associated with the management of the corporate debtor shall provide the information within such time and in such format as sought by the Interim Resolution Professional or Resolution Professional, as the case may be.

20. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakh 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.

21. 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.

Sd/-	Sd/-
(Subrata Kumar Dash)	**(Harnam Singh Thakur)**
Member (Technical)	**Member (Judicial)**

July 15 ,2022
PB/ASH