THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(through web-based video conferencing platform)

CP (IB) No.70/Chd/Hry/2021

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

In the matter of:
R.R Kabel Limited,
Having registered office at Ram Ratna House,
Victoria Mill Compound Pandurang Budhkar Marg, Worli,
Mumbai, Maharashtra – 400013
Alternate address at Survey No.142/2, Madhuban Dam Road,
Rakholi, Silvassa, Dadra and Nagar Haveli, Gujarat- 396240
CIN No.U28997MH1995PLC085294
Email ID:- anant.loya@rrglobal.com
Contact No.9313411000

…Applicant-Operational Creditor

Versus

Govind Electrica Private Limited
SSI Plot No.10, Market No.5, NIT,
Faridabad- 121001
CIN: U51909HR2016PTC063904
E-mail:- govind2005electrica@gmail.com

…Respondent-Corporate Debtor

Judgment delivered on: 21.09.2022

CORAM: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

PRESENT THROUGH VIDEO CONFERENCING
For the Operational Creditor **:** Mr. Arjun Kundra, Advocate
Respondent proceeded ex-parte vide order dated 30.06.2022

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

1. The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as the '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

(hereinafter referred to as the '**Rules**') by R.R. Kabel Limited (for short hereinafter referred to as the '**operational creditor/petitioner**') through its Authorized Signatory Mr. Anant Loya, for initiating Corporate Insolvency Resolution Process (for short hereinafter referred to as the '**CIRP**') against Govind Electrica Private Limited (for short hereinafter referred to as the '**corporate debtor/respondent**'). Copy of Board Resolution dated 24.09.2019 authorizing Mr. Anant Loya, has been annexed as Annexure II with the petition. The present petition has been filed in Form 5 as prescribed in Rule 6 (1) of the Rules. The petition is supported by affidavit of Mr. Anant Loya and the same is at page 123 of the petition.

2. The corporate debtor, namely, Govind Electrica Private Limited is a company incorporated on 02.05.2016 under the Companies Act, 2013, having CIN U51909HR2016PTC063904 and its registered office is at SSI Plot No.10, Market No.5, NIT Faridabad, Haryana- 121001. Therefore, the matter falls within the territorial jurisdiction of this Adjudicating Authority. Copy of master data of the corporate debtor is at Annexure IV of the petition.

2. The brief facts, as stated in the petition, are that the operational creditor is in the business of manufacturing of PVC insulated wires and cables of various types and the respondent/corporate debtor purchased the said goods from the petitioner/operational creditor at its offices (Faridabad and Gurgaon) during the courses of time and accordingly the invoices were raised by the petitioner. The petitioner maintained separate accounts of the corporate debtor i.e. CUS000535, CUS000536, for Faridabad and Gurgaon, respectively. As per the terms of payment, the invoices were to be cleared within 45 days of its generation otherwise, interest @ 24% per annum was to be levied on the late payment. Copies of invoices raised at Faridabad office and Gurgaon office along with lorry

receipt have been annexed as Annexure VI with the petition. Further, it has been stated that the petitioner requested the corporate debtor for reconciliation of the accounts and the confirmation of the balance amount. The corporate debtor confirmed the principal amount of Rs.90,51,950/- in CUS000535 and Rs.93,77,793/- in CUS000536, which was payable to the operational creditor, vide confirmation of accounts dated 18.09.2019 (Annexure VII). The principal outstanding and the interest on the invoices calculated till 31.07.2020, as mentioned in the petition, is detailed below:-

a. CUS000535 (Faridabad)

Sr.No.	Invoice Date	Invoice Number	Amount	Balance Payment
1.	07.06.2018	DS1-190004790	51,92,389	27,00,000
2.	07.06.2018	DS1-190004792	17,66,393	8,75,513
3.	11.06.2018	DS1-190004999	46,384	46,384
4.	14.06.2018	DS1-190005224	5,93,525	4,93,524
5.	15.06.2018	DS1-190005386	4,50,419	4,50,419
6.	15.06.2018	DS1-190002499	2,44,079	2,44,079
7.	22.06.2018	DS1-190005930	4,01,851	4,01,851
8.	30.07.2018	DS1-190008273	20,19,585	20,19,585
9.	17.09.2019	DS1-190012361	14,15,226	14,15,226
10.	21.09.2018	DS1-190012719	1,19,514	1,19,514
11.	24.09.2018	DS1-190012941	1,85,855	1,85,855
	Total Principal Outstanding			**89,51,950**

The interest calculated @ 24% per annum, as mentioned in the invoices, from the date of invoice till 31.07.2020 on the principal outstanding amounts to Rs.44,23,720/-

Thus, total amount outstanding (Principal + Interest) as on 31.07.2020 for the goods supplied at the registered address at Faridabad is Rs.1,33,75,670/-.

b. CUS000536 (Gurgaon)

Sr.No.	Invoice Date	Invoice Number	Amount	Balance Payment
1.	07.06.2018	DS1-190004747	58,44,895	58,44,495
2.	30.07.2018	DS1-190008271	14,43,877	14,43,877
3.	29.12.018	DS1-190020933	20,25,588	20,25,588

4.	07.01.2019	DS1-190021593	65,566	63,433
	Total Principal Outstanding			**89,51,950**

The interest calculated @ 24% per annum, as mentioned in the invoices, from the date of invoice till 31.07.2020 on the principal outstanding amounts to Rs.45,08,201/-

Thus, total amount outstanding (Principal + Interest) as on 31.07.2020 for the goods supplied at the other address/office at Gurgaon is Rs.1,38,85,994/-.

Therefore, the respondent/corporate debtor has defaulted in repayment of operational debt to the tune of Rs.2,72,61,664/-.

3. It has been averred on behalf of the petitioner/operational creditor that a legal notice dated 23.09.2019 (Annexure VIII) was sent to the respondent/corporate debtor at is Faridabad and Gurgaon office for the recovery of amount that was obtained after reconciliation and confirmation on 18.09.2019 alongwith interest accrued on it. In response to the legal notice sent by the petitioner/operational creditor, a reply dated 03.10.2019 (Annexure IX) was received wherein respondent/corporate debtor sought six months to clear the outstanding payment.

4. It has been further averred that since the respondent/corporate debtor failed to make the payment, the operational creditor was constrained to issue demand notice dated 21.01.2020 (Annexure I) under Form 3 to the respondent/corporate debtor for recovery of unpaid operational debt of Rs.2,45,98,075/- as on 23.12.2019. In response to the demand notice, the respondent/corporate debtor sent an email dated 26.01.2020 (Annexure X) to the petitioner requesting for some more time to clear the outstanding amount. It has been further stated that thereafter on 05.03.2020, the petitioner/operational

creditor was in receipt of the reply (Annexure XI) to the demand notice dated 21.01.2020, whereby reference was made to an arrangement arrived at on 07.04.2017, which according to the learned counsel for the petitioner/operational creditor has no concern to the outstanding amount claimed in the present petition.

Thus, it has been submitted on behalf of the operational creditor that despite service of demand notice, the corporate debtor has failed to make any payment till date.

5. Vide order dated 14.07.2021 notice of the petition was issued to the corporate debtor to show cause as to why this petition be not admitted. The petitioner/operational creditor filed affidavit of service vide Diary No.01243/1 dated 01.11.2021, wherein it has been deposed by Mr. Anant Loya, Authorized Representative of the petitioner/operational creditor that in compliance of order dated 14.07.2021, the petitioner/operational creditor had sent notice of the petition along with copy of paper book on 31.08.2021 by registered post on the address of the respondent/corporate debtor, but the service could not be effected and the registered post was returned back. The tracking report reflects '*item returned no such person in the address'*. The original postal receipt along with tracking report and returned envelope has been annexed as Annexure 1 with the affidavit of service. In the said affidavit, it has been submitted that e-mail was sent to the respondent/corporate debtor on 14.09.2021 (Annexure 2) and moreover, the petitioner/operational adopted the mode of substituted service and notice of hearing was advertised in two daily newspapers i.e. 'Rashtriya Sahara' (Hindi) and 'The Hindu' (English) on 27.09.2021. Copies of newspaper original clippings have been annexed as Annexure 3. Thus, it has been deposed by the deponent that in compliance of order dated 14.07.2021 passed by this Bench,

respondent/corporate debtor stood served through e-mail and newspaper publication.

6. When the matter was listed on 11.04.2022, there being no representation on behalf of the respondent/corporate debtor, in the interest of justice, the counsel for the petitioner was directed to inform the next date of hearing to the respondent through e-mail so that effective proceedings can take place on the next date of hearing.

7. In compliance of order dated 11.04.2022, the petitioner/operational creditor filed affidavit of service vide Diary No.01243/2 dated 19.05.2022, wherein it has been deposed by Mr. Anant Loya, Authorized Signatory of the petitioner/operational creditor that the next date of hearing was intimated to the respondent/corporate debtor through e-mail on 28.04.2022 (Annexure A). Despite intimation to the respondent/corporate debtor, none appeared on its behalf and thereafter, vide order dated 30.06.2022 the respondent/corporate debtor was proceeded ex-parte. The arguments in the case were heard on 02.09.2022 and the matter was reserved.

8. After hearing the learned counsel for the petitioner and going through the records carefully, the first issue for consideration is whether the demand notice in Form 3 dated 21.01.2020 was properly served. As discussed above, demand notice was served to the respondent/corporate debtor and in response to the same only, the respondent/corporate debtor vide its e-mail dated 26.01.2020 requested the petitioner for granting some more time to clear the outstanding amount.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The petitioner/operational creditor has filed an affidavit under Section 9(3)(b) of the Code, wherein it has been deposed that the no notice was given by the corporate debtor relating to a dispute of the unpaid operational debt. Thus, it can be inferred that there is no pre-existing dispute between the parties.

10. The other issue for consideration is whether this application was filed within limitation. A perusal of the case file shows that the application was filed vide Diary No.01243 on 30.12.2020 (refiled on 12.01.2021), whereas the date of default is 31.07.2020, therefore, this Adjudicating Authority finds that this application has been filed within limitation.

11. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹2,72,61,664/-. As noted above, the operational creditor has provided the details of the debt due and has also annexed with the petition copies of invoices. Accordingly, the petitioner proved the debt and the default which is above threshold limit.

12. It is noted that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the demand notice dated 21.01.2020. Thus, the conditions under Section 9 of the Code stand satisfied. It is evident from the above-mentioned facts that the liability of the corporate debtor is undisputed. It may be noted that in the reply to the legal notice dated 03.10.2019 (Annexure IX), the respondent/corporate debtor has sought six months' time to clear the outstanding payment. Not only this, in reply to the demand notice also, the

respondent/corporate debtor sent e-mail dated 26.01.2020 (Annexure X) to the operational creditor requesting for some more time to clear the outstanding amount. This conduct of the respondent/corporate debtor shows that it is a case of admitted liability. Thus, the petitioner has proved the debt and the default which is above threshold limit.

13. In Part-III of Form No. 5, no Interim Resolution Professional has been proposed by the petitioner. Accordingly, we appoint Mr. Pramod Kumar Misra as the Interim Resolution Professional in the matter of Govind Electrica Private Limited, whose name appears at Serial No.39 of the list provided by the Insolvency and Bankruptcy Board of India, which is valid till 31.12.2022.

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 CIRP in the case of the corporate debtor, Govind Electrica Private Limited.

15. We also direct 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; 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.

16. 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.

17. 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.

18. The Law Research Associate of this Tribunal has checked the credentials of Mr. Pramod Kumar Misra and there is nothing adverse against him. In view of the above, we appoint Pramod Kumar Misra, Registration

No.IBBI/IPA-001/IP-P02669/2022-2023/14099, E-mail: capkmisra@gmail.com, Mobile No. 9810702519 as the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Pramod Kumar Misra shall be in accordance with the provisions of Section 16(5) of the Code. The Interim Resolution Professional is directed to file his written consent in Form-2 within one week 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 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.) This Adjudicating Authority directs the ex-management and promoters of the corporate debtor to specifically comply with the provisions of the Sub Regulation (2) of Regulation 4 of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. This Adjudicating Authority further directs that the Interim Resolution Professional should also make all efforts simultaneously to retrieve the required information from the computerized data of the corporate debtor from the systems handed over to the Interim Resolution Professional after initiation of CIRP. For retrieving relevant information, the Interim Resolution Professional may take the help of any digital forensic companies from the empanelled list available with the Registry of this Adjudicating Authority, if required. This is imperative for meeting the Code's objectives for maximising the value of the assets of the corporate debtor and completing the resolution process in a time-bound manner. 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 and move an application seeking appropriate remedy, if required.

vii.) 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 the 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.

19. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lac 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. This petition is accordingly allowed and admitted.

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 copy of this order to the Interim Resolution Professional at his email address forthwith.

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

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

September, 21st, 2022
MK