

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

CP (IB) No. 48/Chd/Pb/2019

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

In the matter of :

M/s. Revex Plasticisers Pvt. Ltd.

A-73, Naraina Industrial Area, Phase-1,
 New Delhi-110028.

...Applicant/Operational Creditor

Versus

M/s. Punjab Switchgears Pvt. Ltd.

B-30, Phase-V, Focal Point,
 Ludhiana (Punjab)-141010

...Respondent/Corporate Debtor

Judgement delivered on: 07.06.2019

**Coram: Hon'ble Mr. M.K. Shrawat, Member (Judicial)
 Hon'ble Mr. Pradeep R. Sethi, Member (Technical)**

For the Operational Creditor : 1. Mr. G.S. Sarin, Practising Company
 Secretary.
 2. Ms. Sonali Joon, Advocate.

For the Corporate Debtor : None

Per: M.K. Shrawat, Member (Judicial)

JUDGEMENT

This petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as Rules) by M/s Revex Plasticisers Pvt. Ltd. (Operational Creditor) for initiating the Corporate Insolvency Resolution Process (CIRP) in the case of M/s. Punjab Switchgears Pvt. Ltd. (Corporate

Debtor). As per master data at page 17 of the petition, the registered office of the Corporate Debtor is at B-30, Phase-V. Focal Point, Ludhiana, Punjab-141010. Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. It is stated that the operational creditor supplied Polyester Resin & allied FRP Material to corporate debtor from time to time pursuant to purchase order placed through telephone and/or mail and also received payment through RTGS/Cheque from time to time. The corporate debtor had nil outstanding balance as on 06.01.2017 because the petitioner-operational creditor had received the entire payments. It is further stated that from 12.01.2017, the petitioner-operational creditor supplied materials/goods to the corporatet debtor and also received payments from time to time. In Part 4 of Form 5 the total amount of debt as on 12.01.2017 is stated to be ₹ 5,33,433 along with interest.

3. A demand notice in Form No. 3 is stated to be issued on 20.10.2018 (Annexure P-4 of the petition). The demand notice was accompanied by the duly issued invoices in the name of corporate debtor alongwith the ledger accounts maintained by the operational creditor in its books. The demand notice in Form No. 3 is stated to be served by speed post on the corporate debtor on 26.10.2018 (Page No. 51 to 53 of this petition). The affidavit of Mr. Rama Nand Gupta stating therein that the corporate debtor had received the demand notice on 30.10.2018 as per the tracing report is at Annexure P-5. The operational creditor has not received any amount after serving of demand notice till date and a certificate from the banker of the operational creditor is enclosed.

4. The petition is signed by Shri Rama Nand Gupta, Director of the operational creditor and a copy of the resolution passed in board meeting of operational creditor held on 10.10.2018 authorizing Shri Rama Nand Gupta is at Annexure P-9 of the paper book. Shri Rama Nand Gupta has also filed an affidavit dated 22.12.2018 verifying the contents of Form No. 5. He has also filed an affidavit dated 22.12.2018 (Annexure P-8) stating that no reply was given by the corporate debtor to the demand notice and that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities as on date.

5. In Part III of Form 5, the operational creditor has not proposed the name of any Resolution Professional to act as an Interim Resolution Professional (IRP). In this regard, vide letter file No. IBBI/IP/EMP/2018/02 dated 25.12.2018 of the Insolvency and Bankruptcy Board of India notified that in cases where the operational creditor has made an application for CIRP and has not proposed an IRP, the appointment of IRP can be made from the bench wise list of Insolvency Professionals who have expressed interest to become IRP. The panel is stated to be valid for six months from 01.01.2019 to 30.06.2019. Annexure B-4 of the letter dated 25.12.2018 is the panel of Insolvency Professionals (IP) relating to Chandigarh Bench of the Tribunal. The issue of non-communication of name of Interim Resolution Professional is discussed in the court and on due deliberation, the learned counsel of the petitioner has given an undertaking that an upfront payment of ₹ 1,00,000/- lac for fees and expenses can be paid to the appointed Interim Resolution Professional. Sr. No. 02 thereof relates to Mr. Madan Gopal Jindal with IP Registration No. IBBI/IPA-002/IP-N00137/2017-18/10352,

email Id: mgjindal@gmail.com, Mobile No. 9814170354 is given. The Law Research Associate has made inquiry from the database of Insolvency and Bankruptcy Board of India and the present status in respect of Mr. Madan Gopal Jindal, IRP is that there is nothing adverse on record.

6. Notice of the petition was directed to be issued to the corporate debtor for 11.04.2019 to show cause as to why the petition be not admitted. The affidavit of service has been filed vide Diary No. 1595 dated 28.03.2019 wherein it has been mentioned that the copy of the notice was sent by speed post and the postal receipt with tracking report are enclosed and the item sent by speed post was refused as mentioned at Page 3 of Diary No. 1595 dated 28.03.2019. The copy of the notice is also stated to be sent by e-mail on 07.03.2019 on the e-mail address as reflected in the master data of the corporate debtor and successfully delivered (Page 3 of Diary No. 1595 dated 28.03.2019). The original envelopes sent to the corporate debtor and its Director are also attached with the above mentioned affidavit, one with the remarks "always not met" and the other with the remarks "refused"

7. There has been no representation from the side of the corporate debtor despite service. Further, a fresh notice was issued to the respondent-corporate debtor for 11.04.2019. The petitioner was also given the option of serving through substituted mode. Last opportunity was granted to the respondent otherwise it could be proceeded ex-parte on merits. The affidavit of service was filed by diary No. 2586 dated 21.05.2019. It is stated that the copy of the notice along with copy of present petition was sent on the e-mail address of Mr. Rakesh Dhuria, Mr. Rajat and at the e-mail address available

on the MCA website on 14.05.2019. Mr. Rakesh Dhuria and Mr. Rajat are Sales and Marketing Executives of the corporate debtor with whom the petitioner was dealing regarding supply of goods. It is further stated that the e-mails have not bounced back.

8. We have already noted above that the notice for hearing on 11.04.2019 was duly served by e-mail but there was no attendance. Similarly, the second notice for hearing was also served by e-mail as discussed above. However, there was no attendance on 23.05.2019.

9.. During the course of the hearing, the learned counsel of the operational creditor has argued that there was no reply to the demand notice dated 20.10.2018 nor there was any dispute raised as to the corporate debt by the respondent-corporate debtor.

10. We have carefully considered the submissions of the learned counsel for the operational creditor and have also perused the records.

11. The first issue for consideration is whether the demand notice in Form No. 3 dated 20.10.2018 was properly served. The demand notice was sent at the address as per the master data at Page 16 of the petition in which the registered office shown as B-30, Phase V, Focal Point, Ludhiana, Punjab. The demand notice was sent by speed post. The tracking report filed at Page No. 51 of the petition shows delivery on 30.10.2018 (Consignment No. ED142205572IN).

12. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. We have noted above that the demand notice in Form No. 3 is stated to be issued on 20.10.2018 and served by speed post on the corporate debtor on 13.07.2018. We have also

discussed above that Shri Rama Nand Gupta, Authorized Representative of the financial creditor has filed an affidavit dated 22.12.2018 stating that no reply was given by the corporate debtor to the demand notice and that there is no dispute of unpaid operational debt pending between the parties as on date. Therefore, any dispute with regard to the operational debt is not proved.

13. The provisions of Section 9(5)(i) of the Code are as follows:-

“(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 payment 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.”*

14. We have gone through the contents of the application filed in Form No. 5 and find the same to be complete. As discussed above, there is an unpaid operational debt amounting to ₹5,33,433/- (along with interest). Copy of Ledger Account of the corporate debtor in the books of the financial

creditor for the period of 01.04.2016 to 07.08.2018 [Annexure P-3 (colly)] of the petition] has been filed showing recoverable amount of ₹4,00,325/-. Moreover, demand notice in Form No. 3 was also sent on 20.10.2018 stating that the amount due from the corporate debtor to the operational creditor is ₹5,33,433/-along with interest and despite service of the notice, no reply was received. We have held above that the demand notice in form No.3 dated 20.10.2018 was properly delivered by the Operational Creditor and that no reply thereof was furnished by the Corporate Debtor and no pre existing dispute is also proved.

15. 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 process in the case of the Corporate Debtor M/s Punjab Switchgears Private Limited and direct moratorium and appointment of 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 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.

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 financial 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. In view of the above, we appoint Mr. Madan Gopal Jindal, IP Registration No. IBBI/IPA-002/IP-N00137/2017-18/10352, email Id: mgiindal@gmail.com, Mobile No. 9814170354 as the Interim Resolution Professional, with the following directions:-

- i) The term of appointment of Mr. Madan Gopal Jindal 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 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

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

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

Sd/-
(Pradeep R. Sethi)
Member(Technical)

Sd/-
(M.K. Shrawat)
Member (Judicial)

June 07, 2019
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