

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

**CP (IB) No.218/Chd/Chd/2018**

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

**In the matter of:**

Gangotri Steel Syndicate

Having its office at 113/8, Navyug Market,

Ghaziabad, Uttar Pradesh- 201001

Through its Sole Proprietor Mr. Mahesh Chand Garg

...Petitioner-Operational Creditor

Versus

M/s Jaycon Infrastructure Limited

Having its registered office at

House No.1464, Ground Floor, Sector 43-B,

Chandigarh- 160022

CIN: U70101CH2007PLC030694

...Respondent-Corporate Debtor

**Judgment delivered on 07.10.2019**

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)  
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : Mr. Gaurav Mankotia, Advocate

For the Respondent : 1. Mr. Achin Goel, Advocate  
2. Mr. Deep Kishan, Advocate

**Per: Ajay Kumar Vatsavayi, Member (Judicial)**

**JUDGMENT**

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (for short hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority)

Rules, 2016 (for short hereinafter referred to as '**Rules**'). The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.

2. Gangotri Steel Syndicate (for short hereinafter referred to as the '**petitioner**' and/or '**operational creditor**') has filed the application through its sole proprietor Shri Mahesh Chand Garg, having PAN No.ACEPG2271P. There is also an affidavit in support of the contents of the application.

3. M/s Jaycon Infrastructure limited (for short hereinafter referred to as the '**respondent**' and/or '**corporate debtor**') is a company incorporated under the Companies Act, 1956 with authorized share capital of ₹5,00,00,000/- and paid up capital of ₹4,33,02,750/-. The CIN of the respondent-corporate debtor is U70101CH2007PLC030694 and its registered office is situated in Union Territory, Chandigarh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure A-8 of the petition.

4. The facts of the case, briefly stated, are that the petitioner-operational creditor is a renowned steel merchant since more than three decades and deals in a wide range of TMT Bars, Beams, Angles, Hot Rolled Coils and Cold Rolled Coils. In Part-IV of Form 5, it is stated that the respondent-corporate debtor purchased steel from the petitioner-operational creditor, which was supplied to it, as per agreed terms and the same was duly received by the respondent-corporate debtor. Accordingly, four invoices dated 03.12.2015 and two invoices dated 07.12.2015 were raised by the petitioner-operational creditor, copies whereof are annexed as Annexure A-2 (Colly). It is further stated that three Cheques dated 10.04.2017 for an amount of ₹20 Lac each and one Cheque

dated 10.04.2017 for an amount of ₹16,46,115/- were issued by the respondent-corporate debtor towards outstanding payment of ₹76,46,172.50/-. However, the said cheques were subsequently replaced and 14 Cheques each amounting to ₹5 Lac and one Cheque amounting to ₹6,46,115/- towards outstanding payment of ₹76,46,115/- were issued by the respondent-corporate debtor. On presentation of aforesaid cheques, the same were dishonoured and notices under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as '**1881 Act**') were issued by the petitioner-operational creditor to the respondent-corporate debtor. It is further stated that Complaints under Section 138 of the 1881 Act, for dishonour of 12 cheques each of ₹5 Lacs, were also filed by the petitioner-operational creditor. Copy of bank statement of the petitioner-operational creditor maintained by Punjab National Bank from 01.12.2017 to 05.06.2018, is annexed as Annexure A-3.

5. The petitioner-operational creditor sent a demand notice in Form 3 dated Nil, Annexure A-1, demanding an amount of ₹1,13,34,241/- (inclusive of interest) as on 10.11.2017, as prescribed under Section 8 of the Code. A copy of the said demand notice is annexed as Annexure A-1 (Colly).

6. It is stated that after exchange of various communications between the operational creditor and the Corporate Debtor, on 30.12.2017, the respondent-corporate debtor paid a sum of ₹14,99,941/-, to the petitioner-operational creditor. A copy of ledger account, maintained by the petitioner-operational creditor, reflecting that an amount ₹14,99,941/- was paid by the respondent-corporate debtor to the petitioner-operational creditor is at Page 42 of the paperbook. It is further stated that no payment thereafter, was made by the

respondent-corporate debtor and accordingly, the outstanding principal amount since 30.12.2017 is ₹61,46,231/-. As per Part IV of Form 5, the petitioner-operational creditor is claiming an amount of ₹1,09,01,774/- (inclusive of interest).

7. On 25.07.2018, when the matter was taken up for hearing, this Tribunal directed the petitioner to file affidavit stating therein as to whether the respondent had issued any purchase orders to the petitioner in writing in respect of the goods supplied by the unpaid invoices. Vide Diary No.2814 dated 02.08.2018, the petitioner-operational creditor filed compliance affidavit along with copies of cheques dated 10.04.2017.

8. On receipt of notice in the C.P., the respondent-corporate debtor, filed its reply, vide Diary No.4053 dated 17.10.2018, while raising various objections to the C.P., the respondent-corporate debtor admitted that after reconciliation of their accounts, it was agreed amongst them that corporate debtor shall make a payment of ₹14,99,941/- towards full and final payment to the operational creditor. It is further stated that in terms thereof, the answering corporate debtor made the payment of the agreed full and final amount of ₹14,99,941/- to the operational creditor on 30.12.2017 by way of RTGS and accordingly, stated that there is no debt or default as on the date of filing of C.P. and prays for dismissal of the C.P.

9. The petitioner-operational creditor filed its rejoinder vide Diary No.214 dated 16.01.2019, denying counter averments.

10. On 20.02.2019, when the matter was taken up for hearing, the learned counsel for the respondent sought adjournment on the ground that respondent-

corporate debtor is exploring the possibility of settlement. In pursuance of the same, on 24.05.2019, the following order was passed:-

*“Learned counsel present from the side of the respondent-corporate debtor has tendered a cheque of ₹61,46,231/- of State Bank of India dated 29.03.2019 favouring the petitioner, handed over across the bar to the learned counsel for the petitioner. On receiving this cheque, the petitioner is withdrawing the petition with liberty that in case of non-encashment of the cheque, matter can be mentioned before the Bench.*

*Accordingly, CP(IB) No.218/Chd/Chd/2018 is disposed of as withdrawn.*

*The learned counsel for the petitioner on instructions has stated that on withdrawal, no action under Section 138 of the Negotiable Instruments Act, shall be initiated against the respondent.”*

11. However, after few days, the petitioner-operational creditor, filed an application, bearing CA No.504 of 2019, under Section 424 of the Companies Act, 2013 read with Section 7 and 60 of the Code, and Rule 4 of the Rules, for revival and admission of the CP in view of the failure of the corporate debtor in complying with the terms of the settlement i.e., not honouring the cheques issued towards the debt of the operational creditor.

12. On 20.08.2019, this Tribunal allowed the CA No.504 of 2019 and restored the C.P. and while observing that since the pleadings in the main case are complete, directed the matter to be listed on 25.09.2019 for arguments.

13. Heard the learned counsel for the petitioner and learned counsel for the respondent and have carefully perused the records.

14. In ***Alloysmin Industries vs. Raman Casting Private Limited, CA (AT) (Ins.) No. 684/2018, dated 21.01.2019*** of the Hon'ble NCLAT, on which the learned counsel for the petitioner, placed reliance, it was held that “if the demand notice under Section 8 is served on corporate debtor either on its

Registered Office or its Corporate Office, it should be treated to be valid service of notice under Section 8 and application under Section 9 on failure of payment, if filed after 10 days, is maintainable” and hence the contention of the respondent’s counsel that the demand notice not served at the Registered Office of the Corporate Debtor, is unsustainable.

15. The Hon’ble Supreme Court in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353, Civil Appeal No. 9405 of 2017***, held 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)(ii)(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.”*

16. 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."*

17. Since the respondent-corporate debtor have agreed and admitted its liability to pay the debt, and its default, by tendering a cheque of ₹61,46,231/- to the petitioner-operational creditor, as evidenced by order dated 24.05.2019 of this Tribunal, which was subsequently dishonoured and since the application is otherwise, complete, there is no need to consider any other aspect, in view of the settled position of law, and accordingly, this petition is admitted.

18. 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.

19. 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.

20. 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.

21. 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) x x x x x”

22. 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.

23. In this regard a letter bearing File No.25/02/2019-NCLT dated 28.06.2019 has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No. IBBI/IP/EMP/2018/02/ dated 24.06.2019 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 01.07.2019 to 31.12.2019. We select Ms. Mandeep Gujral appearing at Serial No. 11 of the panel to be appointed as Interim Resolution Professional.

24. The Law Research Associate of this Tribunal has checked the credentials of Ms. Mandeep Gujral and there is nothing adverse against her. In view of the above, we appoint Ms. Mandeep Gujral, Registration No. IBBI/IPA-001/IP-P00507/2017-2018/10908, Mobile No. 98142-28288, E-mail: [mandeepgujral.ip@gmail.com](mailto:mandeepgujral.ip@gmail.com), as the Interim Resolution Professional with the following directions: -

- i.) The term of appointment of Ms. Mandeep Gujral 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.

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 her email address forthwith.

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

October 7<sup>th</sup>, 2019  
Mohit Kumar/Yashpal

Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

Pronounced in open Court.

Sd/- 07/10/2019