

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH**

**CP (IB) No.94/ALD/2019**

*In the matter of:*

An application under Section 9 of Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

*And*

*In the matter of:*

**M/s RP Chemicals**, through its Proprietor

Mr. Praveen Jain

Having Office at:

Flat No. 17, Sagar Villa

7/46, Tilak Nagar

Kanpur-208002(UP)

...

Operational Creditor

*Versus*

**Greater Arafat Tanners Private Limited.**

Having Registered Office at :

C-12, New Jajmau Road

Kanpur-208010(UP)

...

Corporate Debtor

Order reserved on 20.12.2021

Order pronounced on 22.12.2021

*Coram:*

Sh. Rajasekhar V.K.

:

Member (Judicial)

Sh. Virendra Kumar Gupta

:

Member (Technical)

*Appearances (via Videoconference)*

For Operational Creditor

:

*Sh. Yash Tandon, Adv.*

For Corporate Debtor

:

*Sh. Shadab Alam, Adv.*

**ORDER**

**Per :Sh. Virendra Kumar Gupta, Member (Technical)**

**Brief Facts Of The Case**

1. The present application has been filed by Operational Creditor, namely, **M/s RP Chemicals** under Section 9 of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "IBC,2016") for initiation of Corporate Insolvency

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Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor, namely, **Greater Arafat Tanners Private Limited**. The amount of debt has been claimed as of Rs.26,32,942.67 {Rupees Twenty Six Lacs Thirty Two Thousand Nine Hundred and Forty Two and paise Six Seven only) including interest @18% p.a. as stipulated in the invoices.

**Arguments On Behalf Of Operational Creditor**

2. In support of its claim, the operational creditor has placed on record the copy of the invoices along with the goods delivery challan for the period from 02.03.2016 till 22.02.2017 as raised by the operational creditor which were duly received by the corporate debtor. Further, the counsel for the corporate debtor stated that the copy of the demand notice dated 07.01.2019 U/s 8 IBC was sent to the corporate debtor twice i.e. on 10.01.2019 and 16.01.2019 by registered post, which were returned with the acknowledgement "Not Delivered Addressee moved". Then applicant served it upon the registered email address of the corporate debtor as given in MCA website as well as to the email address of the director of the Corporate Debtor, which were duly delivered. The copies of the emails are annexed with the present application. Thus it is contended that it should be deemed sufficient notice upon the corporate debtor. Affidavit in compliance of Section 9(3) (b) of IBC, 2016 has also been placed on record.
3. It is further stated that the corporate debtor has also issued cheque towards the payment of the unpaid price of goods supplied which was also dishonored to which the applicant sent a notice u/s138 of NI Act which was duly delivered upon the same address of corporate debtor. The applicant has ,therefore, filed this petition as an operational creditor praying for initiation of Corporate Insolvency Resolution Process of the Corporate Debtor.

**Arguments On Behalf Of Corporate Debtor**

4. The Learned Counsel for the Corporate Debtor in its defense has submitted that there exists a pre-existing dispute between the parties as the chemicals

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which were supplied by the operational creditor to the corporate debtor was of bad quality which deteriorated the quality of leather used for making finished goods for which the corporate debtor has issued debit notes dated 09.04.2018, 19.04.2018 and 28.04.2018.

**Rejoinder On Behalf Of Operational Creditor**

5. In reply to the arguments raised by the corporate debtor, the counsel for the Operational Creditor submitted that there has never been any dispute raised or communication made by the corporate debtor prior to the service of demand notice and the debit notes issued are also false and fabricated and are issued after more than one year of the last supply of goods and even after that they have issued a cheque for the payment of the due amount, thus contended that the corporate debtor acknowledges its debt and liability.

**Findings:**

6. Heard Ld. Counsel on both sides and perused the material on record.
7. It is noted that this application has been filed on 18.03.2019. The supplies were made during the period from 02.03.2016 till 22.02.2017 for which various invoices were raised. The last invoice was raised on 22.02.2017. Hence, the application is well within the limitation. Even aspect of limitation has not been raised by and on behalf of the corporate debtor.
8. As far as service of notice U/s 8 of IBC is concerned the physical copy was returned as the corporate debtor had moved from the address mentioned in MCA portal. However, the same has been delivered by email to the email address of the corporate Debtor as given in MCA portal as well as to one of the Directors of the corporate debtor which were duly delivered. This factual position is not disputed by the corporate debtor and in our view, there is no substance in the plea of the corporate debtor that notice could have been served on the residential address which was known to operational creditor for the reason that this is not a legal requirement. Hence, compliance to the legal provision relating to delivery of notice U/s 8 IBC stands fulfilled. It is further noted that no reply has been submitted by the corporate debtor to the notice

Sd

U/s 8 of IBC received by the Director. Hence, in the absence of substantial plea regarding pre-existing dispute of such action of the corporate debtor by itself makes it liable to be admitted into CIRP.

9. The amount of debt involved in this application is more than the threshold limit as prescribed U/s 4 of IBC, 2016, at the relevant time.
10. The only remaining aspect is that whether there exists a dispute prior to delivery of notice U/s 8 of IBC, 2016 or not. In this regard it is noted that the operational creditor has supplied the chemical which has been used by the corporate debtor for processing of leather. Though it is claimed that debit notes were issued on 09.04.2018, 19.04.2018 and 28.04.2018, however, the corporate debtor has failed to prove the genuineness thereof and delivery of the same to the operational creditor before issuance of notice of demand U/s 8 of IBC,2016. It is also noted that no email or other credible documents has been brought on record to substantiate its claim regarding pre-existing dispute. Thus, such pleas of the corporate debtor are not more than a frivolous or spurious afterthought to avoid the admission of corporate debtor into CIRP.
11. Further, it is also significant to note that so called debit notes have been raised after expiry of more than one year from the date of supply of materials being chemicals, hence, this fact also makes the claim of the corporate debtor regarding inferior quality of material is liable to be rejected.
12. The operational creditor has proposed the name of the IRP though it is not mandatory in case of application filed U/s 9 of IBC, 2016. The consent of such proposed IRP is on record and no material has been brought to show that any disciplinary proceedings are pending against such IRP. Hence, this Adjudicating Authority can appoint such person as IRP to conduct CIRP as per the provisions of IBC, 2016 and regulations made thereunder.
13. The petition is otherwise complete and defect free and complies with all requirements of law.
14. In view of the above discussion, we admit this petition and order as under:
  - i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate

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Insolvency Resolution Process against the Corporate Debtor Grater Arafat Tanners Private Limited is hereby **admitted**.

- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii) The Operational Creditor has not proposed the name of the interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoint **Mr. Swami Deen Gupta IBBI/IPA-003/IP-N00132/2017-2018/11458 Email: sdguptacmaip@gmail.com** to act as the IRP under Section 13 (1)(c) of the Code.
- iv) The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- v) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following :-
  - 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 (54 of 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.
- vi) The supply of essential goods or services rendered to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during the moratorium period.
- vii) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- viii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.

