



Recd 24/6/19

## GOVERNMENT OF INDIA/भारत सरकार

## NATIONAL COMPANY LAW TRIBUNAL/नेशनल कंपनीलाँ न्यायाधिकरण

## AHMEDABAD BENCH/अहमदाबाद बेंच

Anand House, Sarkhej-Gandhinagar Highway/आनंदहाउस, सरखेज-गाँधीनगरहाइवे  
Nr. Jalsa Party Plot, Thaltej, Ahmedabad/जलसा पार्टी प्लॉट के पास, थलतेज, अहमदाबाद-380 059

Ref: NCLT/AHM/ CP (IB) No. 367 of 2018/ 1877 /2019Date: 21.06.2019

To,

1. Insolvency and Bankruptcy Board of India	7th Floor, Mayur Bhawan, Shankar Market, Connaught Circus, New Delhi -110001
2. Mr. Bhavan Trivedi Interim Resolution Professional	55, 6th Floor, Shri Krishna Centre, Nr. Mithakhali Six Roads, Navrangpura, Ahmedabad, Gujarat-380009
3. Radhey Foam Pvt. Ltd	Plot No. 143-44, Block No. 166/B, OM Textiles Park-3, Parab Village, Taluka- Kamraj, Surat-394 325

Madam/sir,

**Sub: Certified True Copy of order dated 14.06.2019 passed in CP (IB) No. 367 of 2018.**

With reference to the subject cited above, please find enclosed herewith copy of the order dated 14<sup>th</sup> day of June, 2019 passed by this Tribunal in CP (IB) No. 367 of 2018 being The Insolvency and Bankruptcy Board of India, Insolvency Resolution Professional and Corporate Debtor for information, records and action if any at your end.

Encl.: As above

Yours faithfully,

(George Thomas)  
Dy. Registrar

BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD

C.P. (I.B) No. 367/9/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL  
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE  
NATIONAL COMPANY LAW TRIBUNAL ON 14.06.2019**

Name of the Company: Pranay Dye Chem  
V/s.  
Radhey Foam Pvt. Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.

2.

**ORDER**

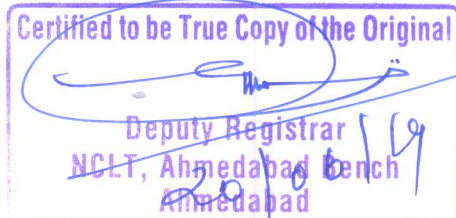
None is present for the parties.

The Order is pronounced in the open court, vide separate sheet.

*Manora*  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 14th day of June, 2019

*Harihar*  
**HARIHAR PRAKASH CHATURVEDI  
MEMBER JUDICIAL**



**BEFORE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD**

**CP (IB) No.367/9/NCLT/AHM/2018**

*(Under Section 9 of the Insolvency and Bankruptcy Code, 2016)*

**In the matter of:**

**Pranay Dye Chem**

404-405, Ratan Galaxy  
Jawaharlal Nehru Road  
Near Mehul Talkies  
Mulund (West)  
Mumbai-400 080

..... Petitioner  
(Operational Creditor)

**Versus**

**Radhey Foam Pvt. Ltd.**

Plot No. 143-44, Block No.166/B  
Om Textiles Park-3  
Parab Village  
Taluka-Kamrej  
Surat-394 325  
Guajrat

..... Respondent  
(Corporate Debtor)

Order delivered on 14<sup>th</sup> June, 2019.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J).**

**And**

**Hon'ble Ms. Manorama Kumari, Member (J).**

**Appearance:**

Mr.Rasesh Parikh, Advocate, for the Petitioner/Operational Creditor  
None present for the Respondent.

**ORDER**

**[Per: Harihar Prakash Chaturvedi, Member (J)]**

1. The present Application is filed under Section 9 read with Rule 6 of the Insolvency and Bankruptcy (Application to the



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Adjudicating Authority) Code, 2016 (hereinafter referred to as "I & B Code") by the Operational Creditor, viz., M/s. Pranay Dye Chem, through its Partner Mr. Prashant J. Lapasia, seeking initiation of Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") in respect of M/s. Radhey Foam Pvt. Ltd. (hereinafter referred to as "Corporate Debtor company").

2. The Corporate Debtor Company, M/s. Radhey Foam Pvt. Ltd., is a company which is registered under the Companies Act, 1956 and having its registered office at Plot No.143-44, Block No.166/B, Om Textiles Park-3, Parab Village, Taluka-Kamrej, Surat-394 325, Guajrat, vide CIN: U17214GJ2013PTC073983, date of incorporation 14<sup>th</sup> March, 2013. The corporate debtor company is engaged in the business of chemicals and dyes.
3. The Nominal Share Capital of the respondent-corporate debtor company is Rs.2,25,00,000/- (Rupees Two Crore Twenty Five Lakh only) and Paid-Up Share Capital is Rs.80,50,000/- (Rupees Eighty Lakhs Fifty Thousand only)
4. The petitioner-operational creditor, M/s. Pranay Dye Chem, is engaged in the business of supply of Chemicals and dyes.
5. It is the case of the petitioner that the Corporate Debtor company had contacted it for supply of chemicals and at the



*Prashant J. Lapasia*

*[Handwritten signature]*

request of the respondent, the petitioner duly supplied such Chemicals, i.e. **Polyhol (40 drums) and TDI (20 Drums)** to the Corporate Debtor on **11.06.2015** through J.M. Roadlines. A copy of the Consignment Note dated 11.06.2015 is annexed with the present petition.

6. The Petitioner/Financial Creditor provides all requisite details about Chemicals supplied to the Respondent/Corporate Debtor company as per the provisions of I & B Code specifically in Part-IV of the application in the prescribed Proforma (under Rule-4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 read with Section 9 of the Code, which are described as under;

Part-IV  
Particulars of Operational Debt

1.	Total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	<p>Total amount of debt: Rs.15,78,862/- (Rupees Fifteen Lakhs Seventy Eight Thousand Eight Hundred Sixty Two only) Plus interest @24% per annum.</p> <p>Details of transactions on account of which debt fell due: <b>Supply of chemicals as set out in the invoice attached to the Demand Notice.</b></p> <p>Date from which such debt fell due: the above amount fell due on 11<sup>th</sup> July, 2015. Particulars of Operational Debt is annexed at Exhibit-"1" to this Application.</p>			
2	Amount claimed to be in default and the date on which the default occurred	Sr. No.	Date	Invoice No.	amount
		1	11.06.2015	PD/188	20,78,862/-
				Total	20,78,862/-
		Less: Amount Received			5,00,000/-



*Handwritten signature/initials*

(attach the workings for computation of amount and dates of default in tabular form)	On 8 <sup>th</sup> October, 2015	
	Net Outstanding Amount	15,78,862/-
Total Outstanding amount of default:		
Rs.15,78,862/- (Rupees Fifteen Lakhs Seventy Eight Thousand Eight Hundred Sixty Two only) plus interest @24% per annum aggregating to Rs.27,45,941/- (Rupees Twenty Seven Lakhs Forty Five Thousand Nine Hundred and Forty One only) as on 11 <sup>th</sup> July, 2018.		
The above amount fell due on 11 <sup>th</sup> July, 2015 as per terms and conditions of invoice which is accepted by the Respondent.		

7. It is stated that after receiving the invoice, the respondent-corporate debtor company did not pay the amount. The petitioner made several requests to the corporate debtor to clear the dues. Hence, the operational creditor had issued Demand Notice in terms of Section 8 of the Insolvency and Bankruptcy Code, 2016 and Form 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, on 24<sup>th</sup> May 2018, through registered post acknowledgment due. The said Demand Notice was received by the respondent on 28<sup>th</sup> May, 2018. Despite this, the respondent did not make full payment nor gave notice/letter of dispute. It is also contended that the respondent only made part payment of Rs.5,00,000/- (Rupees Five Lakh only) on 08.10.2015 towards above stated debts due. Hence, the petitioner has claimed an amount of Rs.27,45,941/- from the Corporate Debtor company. Therefore, the operational creditor has prayed for grant of following reliefs;



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- A. *to admit this application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 for initiation of insolvency resolution process against Radhey Foam Pvt. Ltd.;*
- B. *to appoint an interim resolution professional; and*
- C. *to declare moratorium period for the purposes referred to in section 14 of the Insolvency and Bankruptcy Code, 2016.*

8. While the present petition was filed on 16<sup>th</sup> July, 2018. This Adjudicating Authority issued direction to the petitioner to serve notice to the respondent – corporate debtor company by informing about the date of hearing along with a copy of the present I & B Petition and to file proof of service. However, such service as made by the petitioner returned with postal remark “not found”. Thereafter, a substituted service by way of paper publication was directed to be effected in respect of the Respondent- Corporate Debtor. Despite this paper publication, none appeared for the respondent. Hence, this Adjudicating Authority proceeded further to deal with the present petition as per merits for its admission or otherwise.

9. We have gone through the material of the case available on record and heard the oral submission advanced by the Learned Petitioner Counsel.



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10. That apart, the petitioner/operational creditor has also submitted his written submission by contending as such;

4. On 10.06.2015, via email, Respondent placed order for purchase of Polyhol (40 drums) and TDI (20 Drums) to be delivered at Imperial Mill Ltd. Gabbar Wali Mata Mandir Ni Gali, Kadodara Char Rasta, Surat. The said order marked as Exhibit 9 @page No.189.
5. The Petitioner supplied the said goods on 11.06.2015. The consignee copy of the same is attached at Exhibit 10 @page 190 showing the delivery of the said goods.
6. The delivered goods worth 20,78,862/- were consumed by the respondent company bearing invoice No.PD/188 and no dispute whatsoever was ever raised by the Respondent with respect either quantity or quality. The invoice is dated 11/06/2015 & due date of the payment is 11.07.2015 (Exhibit-1 @ page 9). The invoice is at page No.185.
7. On 08.10.2015, the Respondent made part payment of the outstanding amount covered by the aforementioned invoice aggregating to **Rs.5,00,000/-** leaving outstanding amount of Rs.15,78,862/-. Thereafter, as per the invoice, the interest @24% is outstanding. The interest from 11.07.2015 to 08.10.2015 is Rs.1,21,656 on Rs.20,78,862/- whereas interest is Rs.10,45,423/- from 08.10.2015 till 11.07.2018. Thus, net outstanding amount as on date of the institution of the petition is Rs.27,45,941/-.
8. Thereafter the petitioner stated that the present petition is filed well within the period of limitation as the period of limitation will start from the date of the last payment made by the Respondent, i.e. 08.10.2015.
9. Before institution of the present petition, Form No.4 was issued by the Petitioner as per the provisions of Insolvency and Bankruptcy Code, 2016 ('the Code' for the sake of brevity). The said form was served along with copy of invoice (amount for which has remain outstanding) on 24<sup>th</sup> May 2018. The said form was served via Registered Post A.D. upon Respondent company at its registered office which is evident by the acknowledgment slip as well as tracking report at Page 186 & 187. This clearly shows that



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Respondent company was receiving the post at the registered office. Such fact is enormous bearing on the present case as the notice issued pursuant to an order passed by this Court was not served upon the registered office of the Respondent. This clearly implies that Respondent has deliberately avoided service of the process of this Tribunal.

11. However, this Tribunal by taking abundant caution further directed the petitioner to get published in the Newspaper. The petitioner caused public advertisement of the petition in two daily, viz., Western Times English as well as Gujarati editions on 07.01.2019.

Hence, it can be seen that corporate debtor has avoided the service. Therefore, the contents of petition remain uncontroverted.

11. By taking into consideration of the above stated facts of the present case, it is evident that the Respondent-Corporate Debtor Company has committed default in making payment of its operational debt. Despite issuance of Demand Notice under Section 8 of the I & B Code, the Corporate Debtor did not choose to pay the operational debts due nor gave reply to the above stated statutory notice.

12. From the above stated discussion and by perusing the material available on record, the present IB Petition is found complete and fit for triggering the Insolvency Resolution Process in respect of Corporate Debtor. Therefore, the present IB Petition, filed under Section 9 of the Code, deserves admission. Hence, it is hereby admitted.

13. In view of the Circular of Insolvency and Bankruptcy Board of India, by providing a panel of Insolvency Professionals to



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this Bench of NCLT, which meant for Gujarat. This Adjudicating Authority is required to appoint an Insolvency Professional from such panel in a case where no name of Insolvency Professional is proposed by the Operational Creditor.

14. Hence, this Adjudicating Authority hereby appoints **Mr. Bhavan Trivedi**, having Insolvency Professional Registration. No. IBBI/ IPA-001/IP-P00335/2017-18/10605, (E-mail ID : bhavant@ yahoo.com, Mobile No. 9824094617 as an Interim-Resolution-Professional subject to willingness of the I.R.P. and further confirmation received from the I.B.B.I.

15. This Adjudicating Authority hereby further order moratorium under Section 13(1) (a) of the IB Code prohibiting the following as referred to in Section 14 of the Code;

- (a) the institution of suits or continuation of pending suits or proceedings against the company/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 company/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



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company/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 company/corporate debtor;
- (i) There shall not be any interruption, suspension or termination of supply of essential goods or services to the corporate debtor during the moratorium period.
- (ii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.
- (iii) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the proviso under sub-section (4) of Section 14.


16. Registry is directed to intimate the proposed Interim Resolution Professional to submit his willingness in writing latest by and may appear on 27.06.2019.


17. Registry is directed to communicate a copy of this order to the I.B.B.I., the I.R.P. as well as to the Corporate Debtor at its registered address, after completion of necessary formalities.



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18. In view of the above, the CP (IB) No.367/9/NCLT/AHM/2018 stands admitted.
19. No order as to costs.

  
**Manorama Kumari**  
Adjudicating Authority  
Member (Judicial)

  
**Harihar Prakash Chaturvedi**  
Adjudicating Authority  
Member (Judicial)

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