



its registered office in New Delhi. The petitioner has not proposed the name of any Interim Resolution Professional and has left it to the discretion of naming one by this Tribunal as such an option is available to us.

2. Brief facts necessary for disposal of the controversy raised in the instant petition are that the petitioner is claimed to have supplied goods namely sanitary products and the total outstanding on that account towards Respondent is claimed to be INR 15,74,244/- (Rupees Fifteen Lakhs Seventy Four Thousand Two Hundred and Forty Four Only) including interest on principal debt as on 30.06.2019. The details of the invoices have been given in Form-5 as per the requirement of Rule 6 (1) of the Rules, 2016 which have also been annexed with the petition.

3. The petitioner sent a demand notice dated 28.06.2019 to Corporate Debtor under Section 8 of the Code along with the invoices in Form-3 as prescribed under Rule 5 (1) (a) of the Adjudicating Authority Rules, 2016. It has been claimed that the aforesaid amount was due and payable. The Corporate Debtor sent a reply dated 09.07.2019 denying its liability to make payment to the petitioner on two folds. Firstly it was asserted that certain amount paid by it in cash under signatures of the Petitioner which

has not been reflected in the statement of account and as such the unpaid debts have been incorrectly shown. Objection raised was that the quality of the goods supplied was unsatisfactory and not as per the agreed terms and the Respondent had agreed to give 25% rebate on that count. It was then submitted in para (vi) that the Respondent had always been ready to make the payment duly recoverable which is Rs. 1,15,629/-.

4. Learned counsel for the Corporate Debtor has opposed the admission of the petition and has advanced the following arguments:-

- i. The Operational Creditor has concealed the material facts from this Tribunal as only a sum of Rs. 1,15,629/- due towards the alleged Corporate Debtor which it has always been prepared to pay. A chart showing payments by the Respondent through different modes namely demand draft, cheque as well as cash, has been prepared and relied which is as under:

SI. No.	Amount (Rs.)	Mode of Payment	Dated
1.	225764.00	D.D.	10.10.2017

2.	304585.00	Cheque	24.10.2017
3.	300000.00	Cash	05.12.2017
4.	75000.00	Cash	06.12.2017
5.	200000.00	DD	01.03.2018
6.	200000.00	Cash	15.03.2018

- ii. The Axis Bank informed the Respondent vide letter dated 21<sup>st</sup> November, 2017 (at pg. 12) that the accounts of the Respondent were suspended since 12.09.2017 till such time the company status is restored to ACTIVE or by an order of National Company Law Tribunal. Reliance has then placed on a judgment dated 28.02.2018 passed by NCLT, New Delhi Bench in C.P. No. 161/252/ND/2017 in an appeal under Section 252(3) of the Companies Act filed by the Respondent seeking restoration of the name of the Respondent Company. In such circumstances, the Respondent were not able to make the payment through cheque and made payments and received the payments to the parties in cash including to the Petitioner.
- iii. Aforesaid payments to the Petitioner in cash as per original receipts Annexure-B, C & D were duly received



by Sh. Vibhav, who is whole sole Incharge of the business of the Petitioner and his representatives Sh. Hariom, under their signatures.

- iv. The Petitioner has deliberately concealed the aforesaid receipts of the said payments and it has not reflected the same in its accounts.
- v. The quality of the material supplied by the Petitioner was of very inferior quality and when it was brought to the notice of Sh. Vibhav, he had agreed to pay discount/debit note @ 25% in the total bill raised by the Petitioner at the time of final settlement of the payments of the bills. In such circumstances only a sum of Rs. 1,15,629/- is standing due towards the Respondent payable to the Petitioner.

5. Having heard learned counsels for the parties and after perusing the pleadings with their able assistance, if the projected case of the Respondent is perused to be true that due to suspension of its bank account since 12.09.2017 it was not able to make the payment through cheque to the Petitioner, then why it had made payment to the Petitioner through demand draft on 01.03.2018 for a sum of Rs. 200000/-. Even earlier two times

payments were made through cash on 05.12.2017 & 06.12.2017 and thereafter again payment was made on 15.03.2018 by cash. Respondent has failed to establish the fact that why entire payments which alleged to be made in cash, were not made in form of demand draft. As per the Respondent itself the Petitioner had agreed to pay discount/debit note @ 25% in the total bill raised by it. If this was correct, then why it did not withhold the amount to the extent of 25% which was to be approximately above Rs. 4.50/- lakhs since the time of inception of account i.e. 01.04.2017 to 31.03.2018. The Respondent has not filed any document which may show that any such commitment was ever made by the Petitioner regarding discount/debit note @ 25% in the total bill. Even before filing of the present petition the Respondent had not ever raised any such dispute regarding inferior quality of a goods supplied in a form of letter/correspondence.

6. It is pertinent to mention that the Tribunal is not to adjudicate the quantum of amount of default or to pass decree as to how much amount is actually due to the Petitioner-Operational Creditor. Adjudicating Authority is not to decide a money claim or suit. The Code requires the adjudicating authority to only ascertain and record satisfaction in a summary adjudication as to the occurrence

of default if it amounts to rupees one lac or above (Section 4) before admitting the petition. As per the Respondent itself only a sum of Rs. 1,15,629/- is due towards the Respondent payable to the Petitioner.

7. The definition of the expressions Operational Creditor and Operational Debt as given in Section 5 (20) & (21) of the Code makes it clear that goods supplied, *inter alia* constitute 'operational debt'. The definition clauses are set out below:-

**Section 5 (20) & (21)**

(20) "operational creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;

(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.



'Operational Creditor' is a person inter alia, to whom operational debt is owed and includes any person to whom such debt has been assigned or transferred. The definition of Operational Creditor is not exhaustive but illustrative. It is capable of covering even those heads which are not specifically mentioned in the definition. The definition of operational debt postulates that it is a claim in respect of the provision of 'goods' or 'services' including employment etc. A perusal of the invoices issued by the Operational Creditor in the name of Corporate Debtor unfolds that Operational Creditor has supplied sanitary products to the Corporate Debtor on various occasions. Therefore, Operational Creditor fulfils the basic ingredients of the definition as given under Section 5(20) & 5(21) of the Code. It is thus covered by the provisions of Section 5 (20) & (21) of the Code.

8. There is no escape from the conclusion that 'Corporate Debtor' has committed default and the amount of more than Rupee one lac remained unpaid. Thus, default has been committed by the Corporate Debtor within the meaning of Section 3 (12) read with Section 4 and Section 9 (1) of the Code, 2016.

9. The Operational Creditor has not named anyone as Interim Resolution Professional and has requested us to appoint one for the

Corporate Insolvency Resolution Process. The Insolvency and Bankruptcy Board of India (IBBI) has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professionals for the period 01.01.2020 to 30.06.2020 in compliance with Section 16 (3) (a) of the Code in order to avoid delay. The list of recommended Insolvency Professionals provides instant solution to NCLT-Adjudicating Authority to pick up the name and appoint anyone. It also helps in meeting the time lines given in the Code and save unnecessary wastage of time in asking the Insolvency and Bankruptcy Board of India to recommend the name and then to appoint such Interim Resolution Professional by NCLT-Adjudicating Authority. Accordingly, we appoint Mr. Rakesh Kumar Jain, email id – sirshree.rakesh@gmail.com and Registration No. IBBI/IPA-002/IP-N00053/2017-18/10105 as an Interim Resolution Professional. The aforesaid Interim Resolution Professional has no disciplinary proceeding pending against him nor anything else has been pointed out with regard to his antecedents by IBBI. He shall file his written communication in accordance with Rule 9 of Adjudicating Authority Rules, 2016 and all relevant paper immediately before the Registrar of this Tribunal but not later than two days.



10. As a sequel to the above discussion, this petition is admitted and Mr. Rakesh Kumar Jain is appointed as an Interim Resolution Professional.

11. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this application under Section 9 of the Code. The expression 'immediately' means within three days as clarified by Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

12. We also declare moratorium in terms of Section 14 of the Code. It is made clear that the provisions of moratorium are not to apply to transactions which might be notified by the Central Government. Additionally, the supply of essential goods or services to the Corporate Debtor as may be specified is not to be terminated or suspended or interrupted during the moratorium period. These would include supply of water, electricity and similar other supplies of goods or services as provided by Regulation 32 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



13. Directions are also issued to the Ex-Management/Auditors etc. to provide all the documents in their possession and furnish every information in their knowledge as required under Section 19 of the Code to the Interim Resolution Professional within a period of one week from today otherwise coercive steps to follow.

14. We direct the Operational Creditor to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors. The amount must be accounted for by Interim Resolution Professional and shall be paid back to the Operational Creditor.

15. Before parting we must notice the complaint generally made against Operational Creditor in the form of discrepancies in the statement of account. We cannot in summary proceedings determine the amount due. This function is required to be performed by the Information Utility which is not yet fully functional. Therefore, Resolution Professional may ask the ex-

promoter/director of the Corporate Debtor for any such correction if need be and act accordingly by placing it before the Operational Creditor as it is only fair to do so.

16. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update its Master data & its website by updating the status of 'Corporate Debtor' and by making a specific mention regarding admission of this petition.

17. A copy of this order shall also be sent to the Secretary, Ministry of Corporate Affairs, New Delhi to ensure compliance of directions issued in para 16 above.

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**(M.M.KUMAR)**  
**PRESIDENT**

—sd—

**(MS. SAROJ RAJWARE)**  
**MEMBER (T)**

04.01.2020  
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