IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

PRASANTA KUMAR MOHANTY,
HON'BLE TECHNICAL MEMBER

CP No. (IB) 612(ND)/2018
TA No. 86/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S KRISHNA SALES CORPORATION

…Operational Creditor

Versus

M/S THE RAJASTHAN INDUSTRIAL GASES LIMITED.

…Corporate Debtor

MEMO OF PARTIES

M/s Krishna Sales Corporation
R/o 72, Hira Nagar DCM Ajmer
Road, Jaipur, Rajasthan- 302019

…Applicant

VERSUS

M/s The Rajasthan Industrial Cases Limited
R/o SP-188, RIICO Industrial Area, Jaitpura,
Jaipur, Rajasthan- 303704

…Respondent

For the Applicant **:** Naresh Kumar Sejvani, Adv.

For the Respondent **:** Rajendra K. Salecha, Adv.

Order Pronounced On: 16.08.2022

ORDER

Per: Shri Deep Chandra Joshi, Judicial Member

1. This Application has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('Code' / 'IBC') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules') by Krishna Sales Corporation through its authorized signatory Mr. Vinod Dugar ('Applicant'), claiming to be an Operational Creditor with a prayer for initiation of Corporate Insolvency Resolution Process ('CIRP') against M/s The Rajasthan Industrial Gases Limited ('Respondent' / 'Corporate Debtor').

2. The Applicant has its registered office at 430, 1st Floor, Near Vivekanand Collage, Chandpole Bazar, Jaipur-302001 (Rajasthan); and is involved in sale and distribution of oil cakes (Khal) and cattle feed. Copy of the same is annexed in Annexure 1 (Colly). The Application has been filed in Form 5 as prescribed in Rule 6(1) of (Application to Adjudicating Authority) Rules, 2016.

3. The Respondent is a public limited Company incorporated under the Companies Act, 1956 on 02.08.1988, duly registered with the Registrar of Companies, Jaipur, bearing CIN: U24111RJ1988PLC004571. The Registered Office of the Respondent is at SP-188, RIICO Industrial Area, Jaitpura, Jaipur-303704 (Rajasthan). The company's authorised share capital is Rs. 3,90,00,000/- (Rupees Three Crore Ninety Lakhs Only), and paid-up share capital is Rs. 3,88,00,000/- (Rupees Three Crore Eighty-Eight Lakhs Only). Copy of the same is annexed in Annexure 2 and 3 of the Application.

4. The facts of the case, briefly, as stated in the Application, show that the Applicant has been conducting business with the Respondent from time to time, wherein the Respondent approached the Applicant through the brokers as per market trends for the supply of Mustard Oil Cake on an "on order" basis. In turn, the Applicant raised and issued invoices dated 01.03.2015 to 31.03.2015 (a total of seventy invoices) in favour of the Respondent against the orders placed, whereby a total Rs.2,78,50,701/- (Rupees Two Crores Seventy-Eight Lakhs Fifty Thousand Seven Hundred and One Only) goods worth is being supplied to the Corporate Debtor. Copy of the sale invoices raised on the Corporate Debtor is annexed in Annexure-14 (Colly) of the Application.

5. The Applicant submitted that the Respondent made part-payment (including Debit Notes) of Rs. 1,62,70,440/- (Rupees One Crore Sixty-Two Lakhs Seventy Thousand Four Hundred and Forty Only) to the Applicant. The Applicant further submitted that the last payment received from the Respondent was on 16.05.2015. Thereafter, the Respondent has failed to make the balance payment for the other invoices amounting to total debt of Rs. 1,15,80,258/- (Rupees One Crore Fifteen Lakhs Eighty Thousand Two Hundred and Fifty-Eight Only).

6. The Applicant further submits that excluding the aforesaid part-payments made by the Respondent, a sum of Rs. 1,96,86,438.60/- including interest @ 24% per annum is charged on outstanding invoices.

7. The Applicant issued and served a Demand Notice dated 02.05.2018 to the Respondent under Section 8 of the Code as per Form 3 as prescribed under Rule

5 of the Rules at its registered office demanding a sum of Rs. 1,96,86,438.60/- along with interest @24% per annum on the invoices. The Respondent neither paid the outstanding debt nor raised a dispute regarding the outstanding debt till the fling of the present petition. The demand notice was accompanied by computation of interest, details of invoices, and relevant dates of default. Copy of Demand Notice dated 02.05.2018 and postal receipt dated 02.05.2018 sent to the Respondent are annexed at Annexure 8 and 9 of the Application, respectively.

8. The Applicant has filed a Statement of Bank Account maintained with Kotak Mahindra Bank from 17.05.2015 to 24.04.2018 and Corporation Bank from 13.11.2015 to 07.05.2018 annexed in Annexure 11 and 13 of the Application, respectively. It is stated that there is no repayment of the unpaid operational debt by the Respondent.

9. As claimed by the Applicant, the Respondent is liable to pay an amount of Rs. 1,96,86,438.60/- (Rupees One Crore Ninety-Six Lakhs Eighty-Six Thousand Four Hundred Thirty-Eight and Sixty Paisa Only), as an outstanding amount, as reflected in Part IV of the Form - 5 filed with the Application.

PART IY

Particulars of Operational Debt	
The total amount of debt, details of transactions on account of which debt fell due, and the date from which such debt fell due	Amount of Debt Due: 1,96,86,438.60/- Total Outstanding Principal Amount: Rs. 1,62,70,440/- Total Interest: Rs. 81,06,180.60/-

Amount claimed to be in default and the date on which the default occurred	Rs. 1,96,86,438.60/- (Rupees One Crore Ninety-Six Lakhs Eighty-Six Thousand Four Hundred Thirty-Eight and Sixty Paisa Only) The date of Default is 17.05.2015

10. Notices were issued in the aforesaid Application, and the Respondent filed a reply *vide* Diary No. 810/2018 dated 20.12.2018. It has been submitted that there are various pending complaints before the Courts at Sardar Shahar, Distt. Churu in respect of alleged transaction under Section 138 of Negotiable Instruments Act, 1881 ('NI Act'). Subsequently, the Operational Creditor has instituted the case against the Corporate Debtor arising out of same set of facts and circumstances under the provisions of IBC. It is submitted by the Corporate Debtor that the Application filed by the Operational Creditor deserves to be dismissed. Further, the Application presented signed by Mr. Vinod Dugar *vide* Special Power of Attorney dated 02.05.2018 itself is faulty and not maintainable before this Adjudicating Authority.

11. Furthermore, the petition is not maintainable as the alleged transactions are disputed. There is a serious dispute between Applicant and Non-Applicant regarding the quality of goods. The alleged goods supplied by the Applicant was of a sub-standard quality and such aforementioned supply is made under the guise of trust formed by the previous quality supplies. It is stated in the Reply that the Applicant procure goods from various small oil millers and does not have a warehouse. Accordingly, the Applicant has no control over the quality of the goods.

12. The real dispute is with respect to quality of goods, this is evident that the Corporate Debtor cleared the dues of the Operational Creditor in the past for the quality goods and relied on the ledger account of the Applicant. Copy of the ledger account of the Operational Creditor is annexed in Annexure R-1. Additionally, if the goods supplied were of good quality the payment of the same would not have been withheld in as much as the cheques were replaced solely on the premise that the goods shall be replaced by the Applicant.

13. The Corporate Debtor has stated that the bills are received at the entry point of receipt of goods and therefore has no co-relation with quality and lab check with external lab. Moreover, the quality of the goods being sub-standard is apparent from the lab reports in respect of alleged goods supplied. A Copy of External Lab Report was also handed over to the Applicant when he came to ensure that the goods would be replaced and given new post-dated cheques. A copy of External Lab Report in annexed in Annexure R-2.

14. The Applicant thereby filed a Rejoinder *vide* Diary No. 328/2019 dated 26.02.2019 and denied the abovesaid allegations. It has been stated that there is no such case of dispute or recovery suit pending before the Courts at Sardar Shahar, Distt. Churu in respect of the transaction averred in Application. The matter pending before the Court relates to criminal compliant under the provisions of NI Act and could not be considered as the dispute defined under the Code. The special Power of Attorney executed in favour of Mr. Vinod Dugar dated 02.05.2018 is duly under the applicable laws.

15. Further, the defence of sub-standard quality of goods created as an

afterthought as no such defence ever been raised by the Corporate Debtor neither in response to Legal Notice under Section 138 of NI Act nor in the Reply to the Demand Notice issued under Section 8 of the Code. The Corporate Debtor itself in reply affidavit considered the aforesaid debit notes in their books of accounts presented in ledger account as the confirmation provided against each invoice specifically deducts and provided the rebate and deductions against such and by way of such Corporate Debtor categorically after quality and quantity check determined the net amount payable.

16. In addition, the Applicant states that the Corporate Debtor expressed their inability to pay the debts and requested for one month extension for clearing dues and provided 31 cheques, total amounting to Rs. 1,15,80,257/-. In the July, 2015 Respondent approached the Applicant again to seek further extension of time for clearing dues, and replaced said 31 cheques with new 25 cheques dated 30.09.2015 of the aforementioned amount. On 01.10.2015, when the Applicant about to present the cheques, the Corporate Debtor again sought last extension for arrangement of funds, and gave 24 new cheques dated 20.11.2015 in place of earlier exchanged 25 cheques dated 30.09.2015. Respondent also provided the confirmation of accounts dated 01.10.2015, wherein it admitted its liability.

17. The Applicant has relied on the following judgments:

(i) Sudhi Sachdev v. APPL Industries Ltd., Company Appeal (AT) (Insolvency) No. 623 of 2018.

In the instant case, the Hon'ble NCLAT held that *'6. In the present case, it is not in dispute that there is a debt payable to the Operational Creditor and* *default on the part of the Corporate Debtor. The pendency of the case under Section 138/441 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be a dispute pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute. We find no merit in this appeal. It is accordingly dismissed. No costs.'*

(ii) Chem-Crown India Limited v. Sports Equipment (P) Ltd., [2001] 103 Comp. Cas. 1002 (Delhi).

The Hon'ble Delhi High observed that *'there was no test report that the appellant's adhesive either at the appellant's end before the goods by the premises, or at the time of receipt of the goods by the adhesives were used by the respondent for the manufacture of shoes.'* ………. *'There is no contract that the quality was to be of the same level as that supplied to Liberty nor that any test was to be conducted either at the appellant's premises before the goods were dispatched nor at the respondent's premises when the goods reached there. The complaints were only raised after the adessives were consumed in the manufacture and the shoes were sold to the retailers and other customers.'*

'On these facts, it is difficult for us say either that the amount was not admitted to be due or that the respondent has raised a bona fide dispute with regard to the quality of the goods.'

18. It is seen that as per the terms and prevailing mercantile practices the goods supplied were in due course of business. The Corporate Debtor had many chances to raise dispute regarding the quality of the goods during the exchange of cheques and seeking extension of time. However, exercise of such rights at this belatedly stage of litigation denies any equity in favour of the Respondent, even more so,

where it fails to substantiate the claims/rights given lack of evidence and proofs. Additionally, in its Reply, Corporate Debtor's conducted is apparent on record through its business ledger accounts maintain in existing course of business mentioned where it issued various debit notes for the quality and quantity of goods. In present case, any subsequent claims are not tenable, thus, there exist of dispute regarding the quality of goods supplied. Further, if the Corporate Debtor used the goods, later he cannot take the defence of goods being sub-standard and avoid making the payment.

19. In the instant case, it is well settled principle that the proceedings under NI Act are in criminal nature and does not conflict with the jurisdiction of this Adjudicating Authority.

20. This Adjudicating Authority has perused all the relevant papers and found them in order. The Registered Office of the Respondent is situated in Jaipur, and therefore this Adjudicating Authority has jurisdiction to entertain and try this Application. The matter is within the purview of the Law of Limitation although the last payment was made on 16.05.2015, and the Application filed on 25.05.2018. It is a settled principle, when acknowledgement on account of debt is made before the expiration of the prescribed period, a fresh period of limitation shall be computed from when the acknowledgment was made. The issuance of new cheques dated 20.11.2015 by the Respondent results fresh period of limitation. Therefore, the present Application has been filed within the period of limitation.

21. The first issue for consideration is whether the demand notice in Form No.3 dated 28.04.2019 was served upon the Respondent. The demand notice was sent

via a registered post on 02.05.2018 to the corporate debtor and its directors. The postal receipt is attached on Page 133 (Annexure-9) of the Application.

22. The next issue for consideration is whether the Respondent disputed the operational debt. The Respondent Corporate Debtor has filed a reply and contended that they had been dissatisfied with the goods' quality. However, they have not submitted any authentic communication to substantiate the same. Thus, as per documents placed on record with the adjudicating authority, there is no dispute as to the outstanding liability of the Respondent Corporate Debtor towards the Applicant Operational Creditor.

23. We have gone through the contents of the Application filed in Form No.5 and found the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 1,96,86,438.60/- (Rupees One Crore Ninety-Six Lakhs Eighty-Six Thousand Four Hundred Thirty-Eight and Sixty Paisa Only), including the interest @24% per annum. It is observed that the Operational Creditor has issued various invoices (Annexure-14) for goods supplied to the Respondent/ Corporate Debtor. Applicant/ Operational Creditor has given demand notice in Form-3 dated 02.05.2018, duly served on the Respondent Corporate Debtor. This Adjudicating Authority has held above that the Operational Creditor correctly delivered the demand notice in Form No.3, and no pre-existing dispute is proved.

24. It has been shown that the Corporate Debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice to date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Hence,

this Adjudicating Authority is inclined to commence CIRP against the Corporate Debtor as envisaged under the provisions of IBC, 2016.

25. Under sub-section (4) of Section 9 of the Code, the Operational Creditor proposed the name of Mr. Mahendra Prakash Khandelwal be appointed Interim Resolution Professional ('IRP'), bearing Registration No. IBBI/IPA-002/IP-N00446/20l7-18/11275 with the e-mail address mahendra927@gmail.com, in the present matter. The said IRP has filed the written consent to act as a resolution professional in Form-2 provided under Rule 9 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016. The credentials of the proposed IRP have been checked from the IBBI website, and nothing adverse is found on record.

26. In this matter, the Interim Resolution Professional appointed herein, Mr. Mahendra Prakash Khandelwal, shall exercise all the powers enumerated under the Code read with Rules made thereunder. The Applicant shall provide a copy of the Application, if not provided already, along with this Order to IBBI for its records.

27. The IRP is directed to take all such steps as are required under the statute, inter-alia in terms of Sections 15, 17, 18, 19, 20, and 21 of the Code, and transact proceedings with utmost dedication, honesty and strictly under the provisions of the Code, and Rules and Regulations thereunder.

28. Consequences of commencement of CIRP shall be inter-alia as follows:

(i) The IRP appointed by the Adjudicating Authority, Mr. Mahendra Prakash Khandelwal, is directed to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of Code including the issue of a publication in widely circulated Newspapers as contemplated under the provisions of the Code and calling for claims from the creditors of the Corporate Debtor; and collation of the same shall be done.

(ii) Further, as a sequel of admission, moratorium, as envisaged under Section 14 of the Code, is invoked concerning the Corporate Debtor, which will be in vogue during the CIRP of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of the Code concerning the Corporate Debtor.

(iii) The said IRP shall act strictly following the provisions of the Code, and to defray his expenses to be incurred and fees on the account, the Applicant is directed to deposit a sum of Rs. 1,00,000/- (One Lakhs Only) to the bank account of IRP within two weeks from the date of this Order. This amount shall be proportionately contributed and reimbursed to the Applicant upon forming a Committee of Creditors. The IRP shall duly file a status report apprising this Adjudicating Authority about the progress of CIRP concerning the Corporate Debtor. In terms of Section 17 and 19 of the Code, all personnel of the Corporate Debtor, including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during her tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

(iv) In terms of Section 9 of the Code, this order shall be communicated at the earliest, not exceeding one week from today, to the Applicant, Corporate Debtor, as well as the IRP appointed by this Adjudicating Authority to carry out CIRP. A copy of this order shall also be communicated to IBBI for its records.

29. Copy of this order to be supplied to the Applicant. The Applicant and his counsel are directed to serve a copy of this order along with a copy of the Application and documents on the Resolution Professional by all modes for information.

30. The Registry is directed immediately to send a soft copy of the instant Application along with this order to the RP nominated herein on his e- mail id.

31. Accordingly, CP No. (IB)- 612 (ND)/ 2018 TA No. 86/2018 is admitted.

DEEP CHANDRA JOSHI

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DEEP CHANDRA JOSHI,
JUDICIAL MEMBER

PRASANTA KUMAR MOHANTY

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PRASANTA KUMAR MOHANTY,
TECHNICAL MEMBER