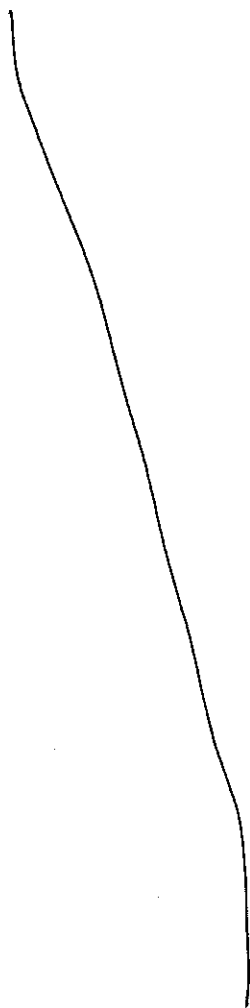




**Shri. K.K. Vohra**  
**Hon'ble Member (Technical)**

Counsel for the Petitioner : Mr. Sanjay Maria (Advocate)

Counsel for the Respondent : Mr. Prabhat Kumar, Mr. Shivam Tyagi  
(Advocates)



## ORDER

Date:02 .09.2019

1. This is a petition filed by Kutch Chemical invoking the provision of Section 9 of Insolvency and Bankruptcy Code, 2016 (“the Code”) against the Respondent (VMA Chemicals) for initiating Corporate Insolvency Resolution Process (“CIRP”) against the Respondent.
2. The Applicant has averred as follows:
  - a. Operational Creditor used to supply goods/ normal paraffin, waksol and AHD to Corporate Debtor from time to time since around year 2015 and they used to make payment on running account basis from time to time.
  - b. From January 2017, the Corporate Debtor started default in making payment of outstanding invoices and failed to make payment for the goods supplied and invoices raised by Operational Creditor.
  - c. The total amount of default as on 1 Oct, 2018 is Rs 43,80,765/-. The said demand notice was duly delivered on the corporate debtor at its registered office in Delhi but corporate debtor neither made payment of unpaid operational debt nor raised existence of any dispute.

Q

**3. Upon an opportunity being granted, the corporate Debtor has filed a reply and it is evident from the reply filed on behalf of the Corporate Debtor**

- a. They contended that no demand notice has been delivered to the respondent, the present petition is pre mature as not maintainable under Section 9 by Operational Creditor.
- b. Corporate Debtor said that there appears to be some delay in making the payments but the respondent was making regular payment to the petitioner.

4. Prior to going to the merits of the case by this Tribunal, it was observed that the notice of demand enabling the filing of the present petition has not been sent by the Petitioner "Kutch Chemicals" rather it was sent by "Panoli Intermediates India Pvt. Ltd.". Thus the Tribunal is of the view that that failure of delivery of notice of demand upon the Corporate Debtor by the Operational Creditor makes this application liable to be rejected as held by the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 194 of 2019 in the matter of M/s Krystal Integrated Services Pvt. Ltd. vs M/s Indiaontime express Pvt. Ltd. dated 12.07.2019 relying upon the decision of the Hon'ble Supreme Court in "Mobilox Innovations (P) Ltd vs Kirusa Software (P) Ltd. Thus, taking into consideration the reasoning as provided in the above order passed by Hon'ble NCLAT we do not find any merit



in the submissions of the Operational Creditor in order to sustain the plea that notice under section 8, IBC, 2018 should be deemed to served which have been dealt with in detail in the above cited order passed by Hon'ble NCLAT and negated. Thus, this petition on the issue of maintainability arising out of service of notice of demand having not been delivered upon the corporate debtor in accordance with the provisions of section 8 of IBC, 2016 read with Rule 5 of AAA Rules 2016 stands rejected in exercise of section 9(5)(ii)(c) of IBC,2016 but without cost.

5. However, the order of rejection of this petition will not preclude the operational creditor from approaching other forums in relation to claim, if so advised. Let a copy of this order be duly communicated to the Operational Creditor forthwith by the Registry.

*Sd/-*

**(K.K. VOHRA)**  
**MEMBER (TECHNICAL)**

*0*

*Sd/-*

*02/09/19.*

**(R. VARADHARAJAN)**  
**MEMBER (JUDICIAL)**

U.D.Mehta/ D