

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)**

**IA No.268 of 2021
In
CP(IB) No.277/Chd/Pb/2018
(Admitted)**

**Under Section 60 (5) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:-

Punjab National Bank ...Financial Creditor

Versus

Kudos Chemie Limited ...Corporate Debtor

And in the matter of IA No. 268/2021:-

Mr. Rajender Kumar Jain,
Resolution Professional of M/s Kudos Chemie Limited,
Reg.#IBBI/IPA-001/IP-P00543/2017-2018/10968,
#3698/1, First Floor, Sector 46-C, Chandigarh- 160047

...Resolution Professional/Applicant

Versus

1. M/s Consultant Blue Chip
having its registered address at
No. 10/14-3, ITC Main Road, Cox-Town,
Jeevanahalli, Bangalore-560005 ...Respondent No.1

2. M/s Shalini Impex
having its registered address at
F-102, Airport, Opp. Hotel Airport
Harni Road, Vadodara-390022 ...Respondent No.2

3. Subodh Engineering Private Limited
having its registered address at
102-103, Ram-Ashirwad Industrial Estate,

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(Admitted)

- Ram Mandir Road,
Goregaon (West) Mumbai-400104 ...Respondent No. 3
- 4. Mazda Limited**
having its registered address at
C/139/13/16G I D C Naroda Ahmedabad,
Gujarat 382330 IN ...Respondent No. 4
- 5. United Fabricators & Erectors**
having its registered address at
E-104, Industrial Area, Phase-7
Mohali-160055 ...Respondent No. 5
- 6. Chopra Machinery & Mill Stores**
having its registered address at
Railway Road, Panipat-132103 ...Respondent No.6
- 7. Finolex Cables Limited**
having its registered address at
26-27, Mumbai-Pune Road-Pimpri,
Pune – 411018 ...Respondent No.7
- 8. Polmon Instruments Private Limited**
having its registered address at
Plot No. 2/30A, Polmon House,
Nizampet Road Hydernagar, kukatpally
Hydrabad-500072 ...Respondent No. 8
- 9. Jaskar Techno Private Limited**
having its registered address at
Plot No. 43, Near Emam Kothi Old H.B. Road,
Kokar Ranchi –Jharkand-834009 ...Respondent No. 9
- 10. JK Seals (INDIA) Private Limited**
having its registered address at
Plot No. 98, Sri Nagar,
New SIDCO Industrial Area, HOSUR,
Tamil Nadu- 635109 ...Respondent No. 10
- 11. Shivalik Projects**
having its registered address at
Plot No. 199C, Industrial Area,
JLPL, Sector-82, Mohali- 14030Respondent No.11

- 12. V.M. Projects Construction**
having its registered address at
E-95, Phase-7, Industrial Area
Mohali -Punjab, - 140603
...Respondent No.12
- 13. A. P. Jain& Bros**
having its registered address at
Village Pabhat Distt.Mohali
Zirakpur– 140307
...Respondent No.13
- 14. Malik Polychem Limited**
having its registered address at
DSM 507, 5TH Floor,
DLF Tower Shivaji Marg, Moti Nagar
New Delhi West Delhi – 110015
...Respondent No. 14
- 15. Jai Nanesh Enterprises Private Limited**
having its registered address at
15/5504 Basti Harphool Singh,
Sadar Thana Road, Delhi – 110006
...Respondent No-15
- 16. Shipping Corporation of India Limited**
having its registered address at
Shipping House 10th floor,
245, Madam Cama Road, Mumbai - 400-021
...Respondent No. 16
- 17. Skipper Chemicals (P) Limited**
having its registered address at
160 Sector 35 Chandigarh - 160036
...Respondent No. 17
- 18. Power Matrix Solutions Private Limited**
having its registered address at
902, Sai Indu Towers,
L.B.S. Marg, Near Asian Paints, Bhandup (W),
Mumbai Mumbai City- 400078
...Respondent No.18

Order delivered on 14.06.2022

**Coram: HON'BLE SHRI HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE SHRI SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:-

For the applicant : Mr. Viren Sharma, Advocate
For respondent No. 1 : Mr. A. Shikhari, Advocate
for the respondent No.3 : Ms. Sujata Melekar, Advocate
For respondent No.10 : Mr. Abhinav Singla, Advocate
For respondent No.15 : Mr. Karanveer Jindal, Advocate
For respondent No.18 : Mr. Amandeep Singh, Advocate

None for the remaining respondents.

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

ORDER

IA No.268/2021

This application has been filed by the applicant - Rajendra Kumar Jain, Resolution Professional, on behalf of M/s Kudos Chemie Ltd. (for short the '**corporate debtor**') under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the '**Code**') seeking to direct the various respondents to repay Rs. 3,25,35,877/- along with interest @ 12% from the date of default, which is pending from the respondents of the corporate debtor.

2. It is stated that the application under section 7 of the Code was filed by Punjab National Bank before this adjudicating authority which was duly admitted wide order dated 05.072019, and Mr. Rajinder Kumar Jain was appointed as the Interim Resolution Professional (herein referred to as the IRP). A public announcement in accordance with section 15 of the code, was made in the

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(Admitted)

newspapers, and thereby as per section 21 of the code, IRP constituted the committee of creditors on 27.07.2019 and called the 1st meeting of the Committee of Creditors (herein referred to as **CoC**) on 02.08.2019. CoC in its meeting held on 17.09.2019, confirmed the appointment of the applicant as the resolution professional. The applicant, while taking over charge of the corporate debtor, came across the list of eighteen debtors. A summary of transactions with the 18 debtors as stated in the application, is mentioned below:

- a) The suspended board of directors had entered into an agreement No. S.036 dated 18.11.2014 with M/s Consultant Blue Chip, (herein referred to as '**Respondent No. 1**') (Annexure A-5 of the application) for a remuneration of Rs. 25,00,000/- for rendering consultancy services to the corporate debtor, and the amount of Rs. 20,00,000/- dated 05.07.2019 was given to the respondent no. 1 but the said service was never provided by the respondent. The IRP issued a recovery letter dated 05.11.2019 for recovering the amount of Rs. 20,00,000/- from respondent no. 1. In their reply dated 11.11.2019, respondent no. 1 duly agrees to the receipt of Rs.20,00,000/- for which they had raised invoice no. INV.0048.14.15 dated 27.11.2014, thereafter the applicant issued a second letter dated 11.12.2019 for requesting respondent number 1 to provide details of services along with a due diligence report issued by the respondent, ledger account, copy of invoice dated 27.11.2014 to which no reply has been received till date.
- b) The corporate debtor had placed a purchase order (P.O. No. 4700000620 dated 10.02.2012) for Rotary VAC Drum Filter worth

Rs.15,50,000/- to M/s Shalini Impex (herein referred to as '**Respondent no. 2**') for which an advance amount of Rs.4,52,500/- was given and an invoice no. SI/DM/09/2012 was raised on 16.08.2012. The applicant therefore issued a letter dated 09.11.2019 to respondent No. 2 for recovery of the outstanding amount but no reply had been received from respondent no. 2. Further, a demand notice was issued on 25.01.2020, to which a reply was received on 11.02.2020, which clearly indicates a business transaction between the corporate debtor and respondent no. 2.

- c) The corporate debtor in its ordinary course of business, used to purchase materials from Subhog Engineering Pvt. Ltd. (herein referred to as '**Respondent no. 3**') for which an advance amount was normally given. A debit balance of Rs.77,96,013.17/- is reflected in the books of the corporate debtor as on 05.07.2019. The applicant issued a letter dated 30.10.2019 for the recovery of the said amount but no reply had been received. Further, another letter dated 07.12.2019 was issued to respondent no. 3, to which no response had been received as well.
- d) The corporate debtor, in the ordinary course of business, used to purchase materials from Mazda Limited (herein referred to as '**Respondent no 4**') for which an advance amount was normally given. A debit balance of Rs.1,04,786/- is reflected in the books of the corporate debtor. The applicant issued a letter dated 30.12.2019 for the recovery of the said amount, but no reply has been received till date.
- e) The Books of the corporate debtor show a debit balance against United Fabricators & Erectors (herein referred to as '**Respondent no. 5**') for

Rs.30,26,300.77/- and therefore, the applicant issued a letter dated 29.01.2020 for recovery of the said amount, but no reply has been received till date.

- f) In the ordinary course of business, the corporate debtor used to purchase materials from Chopra Machinery & Mill Stores (herein referred to as '**Respondent no. 6**') for which an advance amount was normally given. The books of accounts of the corporate debtor shows a debit balance of Rs.3,27,752.02/-. Further, the RBI issued a letter dated 30.12.2019 but no reply has been received from the said respondent.
- g) The Books of the corporate debtor show a debit balance of Rs.3,82,322/- against Finolex Cables Limited (herein referred to as '**Respondent no. 7**'), and therefore the applicant issued a letter dated 30 December 2019 for the recovery of the said amount but no reply has been received from respondent no. 7.
- h) In the ordinary course of business, the corporate data was used to purchase materials from Polmon Instruments Pvt. Ltd. (herein referred to as '**Respondent no. 8**'), for which often an advance amount was given. The books of account of the corporate debtor show a debit balance of Rs.6,18,735.20/- and therefore, the applicant issued a letter dated 30.12.2019 to respondent No 8, but no reply has been received till date.
- i) The corporate debtor used to give advance payment for the material to be purchased from JasKar Techno Pvt. Ltd. (herein referred to as '**Respondent No. 9**') on behalf of the corporate debtor. Therefore, the books of account of the corporate debtor shows an outstanding debit

balance against respondent number 9, being the supplier for these products. The applicant being the resolution professional, issued a letter dated 30.12.2019 for the recovery of the said amount, to which no reply has been received from respondent no. 9.

- j) The corporate debtor in its book of account shows a debit balance amounting to Rs.2,02,625/- as the corporate debtor used to purchase materials from JK Seals (INDIA) Pvt. Ltd. (herein referred to as '**Respondent no. 10**') in its ordinary course of business for which advance payment was usually made. The applicant issued a letter dated 30.12.2019 to respondent number 10, but no reply had been received.
- k) The corporator debtor issued purchase orders with an advance amount in the ordinary course of business with Shivalik Projects (herein referred to as '**Respondent no. 11**') pursuant to which a debit balance is shown in the books of the corporate debtor, amounting to Rs.56,81,351/- for which the applicant issued a letter dated 29.01.2020 via speed, post as well as email, but no reply has been received till date from the said respondent.
- l) The books of the corporate debtor show an outstanding debit balance of Rs.6,40,942.57/- against V.M. Projects Construction (herein referred to as '**Respondent no. 12**'), with respect to the purchase orders with the advance amount given to respondent number 12. The applicant issued a letter dated 31.12.2019, but no reply has been received from the said respondent.

- m) Corporator usually issued purchase orders with the advance amount to A.P. Jain & Bros (herein referred to as '**Respondent no. 13**') pursuant to which a debit balance is shown in the books of the corporate debtor, amounting to Rs.2,00,632.30/- for which the applicant issued a letter dated 31.12.2019 but no reply has been received from the respondent no. 13.
- n) Pursuant to the advance amount issued to Malik Polychem Ltd. (herein referred to as '**Respondent no. 14**') with respect to the purchases of materials made from respondent no. 14, the books of the corporate debtor, show an outstanding of Rs.1,88,100/- for which the applicant issued a letter dated 29.01.2020, but no reply has been received.
- o) The corporator debtor purchases materials from Jai Nanesh Enterprises Pvt. Ltd. (herein referred to as '**Respondent no. 15**') for which an advance amount was usually paid. Pursuant to which balance is shown in the books of the corporate debtor amounting to Rs. 1,57,358/- and the applicant issued a letter dated 30.12.2020 but no reply has been received till date.
- p) Shipping Corporation of India Ltd. (herein referred to as '**Respondent no. 16**'), being the supplier of the corporate debtor, was paid an advance, which was reflected in the books of the corporate debtor amounting to Rs.89,28,941.09/-. The applicant sent a letter, along with an email dated 31.12.20219, for the recovery of the said amount, to which a reply had been received via email on 09.01.2020 in which they stated that there is no outstanding balance in their books. Thereafter, a second letter and email dated 23.01.2020 were sent requesting that

respondent no. 16 to share the ledger statement and invoices, but no response has been received from their side.

- q) The books of the corporate debtor show a debit balance amount of Rs.19,55,340/- as an advance given to Skipper Chemicals (P) Ltd. (herein referred to as '**Respondent no. 17**', but subsequently, no purchases were made. The applicant issued a letter dated 31.12.2019 for the recovery of the said amount. Respondent number 17 replied on 06.01.2020 that there is no outstanding balance to the corporate debtor as per their books. Thereby, another letter dated 15.01.2020 was sent to respondent no. 17, requesting them to share the invoices and ledger, but no reply was subsequently received.
- r) The corporate debtor issued purchase orders with the advance amount to Power Matrix Solutions Pvt. Ltd. (herein referred to as '**Respondent no. 18**' which is reflected in the debit balance in the books of the corporate debtor amounting to Rs. 5,39,500/-. The applicant resolution professional issued a letter dated 09.11.2019 for the recovery of the said amount, but no reply has been received thereby.

3. In the course of the present proceedings, only 4 debtors, namely Respondent No. 1- M/s Consultant Blue Chip, Respondent No. 3- Subodh Engineering Private Limited, Respondent No. 10- JK Seals (INDIA) Private Limited, and Respondent No. 18- Power Matrix Solutions Private Limited have filed their replies. The right to file reply for the remaining respondent had been struck off vide order dated 22.12.2021.

4. Respondent no. 1, in its written submission filed via Dairy No. 602/6 dated 23/09/2021, states that the corporate debtor, via its Managing Director Mr. Jitendra

Singh, signed the Consulting Agreement (herein referred to as 'CA') Vide No. 036 dated 18.11.2014 with Mr. Arun Prasad, Consultant of Consult Blue Chip (Respondent no. 1) and respondent no. 1 rendered services to streamline and enable the development of the business of the corporate debtor as per the terms agreed in the CA. Thereby, respondent no. 1 raised Invoice No. 0048-14-15 dated 27.11.2014 amounting to Rs. 25 Lakhs. The corporate debtor released the amount of Rs. 20 Lakhs through two online bank transfers dated 02.12.2014 for Rs. 15 Lakhs and 27.11.2014 for Rs. 5 Lakhs with unpaid dues of Rs. 5 Lakhs. Further, it is stated that respondent no. 1 has paid his service tax amount of Rs.3.09 Lakhs on his invoice amount of Rs.25 lakhs raised on the corporate debtor for which respondent no.1 was forced to accept the loss for his unpaid invoice amount of 5 Lakhs. Respondent no. 1 also refers to 'clause c' of the CA, which mentions about the remuneration that: *"shall not refund this remuneration under any circumstances whatsoever"*. Further, 'clause b-Tenure' of the CA stated that: *"The Services shall be rendered for a period of 1(One) Year and shall commence as on the date of execution of this Agreement."* Respondent no. 1 mentions that the corporate debtor had never raised any concern or expressed any dissatisfaction with respect to the services of the respondent during the entire tenure. with respect to the limitation, respondent no. 1 mentions the relevant provisions as:

- As per section 238 (A) Insolvency and Bankruptcy:-
238A. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.
- *THE SCHEDULE (PERIODS OF LIMITATION) [Sections 2(j) and 3]
FIRST DIVISION - SUITS description of suit period of limitation time from which period begins to run.*
- *Part 1:- SUITS RELATING TO ACCOUNTS*

1. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties THREE YEARS

• The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account.

2. Against a factor for an account. THREE YEARS

• When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates.

• The Indian Contract Act 1872, read with Section 55, as follows:

"Effect of acceptance of performance at time other than that agreed upon. -If in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts the performance of such promise at any time other than that agreed, the promisee cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so"

5. Respondent No. 3, in its written submissions filed via Dairy No. 602/15 dated 24.02.2023, stated that its letter dated 10.12.2019 was sent by respondent no. 3 addressed to the applicant in which any outstanding towards the corporate debtor was vehemently denied. It is stated that respondent no. 3 would dispatch the order by courier from Maharashtra to the corporate debtor in Derabassi, Punjab, and subsequently, a tax invoice would be raised on the corporate debtor, which would be annexed with the courier receipt upon the delivery of goods.

Sr. No.	Year	Invoice Date	Invoice No.	Invoice Amount	PO Number
1	2008-09	13/05/2008	13	55028.01	
2	2008-09	25/02/2009	87	331214.4	4700000021-1
3	2009-10	28/04/2009	4	397457.3	
4	2009-10	26/06/2009	11	1380811	
5	2009-10	27/06/2009	15	99643.2	
6	2009-10	29/06/2009	16	173998	4700000029
7	2009-10	12/10/2009	64	1192372	

8	2009-10	19/01/2010	81	4471394	4700000205
9	2010-11	08/09/2010	31	32457.96	
10	2011-12	10/04/2011	50	267078	4600003390
Total Amount				9295454	

Further, it is stated by respondent No. 3 that Excise and Central Sales Tax were applicable as the goods were sold in another State, which is different from the manufacturing State, due to which the purchaser is liable to issue a certificate to the seller in Form C in which the value of purchases is declared by the purchaser. In this case, the purchaser corporate debtor has declared with the Central Sales Tax office the delivery of goods sent by respondent no. 3, thereby evidencing that the sales were duly made by respondent no. 3.

6. Respondent no. 10, in his reply filed via Dairy No. 602/8 dated 07.10.2021, stated by the said respondent that there is no pending due against respondent no. 10 and the corporate debtor had raised an order against which the material/good/product was delivered, and corresponding payment was made by the corporate debtor. Moreover, the respondent claims that the said debt is time-barred while placing reliance on the relevant sections of the Code similar to as mentioned by Respondent no. 1. Moreover, as per the series of transactions, it has been contended that the corporate debtor raised a trial order demand of '2 units of complete JK Seals make cartridge type Mechanical Seal' on 15.05.2012 (Annexure R10- 2 of the Reply) with the condition that formal Purchase Order of material would be raised after successful report of the product. The order was booked on 19.05.2012 and was ready for dispatch on 20.07.2012, and respondent no. 10 intimated about the same through email on the same day. Thereby, a

delivery challan was prepared on 26.07.2012, and the material was received on 01.08.2012 by the authorized person of the corporate debtor (Annexure R10- 4 of the Reply). Minutes of Meeting dated 01.08.2012 between respondent no. 10 and the corporate debtor were duly signed by the representatives of both parties. The corporate debtor, on being satisfied with the performance of the material, placed the final purchase Order No. 4600005226 dated 20.11.2012 (Annexure R10- 6 of the Reply). Respondent no. 10 received this purchase order via email dated 05.12.2012 stating that "*you have already dispatched the material against our purchase Order No. 4600005226*", which was also duly acknowledged by respondent no. 10. The said emails are Annexure R10- 7 of the Reply. The corporate debtor issued a cheque in lieu of the above-said order in favor of respondent no. 10, which was deposited in the bank on 07.01.2012 but was dishonoured and returned by the bank of respondent no. 10. Thereby, respondent no. 10 issued a tax cum delivery challan to the corporate debtor on 17.10.2013 (Annexure R10- 9 of the Reply). Therefore, respondent no. 10 claims no outstanding amount due to the corporate debtor.

7. Respondent no. 18, in its reply filed via Dairy No. 602/9 dated 17.11.2021, has stated that respondent No. 18 had changed its registered office and filed form INC-22 with the Registrar of Companies, Mumbai on 21.05.2018. (Exhibit-B of the reply) the applicant had issued a notice dated 09.11.2019 to the previous address in which it was alleged that an amount of Rs.5,39,500/- was a debit balance outstanding towards the corporate debtor as per its books of account. The demand notice dated 25.01.2020 by the applicant resolution professional demanding payment under bankruptcy and insolvency code 2016 was received by respondent no. 18 through email on 30.01.2020. In this demand notice, a principal

amount of Rs.5,39,500 along with an interest amount of Rs.15,56,991 as the alleged operational debt, total amounting to Rs.20,96,491 for the period from 22.06.2012 to 24.01.2020. Further, the present application was served upon respondent no. 18 vide email dated 15.07.2020. But due to the pandemic of coronavirus from March 2020, the respondent could not file his reply earlier. It has been submitted by the respondent that Mr. Kiran Joshi, a sales associate representing respondent no. 18, was approached by the corporate debtor for the requirement of medium voltage capacitor panels, and thereby respondent no. 18 issued a quotation dated 19.10.2011 to the corporate debtor for an amount of Rs.3,16,592/-. After various discussions and email correspondence between both parties, a purchase order was placed by the corporate debtor bearing number 4700000664 dated 22.05.2012 for an amount of Rs.24,73,223.38/- for the purchase of 200 KVER @ 11 KV HT Capacitor panel and 1800 KVER @ 11 KV HT Capacitor Panel. Respondent no. 18 raised a proforma invoice dated 14.07.2012 bearing No. 28 for an amount of Rs.24,73,223.38/- for which an advance payment of Rs.5,39,500/- was made by the corporate debtor, being 25% of the proforma invoice. As per the minutes of the meeting dated 09.09.2012 that was conducted at the factory of respondent no. 18, and the successful inspection of 200 KVAR HT @ 11 KV Capacitor Panel, it was cleared for dispatch. on 11.09.2012, another performer invoice bearing number 48 was raised by respondent number 18 upon the corporate debtor for an amount of Rs.2,76,343/- and mentioned that an amount of Rs. 1,67,344/- is due and payable against delivery of 200 KVAR HT @ 11 KV Capacitor Panel. The corporate debtor did not make the understanding payment which forced respondent number 18 to seize the manufacturing work of 1800 KVAR HT @ 11 KV APFC Capacitor Panel. It has

further stated that the Capacitor Panels that were manufactured by respondent no. 18 who is specifically manufactured to the corporate debtor's requirements and demands and could not be sold to other customers. After various trials of respondent no. 18, no response has been received from the corporate debtor, and their fourth respondent, number 18, was forced to scrap the equipment and salvage them to recover the loss incurred by it. Respondent no. 18 places regard to the decision of the Hon'ble Supreme Court in ***Mobilox Innovations Pvt. Ltd. Vs. Kirusa Software (P) Ltd.*** - 2017 1 SCC Online SC 353 in which the meaning of dispute was analyzed with respect to the operational creditor and observed that *the dispute must exist before the receipt of demand notice or invoice*. Therefore, respondent no. 18 claims that in the present case, the disputes existed prior to the issuance of notice dated 09.11.2019 and demand notice dated 25.01.2020 and emails sent by respondent number 18 clearly evident that a dispute had been raised by respondent number 18 in respect of non-payment of an amount of Rs.1,67,344/- by the corporate debtor. This is page number 18, please start a pre-existing dispute does not entitle the operational creditor to seek Insolvency Resolution.

8. We have heard the learned counsels for the parties who have appeared before us and have gone through the relevant records.

9. In this context, a reference is made to relevant clauses of Section 18 of the Code extracted below:

Duties of the Interim Resolution Professional-

18. The interim resolution professional shall perform the following duties, namely:—

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

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(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

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10. A further reference is made to Section 25 of the Insolvency and Bankruptcy Code, which is reproduced below:-

“Section 25: Duties of resolution professional.

25. (1) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor.

(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely:—

(a) take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor;

(b) represent and act on behalf of the corporate debtor with third parties, exercise rights for the benefit of the corporate debtor in judicial, quasi-judicial or arbitration proceedings;...”

11. In the present case, it is noted that the Resolution Professional has to take custody and control of all the assets of the corporate debtor as per the provisions in this regard in the Insolvency and Bankruptcy Code, 2016.

12. In this connection, a reference is also made to the decision of the Hon'ble NCLAT in the matter of ***Devmata Exim Fit. Ltd. V. Ms. Kavitha Surana, RP of Veerganapathi Steels Pvt. Ltd.*** in Company Appeal (AT) (INS) No. 526 of 2019, wherein it has been held that *the Appellant is liable to pay the sum as the*

Appellant had received and accepted the goods and not returned the same to the Corporate Debtor and sold the goods and realized the Cost. In view of the same, the Appellant was directed to deposit the amount outstanding to the Corporate Debtor.

13. In the course of the present proceedings, respondent No. 1, 3, 10, and 18 filed their replies stating that no dues of the corporate debtor is outstanding against them. Respondent No. 1, against whom an amount of Rs. 20,00,000/- is shown in the books of accounts, stated that it has raised invoices under a consulting agreement signed by the corporate debtor, and the transactions have been carried out as per the terms and conditions of the consulting agreement. Respondent No. 3 has stated that delivery of goods has been made to the corporate debtor in keeping with the said agreement.

14. Respondent No. 10 has also clarified that material as per the purchase order by the corporate debtor has been supplied, and there is no outstanding amount due to the corporate debtor. Respondent No. 18 has also stated that there is a debit balance outstanding towards the corporate debtor as per its books of accounts.

15. In the course of the present proceedings, no case was made out to rebut the aforementioned explanations furnished by the respondent Nos. 1,3,10 and 18, hence, we do not draw any adverse conclusion with respect to the aforementioned four respondents, i.e, respondent Nos. 1,3,10 and 18.

16. In view of the aforementioned discussions, we hold that under the provisions of the Code discussed above, the RP is duty-bound to recover the amount standing in the balance sheet of the corporate debtor in respect of the

aforementioned respondents except for respondent No. 1, 3, 10, and 18 who have furnished plausible explanation regarding the non-existence of the dues standing against their names in the books of the corporate debtor.

17. In the result, this application is partly allowed, and respondents Nos. 2,4,5,6,7,8,9,11,12,13,14,15,16,17 are directed to pay to the corporate debtor the amounts standing against their names in the books of accounts of the corporate debtor within one month of this order. Thus, IA No. 268/2021 is disposed of accordingly.

Sd/-

(Subrata Kumar Dash)
Member (Technical)

June 14, 2023
JGS/PB

Sd/-

(Harnam Singh Thakur)
Member (Judicial)