

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

CP (IB) No.251/Chd/Pb/2018

Under Section 9 of Insolvency and
Bankruptcy Code, 2016

In the matter of:

Surinder Kumar Pupneja,

Proprietor, New Chemtex (India),

W.X. 146, Basti Nau, Jalandhar, Punjab- 144 002

...Petitioner-Operational Creditor

Versus

Hawk Leathrers Pvt. Ltd.,

Having its registered office at

23, Leather Complex, Jalandhar, Punjab- 144001

CIN: U19129PB1992PTC012855

...Respondent-Corporate Debtor

Judgment delivered on 16.09.2019

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)
HON'BLE MR. PRADEEP R.SETHI, MEMBER (TECHNICAL)**

For the Petitioner : 1. Mr. Vaibhav Sahni, Advocate
2. Mr. Amitabh Tewari, Advocate

For the Respondent : None

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

The instant petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016, (hereinafter referred to as '**Code**') read with Rule 6 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as '**Rules**'). The application has been filed in Form 5 as prescribed in Rule 6(1) of the Rules.



2. The petitioner i.e. New Chemtex (India) has filed the application through its proprietor Shri Surinder Kumar Pupneja. The petitioner has also filed Form GST REG 06 Registration Certificate, which is annexed as Annexure A-1 (colly) to the petition. There is also an affidavit of Shri Surinder Kumar Pupneja, in support of the contents of the application.

3. The respondent-corporate debtor is a company incorporated under the Companies Act, 1956 with authorized share capital of ₹30,00,000/- and paid up capital of ₹15,30,000/-. It has its registered office at Jalandhar in the State of Punjab and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Copy of the master data of the respondent-corporate debtor is at Annexure A-2.

4. The facts of the case, briefly stated, are that the petitioner-operational creditor is engaged in the business of supplying and manufacturing leather and textile chemicals. The respondent-corporate debtor regularly transacted with the petitioner-operational creditor for purchase of various leather and chemical products and accordingly different invoices amounting to a sum of ₹9,62,317 were raised. Copies of the invoices raised from time to time are annexed as Annexure A-3 (colly). It is stated that the respondent-corporate debtor paid only an amount of ₹5,27,301/- at various intervals by cheque and thereafter, stopped making payments to the petitioner-operational creditor. The outstanding amount against the respondent-corporate debtor is ₹5,22,019/-, which includes ₹4,35,016/- as the principal amount. The invoices under which the petitioner-operational creditor sold goods to respondent-corporate debtor are from 07.03.2016 to 22.04.2017, copies of which are at Annexure A-3. It is stated that



the petitioner-operational creditor is maintaining its ledger account in due course of business and the same shows that debt due towards petitioner-operational creditor is ₹4,35,016/-. Copy of statement of account from 01.04.2016 to 31.03.2018 is at Annexure A-4.

5. The petitioner sent a demand notice in Form 3 dated 17.07.2018, Annexure A-5 under Section 8 of the Code, claiming the amount due towards the default along with copies of the invoices. As per postal receipt dated 23.07.2018 as at Page 153 of the paper book, the notice was sent by speed post to the respondent-corporate debtor. As per the tracking report of the Postal Department as at Page 154 of the paper book, the notice was delivered to the respondent-corporate debtor on 27.07.2018. Mr. Surinder Kumar Pupneja, Proprietor, of the petitioner-operational creditor also filed his affidavit, stating therein that the petitioner-operational creditor has not received any reply from the respondent-corporate debtor to its demand notice dated 17.07.2018. In the said affidavit, it is also stated that there is no dispute of unpaid operational debt pending between the parties in any court of law or authorities as on day.

6. Notice of this petition to show cause as to why this petition be not admitted was issued to the respondent-corporate debtor on 05.09.2018 and the matter was fixed on 10.10.2018. However, on the said date i.e. 10.10.2018, the learned counsel for the petitioner handed over the envelope across bar containing copy of the petition with entire paper book which was dispatched to the respondent-corporate debtor. The same was stated to have been returned undelivered with the report purported to be made by the postal employee that the office is lying closed for long. The learned counsel further submitted that



envelope was dispatched by speed post on 03.10.2018, which was too late and that the record of the postal department was not updated. Thus, a fresh notice was issued to the respondent-corporate debtor and the matter was fixed for 12.11.2018.

7. When the matter was listed on 12.11.2018, the learned counsel for the petitioner handed over the envelope containing copy of notice and the paperbook of the petition, which was sent by speed post to the respondent-corporate debtor with the report purported to be made by the postal employee 'returned as unclaimed.' The petitioner had also filed affidavit of service, vide Diary No.4345 dated 12.11.2018 along with postal receipt with regard to the dispatch of the notice with copy of petition and the entire paper book by speed post on 18.10.2018 and it was stated that the tracking report was not updated after 19.10.2018 and that the petitioner has not yet received back the copy of the petition. It is also stated that copy of the notice was sent at the e-mail address of the respondent-corporate debtor, as available on the master data of the respondent-corporate debtor, which has not bounced back. Learned counsel for the petitioner submits that the address of the respondent-corporate debtor on the postal envelope containing the notice was mentioned as per the address mentioned in the master data of the respondent-corporate debtor and at the same address the demand notice was served. Therefore, service having been effected by proper mode i.e. service by e-mail at the e-mail address as mentioned in the master data, the respondent was considered duly served and there was no representation from the respondent-corporate debtor.



8. When the matter was listed on 18.03.2019, the petitioner prayed for granting some time to take remedial steps to amend the memo of parties in the name of the proprietor, as the petition was filed in the name of the business.

9. Vide order dated 26.03.2019, the petitioner was again directed to intimate the next date of hearing to the respondent-corporate debtor and place on record affidavit of service. Accordingly, vide Diary No.2455 dated 15.05.2019, affidavit of service in that regard was filed, wherein it was stated that in pursuance of the order dated 26.03.2019, copy of petition and copy of order dated 26.03.2019, has been served upon e-mail address of the respondent-corporate debtor, as available on the master data of the corporate debtor and that the e-mail has not bounced back.

10. In the meanwhile, in compliance of the order dated 26.03.2019, the petitioner-operational creditor filed an application i.e. CA No.462/2019 under Section 60(5) of the Code for amending the memo of parties and vide order dated 06.09.2019, the same was allowed and the amended memo of parties was taken on record. On the said date also i.e. 06.09.2019, it was noticed that there was no representation from the respondent.

11. We have heard the learned counsel for the petitioner and perused the records carefully.

12. We have perused the application in Form 5, which is complete in all aspects. The petitioner-operational creditor has filed this petition in prescribed form after expiry of 10 days of service of demand notice and thereby, complying with the requirement of sub-sections (1) and (2) of Section 9 of the Code. The petitioner has also complied with various requirements of sub-clauses of sub-

Section (3) of Section 9 of the Code. The bank statement issued by HDFC Bank, where the petitioner is maintaining its account is also filed, the same is at Annexure A-7.

13. The proposed Resolution Professional has filed Form 2 (Annexure 10 of the petition), stating that there are no disciplinary proceedings pending against him with the Board or institute of Insolvency Professionals.

14. All the ingredients of clause (i) of sub-section (5) of Section 9 of the Code stand fulfilled as the application is found to be complete in all respects. We therefore, admit this CP and direct initiation of CIRP in the case of M/s Hawk Leathers Pvt. Ltd. and declare moratorium and appoint Interim Resolution Professional as below.

15. We declare the moratorium in terms of sub-section (1) of Section 14 of the Code, as under:-

- a) the institution of suits or continuation of pending suits or proceedings against the 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 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 corporate debtor in respect of its property including any action under the Securitization and



Reconstruction of Operational Assets and Enforcement of Security Interest Act, 2002;

- d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

16. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during moratorium period. The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

17. The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

18. The following directions are issued in respect of the appointment of the Interim Resolution Professional: -

- i.) Appoint Mr. Mast Ram ~~Anora~~, SCO 23-24, IInd Floor, Sector 34-A, Chandigarh- 160022, having Registration No.IBBI/IPA-002/IP-N00211/2017-18/10664 and email address mrchechi@gmail.com, Mobile No.9417264876 as an Interim Resolution Professional;

*Correction in the name made vide order passed on 17.9.19
MJB
designated Registrar
17.9.19*



- ii.) The term of appointment of Mr. Mast Ram, shall be in accordance with the provisions of Section 16(5) of the Code;
- iii.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of inventory of assets of the Corporate Debtor;
- iv.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his



profession and as an Insolvency Professional with high standards of ethics and moral;

v.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

vi.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;

vii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of



thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

- viii.) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

-sd-

(Pradeep R. Sethi)
Member (Technical)

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(Ajay Kumar Vatsavayi)
Member (Judicial)

September 16th, 2019
Mohit Kumar






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National Company Law Tribunal
Chandigarh Bench, Chandigarh