



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

**CP(IB) No. 80/Chd/Chd/2021
Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

**Kudos Chemie Limited
(Through Resolution Professional)
Mr. Rajender Kumar Jain
House No.3698/1, First Floor
Sector 46-C, Chandigarh-160047**

...Petitioner-Operational Creditor

Vs.

**Rahul Sales Limited
Regd. Office:
SCO No.151-152, IInd Floor,
Sector 8 C, Chandigarh-160018
(CIN No.U55109CH1991PLC011625)**

...Respondent-Corporate Debtor

Judgement delivered on: 14.09.2023

**Coram: Hon’ble Mr. Harnam Singh Thakur, Member (Judicial)
Hon’ble Mr. Subrata Kumar Dash, Member (Technical)**

For the Petitioner-
Operational Creditor : Mr. Abhishek Anand, Advocate
: Mr. Viren Sharma, Advocate
: Ms. Sajal Jain, Advocate

For the Respondent-
Corporate Debtor : Proceeded *ex parte* vide
order dated 08.07.2022

Per: Harnam Singh Thakur, Member (Judicial)



JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**for brevity 'IBC' / 'Code'**), by **Kudos Chemie Limited**, (Through Resolution Professional) Mr. Rajender Kumar Jain (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **Rahul Sales Limited. (RSL)**, (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, Rahul Sales Limited, is a Company incorporated on 01.05.2017 under the provisions of the Companies Act, 1956 with CIN No.U55109CH1991PLC011625 with its registered office Regd. Office: SCO No.151-152, IInd Floor, Sector 8 C, Chandigarh-160018. Hence, the territorial jurisdiction lies with this Adjudicating Authority. A copy of the master data of the corporate debtor is attached to Annexure-III.

3. The facts of the case, briefly, as stated in the petition, the CIRP of the applicant company (the then the Corporate Debtor) commenced vide an order dated 05.07.2019 of this Adjudicating Authority and Mr. Rajinder Kumar Jain, was appointed as the Interim Resolution Professional and subsequently confirmed as Resolution Professional following the decision of Committee of Creditors of the Corporate Debtor("COC") in their second meeting duly held on 17.09.2019. The applicant/operational creditor supplied goods to the corporate debtor and raised different invoices detailed in Para 1 of the petition (Annexure-V).



Further, the Balance Confirmation Certificate signed on behalf of the Corporate Debtor as on 31.03.2016 is for an amount of Rs. 2,52,90,77,662/- (Rupees Two Hundred Fifty-Two Lakh Ninety Lakh Seventy Seven Thousand Six Hundred Sixty-Two Only).

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 4,95,99,74,800/- (Rupees Four Hundred Ninety-Five Crore Ninety-Nine Lakh Seventy Four Thousand Eight Hundred Only) which includes Rs.2,52,90,77,662/- (Rupees Two Hundred Fifty-Two Lakh Ninety Lakh Seventy Seven Thousand Six Hundred Sixty-Two Only) as principal and Rs.2,43,08,97,138/- (Rupees Two Hundred Forty-Three Crore Eight Lakh Ninety Seven Thousand One Hundred Thirty-Eight Only) as interest thereon @ 18% as per the terms and conditions of our supply till 06.01.2020. The date of default as mentioned in the petition is 31.03.2016 based upon the invoices. However, compliance affidavit vide Diary No.00151/01 dated 05.01.2022 was filed by the operational creditor clarifying the date of default as 08.12.2018 i.e. when the balance confirmation as on 31.03.2016 was given by the corporate debtor. Copy of Balance Confirmation Certificate (Annexure-II A), KYC, Registration Certificate of RP (Annexure-IV), Invoices (Annexure-V), Bill wise summary of outstanding dues and interest calculation (Annexure-VI), Ledger account statement (Annexure-VII) and accounts from the banks maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid (Annexure-VIII) are attached with the main petition.

5. A demand notice dated 06.01.2020 in Form 3 & 4 is stated to be issued by the operational creditor to the corporate debtor through speed post



and vide email dated 18.01.2020. The notice was delivered to corporate debtor as the delivery report and tracking receipts are attached at Annexure-I of the petition. The corporate debtor gave reply dated 31.01.2020 to the demand notice wherein it is stated that the corporate debtor's contents of the demand notice are bereft of any substance and merit. Nothing in the demand notice will be deemed to have been admitted by RSL. There is a pre-existing dispute on account of invoices raised to RSL but the operational creditor never made any demand for payment since, 2013 it was only vide letter dated 30.11.2019, the demand was raised. The notice is issued by Mr. Rajinder Kumar, Resolution Professional who does not have authority or power to issue the same. There is amount due and payable by RSL. The demand for the debt is time barred as there were 36 invoices raised from 31.10.2013 to 07.04.2014 each becoming due after 60 days from date of respective invoice. The date of default is admitted as 31.03.2016 in the petition which subsist till 31.03.2019. The notice dated 06.01.2020 is beyond statutory prescribed limited of three years.

6. Notice of this petition has been issued to the corporate debtor to show cause as to why this petition be not admitted. The Affidavit of Service was filed vide Diary No. 00151/3 dated 01.04.2022. Vide order dated 26.04.2022 last opportunity was granted to the respondent-corporate debtor for filing its reply. However, thereafter none appeared on behalf of the corporate debtor nor any reply was filed. Thus, the respondent/corporate debtor proceeded against ex parte vide order dated 08.07.2022 of this adjudicating authority. The short written submissions were filed by the petitioner vide Diary No. 00151/4 dated 07.12.2022.



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

8. The first issue for consideration is whether the demand notice dated 06.01.2020 in Form 3 & 4 was duly served upon the corporate debtor. The demand notice dated 06.01.2020 was issued to the corporate debtor vide email dated 18.01.2020 and through speed post as the delivery report/tracking receipts are attached at Annexure-I of the petition. The corporate debtor gave reply dated 31.01.2020 to the demand notice. Therefore, demand notice was duly served upon the corporate debtor.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of an affidavit under Section 9(3)(b) by the operational creditor that after sending the demand notice dated 06.01.2020 to the corporate debtor, replied dated 31.01.2020 was received stating that the debt is time-barred and raised dispute regarding the amount in terms of Section 8(2)(a) of the I&B Code, 2016. Further, no dispute was pending or arose by the corporate debtor qua the outstanding amount even prior to the sending of the statutory demand notice dated 06.01.2020.

However, there is no cogent evidence placed on record by the respondent-corporate debtor in support of his plea. Hence, there is no pre-existing dispute between the parties.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 06.01.2020 in Form 3 & 4 was duly served on the corporate debtor. However, the period of limitation would begin from the date of default. The compliance affidavit vide Diary



No.00151/01 dated 05.01.2022 was filed by the operational creditor clarifying the date of default as 08.12.2018 i.e. when the balance confirmation as on 31.03.2016 was given by the corporate debtor which extends the limitation period by further three years i.e. till 07.12.2021. Reliance can be placed upon by the judgement passed by **Hon'ble Supreme Court** in the case of **Dena Bank Vs. Shiva Kumar Reddy and Anr. Civil Appeal No.1650 of 2020** wherein it was held that, "142. To sum up, in our considered opinion an application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgment of the debt by the Corporate Debtor before the expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years." This application was filed on 26.02.2020 vide Diary No. 1580 and re-filed on 28.01.2021 vide Diary No.00151. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. We have gone through the contents of the application filed in Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 4,95,99,74,800/- (Rupees Four Hundred Ninety-Five Crore Ninety-Nine Lakh Seventy Four Thousand Eight Hundred Only) which includes Rs.2,52,90,77,662/- (Rupees Two Hundred Fifty-Two Lakh Ninety Lakh Seventy Seven Thousand Six Hundred Sixty-Two Only) as principal and Rs.2,43,08,97,138/- (Rupees Two Hundred Fourty Three Crore Eight Lakh Ninety Seven Thousand One Hundred Thirty Eight Only) as interest thereon @ 18% as per the terms and conditions of



our supply till 06.01.2020 is still pending which amounts to default, when the corporate debtor avoided the payment of outstanding amount despite repeated reminders by the petitioner-operational creditor. Copy of Balance Confirmation Certificate (Annexure-II A), KYC, Registration Certificate of RP (Annexure-IV), Invoices (Annexure-V), Bill wise summary of outstanding dues and interest calculation (Annexure-VI), Ledger account statement (Annexure-VII) and Copy of the relevant accounts from the banks maintaining accounts of the operational creditor confirming that there is no payment of the relevant unpaid (Annexure-VIII) are attached with the main petition. The petitioner has proved the debt and the default which is above the threshold limit of rupees One crore.

12. In the present petition all the aforesaid requirements have been satisfied. It is seen that the petition preferred by the petitioner is complete in all respects. The material on record clearly goes to show that the respondent committed default in payment of the claimed operational debt even after the demand made by the petitioner. The entire evidence and assertion of petitioner remained unrebutted as respondent/corporate debtor did not come present and proceeded ex-parte. In view of the satisfaction of the conditions provided for in Section 9(5)(i) of the Code, we admit the petition for initiation of the CIR Process in the case of the Corporate Debtor, Rahul Sales Limited and also direct moratorium to take effect and appoint Interim Resolution Professional as below :-

13. In Part-III of Form No. 5, Mr. Tarsem Chand Garg has been proposed as Interim Resolution Professional (IRP) by the petitioner. However, vide IA No.94/2023, Mr. Kushvinder Singhal has been proposed as



new IRP by the petitioner. Form-2 dated 03.01.2023, Form-B dated 15.11.2022 wherein AFA is valid upto 14.11.2023 along with Certificate of Registration issued by Insolvency and Bankruptcy Board of India has been submitted. The Law Research Associate of this Tribunal has checked the credentials of Mr. Khushvinder Singhal and there is nothing adverse against him. In view of the above, we appoint Mr. Khushvinder Singhal, Registration No.IBBI/IPA-002 /IP-N00888 /2019-2020 /12833 ,E-mail: kvsinghal@gmail.com, Mobile No.9914030030, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Khushvinder Singhal shall be in accordance with the provisions of Section 16(5) of the Code;
- ii.) 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;



iii.) 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;


iv.) 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;

v.) 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;

vi.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider



kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. The statutory auditor is directed to share with the Resolution Professional the audit documentation and the audit trails, which they are mandated to retain pursuant to SA-230 (Audit Documentation) prescribed by the Auditing and Assurance Standards Board ICAI. The IRP/Resolution Professional is directed to take possession of the Books of Account in physical form or the computer systems storing the electronic records at the earliest. In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order. For retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific



mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.

viii.) 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

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



14. 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.

15. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, if any, 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.



16. 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.

17. The petitioner is directed to deposit an amount of Rs.2,00,000/- (Rupees TwoLakhs Only) with the Interim Resolution Professional to meet the immediate expenses of the CIRP within two weeks. The same shall be fully accountable by Interim Resolution Professional and shall be reimbursed by the Committee of Creditors (CoC) to the petitioner to be recovered as the CIRP cost.

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

19. This petition is accordingly admitted.

sd/-
(Subrata Kumar Dash)
Member (Technical)

sd/-
(Harnam Singh Thakur)
Member (Judicial)

September 14, 2023
SD/TBG