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

CP (IB) No. 283/Chd/Pb/2019
Under Section 9 of the Insolvency and Bankruptcy Code, 2016.

In the matter of:

M/s Vijay Paints & Chemicals
having its registered office at
#418, Industrial Area-A, Ludhiana-141010,
through its Sole Proprietor Smt. Renu Seth.

…Petitioner-Operational Creditor

Vs.

M/s Hanson Agro Limited
has its registered office at
Plot No.7, Wariana Industrial Complex,
Leather Complex, Jalandhar, Punjab-144004
CIN No.U02001PB1993PLC013312

…Respondent-Corporate Debtor

Judgement delivered on: 20.04.2023

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

For the Petitioner-Operational Creditor : Mr. Pulkit Goyal, Advocate
For the Respondent-Corporate Debtor : Mr. M.S. Gill, Advocate

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 **M/s Vijay Paints & Chemicals** through its Proprietor Smt. Renu Seth (**for brevity ‘Operational Creditor’ / ‘Petitioner’**), with a prayer to initiate Corporate

Insolvency Resolution Process (**CIRP**) in case of **M/s Hanson Agro Limited** (**for brevity 'Corporate Debtor' / 'Respondent'**).

2. The Corporate Debtor, namely, **M/s Hanson Agro Limited**, is a Company incorporated on 11.05.1993 under the provisions of the Companies Act, 1956 with CIN No.U02001PB1993PLC013312 with its registered office at Plot No.7, Wariana Industrial Complex, Leather Complex, Jalandhar, Punjab-144004. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition and marked as Annexure 1.

3. The facts of the case, briefly, as stated in the petition are that the Operational Creditor is engaged in the trading of Paints & Chemicals. Both parties are trading with each other for last many years. A chemical i.e. Ethyl Acetate was supplied to Corporate Debtor by Operational Creditor and promised to make payment against each invoice soon after the delivery of goods. The payment was not received for the goods delivered between 24.07.2018 to 26.09.2018. The Corporate Debtor used to make payments by way of electronic transfer or through cheques against the raised invoices. The corporate debtor failed to make part payment of the invoice dated 24.07.2018 and full payment of invoices issued thereafter. However, a partial payment of Rs. 30,568/- was received against the invoice bearing no. B89. Thereafter, no payment was received.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 2,10,896/- (Rupees Two Lakh Ten Thousand Eight Hundred Ninety Six Only/-). The default occurred on 24.07.2018 i.e. date from which Bill No. B89 became due to be paid. Copy of

invoices (Annexure 2), Ledger Account (Annexure 3), Statement of Account (Annexure 4) and Bank Certificate (Annexure 5) are attached with the main petition.

5. A demand notice dated 02.03.2019 was withdrawn by the petitioner and fresh demand notice dated 26.03.2019 in Form 3 & 4 is stated to be issued by the operational creditor vide registered post and email dated 27.03.2019 and the same has been delivered to the corporate debtor vide email which did not bounce back. The delivery report, postal receipts, postal envelope and copy of email are attached at Annexures 6 & 7 with the main petition. The corporate debtor gave reply dated 15.04.2019 to demand notice dated 02.03.2019 wherein it is stated that the chemical supplied was of poor quality. The lamination of plastic rolls and pouches was delaminated. The balance quantity of about 20000 BOPP HDPE laminated bags is still lying in the godown. Due to defective material supplied, there was a loss of Rs. 3 lakhs. Mr. Puneet Seth assured of compensating for the loss by issuing a credit note worth the amount of the invoice.

6. The notice of this petition has been issued to the corporate debtor to show cause as to why this petition not be admitted. The affidavits of service were filed vide diary Nos. 4065 dated 14.08.2019, 5058 dated 23.09.2019 and 00195/1 dated 26.04.2022. The corporate debtor has filed a written statement vide diary No.5130 dated 25.9.2019, wherein it is stated that the petitioner had sent two demand notices dated 02.03.2019 and 26.03.2019. The second demand notice was factually different and had different information and legal implications. The first notice mentions the details of outstanding invoices from the year 2017 and after the

implementation of GST to 26.09.2018, therefore, the definiteness of dates and jurisdiction which fall under Ludhiana is to be checked. The definite date is 01.07.2017 based on the ledger maintained by the Company. However, in the second notice, the dates are mentioned as 01.04.2018 to 26.09.2018. Therefore, the dates are different. The petitioner has not revealed the factum of the litigation pending and did not represent themselves before Commercial Courts. Further, a mediation application was filed before Legal District and Service Authority, Alternate Dispute Resolution Center, Court Complex, Jalandhar and as per the order dated 12.06.2019 of Civil Judge cum Secretary, District Legal Service Authority states that the party does not want to enter the mediation process.

7. The rejoinder to the written statement was filed by the petitioner vide diary No.1503 dated 24.02.2020, wherein it is stated that the earlier demand notice was withdrawn and the amended demand notice dated 22.03.2019 was sent by post. The litigation pending between the parties was only initiated by the Corporate Debtor after the filing of the present company petition. The proceedings initiated by the Corporate Debtor before District Legal Service Authority were only after the delivery of demand notice.

8. The short written submissions have been filed by petitioner vide Diary No.00195/2 dated 13.07.2022 and by respondent-corporate debtor vide diary No.00195/3 dated 25.01.2023,

9. We have heard the learned counsel for the petitioner as well as corporate debtor and have perused the records.

10. The first issue for consideration is whether the demand notice in Form 3 & 4 dated 26.03.2019 is stated to be issued by the operational

creditor vide registered post and email dated 27.03.2019 and the same has been delivered to the corporate debtor vide email which did not bounced back. The delivery report, postal receipts, postal envelope and copy of email are attached at Annexure 6 & 7 with the main petition. The corporate debtor gave reply dated 15.04.2019 to demand notice dated 02.03.2019.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by way of affidavit by learned counsel for the Operational Creditor that the Corporate Debtor did not raise any dispute within the stipulated time or upto the date of filing this petition, nor did it raise any dispute qua the outstanding amount. Moreover, as per the knowledge of the petitioner Operational Creditor, even 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 26.03.2019.

It is stated by the respondent filed an application before Mediator, District Legal Services Authority, Dispute Resolution Center, Court Complex, Jalandhar for which authority announced the order dated 12.06.2019 and thereafter, the respondent choose to go for adjudication before Commercial Court, Jalandhar. However, it is seen from the records that the application filed before the Mediator, District Legal Services Authority, Dispute Resolution Center, Court Complex, Jalandhar only after filing of the present petition on 18.03.2019 and re-filed on 15.04.2019 under Section 9. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

12. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 26.03.2019 in Form 3 & 4

attached as (Annexure 6 & 7) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default i.e. 24.07.2018 i.e. date from which Bill No. B89 became due to be paid. This application was filed vide Diary No.1939 on 18.03.2019 and was re-filed on 15.04.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

13. We have gone through the contents of the application filed in the Form 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of Rs. 2,10,896/- (Rupees Two Lakh Ten Thousand Eight Hundred Ninety Six Only/-) is still pending which amounts to default, when corporate debtor avoided the payment of outstanding amount despite repeated reminders by petitioner-operational creditor. Copy of invoices (Annexure 2), Ledger Account (Annexure 3), Statement of Account (Annexure 4) and Bank Certificate (Annexure 5) are attached with the main petition. Accordingly, the petitioner proved the debt and the default, which is more than Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020) by the respondent-corporate debtor.

14. Although, respondent has raised dispute about the quality of goods and also pendency of litigation in Commercial Court. However, this contention of respondent-Corporate Debtor is devoid of legal force because there is no evidence on record to show that respondent-Corporate Debtor raised the quality dispute before serving demand notice. Even the litigation in the Commercial Court has been filed after reply to demand notice. Suit has been filed on 18.03.2019 and was refiled on 15.04.2019 whereas, demand

notice was sent on 26.03.2019, and reply for the demand notice was filed on 02.03.2019 and amended on 15.04.2019. Therefore, both the demand notices are within the period of limitation. Thus, the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. In these circumstances, the conditions under Section 9 of the Code stand satisfied. It is evident that from the aforesaid discussed facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above threshold limit.

15. 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 demand made by the petitioner. 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, **M/s Hanson Agro Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

16. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) had been proposed by the petitioner. However, vide IA No.1760/2022 Mr. Mohit Chawla has been proposed as new IRP (Interim Resolution Professional). The Form 2 dated 21.09.2022 along with Certificate of Registration issued by IBBI and Form B is attached with the application. The Law Research Associate of this Tribunal has checked the credentials of Mr. Mohit Chawla, his AFA Certification is valid upto 01.12.2023 and there is nothing adverse against

him. In view of the above, we appoint Mr. Mohit Chawla, Registration No.IBBI/IPA-001/IP-P00524/2017-2018/10949,E-mail:ipservices@embeegroup.in, Mobile No. +91-9888003303, the Interim Resolution Professional with the following directions:-

i.) The term of appointment of Mr. Mohit Chawla 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.

17. 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.

18. 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.

19. 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.

20. The petitioner is directed to deposit an amount of ₹30,000/- (Rupees Thirty Thousand 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.

21. 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.

22. This petition is accordingly admitted.

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

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

April 20, 2023
PRF/TB