

**THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

**CA No. 716/2019
And
CP (IB) No. 327/Chd/Pb/2019**

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016 and Rule 11
of NCLT Rules, 2016.**

In the matter of:

**M/s Bidar Chemo
Trades (Proprietorship Firm)**
with its registered office at
210, Yogeshwar Building, 135/139,
Kazi Sayed Street, Masjid Bunder,
Mumbai-400003

...Petitioner-Operational Creditor

Vs.

M/s Rchem Industries Private Limited
with its registered office at
Village Bassikalekhan P.O Haryana,
Hoshiarpur, Punjab

...Respondent-Corporate Debtor

Judgment delivered on: 06.10.2021

**Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr. Raghu Nayyar, Member (Technical)**

For the Petitioner-Operational Creditor: Mr. Pankaj Khullar, Advocate

Per: Ajay Kumar Vatsavayi, Member (Judicial)

JUDGMENT

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, (**for brevity 'IBC' / 'Code'**), 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by M/s Bidar Chemo Trades, through its Proprietor Mr. Sanjay Darooka (**for brevity 'Operational Creditor' / 'Petitioner'**), with a prayer to initiate Corporate Insolvency Process against M/s Rchem Industries Pvt. Ltd. (**for brevity 'Corporate Debtor'**). There is an affidavit of Mr. Sanjay Darooka in support of the contents of the application at page No.18 of the petition.

2. The Corporate Debtor namely, M/s Rchem Industries, is a Company incorporated on 11.10.1999 under the provisions of Companies Act, 1956 with CIN No. U51109PB1999PTC023005 having its registered office at Village Bassikalekhan P.O Hariana, Hoshiarpur, Punjab which falls within the State of Punjab. Hence, the jurisdiction lies with this Adjudicating Authority. The Authorized Share Capital of the Respondent Company is ₹2,00,00,000/- and Paid-Up Share Capital of the Company is ₹1,58,15,000/-. Copy of Master Data of corporate debtor is found at Annexure P6 (Page No. 29) of petition.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor deals in buying and selling of Methanol in various quantity/sizes. Petitioner-operational creditor used to supply "methanol" in different quantities/sizes to the corporate debtor and in it's usual course of business, petitioner used to raise invoices and payments were made by the corporate debtor from time to time against the invoices raised. The

operational creditor issued Invoice bearing No. 000259 dated 17.10.2018 for a sum of ₹9,67,205/-, Invoice bearing No. 000250 dated 19.10.2018 for a sum of ₹9,65,205/- and Invoice bearing No. 000251 dated 19.10.2018 for a sum of ₹9,60,845/-, which remained unpaid and a balance sum of ₹ 28,90,257/- became due and payable by corporate debtor. Copy of invoices bearing No. 000249, 000250 and 000251 and ledger account of corporate debtor maintained by operational creditor are attached as Annexure P2, P3, P4 and P5 respectively. It is also submitted that operational creditor issued three cheques bearing Nos. 073612 dated 26.12.2018, 073613 dated 28.12.2018 and 073614 dated 28.12.2018 in favour of operational creditor to settle the pending dues amounting to ₹28,90,257/-. The aforesaid cheques were presented for payment by petitioner with his banker but the same are returned unpaid with remarks "Funds Insufficient" for one cheque and "Crossed to two banks" for other two cheques. Copy of cheque return memo along with cheques are attached as Annexure P-8 (Colly) of the petition. Thereafter, a legal notice dated 07.03.2019 (Annexure P-10) under Section 138 of Negotiable Instruments Act was issued demanding payment of aforesaid cheques within 15 days. As per Part-IV of Form 5, the total amount claimed to be in default is ₹28,90,257/- (along with interest @ 21% per annum) and date of default is stated to be 18.12.2018.

4. It is stated that the respondent-corporate debtor has failed to discharge its obligation towards the applicant-operational creditor, in as much as it failed to make the payment due to the applicant-operational creditor.

5. A demand notice in Form 3 dated 13.02.2019 (Annexure P-11) is stated to be served upon the corporate debtor by speed post. The demand

notice was accompanied by copy of purchase order dated 16.10.2018 and copy of invoices dated 17.10.2018, 19.10.2018 at 19.10.2018. Original postal receipt and copy of tracking report are attached as Annexure P-12 (Colly). The corporate debtor vide demand notice dated 13.02.2019 was called upon to repay the total unpaid operational debt of ₹28,90,257/-.

6. It is deposed by the petitioner that the demand notice was issued to the corporate debtor vide speed post and no notice/reply has been given by the corporate debtor to demand notice dated 13.02.2019. The aforesaid affidavit is appended with the petition at Page Nos. 19 & 20.

7. During the pendency of the present petition, CA No. 716/2019 was filed by petitioner-operational creditor seeking directions to restrain the corporate debtor from selling or alienating any of its assets, both movable and immovable in any manner.

8. Notice of this petition was issued to the corporate debtor on 12.07.2019 to show cause as to why this petition be not admitted. Petitioner-operational creditor has filed affidavit of service vide Diary No. 4327 dated 26.08.2019 wherein notices were duly served to the respondent-corporate debtor. However, on the last date of hearing the following order has been passed:-

“On 22.01.2020, the following order was passed:-

“CP (IB) No. 327/Chd/Pb/2019

In spite of availing substantial time, the respondent/corporate debtor has chosen not to file reply till date.

2. List on 06.03.2020 for filing reply within three weeks as a last chance with a copy

to the other side, failing which the respondent shall be liable to pay costs of ₹ 10,000/- to the Prime Minister's National Relief Funds. Rejoinder, if any, be filed within one week thereafter after service on the other side.

CA No. 716/2019

The instant CA has been filed by the petitioner in the CP under rule 11 of NCLT Rules, 2016 seeking directions to restrain the corporate debtor from selling or otherwise alienating any of its assets, both movable and immovable in any manner.

2. *No reply has been filed by the respondent in the CA. Even in the CP also, till date no reply has been filed.*

3. *List the CA also on 06.03.2020.*

4. *In the meantime, the respondent/corporate debtor shall not alienate any of his immovable properties."*

2. In spite of the above orders, the corporate debtor has neither filed any reply till date nor there is any representation from the corporate debtor today. Accordingly, the respondent-corporate debtor is set ex-parte.

3. Heard Mr. Pankaj Khullar, Advocate for the petitioner. Order reserved in CP and CA."

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

10. The first issue for consideration is whether the demand notice in Form 3 dated 13.02.2019 was properly served. The demand notice was sent to the registered address of the corporate debtor as per the master data at Annexure P-6 (Page No. 46) of the application in which registered office is shown as Village Bassikalekhan PO Hariana Hoshiarpur Punjab. Original postal receipt and copy of tracking report showing duly service of notice are at Annexure –P-12 (Page Nos. 55 and 56).

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. The operational creditor has attached copy of various invoices (Annexures P2 to P4) in order to prove the debt. A demand Notice dated 13.02.2019 has been sent by operational creditor demanding payment of unpaid operational debt of ₹28,90,257/-. After the service of demand notice, corporate debtor wrote an e-mail dated 24.04.2019 (Annexure P-13) wherein it is stated that company is unable to pay the debt. It can be seen that even after service of Demand Notice dated 13.02.2019, no notice of dispute has been raised by the corporate debtor. In view of the same, we held that there is no pre-existing dispute.

12. The other issue for consideration is whether the C.P. is filed within limitation. All the invoices (Annexures P-2 to P-4) are pertaining to the year 2018 and since the C.P. is filed in the year 2019, therefore, the C.P. is well within the period of limitation.

13. We have gone through the contents of the application filed in the Form No. 5 and find the same to be complete. As discussed above, there is a total unpaid operational debt (in default) of ₹28,90,257/- (along with interest of 21% per annum) from 18.10.2018. Copy of various invoices raised by operational creditor are appended with the petition and the same are found as Annexures P-2 to P-4 of petition. Moreover, demand notice in Form 3 dated 13.02.2019 (Annexure-P11) was also sent at the registered address of corporate debtor stating that the amount due is ₹28,90,257/-. As a statutory requirement under Section 9(3)(b) of the Code, an affidavit dated 04.06.2019 (Page Nos. 19 and 20) has been placed by the operational creditor stating that despite the service of demand notice dated 13.02.2019 (Annexure P-11),

operational creditor did not receive any reply to demand notice. As per ledger account of corporate debtor maintained with operational creditor from 01.04.2018 to 31.03.2020 (Annexure P-5); an outstanding balance of ₹28,90,257/- is due and payable by corporate debtor. It has been shown that the corporate debtor has failed to make payment of the aforesaid amount due as mentioned in the statutory notice till date. It is also observed that the conditions under Section 9 of the Code stand satisfied. Accordingly, the petitioner proved the debt and the default, which is more than ₹1 lakh by the respondent-corporate debtor.

14. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Operational Debt for the default amount being above ₹1,00,000/-, the petition is admitted in terms of Section 9 of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

- “(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 Financial 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.
- (e) 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.
- (f) 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.
- (g) 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.”

15. The Operational Creditor has not recommended any person as IRP. In this regard a letter bearing File No.25/02/2021-NCLT dated 01.07.2021

has been received from the National Company Law Tribunal, New Delhi forwarding therewith a copy of letter No.IP-12011/1/2020-IBBI/1013/1965 dated 30.06.2021 along with the guidelines and the panel of resolution professionals approved for NCLT, Chandigarh Bench for appointment as IRP or Liquidator. The panel is valid for six months for July-December 2021. We select Mr. Harish Malhotra appearing at Serial No. 4 of the panel to be appointed as Interim Resolution Professional.

16. The Law Research Associate of this Tribunal has checked the credentials of Mr. Harish Malhotra and there is nothing adverse against him. In view of the above, we appoint Mr. Harish Malhotra, Registration No. IBBI/IPA-001/IP-P00728/2017-18/11223, E-mail: ca.harish@gmail.com, as the Interim Resolution Professional subject to the condition that he shall file Form 2 within a period of one week from the date of this order if not filed. The IRP is directed to take the steps as mandated under the IBC inter-alia under Section 15, 17, 18, 20 and 21 of IBC, 2016.

17. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial 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 the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every fortnight.

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18. The instant CA No. 716/2019 has been filed by petitioner under Rule 11 of NCLT Rules, 2016 seeking interim relief along with supporting affidavit.

19. In the circumstances and in view of the judgment passed in CP (IB) No. 327/Chd/Pb/2019, the interim order stand vacated and the instant CA No. 716/2019 is disposed of.

A copy of order shall 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 e-mail address forthwith.

Sd/-
(Raghu Nayyar)
Member (Technical)

Sd/-
(Ajay Kumar Vatsavayi)
Member (Judicial)

October 06th, 2021
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