



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-IV**

**IB-585/(ND)/2019**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**IN THE MATTER OF:**

**K B Polychem India Ltd.**

**..... Operational Creditor/ Applicant**

**Versus**

**Rapt Industries Pvt. Ltd.**

**..... Corporate Debtor**

**Order Delivered on: 24.08.2022**

**Coram:**

**SH. DHARMINDER SINGH, HON'BLE MEMBER (JUDICIAL)**

**DR. BINOD KUMAR SINHA, HON'BLE MEMBER (TECHNICAL)**

**ORDER**

**PER: DR. BINOD KUMAR SINHA, MEMBER- TECHNICAL**

This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate Insolvency Resolution Process in respect of respondent company, claimed to be the corporate debtor.

2. The present petition i.e. CP(IB)585/ND/2019, was dismissed by this Authority vide order dated 22.01.2022 on the ground of 'pre-existing dispute'. The said

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order was challenged by the petitioner herein before the Hon'ble NCLAT, New Delhi, vide Company Appeal (AT) (Ins) No. 396 of 2020. Hon'ble NCLAT, vide order dated 13.07.2022, accepted the said appeal and held that there was no pre-existing dispute between the parties. Accordingly, it is held that the conclusion of the *Adjudicating Authority that the dispute existed before the issue of demand notice under Section 8 and thereafter, section 9 application is erroneous.*

3. Further, Hon'ble NCLAT also held in para No. 9, as under:-

*“On the basis of aforesaid discussion, we are of the clear opinion that the Impugned Order is erroneous. It is therefore set aside. Since the section 9 application was rejected only on the ground of ‘pre-existing dispute’ we admit it for initiation of Corporate Insolvency Resolution Process against the corporate debtor. The matter is sent to the Adjudicating Authority for issuing the necessary orders consequent to admission of section 9 application within 15 days of this judgment.”*

4. Thus, direction has been given to this Authority to pass an appropriate order under Section 9 of the Code, 2016, consequent to the admission of the said application. Accordingly, in view of the order dated 13.07.2022 passed in Company Appeal (AT) (Ins) No. 396 of 2020, the present IB/585/ND/2019 stands allowed with the following order to initiate CIR proceeding against the Corporate Debtor.

5. The operational creditor has not proposed the name of an Interim Resolution Professional therefore this bench appoints Mr. Rakesh Kumar Jindal as Interim Resolution Professional having registration number IBBI/IPA-002/IP-N01148/2021-2022/13963 with email – id: iprakesh.jindal@gmail.com who has to submit an acceptance of the appointment as the interim resolution



professional and has to sign a communication in Form 2 in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. There is a declaration which needs to be made by him/her that no disciplinary proceedings are pending against him in Insolvency and Bankruptcy Board of India or elsewhere. In addition, further necessary disclosures have to be made by IRP above named as per the requirement of the IBBI Regulations.

6. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Mr. Rakesh Kumar Jindal to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

7. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, we also declare moratorium in terms of Section 14 of the Code.

Thus, the following prohibitions are imposed:

*“(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, 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 possession of the corporate debtor.*

*(e) The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearance or similar grant or given by the Central government , State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, on the grounds of current dues arising for the use or continuation of the license, permit, registration, quota, concessions, clearances or a similar grant or right during the moratorium period”.*

8. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

9. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to




extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate orders. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

10. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

Let copy of the order be served to the parties.

Consign the file to the record room.

  
**(DR. BINOD KUMAR SINHA)**  
**MEMBER (T)**

  
**(DHARMINDER SINGH)**  
**MEMBER (J)**