

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

**CP (IB) No.206/Chd/Pb/2019  
Under Section 9 of the Insolvency  
and Bankruptcy Code, 2016.**

**In the matter of:**

**M/s Kemit Chemicals Private Limited**  
having its Regd. office at  
78/12, G.I.D.C. Phase I, Vatva Ahmedabad  
Gujarat-382445

C-1/120, G.I.D.C.,  
Phase-1, Vatva, Ahmedabad-382 445 ...Petitioner-Operational Creditor

Vs.

**M/s Fertile India Agrotech Limited**  
having its Regd. office at  
K 2, Textile Colony, Industrial Area A  
Ludhiana-141008  
CIN No: U24219PB2003PLC025822 ...Respondent-Corporate Debtor

**Judgment delivered on: 13.03.2024**

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

For the Petitioner- Operational Creditor : Mr. Vaibhav Sahni, Advocate  
with Ms. Swati Vashisth, PCA

For the Respondent-Corporate Debtor : ex-parte vide order dated  
27.02.2023

**Per: Harnam Singh Thakur, Member (Judicial)  
Subrata Kumar Dash (Technical)**

**JUDGMENT**

The present petition is filed, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC' / 'Code'), by **M/s Kemit Chemicals Private Limited (for brevity 'Operational Creditor')**

**'Petitioner'**), with a prayer to initiate Corporate Insolvency Resolution Process (**CIRP**) in case of **M/s Fertile India Agrotech Limited (for brevity 'Corporate Debtor' / 'Respondent')**).

2. The Corporate Debtor, namely, is a Company incorporated on 26.02.2003 under the provisions of the Companies Act, 1956 with CIN No. U24219PB2003PLC025822 with its registered office at K 2, Textile Colony, Industrial Area A, Ludhiana-141008. 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 A-3.

3. The brief facts as stated in the petition are that the Operational Creditor was engaged in the business of manufacturing and supplying disbursing and getting agents that are used for agrochemical formulation and the corporate debtor was engaged in the business with the operational creditor since 2014 and placed a request for material to be supplied. The first invoice was raised on 17.12.2014 for Rs. 2,86,243/- and payments were received on 30.01.2015, 04.02.2015 and 05.03.2015 for Rs. 75,000/- each and a balance payment of Rs. 61,243/- was received on 12.05.2015. The operational creditor supplied further goods for Rs. 4,26,124/- and Rs. 4,28,592/- and invoices dated 13.02.2016 and 22.03.2016 were raised. However, 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.12,58,915/- (Rupees Twelve Lakh Fifty Eight Thousand and Nine Hundred Fifteen Only) (Principal amount of Rs. 8,54,716/- and interest @ 18% P.A. of Rs. 4,04,199/- till 15.12.2018) and the default occurred on 20.05.2016 i.e. when last bill raised bearing bill No. 687 dated 22.03.2016 amounting to Rs. 4,28,592/- fell due on 20.05.2016. Copy

of bank certificate where deposits are made and credits are received (Annexure A3), invoices (Annexure A4), ledger Account maintained by Operational Creditor from 01.04.2014 (Annexure A6), working computation (Annexure A2) are attached with the main petition. Ledger account filed vide diary No. 01153/5 dated 30.01.2024. The compliance affidavit was filed by Diary No. 01153/6 dated 04.03.2024 wherein it is stated that the operational creditor & corporate debtor was a running account as the corporate debtor did not pay the entire invoice amount in one go rather it used to make part payments. The payments that were made by the corporate debtor are reflected in the ledger account as maintained by the operational creditor in its usual course of business. The payments were credited to the bank account of the Operational Creditor, which is already annexed with the main petition as Annexure A-3. The entries qua the payments made by the Corporate Debtor are reflected at page No. 37,38,44 & 57 of the main petition.

5. A demand notice in Form 3 is stated to be issued by the operational creditor on 03.01.2019. The short note has been filed vide Diary No. 01153/4 dated 11.01.2024 wherein it is submitted that the notice was issued on the registered address of the corporate debtor on the Ministry of Corporate Affairs Portal via Indian Post, but received back with the note "left without address". Vide order dated 17.05.2019 of this Adjudicating Authority, the notice to the corporate debtor was issued by speed post on 17.06.2019 and was received back with the comment "left". Again the notice was sent on 23.05.2019 which was served upon the corporate debtor on 25.09.2019. The notice was also sent on the email address of the corporate debtor which was not bounced back. The corporate debtor had not replied to the demand notice till date.

6. The 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 Nos. 3601 dated 24.07.2019, 5876 dated 24.10.2019. However, none appeared on behalf of the respondent-corporate debtor and no reply was filed. Therefore, the respondent corporate debtor was proceeded ex-parte vide order dated 27.02.2023 of this Adjudicating Authority.

7. The short written submissions have been filed by the petitioner vide Diary No.01153/3 dated 09.05.2023 reiterating the facts mentioned in the petition and further stated that despite several reminders no payments were made.

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

9. The first issue for consideration is whether the demand notice in Form 3 dated 03.01.2019 was properly served. It is submitted that the notice was issued on the registered address of the corporate debtor on the Ministry of Corporate Affairs Portal via Indian Post, but received back with the note "left without address". Vide order dated 17.05.2019 of this Adjudicating Authority, the notice to the corporate debtor was issued by speed post on 17.06.2019 and was received back with the comment "left". Again the notice was sent on 23.05.2019 which was served upon the corporate debtor on 25.09.2019. The notice was also sent on the email address of the corporate debtor which was not bounced back. Therefore, several attempts were made for delivery of notice and hence, demand notice is deemed to be duly served.

10. The other issue for consideration is whether this application is filed within limitation. A demand notice issued dated 03.01.2019 in Form 3 attached as (Annexure A5) was duly served on the corporate debtor. However, the period of limitation would begin from the date of default 20.05.2016 i.e. when last bill raised bearing bill No. 687 dated 22.03.2016 amounting to Rs. 4,28,592/- fell due on 20.05.2016 with a waiting period of two months (Annexure- A4 and A5). This application was filed vide Diary No. 1351 on 19.03.2019. Therefore, this Adjudicating Authority finds that this application is filed within limitation.

11. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. It is deposed by learned counsel for the petitioner by way of affidavit filed under Section 9(3)(b) dated 14.03.2019 that no notice has been given by the Corporate Debtor relating to a dispute of the unpaid operational debt. Therefore, despite several notices to the respondent-corporate debtor, there was no reply on behalf of the respondent. So, it can be assumed that they have nothing to say in the present matter. Hence, it can be safely concluded that there is no pre-existing dispute regarding the claim in hand.

12. 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.12,58,915/- (Rupees Twelve Lakh Fifty Eight Thousand and Nine Hundred Fifteen Only) (Principal amount of Rs. 8,54,716/- and interest @ 18% P.A. of Rs. 4,04,199/- till 15.12.2018) 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 bank certificate where deposits are made and credits are received (Annexure A3), invoices (Annexure A4), ledger Account maintained by Operational Creditor from 01.04.2014 (Annexure A6), working computation (Annexure A2) 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.

13. It is noted that the corporate debtor has failed to payback the aforesaid amount due as mentioned in the statutory notice till date. Thus, 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.

14. 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 a default in payment of the claimed operational debt even after the 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 Fertile India Agrotech Limited** and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

15. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. Therefore, the Law Research Associate

of this Tribunal has checked the credentials of Mr. Dharmendra Kumar Bhasin and there is nothing adverse against him. In view of the above, we appoint Mr. Dharmendra Kumar Bhasin, Registration No. IBBI/IPA-002/IP-N00816/2019-2020/12564, E-mail:ipdkbhasin@gmail.com, Mobile No. +91-9877932667 from the list provided by the Insolvency and Bankruptcy Board of India, the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Dharmendra Kumar Bhasin shall be in accordance with the provisions of Section 16(5) of the Code, subject to his written consent to be filed within 7 days of this order;
- 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 the 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 the 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 a 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 the 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 the constitution of the Committee; and

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

16. 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.

17. 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 the 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.

18. 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.
19. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One lakh 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.
20. 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.
21. This petition is accordingly admitted.

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

March 13, 2024  
SM/TBG

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