

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

CP (IB) No. 158/Chd/Pb/2019

**Under Section 9 of Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

M/s Aggarwal Metal Works Private Limited

Regd. Office: 205, Second Floor,
“Arunachal Building”, 19, Barakhamba Road,
New Delhi-110001

...Petitioner-Operational Creditor

Vs.

G.S. Radiators Limited

Redg. Office: G.S. Estate, G.T. Road, Ludhiana
CIN No. U45202PB1988PLC008762

...Respondent-Corporate Debtor

Judgement delivered on: 16.02.2023

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

Present

For the Petitioner-
Operational Creditor

: Mr. Rohit Khanna, Advocate
Mr. Raghav Kapoor, Advocate

For the Respondent-
Corporate Debtor

: Ms. Niharika Sohal, 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 Aggarwal Metal Works**

Private Limited through its Authorised Representative, Mr. Vipin Dhingra, Senior Manager, (for brevity 'Operational Creditor' / 'Petitioner'), with a prayer to initiate Corporate Insolvency Resolution Process (CIRP) in case of **G.S. Radiators Limited** (for brevity 'Corporate Debtor' / 'Respondent').

2. The Corporate Debtor, namely, **G.S. Radiators Limited**, is a Company incorporated on 17.10.1988 under the provisions of the Companies Act, 1956 with CIN No. U45202PB1988PLC008762 with its Redg. Office: G.S, Estate, G.T. Road, Ludhiana. Hence, the territorial jurisdiction lies with this Adjudicating Authority. Copy of the master data of the corporate debtor is attached with the main petition as Annexure E.

3. The facts of the case, briefly, as stated in the petition are that the operational creditor is manufacturer of Copper & Copper Alloy Foils, Strips and Sheets, Copper & Brass Round and Flatted Wires in India. The Operational Creditor has been dealing with the corporate debtor from the last several years and the operational creditor used to raise invoices from time to time for supply of the products. The corporate debtor was allowed to make payments within a period of 90 days with the first 45 days being interest-free. The products were supplied to the corporate debtor through its transporter and several invoices were raised between December 2017 to March 2018. Pursuant to raising invoices, an amount of Rs. 65,76,205/-, was pending towards the corporate debtor. Copy of Invoices along with purchase orders, calculation sheet and copy of the receipt issued by the transporter are attached as Annexures- I, G and J respectively of the petition. Thereafter, the Corporate debtor has issued a cheque bearing no. 153340 dated 14.11.2018 amounting to Rs. 50 lakhs but the same was dishonoured on 15.11.2018 due to the insufficiency of funds. A demand notice dated 27.11.2018 (Annexure-L of the

application) under section 8 has been sent to the corporate debtor and the same was delivered at their registered office on 28.11.2018 and 08.12.2018. The Corporate Debtor has replied to the demand notice stating that the material supplied by the corporate debtor is of inferior quality and the same were not supplied within the time frame due to which the Corporate Debtor has suffered huge losses.

4. It is submitted by the petitioner in Form 5, Part IV that the amount claimed to be in default is Rs. 75,07,368/- (Rupees Seventy-Five lakhs Seven Thousand Three Hundred Sixty-Eight only, as on 22.11.2018 including interest @ 18% per annum) and the date of default is stated to be 26.11.2018. The copies of invoices along with the purchase order and a chart showing the calculation of debt due along with the date on which debt fell due is attached as Annexure I & G, respectively of the petition. The copies of e-mail correspondence between the operational creditor and corporate debtor wherein the respondent has assured the payment of the operational creditor are attached as Annexure O of the petition.

5. A demand notice in Form 3 dated 27.11.2018 is stated to be issued by the operational creditor through speed post and courier (Annexure-L) demanding the unpaid operational debt. The said demand notice has been delivered to the corporate Debtor on 28.11.2018 (courier) and on 08.12.2018 (speed post). The corporate debtor has also replied to the demand notice on 07.12.2018. The Copy of the reply and e-mail correspondence between the Operational Creditor and Corporate Debtor are attached as Annexures- M and O respectively of the petition. The petitioner has also attached statement of bank accounts where the deposits are received by the operational creditor and a certificate from its Banker confirming

that no payment of unpaid operational debt has been received by the petitioner as Annexure P & Q, respectively of the petition.

6. Notice of this petition was given to the respondent-corporate debtor vide order dated 03.05.2019 of this Adjudicating Authority as to why this petition be not admitted. The respondent has filed its reply by Diary no. 6462 dated 20.11.2019 stating that the corporate debtor was a manufacturer of automobile parts and used to place orders with the Operational Creditor. The Operational has supplied substandard quality of raw materials due to which the Corporate Debtor has suffered huge losses. The corporate debtor has also replied to the demand notice dated 27.11.2018 and the amount claimed is not payable for the reasons mentioned in the reply dated 07.12.2018. The corporate debtor has stopped the payment due to the inferior product supplied by the petitioner. The corporate debtor has made the last payment till april, 2018 and the operational creditor has presented the blank cheque with the bank without informing the respondent which was returned due to the insufficiency of funds. In support of the contentions, the respondent has relied upon the judgement of the Supreme Court in matter of **“Mobilox Innovation Private Limited Vs. Kirusa Softwares Private Limited”** Civil Appeal No. 9405 Of 2017 dated 21.09.2017 wherein it has been held that

“ It is clear, therefore, that once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the “existence” of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the “dispute” is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster.

However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application.”

7. We have heard the learned counsel for the petitioner and carefully perused the record available.

8. The first issue for consideration is whether the demand notice in Form 3 dated 28.11.2018 was duly served to the operational creditor. It is seen that the operational creditor has been sent a demand notice in Form 3 through the speed post and courier which was duly served on 28.11.2011 and 08.12.2018. The corporate debtor has also replied to the demand notice by letter dated 07.12.20218 demanding the documents attached with the demand notice which were duly forwarded by the petitioner through email dated 11.12.2018. It is established that the demand notice has been duly served to the Corporate Debtor.

9. The next issue for consideration is whether the operational debt was disputed by the corporate debtor. Pursuant to the service of demand notice, a letter dated 07.12.2018 has been issued by the counsel of the corporate debtor stating that the materials supplied by the operational creditor was of inferior quality and the same were not supplied between the stipulated time due to which corporate debtor has incurred heavy losses. It is noted that the corporate debtor has not informed the operational creditor regarding the supply of inferior goods and the dispute was raised for the first time in reply to the demand notice. The petitioner has also filed an affidavit dated 16.11.2022 under Section 9(3)(b) deposing that the reply to the demand notice is merely an after-issuance of demand notice and there was no pre-existing dispute in relation to the operational debt. In this context, a reliance is

placed on the judgement of Hon'ble National Company Law Appellate Tribunal in the matter of **“Writers and Publishers Pvt. Ltd. Vs. M/s Oriental Coal Corporation”** Company Appeal (AT) (Ins.) No. 1170 of 2022 dated 15.12.2022 wherein it has been held that

“24. It is a well settled proposition that for a pre-existing dispute to be a ground to thwart an application under Section 9, the dispute raised must be truly existing at the time of filing a reply to notice of demand as contemplated by Section 8(2) or at the time of filing the Section 9 application. In the present case, we notice that no reply was framed in response to the demand notice at all. In such circumstances the Adjudicating Authority is only required to look into the substance of the pleadings to find out whether a real dispute is discernible from the stated facts.” (Emphasis supplied)

10. In the light of above discussion, it can be safely concluded that there is no real pre-existing dispute between the parties before the issuance of demand notice as there was no written communication regarding the inferior quality of goods. The corporate debtor has failed to show any written communication made to the operational creditors regarding the dispute of inferior quality prior to the issuance of demand notice. Infact, the email dated 06.08.2018 (Annexure- O of petition) has been sent by the authorised person of the corporate debtor asking for 7 days' time for the payment. Thus, the authority (case of **“Mobilox Innovation Private Limited Vs. Kirusa Softwares Private Limited”**(Supra) is not applicable to the present case.

11. The other issue for consideration is whether this petition is filed within the limitation period. It is submitted that the operational creditor had been supplying goods to the corporate debtor from the last several years and they have attached last invoices issued from December 2017 to March 2018 against the supply of goods. It is also seen that a Cheque bearing No. 153340 dated 14.11.2018 for a

sum of Rs. 50,00,000/- was also presented by the operational creditor and the same has been dishonoured on 15.11.2018 because of insufficiency of funds. The operational creditor has issued a Demand Notice in Form 3 dated 26.11.2018 demanding the payment of unpaid operational debt. As stated the default occurred on 22.11.2018, whereas, the present application under Section 9 of the Insolvency and Bankruptcy Code, 2016 has been filed on 05.04.2019 vide Diary No. 1766. Therefore, this Adjudicating Authority finds that this petition is filed within limitation.

12. 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 is Rs. 75,07,368/- (Rupees Seventy-Five lakhs Seven Thousand Three Hundred Sixty-Eight only, as on 22.11.2018 including interest @ 18% per annum), against the goods supplied by operational creditor. It is noted that the corporate debtor has failed to make payment of 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 from the above-mentioned facts that the liability of the corporate debtor is undisputed. Accordingly, the petitioner proved the debt and the default, which is above the threshold limit of Rupees one lakh (prior to the amendment in threshold limit of one crore vide notification No. S.O.1205(E) dated 24.03.2020).

13. 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, **G.S. Radiators Limited**, and also direct moratorium to take effect and appoint Interim Resolution Professional as below.

14. In Part-III of Form No. 5, no Interim Resolution Professional (IRP) has been proposed by the petitioner. The Law Research Associate of this Tribunal has checked the credentials of Mr. Vivek Bansal and there is nothing adverse against him. In view of the above, we appoint Mr. Vivek Bansal, Registration No. IBBI/IPA-001/IP-P-01475/2018-2019/12249; E-mail: irp.vivekbansalca@gmail.com, Mobile No. 9815869228 as the Interim Resolution Professional with the following directions:-

- i.) The term of appointment of Mr. Vivek Bansal 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 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 morals;

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.

15. 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.

16. 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.

17. 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 the corporate debtor under Section 33 as the case may be.

18. The petitioner is directed to deposit an amount of ₹1,00,000/- (Rupees One Lakhs 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.

19. A copy of this order be communicated to both 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.

20. This petition is accordingly admitted.

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

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

February 16, 2023
SA/VN