



**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) No.50/ALD/2020

(An application under Section 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

M/S. Insecticides (India) Limited

401-402, Lusa Tower, Azadpur Commercial Complex,
Delhi- 110033

...Applicant/Operational Creditor

Versus

M/S Kino Organics (India) Limited

(Earlier known as: M/s Lordsons Agro Overseas Private Limited)
GF 02, Sears Tower,
Omaxe Heights, Vibhuti Khand,
Gomti Nagar, Lucknow, U.P.- 226012

...Respondent/Corporate Debtor

Order pronounced on 7th November, 2023

CORAM:

Sh. Praveen Gupta : Member (Judicial)

Sh. Ashish Verma : Member (Technical)

PRESENT-

Sh. Krishna Dev Vyas, Adv. : For the Operational Creditor

Corporate Debtor : Ex-parte v.o.d. 08.03.2021

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ORDER

1. The instant application was filed on 14.01.2020 by M/s Insecticides (India) Limited. (hereinafter referred as '**Applicant-Operational Creditor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the "**I & B Code, 2016**") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred as "**the Rules**"). The prayer made therein is to initiate Corporate Insolvency Resolution Process (hereinafter referred as '**CIRP**') in respect of M/s Kino Organics (India). Ltd. (formerly M/s Lordsons Agro Overseas Private Ltd.) (hereinafter referred as '**Respondent-Corporate Debtor**') due to default in payment of total outstanding amount of Rs.13,48,942/- (Rupees Thirteen Lakh Forty-Eight Thousand Nine Hundred and Forty-Two) with the date of default mentioned in the application as 06.01.2017.

2. Briefly stated facts of the present case as averred by the applicant/Operational Creditor in its application filed in Form-5 containing part I, II, III, IV & V are that: -

(i) The Applicant-Operational Creditor is involved in the business of supply of Paraquat Dichloride,



Thiamethoxam and other agro items to Corporate Debtor since 2016. The Respondent-Operational Creditor was approached by the Corporate Debtor named at that time as M/s Lordsons Agro Overseas Private Ltd., for the supply of the Paraquat Dichloride, Thiamethoxam and other agro items. The Applicant successfully supplied goods from time to time as agreed and raised invoices for the same which were acknowledged as well. Copies of the invoices issued are annexed as **Annexure B(colly)** with the application. As per these invoices, the total amount of the goods supplied were of Rs. 18,75,353/-. Out of these amounts, a payment of Rs. 5,52,425/- was made, leaving a balance of Rs. 13,22,928/- to be paid.

- (ii) As stated in the application, the Corporate Debtor thereafter, failed to make the payment of remaining amount of Rs. 13,22,928/-. As per the terms of payment mentioned in the invoices, 18% interest is to be charged on the delayed payment and hence, interest on delayed payment was charged by the Operational Creditor. In order to recover the outstanding amount from the Corporate Debtor, the Applicant-Operational Creditor



served a demand notice u/s 8 of the I & B Code, 2016 on 12.04.2018 demanding the payment of Rs. 13,22,928/- with interest amount of Rs. 3,07,780/- calculated up to 10.04.2018. Copy of Demand notice has been annexed as **Annexure C(Colly)** with the application.

(iii) It is pointed out by the Operational Creditor that the Corporate Debtor paid a sum of Rs. 6,26,234/- out of the outstanding principal amount of Rs. 13,22,928/- and amount of Rs.6,96,694/- excluding interest is still payable by the Corporate Debtor. The interest amount calculated till 20.09.2019 at 18% is Rs. 6,52,248 in addition to the principal amount of Rs. 6,96,694/- and thus, the total outstanding amount is Rs.13,48,942/- as mentioned in Part IV of the application u/s 9. Computation copy of interest amount has been annexed as **Annexure E** with the application.

(iv) The Corporate Debtor then went on to change the name of the company from M/s Lordsons Agro Overseas Private Limited to M/s Kino Organics (India) Limited and despite



numerous reminders sent by the Applicant, continued to neglect paying the outstanding amount.

- (v) The Applicant once again served a demand notice on 4.11.2019 seeking payment of outstanding amount of Rs. 13,48,942/- within 10 days from date of receipt of the said notice which was then returned back with remark “Addressee Left without instructions” despite sending the notice on the address of the Corporate Debtor as reflected on the website of the Ministry of Corporate Affairs. True Copy of the Demand Notice dated 04.11.2019 along with postal receipts and proof of delivery thereof has been annexed as **Annexure F (Colly)**. The Operational Creditor has also annexed a bank certificate indicating that no payment has been received from Corporate Debtor as **Annexure G**.

3. Citing the above details furnished in Part IV of the application u/s 9, the Applicant- Operational Creditor stated in the application that it has sufficient reasons to believe that the Corporate Debtor is not willing to pay the outstanding amount and is just delaying the payment of



the said admitted outstanding amount which is due and payable by the Corporate Debtor. In an affidavit filed along with the application, the Operational Creditor, as required u/s 9(3)(b) of the I & B Code, 2016 confirmed that no suit or arbitration proceedings are initiated by the Corporate Debtor against the Operational Creditor or of any dispute which were in existence prior to the receipt of the demand notice under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudication Authority) Rules, 2016.

4. The above application filed by the Applicant has been considered in the hearing held on 03.02.2020 and following order was issued: -

“Sh. Rishi Sood alongwith Sh. Krishna Dev Vyas, advocates for the operational creditor are present.

The present petition has been filed under Section 9 of IBC, 2016 by the petitioner/operational creditor (hereinafter referred to as the petitioner) against the corporate debtor (hereinafter referred to as the respondent) for defaulted amount of Rs. 13,48,942/- for supplying organic material/goods by the petitioner to the respondent for which invoices were raised. It is contended that the date of default is 07.01.2017.

It is contended that the outstanding amount due was not paid despite repeated demand being raised, therefore, notice under Section 8 was sent on



12.04.2018, a copy of which has been annexed as Annexure-C.

It is contended that a partial amount of Rs. 6,26,234/- was paid by the corporate debtor after receipt of notice under Section 8 of IBC by him and Rs. 6,96,694/- excluding interest is still payable and outstanding by the corporate debtor.

It is contended that the outstanding amount was not paid despite request thus a second notice was sent on 4th November, 2019 to the respondent by the petitioner, a copy of which has been annexed as annexure-k for the total amount of Rs. 30,48,942.

Learned counsel for the petitioner has drawn attention of this Court and states that aforesaid notice was also received by the respondent to which no reply was received the petitioner to the aforesaid notice and thus it is contended that the liability stands admitted.

An advance copy of the present petition has also been sent to the respondent by speed post tracking report is not on record and the same shall be filed by the next date of listing.

Issued notice by all modes including the process of Court and Dasti. Counsel for the petitioner is directed to file tracking report along with Affidavit of service before the Registry of this Bench by the next date of listing.

Put up on 27.02.2020”

After considering the entire facts of the case in the above order, notice to the Respondent-Corporate Debtor



was issued to give opportunity to it to explain for non-payment of outstanding dues and the Ld. Counsel for the Applicant-Operational Creditor, Mr. Krishan Dev Vyas and Mr. Rishi Sood who appeared in that hearing, have been asked to file tracking report along with Affidavit of service before the Registry by next date of hearing. Then, on the next date of hearing i.e. 27.02.2020, affidavit of service was filed stating that the notice sent to the Respondent by registered post was returned back with endorsement “*left*” and notice sent through *E-mail*, has not bounced back, however, there was no appearance on behalf of the Corporate Debtor. As in next hearing on 03.12.2020 also, nobody appeared on behalf of the Respondent-Corporate Debtor, Applicant-Operational Creditor was directed in order dated 03.12.2020 to make a paper publication in two local newspapers (Hindi and English) widely circulated in the area, where the registered office of the Corporate is situated with regard to the service of notice of the present case, within three weeks. Pursuant to the above order, paper publication has been done and affidavit of service has been filed by the Applicant-Operational Creditor in the



next hearing held on 08.02.2021. There was again no appearance on behalf of the Corporate Debtor on 08.03.2021, and therefore the Respondent-Corporate Debtor was set *ex-parte* vide order dated 08.03.2021 and *ex-parte* order has continued as on subsequent dates also, there was no appearance on behalf of the Corporate Debtor.

5. During the hearing held on 17.02.2023, it has been observed that the date of default in the matter is 6th January, 2017 and date of filing of the present petition is 14th- January, 2020. The Ld. Counsel representing the Operational Creditor sought a short adjournment to ascertain and clarify as to the aspect of the limitation as per order dated 17.02.2023. In compliance to this order, the Operational Creditor filed a supplementary affidavit on 15.07.2023, which was taken on record in the order dated 06.10.2023. In para 7 of the said affidavit, it is stated that the Respondent/ Corporate Debtor has failed to make the payment, however some payments have been made by the Respondent/ Corporate Debtor from the date commencing from 27.04.2018 till 04.12.2018, the same facts are also



narrated in the main petition at page 14 para no.9. Therefore, according to him, since the payments have continuously been made, the present petition is within the limitation as the last date of payment made by the Corporate Debtor was on 04.12.2018. The relevant paras of the said affidavit are also reproduced as below:

“2. I further state that the Operational Creditor had supplied goods to the Corporate Debtor over a period of time and had raised the following invoices details are which are enumerated herein below:

S. No.	Date	Amount (inclusive of service tax) (Rs.)
1.	30.08.2018	1,67,475/-
2.	08.09.2016	1,67,475/-
3.	30.09.2016	1,59,500/-
4.	07.10.2016	1,04,773/-
5.	18.10.2016	1,64,154/-
6.	12.11.2016	5,73,313/-
7.	12.12.2016	86,063/-
8.	20.12.2016	1,54,219/-
9.	26.12.2016	2,96,381/-

3. I further state that as per the terms and conditions the payment was to be made within a period of 90 days from the date of receipt of the invoices failing which interest would be charged over the said invoices.

4. I further state as far as invoices being 30.08.2016, 08.09.2016, 30.09.2016, 07.10.2016 are



concerned the same were paid by the Corporate Debtor to the Operational Creditor for which no claim is being sought by the Operational Creditor from the Corporate Debtor in the present petition. The Operational Creditor is raising his claim based upon the invoices details of which are reiterated herein below:

Sr. No.	Invoice Date	Invoice No.	Invoice Amount	Credit Period (Days)	Due date
1.	18.10.2016	1642100040	1,64,154.00	90	16.11.2017
2.	12.11.2016	1607101075	5,75,313.00	90	10.02.2017
3.	12.12.2016	1607101120	86,063.00	90	12.03.2017
4.	20.11.2016	1642100045	1,54,219.00	90	20.03.2017
5.	26.11.2016	1607101147	2,96,381.00	90	26.03.2017

5. I state that the said working/ computation of default along with the credit days' period & due date also finds mention in **Annexure @ page 43** of the Company Petition filed by the Operational Creditor. It is further submitted that taking into consideration the due dates with respect to the invoices of which the claim is being made, the same is within the period of limitation.

6. It is submitted that the present petition has been filed before the Hon'ble NCLT on 14.01.2020 wherein the respective due dates of the invoices commence from 16.01.2017 clearly reflecting that the present petition has been filed within a period of 3 years from the due date of payment of the invoices.

7. I further state that a demand notice dated 12.04.2018 was sent by the Operational Creditor to the Corporate Debtor seeking payment of the outstanding amount Rs. 13,22,928/- (Rupees Thirteen



Lac Twenty-Two Thousand Nine Hundred Twenty-Eight Only). Pursuant to which the Corporate Debtor had made the payments details of which are mentioned below herein:

S. NO	DATE	AMOUNT
1.	27.04.2018	Rs. 2,05,672/-
2.	28.05.2018	Rs. 1,59,500/-
3.	13.07.2018	Rs. 86,062/-
4.	06.08.2018	Rs. 1,00,000/-
5.	19.11.2018	Rs. 50,000/-
6.	04.12.2018	Rs. 25,000/-
	Total	Rs. 6,26,234/-

8. That the payment so made by the Corporate Debtor clearly reflects the acknowledgment of the debt on the part of the Corporate Debtor which also extends the period of limitation. Therefore, in light of the payment being made post receipt of the demand notice clearly reflects the acknowledgement and the present petition has been filed on 14.01.2020 which is within the specified period of limitation.

9. I state that the threshold limit for the purposes of instituting Corporate Insolvency Resolution process under section 9 of the IBC code was Rs. 1,00,000 (Rupees One lac) under the IBC code. In any event, if the default is over a sum of Rs. 1,00,000/-, the CIRP process will initiate. Herein, there are different invoices which have been raised by the Operational Creditor upon the Corporate Debtor are over Rs. 1,00,000/-, of which no payment has been made nor any notice reflecting any dispute has been sent upon the Operational Creditor. Therefore, the present Petition is within the fore corners of limitation.”



After considering the above affidavit and the arguments advanced by the Ld. Counsel for the Applicant-Operational Creditor, the case is finally heard.

6. In this case, an Additional Affidavit has also been filed on 24.01.2023 proposing the name of Mr. Ankit Agarwal for appointing him Interim Resolution Professional (herein referred as “**IRP**”). His consent in Form-2 has also been filed. We have considered him in this order for appointing as IRP in the present case as proposed by the Applicant.
7. A written submission has also been filed in this case on 05.01.2023 submitting *interalia* as under: -
 - (i) The Corporate Debtor owes an outstanding amount of Rs. 13,48,942/- (Thirteen Lakhs Forty-Eight Thousand Nine Hundred and Forty-two rupees) including the leviabale interest amount for the supply of Paraquat Dichloride, Thiamethoxam and other agro items, to Operational Creditor.
 - (ii) The Applicant states that the Corporate Debtor received goods as per invoices for amount of Rs. 18,75,353/-



from 30.08.2016 till 26.12.2016 and that Corporate Debtor made payment of Rs. 5,52,425/- during the period commencing from 13.12.2016 to 23.01.2018.

(iii) The Corporate Debtor failed to comply with the invoices and to make full payments of invoices raised, which prompted the Applicant to serve a demand notice on 12.04.2018 upon Corporate Debtor under Section 8 IBC, pursuant to which the Corporate Debtor had made payments for a sum of Rs. 6,26,234/-.

(iv) Another Demand Notice was served upon the Corporate Debtor on 04.11.2019 seeking payment of remaining outstanding amount but to no avail.

(v) It was recorded vide order dated 27.02.2020 that the notices were issued and an affidavit of service has been filed by the applicant/ petitioner, according to which the respondents have been served notice by email, however, none on behalf of the Respondent has put in appearance. Since the notices sent to the respondents by registered post have been returned back with endorsement 'left', therefore it was directed by this



Tribunal that the Applicant makes a paper publication. The publication was duly carried out in Pioneer (Hindi & English) on 03.02.2021 and an affidavit of service dated 03.02.2021 was duly filed with the Hon'ble NCLT.

(vi) Vide order dated 08.03.2021, the Respondent was proceeded ex parte by the Tribunal. The Notice of the Petition was served upon the Respondent through all modes namely speed post, courier, email & even through substituted service.

(vii) Following Legal Submissions have been made in the written submission: -

- Payments made by the CD subsequent to the receipt of the first demand notice dated 12.04.2018.
- Demand notice dated 4th November 2019 was send at the registered address of the CD Company. Copy of the petition was also sent at the registered address of the CD Company.
- Both Kino organics India Limited and Lordsons agro overseas private Limited are the same entities as the



same could be seen from the registered address mentioned in the Company master data and the Directors are also the same in the demand notice initially sent and subsequently sent. The directors are also the same.

- Affidavit of service duly filed, substituted service carried out in the newspapers at the place where the registered office of the Company is situated. No appearance was entered on behalf of the Respondent.
- Respondent proceeded *ex parte* after examining the records and the affidavit of service filed on behalf of the Petitioner.
- Therefore, the IRP may be appointed in the matter.

8. As discussed in foregoing paras of this order, we have considered the details of the case as submitted before us in the application as well as in the written submission filed by the Applicant-Operational Creditor and also the arguments advanced by the Ld. Counsel for the Applicant-Operational Creditor. The Corporate Debtor is set *ex-parte*.



9. We find that the debt against the goods supplied with respect to the invoices raised by the Operational Creditor falls within the definition of Operational Debt u/s 5(21) of the I & B Code, 2016. The Operational debt is defined u/s 5(21) of the Code to mean “*a claim in respect of provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority*”. The invoices against which the debt is outstanding are raised for supply of Paraquat Dichloride, Thiamethoxam and other agro items which will come under the category of providing goods, hence would qualify for the operational debt. Thus, we find that there exists an operational debt duly established by the records produced during the hearing of the case. There has been no appearance on behalf of the Corporate Debtor in this respect to explain as to why the outstanding amount is still not paid, which at present comes to Rs. 6,52,248/- being the principal amount of the invoices raised as per the details provided in the application as well as in the written submission. The



amount of the outstanding debt has also been found more than Rs. 1 lakh which was the threshold limit under section 4 of the I&B Code, 2016 for filing of application u/s 9 at that time as per the date of default being 07.01.2017, which continued till 04.12.2018 due to part payments made within the limitation period of 3 years acknowledging the debt as per section 18 of the Limitation Act, 1963. As the application has been filed on 14.01.2020, it is thus within the limitation period as per the Limitation Act, 1963 as recorded in the order dated 06.10.2023 of this Tribunal. As no payment of the outstanding debt has been made by the Corporate Debtor subsequent to the date of 04.12.2018 and nothing has been presented before us by the Corporate Debtor explaining if there was any dispute for not paying the outstanding amount and the Operational Creditor in an affidavit filed along with the application has confirmed that no suit or arbitration proceedings are initiated by the Corporate Debtor against the Operational Creditor or of any dispute which were in existence prior to the receipt of the demand notice under Rule 5 of the Insolvency and Bankruptcy (Application to



Adjudication Authority) Rules, 2016 , it is amply established that there is default due to non-payment of the outstanding debt of Rs. 6,52,248/- (along with interest @ 18% as computed in the application) on the part of the Corporate Debtor.

- 10.** Taking into account the provisions of Section 9 of the I & B Code, 2016, we find that the application made under sub-section (1) of Section 9 along with documents and fees as mentioned in its sub-section (2) is complete. The payment of the outstanding operational debt has not been made which is well above the threshold limit of Rs.1 lakh. The petition u/s 9 was filed on 14.01.2020, and some payments were made during the period 27.04.2018 and 04.12.2018, hence, petition is well within the limitation period. In terms of section 9(3) of I & B Code 2016, the Operational Creditor has provided a copy of invoice demanding payment and demand notice u/s 8 was issued to the corporate debtor for payment of outstanding dues for goods supplied. Therefore, after finding that all the conditions for admission of application under Section 9(5)(i) of the I & B Code 2016 against the Corporate Debtor,



has been fulfilled and the Ld. Counsel of the Corporate Debtor has failed to appear and demonstrate before us anything about there being any pre-existing dispute as regards the payment of the operational debt, we find this application fit for admission under Section 9(5) of the I & B Code, 2016 for starting CIRP against the Corporate Debtor, M/S Kino Organics (India) Limited (Earlier known as: M/s Lordsons Agro Overseas Private Limited).

- 11.** The Operational Creditor has proposed the name of Mr. Ankit Agarwal as the IRP in the present application. The written consent by IRP in Form 2 has been on record by way of affidavit bearing Registration No. IBBI/IPA-002/IP-N01070/2020-2021/13514, having registered office at 62A, K K HOSPITAL ROAD, NEAR SWAYAMVAR WEDDING HALL (RAJENDRA NAGAR), Bareilly, Uttar Pradesh- 243122. The verification of the said IRP has been carried out by Law Research Associate of this Tribunal, Mr Sarim Husain, and it is found that there is no proceeding pending against the proposed IRP. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 08.03.2024.



12. Accordingly, this application is admitted u/s 9(5)(i) of I & B Code, 2016 under the following terms and conditions.

- i. The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating the Corporate Insolvency Resolution Process against the Corporate Debtor i.e. M/S Kino Organics (India) Limited (Earlier known as: M/s Lordsons Agro Overseas Private Limited) is hereby admitted.
- ii. We hereby declare a moratorium u/s 14 and public announcement in accordance with Sections 13 and 15 of the I & B Code, 2016.
- iii. This Adjudicating Authority hereby appoints Mr. Ankit Agrawal as IRP as discussed in para 10 above.
- iv. The IRP shall cause a public announcement of the initiation of the Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of the



Insolvency & Bankruptcy Code, 2016 shall be made immediately.

v. Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following: -

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; Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;

b) 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 (54 of 2002);



- c) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- vi. The supply of essential goods or services rendered to the Corporate Debtor as may be specified, shall not be terminated, suspended, or interrupted during the moratorium period.
- vii. The provisions of sub-section (1) of Section 14 of I & B Code, 2016 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- viii. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial 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 Constitution of the Committee.



- ix. The Committee of the Creditors shall appoint a Resolution Professional (hereinafter referred as “**RP**”) as per section 22 of the I & B Code, 2016. A monthly progress report shall be filled by the Resolution Professional providing the details of work done in respect of completing the CIRP within the timeline as prescribed under the provision of section 12 of the I & B Code, 2016.
- x. The order of moratorium shall have effect from the date of admission till the completion of the Corporate Insolvency Resolution process.
- xi. However, at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.



- xii. The personnel of the Corporate Debtor, its promoters or any other person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP/RP to provide necessary details and documents as may be required by him in managing the affairs of the Corporate Debtor in accordance with the provision of the I & B, Code, 2016.
- xiii. The Operational Creditor/Applicant is directed to deposit Rs. 2,00,000/- (Rupees two lakhs only) with the IRP appointed hereinabove within two weeks from this order. IRP can claim the preliminary expenses and fees subject to approval by the CoC and after the constitution of the CoC.
- 13.** Registry is hereby directed to communicate the order to the Operational Creditor, the Corporate Debtor, the IRP and the jurisdictional Registrar of Companies by Speed Post as well as through email.
- 14.** List the matter on 15.12.2023 for filing of the first monthly progress report.



- 15.** Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.
- 16.** Ordered accordingly.

-Sd-

(Ashish Verma)
Member (Technical)

Sarim Husain
LRA

-Sd-

(Praveen Gupta)
Member (Judicial)