

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI BENCH
COURT- III**

IB-230/ND/2020

U/S. 9 of the IBC, 2016 and Rule 6 of the
Insolvency and Bankruptcy (Application to
Adjudicating Authority), Rule, 2016

IN THE MATTER OF

M/s Newgen Speciality Plastics Ltd.

...Operational Creditor/Petitioner

Versus

M/s Royal Polyurethane India Private Limited

...Corporate Debtor/Respondent

Delivered on 24.12.2021

Coram:

SHRI P.S.N. PRASAD, HON'BLE MEMBER (JUDICIAL)

SHRI NARENDER KUMAR BHOLA, HON'BLE MEMBER (TECHNICAL)

Appearances:

Operational Creditor : CMA SK Bhatt, Liquidator for Operational
Creditor

Corporate Debtor : Mr. Gautam Singhal & Mr. Rajat Chaudhary
(Advocates)



O R D E R

Per: Narender Kumar Bhola, Member (Technical)

1. Under consideration is IB-230/ND/2020 filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor *M/s Newgen Speciality Plastics Ltd.*, is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., *M/s Royal Polyurethane India Private Limited*, declare moratorium and appoint Interim Resolution Professional (hereinafter referred as 'IRP').

2. The Operational Creditor/Petitioner has averred as follows: -

- a. The Operational Creditor is a leading manufacturer, exporter and equipment supplier for plastic products and the corporate debtor is in the business of manufacture of basic chemicals (polyurethane chemicals). The Corporate Debtor approached the Operational Creditor in the year of 2018 and after negotiating the terms and conditions, placed a purchase order dated 10.08.2018 upon Operational Creditor for Ice Box and Carrier Frame respectively. The Purchase order was for sum of Rs. 4,67,98,086.00/- (Rupees Four Crore Sixty-Seven Lakhs Ninety-Eight Thousand and Eighty-Six Only).
- b. It is submitted that Operational Creditor has successfully carried out its contractual obligations and issued various invoices No. 0423, M-0468, 0487, 0533 respectively. The Corporate Debtor had accepted the invoices and made part payments. The Corporate Debtor never raised any dispute qua the invoices raised by Operational Creditor. It is stated that the last leg of delivery containing ice box and carrier



frame was delivered and an invoice to that effect was raised on 15.03.2019.

- c. The Operational Creditor thereafter sent notice through its advocate and called upon the corporate debtor to pay the sum of Rs.27,15,669/- (Twenty-Seven Lakh Fifteen Thousand Six hundred and sixty-Nine Only) and the same was returned undelivered with remarks "no such address". The Operational Creditor issued a demand notice to the corporate debtor through the email id as available in the master data available with Ministry of Corporate Affairs. The Corporate Debtor replied to the same and submitted that no such amount is outstanding from the corporate debtor and the Operational Creditor sent rejoinder to the same. Hence, the present petition is filed by the Operational Creditor for seeking CIR Process of Corporate Debtor.
3. The Corporate Debtor has filed reply to the captioned petition and raised the certain objections with respect to the maintainability of the petition as the same is not filed as per the provisions of IBC, 2016 r/w relevant regulations and further submitted that the Operational Creditor failed to produce any document to show that the corporate debtor is not financially sound. It is stated that the corporate debtor in terms of clause 3 of the purchase order dated 10.08.2018 made advance payment of Rs. 29,51,011/- (Rupees Twenty Nine Lakhs Fifty One Thousands and eleven Only) and the operational creditor was in the process of supplying goods to the corporate debtor. However, operational creditor went into CIR Process before supplying any goods. After the CIR Process of Operational Creditor commenced, the IRP/RP of the Operational Creditor along with ex-management approached the Corporate Debtor to continue the business with them, pursuant to the assurances, the corporate debtor continued the commercial relation



and total goods valued at Rs. 27,15,699.11 were supplied with respect to the advance payment of an amount Rs. 29,51,011/- and Petitioner is still illegally and unlawfully holding an excess amount of Rs. 2,35,241.89/-. However, the petitioner illegally issued a demand notice demanding Rs. 27,15,669/- instead of paying the said amount of Rs. 2,35,241.89/-. It also submitted that pursuant to the initiation of liquidation process of Petitioner, the Corporate Debtor filed a claim in Form C dated 14.02.2020 for total outstanding amount of Rs. 23,23,133/- (including interest) before Mr. Anil Kumar and same was acknowledged. However, the status has not been confirmed. It is pertinent to mention that the IRP/RP requested the related company of the Corporate Debtor to continue the business relation and assured that payment will be paid in priority and would form the CIRP Cost. It is stated that the captioned petition was filed by the Resolution Professional. However, the adjudicating authority appointed a different Insolvency Professional as Liquidator at the time of order of liquidation of corporate debtor, therefore, not maintainable. Hence, prayed that the captioned petition may be dismissed keeping in view the aforesaid facts and circumstances.

4. The Petitioner also filed its rejoinder reiterated all the facts mentioned in the Petition and further submitted that this petition is maintainable u/s 11 explanation II of IBC, 2016 and as per several clauses of section 35 of IBC, 2016, the application filed by the RP can be very well perused by the Liquidator and all the compliances have been made by the RP/Liquidator before filing the captioned petition. No prior permission from Hon'ble Adjudicating Authority is required before filing of Captioned Petition as the same is filed by RP and not liquidator. The Petitioner quoted the Hon'ble Bombay high Court judgment in *Vyasa*



Bank Limited v. Official Liquidator, Shrinivas Cotton Mills Limited, (1995) 84, Comp. Case.493. The relevant extract of the judgment is as follows:

“10. The section does not expressly provide for nullification of the proceedings as a consequence of non-compliance with the requirement of the Section. The intention of the Legislature can be inferred from the omission of the words to the effect "previous leave of the Court". Whenever the Legislature wanted to make such leave or permission a condition precedent to the institution of proceedings, the words "previous sanction or permission or leave" have been used in section 92 of the Civil Procedure Code, 1908, and in Section 197 of the Criminal Procedure Code, 1973, and again the clause 12 of the Letters Patent. The consequence of disregarding the necessity of the leave can also help us find out the legislative intent...”

The Petitioner also relied on judgment passed by the Hon'ble NCLT, Kolkata in the matter of *Nicco Corporation Limited v. Mr. Vinod Kumar Kothari, Liquidator of the Corporate Debtor in CA No.487/2017 dated 24.11.2017*. The relevant extract of the judgment is as follows:

“... Under the sub-section (1) of section 35, it is stated that the powers of the Liquidator are subject to the directions of the adjudicating authority. It does not mean that for every action, which the liquidator has to perform should be with the prior permission of the adjudicating authority.....”

It is also averred that it is the part of the duty of the liquidator to recover the blocked funds with a view to maximize the value to the stakeholders. It is further stated that there is no pre-existing dispute and the respondent was supplied material during CIRP and there was no commitment/approval/communication by the RP/former Liquidator that advance, if any before CIRP shall be adjusted against the supplies in the CIRP. Moreover, this is not admissible as per Law. For supplies made before CIRP, one has to file his claim. The company comes in CIRP when it is in deep financial stress and due to this, the Law has provided that one will file claim for dues before CIRP. Hence, reiterated the prayers.

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5. The Petitioner has also filed the written submissions and reiterated all the facts as already discussed in detail in aforementioned paragraphs. In short, the petitioner submitted that the captioned Petition is maintainable, there is no pre-existing dispute, advance cannot be adjusted against the supplies made during the CIR Process and the stories of the Respondent/Corporate Debtor are self-fabricated without any evidence on record, hence, prayed that CIR Process of Corporate Debtor may be initiated.

6. The Respondent/Corporate Debtor also filed its written submissions and reiterated all the facts as already discussed in reply. In short, the Corporate Debtor argued on the point that there is pre-existing dispute, it is the respondent who has outstanding amount recoverable from the Operational Creditor and this petition is filed with malafide intention, therefore prayed for the dismissal of the captioned petition.

7. We have perused the Pleadings, written submission and arguments advanced by the parties. It is admitted fact that the Operational Creditor has made the supplies to the corporate debtor during the time when it is going through the CIR Process and no payment is made by the corporate debtor post commencement of CIR Process of the Operational Creditor with respect to those supplies. We are not convinced of the argument of the Corporate Debtor that the supplies were made against the advance paid to the operational creditor before the commencement of the CIR Process of Operational Creditor. Therefore, it is a fit case for initiation of CIRP of the Corporate Debtor. It is also pertinent to note that the Notification regarding the enhancement of minimum amount of default to one crore for the




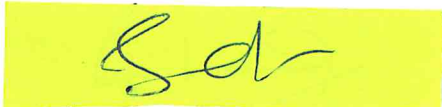
purpose of Section 4 was issued by the Ministry of Corporate Affairs on 24th March, 2020 and the amount defaulted by the Corporate Debtor as well as the filing of captioned petition is much before the coming into effect of notification dated 24th March, 2020, since any notification issued by the Government are generally Prospective in nature unless specifically stated otherwise, hence the notification is not applicable to the present case. Therefore, this adjudicating authority is inclined to admit the captioned petition and accordingly CIR Process of Corporate Debtor is initiated. The Operational Creditor has also proposed the Insolvency Resolution Professional. This adjudicating authority hereby appoints Mr. Rajesh Kumar Parakh having Reg. No. IBBI/IPA-001/IP-00272/2017-18/10516 (Email ID: parakh.rajesh@gmail.com and Mob No. +91-9811350848) as IRP as proposed by operational creditor.

8. The IRP is directed to take charge of the respondent corporate debtor's management immediately. He is also directed to cause public announcement as prescribed under section 15 of the IBC, 2016, within three days from the date of this order received, and call for submissions of claim in the manner as prescribed.
9. The moratorium is declared which shall have effect from this Order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely: -
 - a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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);
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the respondent.
10. The supply of essential goods or services of the Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the central government.
11. The IRP shall comply with the provisions of sections 13(2), 15, 17 and 18 of the Code. The directors of the Corporate Debtor, its Promoters or any person associated with the management of the corporate debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his functions under section 20 of the IBC, 2016.
12. The operational Creditor is directed to send the copy of this Order to the IRP with immediate effect, so that he could take charge of the corporate debtor's assets etc., and make compliance with this order as per provisions of IBC, 2016.
13. This order is pronounced by the Adjudicating Authority through virtual mode.


(NARENDER KUMAR BHOLA)
MEMBER (TECHNICAL)


(P.S.N. PRASAD)
MEMBER (JUDICIAL)