



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI BENCH, COURT - V**

**IB -280 /ND/2020**

*An application under section 9 of the Insolvency and Bankruptcy Code, 2016 read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.*

**In the matter of:**

**S.L. Plastics**

6/22, S.F.S. Agarwal Farm,  
Mansarovar, Jaipur, Rajasthan 302020

*...Operational Creditor*

***Versus***

**Aditya Chemtec Pvt Ltd.**

G-6/3 IIIrd Floor, Malviya Nagar  
New Delhi - 110017

*...Corporate Debtor*

**Coram:**

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

**SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (TECHNICAL)**

**APPEARANCES:**

For the Operational Creditor : Adv. Gulshan Kr. Sachdev

For the Corporate Debtor : Adv. Mr. Sanket Gupta

**Order Delivered on: 28.03.2023**



## **ORDER**

**PER: SHRI RAHUL BHATNAGAR, HON'BLE MEMBER (T)**

1. The instant application is filed by S.L Plastics (hereinafter referred as 'Applicant'/ 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the IBC') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer to initiate Corporate Insolvency Resolution Process ("CIRP") against Aditya Chemtec Private Limited (hereinafter referred as 'Respondent Company' or 'Corporate Debtor') for failing to make the payment for the invoice issued dated 1<sup>st</sup> June, 2017 amounting Rs.13,54,300/- out of which Rs.7,02,800/- remains outstanding for the goods supplied, along with an interest amount of Rs.2,58,207/- @ 18% calculated as per the term of the invoice from their due date i.e. 1<sup>st</sup> July, 2017 till 16<sup>th</sup> July 2019 in respect of the outstanding invoice dated 1<sup>st</sup> June 2017.
2. The Respondent Company Aditya Chemtec Private Limited (hereinafter referred as Corporate Debtor) was incorporated under the provisions of the Companies Act, 1956 having its registered office situated at G-6/3, IIIrd Floor, Malviya Nagar, New Delhi- 110017. Since the registered office of the respondent corporate debtor is in New Delhi, this Tribunal having territorial jurisdiction over the NCT of Delhi is the Adjudicating Authority in relation to the prayer for initiation of Corporate Insolvency



Resolution Process in respect of respondent corporate debtor under subsection (1) of Section 60 of the Code.

- 3.** Briefly stated the facts of the present case as averred by the applicant are that the applicant is involved in trading of chemical and had supplied caustic soda flakes to the Corporate Debtor, who is also involved in business of chemical trading such as Bleaching Powder, Calcium Chloride Flakes, Potash Flakes etc. As per invoice Corporate Debtor had placed a purchase order of 580 Bags of caustic soda flakes of 50 Kg each. The Applicant in compliance of the purchase order had supplied the material to the Corporate Debtor and raised its Invoice along with the packing list of the material and confirmation for the same upon the Corporate, Further it is submitted that the Corporate Debtor has failed to make the payment for the invoice and during the course of business they had transacted with each other and a huge outstanding has been created in favour of Corporate Debtor which is payable to the Operational Creditor.
- 4.** It is submitted that the Corporate Debtor had defaulted in payment of the total debt of INR Rs.9,61,007/-. In view of default on part of the Corporate Debtor to make the payment to the Applicant against the material so supplied the Applicant had raised Demand Notice dated 16.07.2019, under Section 8 of the Code upon the Corporate Debtor and the same was duly delivered upon the Corporate Debtor by email on 16.07.2019. Also, there is the speed post receipt evidencing the delivery status of Demand Notice to the Corporate Debtor. There is no denial about



services being received from the Operational Creditor. The Corporate Debtor herein has taken a technical plea that it is not privy to the contract in relation to the demand raised by the Operational Creditor.

- 5.** That the respondent through his reply submitted that all averments, statements, submissions, grounds, contentions or allegations made by the Applicant are baseless, misconceived and false, and hence, are denied in entirety. Further stated that the 580 Bags of caustic soda flakes of 50 Kg each supplied by the Applicant were mostly damaged, torn, wet and the chemical was lying scattered on the floor of the transport vehicle and weight of most of the bags was less than 50 Kgs and some bags even weighed around 50% of the weight as shown in Invoice as the goods were damaged because they had become moisturized.
- 6.** Further the respondent submitted that the Respondent informed that more than 50% of the quantity of goods were damaged and cannot be utilized and he was liable to pay only Rs. 6,51,500.00 towards the goods which can be utilized which they have already paid and also reminded the Applicant to issue credit note for the balance amount. That the Applicant agreed and confirmed that no dues were pending against the Respondent towards the Applicant and will also issue Credit Note, therefore claiming pre- existing dispute as to the quality of the goods delivered by the Applicant and the Applicant has imposed an arbitrary rate of interest at the rate of 18% per annum
- 7.** The respondent further stated that the Ministry of Corporate Affairs vide Notification dated 24/03/2020 has



increased the threshold limit from Rs. 1 Lakh to Rs. 1 Crore for initiating insolvency or liquidation proceedings. That in the present matter the alleged default is within Rs.1 Crore.

### **Analysis and Findings**

8. We have heard Ld. Counsel for the applicant and perused the averments made in the application filed by the applicant. The relevant documents annexed with the submissions have been examined.
9. On-going through the submissions made by the Learned Counsels for both the parties and on perusing the documents placed on record, it is observed that the Corporate Debtor has received the goods supplied by the Operational Creditor and is liable to pay for the same. However, the claim of the Corporate Debtor that there was a pre- existing dispute as to the quality of the goods delivered by the Applicant is not proved since the Corporate Debtor failed to produce any substantial and relevant communication/document in respect of any pre-existing dispute between the parties. In the matter of **Mobilex Innovations Pvt. V. Karusa Software Pvt. Ltd.**, Hon'ble Supreme Court has made it abundantly clear that any dispute raised by the Corporate Debtor after service of Demand Notice envisaged under Section 8 of the IBC shall not be construed to be an existing dispute. In the present case, the Corporate Debtor has not produced any single document to prove that there is any dispute between the



parties prior to Demand Notice. Therefore, all the allegations/disputes raised by the Corporate Debtor after Demand Notice are required to be ignored completely as being after-thought and therefore, the whole defense of the Corporate Debtor is sham, bogus and not tenable in the eyes of law.

- 10.** We further find that the nature of debt is a “Operational Debt” as defined under section 5 (21) of the IBC. It has also been established that there is a “Default” as defined under section 3 (12) of the Code on the part of the Corporate Debtor. Therefore, the two essential qualifications, i.e., existence of ‘debt’ and ‘default’, for admission of a petition under section 9 of the Code, 2016 have been met in this case.
- 11.** It is pertinent to note that the objection raised by the Corporate Debtor that the Ministry of Corporate Affairs vide Notification dated 24/03/2020 has increased the threshold limit from Rs. 1 Lakh to Rs. 1 Crore for initiating insolvency proceedings, however it is necessary to mention here that the present petition was filed in January 2020 and rule laid down under the IBC wherein under section 4 it is stated that the minimum amount of default in Rupees One Lakh and the Notification No. F.No.30/9/20-Insolvency dated 24.03.2020 is prospective in nature. The Hon’ble NCLAT in matter of **Madhusudan Tantia v. Amit Choraria** Company Appeal (AT) (Insolvency) No.557 of 2020 has held that



*“56”. As far as present case is concern, this tribunal, after carefully and with great circumspection, ongoing through the contents of the notification dated 24.03.2020 issued by the Ministry of Corporate Affairs, Government of India, whereby and whereunder the minimum amount of default limit was specified as Rs One crore (obviously raising the minimum amount from Rs one lakh to one crore) unerringly comes to definite conclusion that the said notification is only ‘Prospective in Nature’ and not a ‘retrospective’ one because of the simple reason the said notification does not in express term speak about the applicability of ‘retrospective’ or ‘retroactive’ operation.*

- 12.** In view of the above facts and circumstances, we are satisfied that the present petition made by the Operational Creditor is complete in all respects as required by law. The Petition establishes that the Corporate Debtor is in default of a debt due and payable and that the default is more than the minimum amount stipulated under section 4 (1) of the Code, stipulated at the relevant point of time. Further, as envisaged under section 9(3)(b) of the Code, an affidavit has also been filed by the Operational Creditor.

**It is, accordingly, hereby ordered as follows:-**

- 13.** The present company application (**C.P. No. (IB)- 280 (ND)/2020**) stands admitted and the CIRP is hereby initiated against **Aditya Chemtec Pvt. Ltd.**
- 14.** Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the resolution professional along with the



application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of resolution professional. Therefore, this Adjudicating Authority appoints Mr. Sanjay Chopra, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of resolution professionals as maintained by IBBI. The registration number of the IRP being IBBI/IPA-001/IP-P01568/2018-2019/12427 and email id casanjaychopra@gmail.com.

**15.** We direct the applicant to deposit with IRP a sum of Rs.2 lacs 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.

**16.** We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) 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 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 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 the possession of the corporate debtor.”*

*(e)The IB Code 2016 also prohibits Suspension or termination of any license, permit, registration, quota, concession, clearances or a similar grant or right 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 insolvency, subject to the condition that there is no default in payment 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.”*

- 17.** 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 IBC 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'.

- 18.** 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.

**Sd/-**

**(SHRI RAHUL BHATNAGAR)**  
**Member (Technical)**

**Sd/-**

**(SHRI P.S.N. PRASAD)**  
**Member (Judicial)**