

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

**CA No. 617/2019
In
CP (IB) No.160/Chd/Pb/2018**

**Under Section 66 of the
Insolvency and Bankruptcy
Code, 2016**

In the matter of:

Mahavir Traders ...Petitioner/Operational Creditor

Versus

Gian Chand and Sons Pvt. Ltd. ...Respondent/corporate debtor.

And

In the matter of CA No. 617/2019

**Rajeev Bhambri, Resolution Professional,
Gian Chand and Sons Private Limited**

having its registered office at
R/o Village Bazra, Rahon Road,
Ludhiana, Punjab-141007

....Applicant

Vs.

1. Gulshan Rai

S/o Sh. Gian chand
having its registered office at
R/o B-XIX, 102, Major Gurdial Singh Road,
Mall Road, Civil Lines
Ludhiana, Punjab

2. M/s Malhotra Fabrics,

Through Proprietor,
having its registered office at
Place of business at Rahon Road,

Near Maharban Police Station, Ludhiana, Punjab-141007

....Respondents

Judgment delivered on: 06.02.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For Applicant in IA No. 617/2019 : Mr. Karanveer Jindal, Advocate
For Respondent No. 1 in
IA No. 617/2019 : Dr. Rajansh Thukral, Advocate
Mr. Siddharth Thukral, Advocate

PER: SUBRATA KUMAR DASH, MEMBER (TECHNICAL)

JUDGMENT

IA No.617/2019

The present application has been filed by the Resolution Professional under Section 66 of the Insolvency and Bankruptcy Code, 2016 seeking direction against the respondent to contribute an amount of Rs. 7,86,935/- in the account of the corporate debtor, jointly and/or severally.

2. In the present matter, the CIRP was initiated against the corporate debtor vide order dated 30.10.2018 of this Adjudicating Authority, and Mr Anjum Goyal was appointed as Interim Resolution Professional. In the first meeting of COC held on 30.11.2018, the applicant was proposed to be appointed as Resolution Professional instead of Mr Anjum Goyal, Interim Resolution Professional. Vide order dated 12.12.2018 of this Adjudicating Authority, the applicant was appointed as Resolution Professional.

3. It is submitted by the applicant that during the verification of record as on 30.10.2018, respondent No. 2 had deposited an advance of Rs. 4 Lakhs with the corporate debtor against the supplies of material. However, on 29.11.2018, the goods material of the corporate debtor worth Rs. 7,86,935/- was sold to respondent No. 2 in a fraudulent manner. Therefore, the corporate debtor is liable to recover an amount of Rs. 7,89,935/- from respondent No. 2. To substantiate the above, the applicant has attached a copy of the ledger account for the year 01.04.2018 to 31.03.2019, wherein three transactions have been shown

- a. Dated 13.09.2018, receipt of Rs. 3 Lakhs
- b. dated 17.10.2018, receipt of Rs. 1 Lakhs
- c. dated 29.11.2018, invoice amounting to Rs. 7,86,935/-

4. It is further submitted by the applicant that on coming to the knowledge of the above transaction dated 29.11.2018, the applicant intimated the CoC and it was unanimously decided by the CoC to file the present application. Further, it is submitted that the transaction under challenge has been done during CIRP and has the effect of converting an operational creditor into an operational debtor.

5. The applicant has relied on the judgment of Hon'ble NCLAT in the matter of ***Ravi Kumar Tomar vs. Newgen Speciality Plastics Ltd. and Anr.,*** Company Appeal (AT) (Insolvency) No. 65 of 2022 dated 22.08.2022.

6. Notices were issued to the respondent vide order dated 20.08.2019. Pursuant to the notice, the reply has been filed by respondents No. 1 & 2 vide diary No. 5140 dated 26.09.2019 and 6626 dated 26.11.2019, respectively.

Reply by respondent No. 1

7. It is stated by respondent No. 1 that with effect from 30.10.2018 i.e., initiation of CIRP, the management of affairs of the corporate debtor has been taken over by Interim Resolution Professional and under what circumstances the goods worth Rs. 7,86,935/- sold on 29.11.2018 to respondent No. 2 are best known to the Interim Resolution Professional. Also, the applicant is silent as to the action taken by Interim Resolution Professional, and the applicant has not impleaded the IRP as a necessary and proper party. Further, the applicant has not placed any document on record to show any kind of involvement of respondent No. 1 except the ledger account. No sale invoice has the signatures or the authorization of respondent No. 1 has been placed on record. It is submitted that transactions with respondent No. 2 are continuing in nature, and the Interim Resolution Professional has supplied the goods received in advance already received by respondent no. 2.

8. It is submitted by the respondent that a person who has paid the advance cannot be called an operational creditor as a purchaser is always a debtor, and advance payment for the purchase of goods cannot change his character from a debtor to a creditor. Therefore, the applicant has misdescribed respondent No. 2 as an operational creditor of the corporate debtor.

9. The respondent has further relied on the judgment of Hon'ble NCLAT in the matter of Company Appeal (AT) (Insolvency), 203 of 2020 Committee of Creditors of Educomp Solutions Ltd. vs. Ebix Singapore Pt. Ltd. & Anr.

Reply of respondent no. 2

10. It is submitted that the respondent had made an advance payment to respondent No. 1 by way of two cheques, i.e., Cheque no. 15135 dated

13.09.2018 of Rs. 3 Lakhs and cheque no 15304 dated 17.10.2018 of Rs. 1 Lakh. The respondent received the goods on the late night hours of 29.11.2018 vide seven invoices. Further, it is stated that the respondent had utilised the cloth as per invoice no. 621, but vide six separate invoices, the corporate debtor, instead of sending the cloth, sent the waste fibre yarn, which was of very inferior quality. Further, upon the adjustment of the inferior quality waste fibre yarns as per bill no, 622 to 627, the respondent herein is entitled to recover an amount of Rs. 90,185/- from the corporate debtor. It is further submitted that the respondent herein never be called or given notice by the IRP regarding the CIRP of the corporate debtor.

11. The applicant has filed a rejoinder to the reply filed by respondents vide diary No. 959 dated 04.02.2020, wherein it is stated that respondent no. 2 can send the inferior quality yarn back to the corporate debtor in lieu of payment outstanding on account of supply of yarn and denied the averments made by the respondents.

12. We have the learned counsel for the applicant and the respondent and carefully perused the record available.

13. Now, the issue involved in this case is as to whether the advance paid to the corporate debtor before the commencement of the CIRP of the corporate debtor can be adjusted towards the supplies made subsequently by the Corporate Debtor to the creditor during CIRP

14. For a proper appreciation of above issue, a reference is made to the Judgement of Hon'ble NCLAT in the matter of **Ravi Kumar Tomar vs. Newgen Speciality Plastics Ltd. and Ors.** (22.08.2022 - NCLAT) : MANU/NL/0620/2022, wherein it is held that

“ However, the entire case of the Appellant is that the advance has been made against the same purchase order, therefore, it deserves to be adjusted. The argument raised by the Counsel for the Appellant may appear to be attractive and interesting but the fact remains that after initiation of CIRP against the Respondent No. 1, supplies made by it for creation of the liquidity, in order to run the Company, cannot be adjusted with the advance given before the initiation of CIRP against it because in that situation it would be transfer of the asset of the Corporate Debtor on account of an antecedent debt to a creditor (Respondent 2) which shall be preferential transaction and the same has been frowned upon by this Tribunal in the case of Binani Industries Ltd. (Supra). Moreover, once the moratorium is kicked in it does not allow to recover any amount from the Corporate Debtor nor the Corporate Debtor can appropriate any amount towards its own dues. Thus, looking from any angle, we do not find any error in the impugned order for the purpose of interference and hence, the present appeal is hereby dismissed. No costs.”

15. In view of above, the advance paid by the Respondent no.2 before the initiation of CIRP against the goods supplied by the corporate debtor after initiation of CIRP cannot be adjusted against the advance given because in that situation it would be transfer of the asset of the Corporate Debtor on account of an antecedent debt to a creditor (Respondent 2) which shall be preferential transaction. Thus, the respondent No. 2/creditor is directed to file its claim before Resolution Professional for the pre-CIRP advance of Rs.4,00,000/- as per the relevant provisions, rules and regulations of the Code. Respondent No2 is further directed to contribute an amount of Rs. 7,86,935/- to the account of the corporate debtor against the goods supplied.

16. As regards the claim of inferior quality of supplies made by the corporate debtor, the respondent No.2 is at liberty to take up the issue before the

appropriate legal forum as this Adjudicating Authority is not mandated to adjudicate on such issues.

17. In the result, the present application i.e., IA No. 617/2019 is allowed and disposed of accordingly.

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

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

February 06, 2023
PB/ASH