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

CP (IB) No.42/Chd/HP/2019

Under Section 9 of Insolvency and Bankruptcy Code, 2016.

<u>In the matter of :</u>

M/s Jai Ganesh Trading Co.
through its proprietor Mr.Himesh Taneja,
having its place of business at 750,
Grover colony, Dilbagh Nagar Extension,
120 Feet Road, Opp Narula Palace,
Jalandhar City.

….Petitioner/Operational Creditor.

Versus

Addinath Rubbers Private Limited,
having its registered office at
Village Nangal Kalan, Tehsil Haroli,
Una, Himachal Pradesh – 174301.

….Respondent/Corporate Debtor.

Judgement delivered on: 25.09.2019

Coram: Hon'ble Mr. Ajay Kumar Vatsavayi, Member (Judicial)
Hon'ble Mr.Pradeep R. Sethi, Member (Technical)

For the petitioner-operational creditor: Mr. Adhiraj Bhardwaj, Advocate

For the respondent-corporate debtor: Mr.Atul V.Sood, Advocate

<u>Per: Ajay Kumar Vatsavayi, Member (Judicial)</u>

<u>JUDGEMENT</u>

This petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **Code**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (**Rules**) by M/s Jai Ganesh Trading Co. through its proprietor Mr. Himesh Taneja (**Operational Creditor**) for initiating the Corporate Insolvency Resolution Process (**CIRP**) in the case of **Addinath Rubbers Private Limited** (**Corporate Debtor**). As per master data at page 19 of the petition, the registered office of the Corporate Debtor is at Village Nangal Kalan, Tehsil Haroli, Una, Himachal Pradesh – 174301. Therefore, the jurisdiction lies with this Bench of the Tribunal.

2. The Corporate Debtor was incorporated on 31.12.2017 under the provisions of Companies Act, 2013. The CIN of the Corporate Debtor is U25199HP2007PTC030819. It is stated that the Corporate Debtor is engaged in the business of manufacturing of rubber products and the Operational Creditor entered into an agreement with the corporate Debtor for the sale of raw materials in the nature of chemicals, adhesives dye colours, which were utilized in production of Corporate Debtor's products. Copy of the agreement is placed as Annexure A-2 of the petition.

3. It is stated that the Operational Creditor has sold raw material to the Corporate Debtor and issued various invoices from 10.05.2016 to 30.10.2018. In Part IV of Form 5 the total amount of debt is stated to be ₹55,28,133/-. It is also stated that an amount of ₹90,000/- has been paid by the Corporate Debtor after issuance of demand notice dated 31.10.2018.

4. A demand notice in Form No.4 is stated to be issued on 31.10.2018 (Annexure A-5) of the petition). The demand notice was accompanied by duly issued invoices in the name of Corporate Debtor along with copies of ledger in the books of the Operational Creditor. The demand

notice in Form No.4 is stated to be served by speed post on the Corporate Debtor on 31.10.2018 (Page No.187 of this petition).

5. Reply dated 07.11.2018 to the above stated demand notice was given by the Corporate Debtor wherein it denied the liability amount as debt for the purposes of Insolvency and Bankruptcy Code, 2016 and mentioned that any non-payment of outstanding invoices are a result of ongoing settlement with the Corporate Debtor's Bank, which has rendered their account as NPA. It was also assured that the Corporate Debtor would clear all the dues once this matter is resolved.

6. The petition is signed by Shri Himesh Taneja, proprietor of the Operational Creditor and has also filed an affidavit dated 15.12.2018 verifying the contents of Form No. 5. He has also filed an affidavit dated 15.12.2018 (Page 281-283) stating that the petitioner has sent a demand notice dated 31.10.2018 to the Corporate Debtor at its registered office under Section 8 of the Code, demanding payment of the operational debt amounting to ₹55,28,133/-. It is also stated that the payment of ₹90,000/- was made by the Corporate Debtor after issuance of the demand notice dated 31.10.2018. It is further deposed that the Corporate Debtor vide its reply dated 07.11.2018 to the demand notice, has raised an illusionary dispute with the Bank and no amount has been received by the Operational Creditor from the Corporate Debtor in satisfaction of any part of invoices issued by the Operational Creditor to the Corporate Debtor.

7. In Part III of Form 5, the operational creditor has proposed Mr. Vigyan Prakash Arora, bearing Registration No. IBBI/IPA-001/IP-P01106/2017-2018/11797 as the Interim Resolution Professional. The

consent of the proposed IRP is furnished in Form No. 2 at Page No. 286 to 288 in which he has stated that there are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

8. On 31.01.2019, Mr.Atul V.Sood, Advocate accepted the notice on behalf of the respondent-Corporate Debtor and filed power of attorney along with the Board resolution. Learned counsel for the respondent-Corporate Debtor also sought some time to file reply and a period of five weeks was granted to file the reply. It is observed that no reply has been filed by the Corporate Debtor so far.

9. When the matter was listed on 19.09.2019, learned counsel for the respondent-Corporate Debtor submitted that the Corporate Debtor defaulted in making payment of the debt due to the Operation Creditor and an appropriate order may be passed accordingly.

10. We have carefully considered the submissions of the learned counsel for the Operational Creditor and Corporate Debtor and have also perused the records.

11. We find that in ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited, (2018) 1 SCC 353,*** the Hon'ble Supreme Court has held as under:

> *"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."

12. The present petition is filed by the Operational Creditor since payment for invoices issued in respect of the goods supplied, have not been paid by the corporate debtor. The total amount of debt is stated to be ₹55,28,133/-. Along with the petition, the Operational Creditor has filed the Ledger of the Corporate Debtor in the books of the Operational Creditor which is placed as annexure A-7 of the petition. The statement of accounts of Operational Creditor maintained with Union Bank of India ranging from 01.04.2015 to 14.12.2018 is also found attached with the petition as Annexure A-8.

13. It is evident that the Corporate Debtor has already made the payment of ₹90,000/- after issuance of the demand notice as prescribed in Form 4 dated 31.10.2018, thereby reducing the liability from ₹55,28,133/- to ₹54,38,133/-.

14. During the course of hearing, learned counsel for the respondent-Corporate Debtor has contended that the Corporate Debtor has defaulted in making payment of the debt and therefore, it is held that there is no dispute as to the debt and default by the Corporate Debtor.

15. In view of the above discussion, this petition deserves to be allowed.

16. The provisions of Section 9 (5) (i) of the Code are as follows:-

> *"(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—*
>
> *(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—*
>
> *(a) the application made under sub-section (2) is complete;*
>
> *(b) there is no payment of the unpaid operational debt;*
>
> *(c) the invoice or notice for payment to the corporate debtor has been delivered by the operational creditor;*
>
> *(d) no notice of dispute has been received by the operational creditor or there is no record of dispute in the information utility; and*
>
> *(e) there is no disciplinary proceeding pending against any resolution professional proposed under sub-section (4), if any."*

17. No objections are being raised to the completeness of the application filed under Section 9 (2) of the Code. As discussed above, the operational debt remains unpaid and the demand notice under Section 8 of the Code was duly delivered to the Corporate Debtor on 31.10.2018. The reply to the demand notice has been examined above and found to be not acceptable. As discussed above, the proposed Resolution Professional Shri Vigyan Prakash Arora, has filed Form No.2 in which he has stated that there

are no disciplinary proceedings pending against him with the Board or Indian Institute of Insolvency Professionals of ICAI.

18. 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 CIRP process in the case of the Corporate Debtor M/s Addinath Rubbers Private Limited and direct moratorium and appointment of Interim Resolution Professional as below.

19. 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 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.

20. It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during 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 financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

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

22. The Law Research Associate of this Tribunal has checked the credentials of Mr.Vigyan Prakash Arora and there is nothing adverse against him. In view of the above, we appoint Mr.Vigyan Prakash Arora, bearing Registration No.IBBI/IPA-001/IP-P01106/2017-2018/11797, Mobile No.9815000485, e-mail id vigyan@vigyanarora.com as the Interim Resolution Professional with the following directions:-

i) The term of appointment of Mr. Vigyan Prakash Arora shall be in accordance with the provisions of Section 16 (5) of the Code;

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 moral;

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 Interim Resolution Professional 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 constitution of the committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the committee within seven days of filing the report of constitution of the committee; and

vii) The Interim Resolution Professional is directed to send regular progress report to this Tribunal every fortnight.

A copy of this order be communicated to both the parties. The learned counsel for the petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send copy of this order to the Interim Resolution Professional at his email address forthwith.

Sd/- Pronounced in open Court. Sd/-
(Pradeep R.Sethi) (Ajay Kumar Vatsavayi)
Member (Technical) Member (Judicial)

September 25th, 2019
Ashwani