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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

IBA/1031/2019 filed under Section 9
of the Insolvency and Bankruptcy Code,
2016 r/w Rule 6 of the Insolvency and
Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

In the matter of ***M/s. Arrowline Organic Products Pvt. Ltd.***

M/s. Rockwell Industries Limited

6-3-883/2/A, 3rd Floor,
Tejaswi Plaza, Panjagutta,
Hyderabad – 500 082

... Operational Creditor

-Vs-

M/s. Arrowline Organic Products Private Limited

11/6, Bishop Wallers Avenue (South)
CIT Colony, Mylapore,
Chennai – 600 004

...Corporate Debtor

Order Pronounced on **05.05.2020**

CORAM :

**R. VARADHARAJAN, MEMBER (JUDICIAL)
ANIL KUMAR B, MEMBER (TECHNICAL)**

For Operational Creditor : Chandramouli Prabhakar, Counsel

For Corporate Debtor : Rahul Balaji, Counsel

ORDER

Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. Under Adjudication is an Application that has been filed by **M/s. Rockwell Industries Limited** (hereinafter referred to as '*Operational Creditor*') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule

6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **M/s. Arrowline Organic Products Private Limited** (hereinafter referred to as '*Corporate Debtor*'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional.

2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is a Public Limited Company. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Private Limited Company with CIN:U5122TN2015PTC099926 which was incorporated on 06.04.2015 and that its Authorized Share capital and paid up capital is Rs.24,00,00,000/- and Rs.17,30,59,300/- respectively. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No.11/6, Bishop Wallers Avenue (South), CIT Colony, Mylapore, Chennai - 600 004. Part-III of the Application shows that the Operational Creditor has not proposed the name of the "Interim Resolution Professional" (IRP) and left it to the discretion of this Tribunal to appoint the same.



3. From Part-IV of the Application, it is seen that a sum of Rs.21,00,000/-, is being claimed by the Operational Creditor as Operational Debt and the date of default is stated to be on 14.05.2019. The details of transaction are stated to be supply of Deep Freezers by the Operational Creditor to the Corporate Debtor.

4. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor is a leading deep freezer manufacturer in the state of Telangana and the Corporate Debtor is involved in the product, distribution and sale of organic and other allied products. The Corporate Debtor approached the Operational Creditor to procure various freezers of certain requirement for the preservation of its produce for onward transportation. It was submitted that after mutual deliberations and negotiations, the Corporate Debtor placed 5 purchase orders on 07.02.2017 in the following manner;

- i. AOPL/PO/291 – FEB – 2017 dated 07.02.2017
- ii. AOPL/PO/292 – FEB – 2017 dated 07.02.2017
- iii. AOPL/PO/293 – FEB – 2017 dated 07.02.2017
- iv. AOPL/PO/294 – FEB – 2017 dated 07.02.2017
- v. AOPL/PO/295 – FEB – 2017 dated 07.02.2017



5. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor vide its Letter dated 11.02.2017 enclosed 6 post dated cheques and the details of the same are given below;

- i. Cheque No. 313 dated 03.04.2017 for Rs.9,36,000/-
- ii. Cheque No. 314 dated 03.04.2017 for Rs.4,68,000/-
- iii. Cheque No. 315 dated 03.04.2017 for Rs.4,68,000/-
- iv. Cheque No. 316 dated 03.04.2017 for Rs.5,18,000/-
- v. Cheque No. 317 dated 06.04.2017 for Rs.5,18,000/-
- vi. Cheque No. 318 dated 06.04.2017 for Rs.3,88,500/-

6. It was submitted by the Learned Counsel for the Operational Creditor that the Corporate Debtor has placed further two Purchase orders with the Operational Creditor in the month of March 2017, the details of which are given below;

- i. AOPL/PO/344A – MAR – 2017 dated 17.03.2017
- ii. AOPL/PO/344B – MAR – 2017 dated 17.03.2017

7. In pursuance of the same, the Corporate Debtor vide its letter dated 24.03.2017 has enclosed two post dated cheques, the details of which are as follows;

- i. Cheque No. 441 dated 08.05.2017 for Rs.8,19,000/-
- ii. Cheque No. 442 dated 08.05.2017 for Rs.6,15,000/-



8. The Learned Counsel for the Operational Creditor submitted that the Operational Creditor has supplied a total of 182 Nos. of Deep Freezers as per the aforesaid 7 Purchase Orders and the said Deep Freezers were immediately dispatched by the Operational Creditor through M/s. Sheetal Transports & M/s. Cosmo Carrying Pvt. Ltd. to the Corporate Debtor. It is submitted that the Operational Creditor has raised a total of 13 Invoices amounting to a sum of Rs.42,58,773/- against the Corporate Debtor.

9. The Learned Counsel for the Operational Creditor submitted that as per the payment terms originally agreed for the said Deep Freezer, the same was to be paid within 45 days of delivery of the said goods and the said goods have also been delivered promptly by M/s. Sheetal Transports & M/s. Cosmo Carrying Pvt. Ltd. to the Corporate Debtor without any undue delay. However, despite the lapse of the Credit period and the grace period, as no payments were forthcoming from the Corporate Debtor, the Operational Creditor presented the 5 of the 8 cheques to the Bank, however the same was returned with an endorsement "*Payment Stopped by the Drawer*".

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10. Thereafter, the Corporate Debtor was duly notified of the dishonouring of the said Cheque through the Return Memo issued by the Bank and the Corporate Debtor had requested the Operational Creditor not to present any further cheques for payment and requested for further time to make the payment, due to fund constraints. As against the total outstanding due of Rs.42,58,773/- the Corporate Debtor has paid a sum of Rs.5,00,000/- on 17th June 2017 vide NEFT to the Bank Account of the Operational Creditor and pursuant thereto, for the balance amount of Rs.37,58,773/-, the Corporate Debtor vide its letter dated 23.06.2017, issued three post dated cheques and requested the Operational Creditor not to present the cheques which are in their possession. The details of three post dated cheques issued by the Corporate Debtor are as follows;

- i. Cheque No. 583 dated 17.07.2017 for Rs.15,00,000/-
- ii. Cheque No. 584 dated 17.08.2017 for Rs.15,00,000/-
- iii. Cheque No. 585 dated 17.09.2017 for Rs.7,58,000/-

11. The Learned Counsel for the Operational Creditor submitted that despite such accommodation by the Operational Creditor, the Corporate Debtor once again requested not to encash the said 3 cheques and therefore, once again, in the interest of continued business, the Operational Creditor did not present the aforementioned three



cheques for payment. However, after repeated followup, the Corporate Debtor has made a payment of Rs.2,00,000/- on 14.11.2018 vide NEFT and thereafter, vide letter dated 15.11.2018 and 20.11.2018 towards the balance debt due and payable, the Corporate Debtor has issued further 11 post dated cheques to the Operational Creditor. However, again some of the cheques have been returned unpaid by the Bank with the endorsement "*Payment Stopped by Drawer*". Thus, out of the said 11 Cheques, 6 cheques were returned unpaid by the Corporate Debtor amounting to Rs.21,00,000/-.

12. The Learned Counsel for the Operational Creditor submitted that the Corporate Debtor has never denied the sums due and payable by them and from the perusal of the emails dated 11.07.2017, 26.07.2017, 05.08.2017, 01.09.2017 and 22.03.2018, the Corporate Debtor has only expressed their inability to make payments to the Operational Creditor. It was further submitted that the cheques enclosed by the Corporate Debtor in their letter dated 15.11.2018 and 20.11.2018 clearly show that the Corporate Debtor has admitted the debt due and payable by it.

13. The Learned Counsel for the Operational Creditor submitted that they have issued Demand Notice in Form 3



dated 26.12.2018 to the Corporate Debtor under Section 8 of IBC, 2016 and since the same had various defects, such as claiming certain dues which had not yet become payable and incorrect Registered Office, the Operational Creditor has issued a fresh Demand Notice dated 03.06.2019 in compliance with the provisions of Section 8 of IBC, 2016 in the prescribed Form seeking for payment of the amount due and payable as on 03.06.2019 i.e. Rs. 21,00,000/-. However, despite the receipt of the said Form - 3 notice, the Corporate Debtor has neither responded nor remitted the claimed amount of Rs.21,00,000/- to the Operational Creditor and no notice of any dispute or any communication whatsoever has been received by the Operational Creditor till date.

14. The Operational Creditor has also filed the extract of the Bank Statement for the corresponding period and further the Operational Creditor has also produced the Bank statement of the Operational Creditor for the month of June 2019 showing that no payment has been made by the Corporate Debtor since the issuance of Form 3 by the Operational Creditor. Under the circumstances, the Operational Creditor has filed the present Application for initiation of the CIRP as against the Corporate Debtor as the Corporate Debtor is unable to pay its dues to the Operational Creditor.



15. In relation to the Corporate Debtor, it may be seen from the record of proceedings that the Corporate Debtor has entered appearance through its counsel on 08.11.2019 and they were directed to file reply within a period of 10 days and the matter was posted on 04.12.2019. However, on 04.12.2019, the Corporate Debtor has not filed the reply and the matter was posted to 21.02.2020. Even on 21.01.2020, the Corporate Debtor sought time to file reply and this Tribunal has passed the following order;

"Learned Counsel for the parties are present. Learned Counsel for the Corporate Debtor seeks for some time for filing reply as negotiation between the parties for settlement are going on. However, it cannot be extended as such the direction for filing reply was given by this Tribunal dated 08.11.2019 within a period of ten days from that date. More than two months have lapsed and even as today no reply has been filed and in the circumstances we are not able to consider the grant of time for the same. Hence, the right of filing reply of the Corporate Debtor shall stand closed. However, the Corporate Debtor has the liberty to contest the matter based on the available records before this Tribunal. Post this matter for enquiry on **04.02.2020.**"

16. It may be seen that the Corporate Debtor has sought for time and more time on the pretext that negotiation between the parties for settlement are going on, which dissuade the Corporate Debtor from filing any reply and the same goes on to show that the Corporate Debtor has impliedly admitted

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their liability of payment due to the Operational Creditor. Thus, the Operational Creditor has proved that there is an existence of 'Operational Debt' and the default of such operational debt which is payable by the Corporate Debtor to the Operational Creditor

17. From the list of invoices filed and the Purchase Order annexed, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years and in relation to the Corporate Debtor the registered office of which is situated within the State of Tamilnadu, amenable to its territorial jurisdiction, this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

18. Thus taking into consideration the facts and circumstances of the case as well as the position of Law, we are of the view that the Petition as filed by the Operational Creditor is required to be admitted under Section 9(5) of the IBC, 2016. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India appoints **Mr. ASIR RAJA SELVAN** with Registration



Number **IBBI/IPA-002/IP-N00498/2017-2018/11554**
(email id:- **asir.cs@gmail.com**) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- 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

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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 respondent.

19. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) 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.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the

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Central Government in consultation with any financial sector regulator.

20. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where 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 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.

21. The Operational Creditor is directed to pay a sum of **Rs. 2,00,000/-** (*Rupees Two Lakhs Only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India

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(Insolvency Resolution Process for Corporate Persons)
Regulations, 2016.

22. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

-SD-
(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-
(R.VARADHARAJAN)
MEMBER (JUDICIAL)

Raymond

*Order pronounced by concord in terms of
NCLT circular dated 14/04/2020 through video
conferencing platform. Member (T) present in
person at Chennai and Member (T) through
14 of 14*

(P.T.O.)