

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
"CHANDIGARH BENCH, CHANDIGARH."**

(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)

**CP (IB) NO. 24/Chd/Hry/2018**

**Under Section 9 of IBC, 2016**

**In the matter of :**

**SWASTIK POLYVINYL PVT.LTD**

3B, Big Jos tower, A-8 Netaji Subhash Place,  
Pitampura, Delhi-110034

....Applicant-Operational Creditor.

Vs.

**P.R.TECHNOPLAST PVT.LTD.**

Having its registered office at  
Khasra No.6316/175, Rajendra Park,  
Bajghera Road,  
Gurgaon-122001, Haryana

...Respondent-Corporate Debtor

**Order delivered on: 14.03.2018**

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)  
Hon'ble Mr.Pradeep R.Sethi, Member (Technical)**

For the Applicant. 1.Mr. Gagandeep Singh Ahluwalia, Advocate.  
2.Mr.Sunil Aggarwal, PCS

For the Corporate Debtor. None.

**Per: R.P.Nagrath, Member (Judicial)**

**ORDER (Oral)**

This petition has been filed by the petitioner as an Operational  
Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for  
short, hereinafter referred to as the 'Code') read with Rule 6 of the Insolvency  
and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for  
brevity, the 'Rules') for initiating insolvency resolution process against the  
Respondent-Corporate Debtor.

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2. The petitioner-company was incorporated on 19.05.1998 with its registered office at Delhi, having been allotted CIN U25209DL1998PTC093922.

3. The petitioner-company passed a resolution in the meeting of Board of Directors held on 08.12.2017 deciding to initiate the of insolvency resolution process against the corporate debtor under the Code and authorising Mr. Deepak Bansal, Director and/or Mr.Om Parkash Bansal, Director to file application before this Tribunal and to do all the acts necessary for the progress of the case.

4. The respondent-company was incorporated on 26.06.2013 under the Companies Act, 1956 and allotted CIN U25190HR2013PTC049656. Authorised share capital of the respondent company is ₹2.00 crores and paid-up share capital is ₹1.96 crores. It has its registered office at Gurugram, Haryana and therefore, the matter falls within the territorial jurisdiction of this Tribunal.

5. The application has been filed under Rule 6(1) of the Rules and the contents of the application are supported by the affidavit of Mr.Deepak Bansal, authorised representative of the company. The affidavit of Mr.Deepak Bansal is at Annexure-E page 23 of the paper book.

6. It is stated that the respondent is a private limited company and is engaged in the manufacturing of two wheeler products and plastic moulding parts and fasteners. The petitioner was supplying PP Compound/S-Profit/white/AM and also done the work for the respondent-corporate debtor. The petitioner issued various vouchers for the supply of material for the period from 17.07.2015 to 28.10.2016. The goods supplied

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under the 8 invoices to the respondent are to the tune of ₹13,81,535/- out of which the petitioner has received only ₹1,70,137/- and an amount of ₹12,11,398/- is the balance outstanding.

7. The petitioner has annexed certificate from its Bank i.e. Union Bank of India where it is maintaining its account which is dated 09.11.2017 Annexure-K. The Bank has certified that no amount has been credited from the respondent-corporate debtor in the account of the petitioner since 30.10.2016. Learned counsel for petitioner submits that the last payment made by the respondent to the petitioner was on 29.10.2016. In support of this contention, the petitioner has filed ledger account Annexure-M which shows that last payment made by the respondent and credited in the account of the petitioner was on 29.10.2016.

8. In Part IV of the application, the petitioner has mentioned the outstanding amount for which the corporate debtor is in default as ₹12,11,398/- plus amount of interest to the tune of ₹3,87,627/-. Learned counsel for petitioner submits that the interest has been calculated from the due date @18% p.a. but during the arguments, learned counsel for petitioner restricted the interest @6% p.a. from the due date. It is observed that in case the petition is admitted the Interim Resolution Professional / Resolution Professional shall keep in view the aforesaid undertaking while determining the claim of the petitioner-operational creditor.

9. The petitioner sent a demand notice dated 13.11.2017 in Form 3 Annexure-I to the corporate debtor giving all the details. It is stated in Col.7 of the demand notice that along with the notice, the petitioner-operational creditor also sent all the invoices for the work done, ledger

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account of the respondent-corporate debtor being maintained by the petitioner, computation of interest details and also bank certificate. Along with this notice the operational creditor also sent notice in Form 4 dated 13.11.2017 raising demand of the outstanding amount of the transactions to the tune of ₹12,11,398/- along with interest as claimed in the instant petition. Copy of this notice is at page 40 of the paper book. Invoices under which the goods were supplied to the respondent-corporate debtor are from pages 67 to 74 Annexure-L and the same invoices which were also sent to the respondent along with notice are from pages 42 to 59 of the paper book. The demand notice was sent to corporate debtor and all its directors, as submitted by the learned counsel for petitioner, by speed post as per the postal receipts attached at page 54 of the paper book. Notice to the corporate debtor was delivered as per the tracking report at page 56 of the paper book. Rest of the tracking reports are also enclosed.

10. Notice of this petition was sent to the respondent-corporate debtor to show cause as to why this petition be not admitted. Learned counsel for petitioner filed his own affidavit of service dated 08.03.2018 stating that the notice was sent by speed post on 21.02.2018 Annexure-A attached with the affidavit and the same was delivered to the respondent-corporate debtor on 24.02.2018 as per the tracking report Annexure-B attached with the affidavit.

11. It was also directed in the order dated 06.02.2018 that the petitioner shall send the notice by the other mode i.e. at the e-mail address of the respondent-corporate debtor available on the master data of the company. Copy of the said email dated 21.02.2018 is at Annexure-C

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attached with the affidavit. Learned counsel for petitioner submits that the aforesaid e-mail did not bounce back. There is no representation from the respondent despite valid service.

12. We have heard learned counsel for petitioner and perused the record quite carefully.

13. It is contended that despite service of the demand notice to the corporate debtor which was delivered on 22.11.2017, the corporate debtor did not send any notice of dispute nor any payment was made within 10 days of delivery of the said notice.

14. Learned counsel for petitioner referred to the affidavit Annexure-F furnished by Mr. Deepak Bansal, authorised representative of the company dated 19.12.2017, stating therein that the petitioner has not received any notice of dispute from the corporate debtor of the unpaid operational debt nor any reply has been received. This affidavit has been file in order to comply with the mandatory requirement of Section 9(3)(b) of the Code. The allegation to this effect is also contained in the petition while narrating the facts of the instant case at para 6 (page 18) of the paper book.

15. The petitioner has also complied with the requirement of Section 9(3)(c) of the Code by filing certificate Annexure K from the Bank maintaining account of the operational creditor confirming that there is no payment of the unpaid operational debt by the respondent-corporate debtor.

16. The petition under Section 9 of the Code can be filed by the operational creditor after the expiry of 10 days of the delivery of demand notice to the corporate debtor sent under Section 8 of the Code. This is

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provided in sub-section (1) of Section 9 of the Code. Sub-section (5) of Section 9 of the Code reads as under:

*"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 repayment 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.*
- (ii) *Reject the application and communicate such decision to the operational creditor and the corporate debtor, if-*
  - (a) *The application made under sub-section(2) is incomplete;*
  - (b) *There has been repayment of the unpaid operational debt;*
  - (c) *The creditor has not delivered the invoice or notice for payment to the corporate debtor;*
  - (d) *Notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility; or*
  - (e) *Any disciplinary proceeding is pending against any proposed resolution professional."*

17. On perusal of the application, we find that the application is complete in all respects and there is no challenge on behalf of the respondent, despite service of the notice of this petition and service of demand notice as already described. Even when the petition was filed, the petitioner dispatched copy of this petition along with entire paper book to the respondent-corporate debtor on 19.12.2017 in order to comply with the requirement of Rule 6(2) of the Rules and the postal receipt of the dispatch of the copy of the petition is at page 32 of the paper book,

18. The petitioner being Operational Creditor is not bound to propose the name of Resolution Professional to be appointed as Interim

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Resolution Professional. But in this case, the petitioner has proposed the name of Mr. Prabhjit Singh Soni as the Resolution Professional who has given his written communication in Form 2 Annexure-H stating therein all the particulars which are required to be furnished. It is stated by him that he is serving as an Interim Resolution Professional in one case and Resolution Professional in the other. It is certified that there are no disciplinary proceedings are pending against the Resolution Professional with IBBI and ICSI.

19. All the requirement of sub-clause (1) of sub-section (5) of Section 9 of the Code are complied with. In view of the above, the instant petition deserves to be admitted. The petition is, therefore, admitted declaring the moratorium prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -

- (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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

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Prabhjit Singh*

(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, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall however not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

21. The 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 matter be listed on 20.03.2018 for passing of the formal order of appointment of Interim Insolvency Resolution Professional with further directions. Copy of this order be communicated to both the parties.

Sd/-

(Pradeep R.Sethi)  
Member (Technical)  
Adjudicating Authority

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(Justice R.P.Nagrath)  
Member (Judicial)  
Adjudicating Authority

March 14, 2018  
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