

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

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

CP (IB) No.119/Chd/Chd/2018

**Under Section 9 of the
Insolvency and Bankruptcy
Code 2016.**

In the matter of:

Bhagwati Kripa Paper Mills Pvt. Ltd., having its registered office at: B-98, 10-B Scheme, Gopalpura Bypass, Jaipur-303801

And its corporate office at:

Bhagwati Kripa Paper Mills, near JVVNL Office, A-28, RIICO Industrial Area, Kaladera, Chomu, Jaipur.

...Petitioner/Operational Creditor

Versus

A.P. Enterprises Private Limited, having its registered office at: Plot No. 77, Industrial Area, Phase-II, Chandigarh – 160002.

...Respondent/Corporate Debtor

Judgment delivered on 13.11.2018

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

For the petitioner : 1. Mr. Sahil Narang, Advocate
2. Mr. Vipul Joshi, Advocate

For the Respondent : Mr. Ajay Bishnoi, Advocate

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

Judgment

This petition has been filed by M/s Bhagwati Kripa Paper Mills Pvt. Ltd. a company incorporated under the Companies Act, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred hereinafter as the 'Code') for initiating Insolvency Resolution Process against the corporate debtor. The operational creditor passed a Resolution dated 23.03.2018 resolving to file the petition under the Code against the respondent-corporate debtor and authorizing Mr. Prem Kishore Mehra, Managing Director, Mr. Sanjeev Mehra, Director of the company severally to file the petition, sign and verify the pleadings and to do all the acts necessary for the progress of the case. The Resolution of the Board of Directors of the petitioner-operational creditor is at Page 981 of the paper book. The application has been filed in Form 5 as prescribed in Rule 6(1) of Insolvency & Bankruptcy (Application to Adjudicating Authority), Rules 2016 (for brevity the 'Rules'). The contents of the application are supported by the affidavit sworn in by Mr. Sanjeev Mehra one of the authorized person.

2. The respondent-corporate debtor M/s A.P. Enterprises was incorporated on 13.01.1993 with authorized capital of ₹3,50,00,000/- (Rupees Three Crores and Fifty Lakhs Only) and paid up capital of ₹3,48,55,000/- (Rupees Three Crores Forty Eight Lakhs and Fifty Five Thousand Only). It has its registered office at Chandigarh and therefore, the matter falls within the territorial jurisdiction of this Tribunal. Annexure II/M is the Master Data of the corporate debtor.

3. The facts of the case, briefly stated, are that the petitioner-operational creditor is the manufacturer and supplier of high quality kraft paper. The goods were supplied to the respondent-corporate debtor from time to time. On the basis of various purchase orders issued by the respondent, the petitioner raised sale orders and periodically raised the invoices of the goods delivered to the respondent-corporate debtor. The last invoice was issued on 08.11.2017. The chart showing the details of the unpaid/partially paid invoices and corresponding purchase and sale orders has been annexed at Annexure II/B (Page 786). The copies of the unpaid/partially paid invoices alongwith the corresponding purchase and sale orders are at Annexure II/A (Pages 50 to 785). The first such invoice of unpaid/partially paid invoice is dated 19.08.2017 alongwith the purchase and sale order dated 16.08.2017 placed on record corresponds to the chart Annexure II/B. All the rest of invoices with the relevant purchase and sale orders are also annexed.

4. Pursuant to multiple reminders sent over e-mail by the petitioner-operational creditor to the respondent, a meeting was held between the authorized representatives of both the companies, wherein the Director of respondent-corporate debtor Mr. Narinder Kumar Garg confirmed the outstanding liability to the tune of ₹4,61,85,364.50/- as on 09.02.2018, by furnishing an undertaking dated 09.02.2018 on a stamp paper, copy of which is at Annexure II/D (Pages 797-805). In terms thereof the respondent agreed to pay ₹22 lakhs through RTGS transfer. Out of this, an amount of ₹8 lakhs was transferred in favour of the petitioner by RTGS transfer on the same day i.e. on 09.02.2018. The respondent also undertook to provide an amount of ₹4,810.50/- separately to the petitioner through a credit note by the aforesaid e-mail. For the balance

amount of ₹4,31,80,554/- (Page 2), the respondent issued a number of cheques towards the admitted liability. The list of the cheques is part of the said undertaking dated 09.02.2018 for the total amount of ₹4,31,80,554/-. The list of 79 cheques issued on 09.02.2018 of the total amount of ₹4,31,80,554/- is from pages 802 to 804 of the paper book.

5. Out of the aforesaid amount of ₹22 lacs the respondent-corporate debtor deposited an amount of ₹8,00,000/- by RTGS transfer on 09.02.2018. the date of execution of the aforesaid document and another amount of ₹5 lacs by RTGS transfer on 23.02.2018. So even the aforesaid total amount of ₹22 lacs agreed to be transferred by RTGS transfer has not been fully paid. The bank receipt with record to the deposit of ₹8 lacs on 09.02.2018 is Annexure II/E and for ₹5 lacs on 23.02.2018 is Annexure II/F. There is thus, a total amount of ₹4,48,85,364/- still outstanding as on 23.03.2018.

6. The petitioner has attached Annexure II/G (Page 808), the list of nine cheques of the total amount of ₹60 lacs provided on 09.02.2018. By an e-mail dated 27.02.2018 Annexure II(I), the petitioner followed up with the respondent regarding the outstanding payment and requested the respondent-corporate debtor to replace the few cheques amounting to ₹60 lacs which were either dishonoured or became invalid because of the expiry of validity period. Out of the cheques drawn on State Bank of India issued by the respondent-corporate debtor for a total amount of ₹60 lacs, the cheques worth ₹50 lacs were dishonoured.

7. By e-mail dated 28.02.2018 Annexure II/J, the petitioner informed the respondent that it would be depositing certain cheques with the bank for

encashment and requested the respondent to arrange sufficient funds. The chart Annexure II/H contains the details of the 12 cheques provided by the respondent-corporate debtor as on 12.03.2018 to replace the dishonoured cheques. The petitioner has also relied upon various reminder e-mails dated 15.01.2018, 01.02.2018, 03.02.2018, 06.02.2018, 08.02.2018, 22.02.2018, 06.03.2018 and 16.03.2018 Annexure II/K (colly) regarding the C-Forms requiring payment of Central Tax. It is thus stated that the respondent-corporate debtor has not disputed the liability to pay the outstanding amount despite repeated demands and has thus committed default.

8. The petitioner then sent a demand notice under Section 8 of the Code dated 27.03.2018 Annexure-I in Form 3 as provided in Rule 5 of the Rules giving detailed facts therein and by attaching the necessary documents which have been pleaded in the instant case. The demand notice was sent through e-mail as well as Speed Post and Registered Post AD which was duly served on the corporate debtor on 28.03.2018.

9. The respondent-corporate debtor sent a reply to the demand notice dated 03.04.2018 Annexure II/N alongwith the Annexures which was received by the petitioner on 09.04.2018. It is alleged that the reply to the demand notice has been sent much after the expiry of 10 days service of the notice. Otherwise the reply to the demand notice contains the allegations which are designed as a ploy and an afterthought just to defeat the rights of the operational creditor. All the allegations contained in the reply are disputed. The reply contains only the bald averments. The dispute raised with regard to the deterioration of the quality of goods supplied by the petitioner are being raised for the first time which in any

case is belated and the same has been taken only to create a sham and illusory defence. The quality issue was never raised by the corporate debtor nor any proof to substantiate such a claim has been annexed especially the plea has no legs to stand as the respondent-corporate debtor admitted the liability by way of the balance confirmation and issuing multiple cheques.

10. The reliance upon the ledger account to certain entries of the respondent is a fraudulent act of the respondent-corporate debtor with an intent to deliberately and intentionally conceal the true facts from the Tribunal. It is stated that the corporate debtor supplied the material procured from operational creditor to five concerns (i) A.P. Enterprises, Ludhiana (A.P. Ludhiana), (ii) A.P. Enterprises, Baddi (A.P. Baddi), (iii) A.P. Enterprises Pvt. Ltd., Chandigarh (A.P. Chandigarh), (iv) Charan Kamal Card Board Paper Mills Pvt. Ltd., Amritsar (Charan Kamal) and (v) Kronos Packaging Pvt. Ltd., Solan (Kronos) (page 22). The ledger account attached with reply to demand notice refers to the purchases made in respect of A.P. Ludhiana, A.P. Baddi and A.P. Chandigarh but the purchases made in the names of Kronos and Charan Kamal are not reflected. In fact, the payments were made by the respondent-corporate debtor towards the goods supplied not only to the three A.P. Enterprises entities but also in the names of other two entities M/s Kronos Packaging and Charan Kamal Card Board Paper Mills Pvt. Ltd. The chart providing details of money paid by the respondent-corporate debtor for all the five entities is at Annexure II/P. The petitioner has also responded to the entries in the bank statements annexed to the reply and those entries do not reveal which relevant entries pertain to any particular transaction nor it has provided any calculation chart to substantiate the defence

that all the payments made for the purchases pertains only to the purchases made in the name of three A.P. Enterprises entities.

11. The petitioner has not proposed any registered Resolution Professional to be appointed as interim Resolution Professional and left this matter for the Tribunal, in case the petition is admitted. This information has been given in Part III of the application form.

12. Notice of this petition was issued to respondent-corporate debtor and reply thereto has been filed. Pleadings on behalf of the respondent are filed by the corporate debtor through Mr. Narinder Kumar Garg its Managing Director. The Resolution of Board of Directors of the respondent attached with the reply is Annexure R-1 dated 25.05.2018. By this Resolution, the respondent-corporate debtor has authorized Mr. Narinder Kumar Garg, Managing Director and Mrs. Manju Garg, the Director of the corporate debtor severally to engage counsel, issue notice and sign and verify the pleadings and to do all the necessary acts in the progress of the case. The reply to the application has been filed by the respondent-corporate debtor and the contents thereof are supported by the affidavit of Mr. Narinder Kumar Garg, the Managing Director.

13. It is stated that there is no amount due and payable by the respondent-corporate debtor to the petitioner. The respondent is maintaining complete record of the invoices and payments made to the respondent-corporate debtor. M/s A.P. Enterprises was liable to pay only for the invoices issued in its name as at Annexure R-2 (Colly). According to the respondent, it was not liable to make payment of the amounts in respect of M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., (CKCB), which is a private distributor and seller of the goods

to respondent. M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., used to purchase the goods from the respondent-corporate debtor and sell it further to the respondent company and earning its commission. Even the sale orders issued by the petitioner alongwith the invoices show that M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., is the distributor for sale to the respondent-corporate debtor. This type of arrangement was made to cut the costs for logistic point of view so that the truck goods/shipments can directly go to the buyers/consignees places. Therefore, those invoices were supposed to be paid by M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., a separate entity. The copies of invoices which M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., was liable to pay are at Annexure R-3 (colly). Accordingly, the amount of the invoices which the respondent-corporate debtor is liable to pay are worth ₹5,60,83,015/- (Page 3 of reply) for which the respondent is not denying the liability. The amount of the invoices for M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., to the tune of ₹1,27,25,661/- (Page 3) has to be paid by the aforesaid concern. Copy of the chart showing total invoices amount of the petitioner company and M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., is at Annexure R-4. The copy of the bank statement of the respondent-corporate debtor has also been attached at Annexure R-5 (Colly) showing the regular payments being made to the petitioner-operational creditor. As per the certificate issued by the Chartered Accountant of the respondent, it has made total payment of ₹6,40,56,351/- (Page 4) whereas amount of liability is less than that. The petitioner is said to have extorted the respondent to receive the excess amount to the tune of ₹79,73,336/- (Page 5 of the reply) from the respondent-corporate debtor.

14. On similar grounds the claim made by the petitioner in respect of the goods supplied in the name of Kronos Packaging Pvt. Ltd., as the distributor is disputed. It is alleged that the respondent-corporate debtor owes money towards Kronos Enterprises and the copy of the chart of transactions between the respondent and Kronos Enterprises is at Annexure R-7.

15. With regard to issuance of cheques, it is stated that the same were undated and given as security cheques which the petitioner has misused and initiated the criminal proceedings under Section 138 of the Negotiable Instruments Act. The respondent-corporate debtor stopped the payment of the cheques given to the petitioner so that the security cheques are not misused.

16. With regard to the important assertion of the admission by way of balance confirmation dated 09.02.2018 it is stated that the petitioner called Mr. Narinder Kumar Garg, Managing Director on the pretext of business meeting in Jaipur in Rajasthan in February, 2018 where they got signed from him 3-4 blank papers by pressurizing Mr. Garg that the petitioner company needs a letter of credit from their bank for which the document of guarantee is to be furnished. Mr. Garg signed the sheets owing to the decade long business relations and trust with the petitioner company and on personal assurance of senior management of the petitioner company. The respondent was shocked to know that later on these pages were misused for creating a false balance confirmation dated 09.02.2018. The validity and genuineness of these documents has been disputed. It is also stated that Mr. Garg was not present at the time when the Notary had attested the balance confirmation and prayer was made to summon the Notary Public.

17. The respondent is stated to be a company of repute which is working since the year 1987 and was incorporated as a company in the year 1993. It is a Manufacturer and Distributor of pulp and paper products mainly kraft paper and one of the leading Paper Mills in Chandigarh and mainly operating from Chandigarh, Ludhiana and Baddi.

18. Reference has also been made to Section 75 and 76 of the Code to contend that the petitioner is liable for punishment for furnishing false information and for non-disclosure of dispute or payment operation debt.

19. In the rejoinder filed by way of affidavit of Mr. Sanjeev Mehra, the operational creditor has stated that corporate debtor admitted its liability to make payment of the outstanding amount vide e-mail dated 01.01.2018 (Page 790) of the paper book. There is nothing on record to suggest that the respondent-corporate debtor denied the liability for making payments relating to M/s Charan Kamal Card Board Paper Mills Pvt. Ltd./ Kronos Packaging Pvt. Ltd. The cheques dated 12.03.2018 for a total amount of ₹50 lacs were issued in lieu of the cheques of ₹60 lacs which had bounced and therefore, these cannot be termed as security cheques. The liability to pay by the respondent-corporate debtor in respect of M/s Charan Kamal Card Board Paper Mills Pvt. Ltd. and Kronos Packaging Pvt. Ltd., also stands admitted in the e-mails dated 01.01.2018 and 09.02.2018. The payment of the invoices in respect of M/s Charan Kamal Card Board Paper Mills Pvt. Ltd. and Kronos Packaging Pvt. Ltd., has always been made by the respondent-corporate debtor. Even the C-Forms included all these invoices except for the last quarter of financial year 2017-18. The corporate debtor had undertaken to provide the C-Forms towards the supplies even in relation to

invoices in the name of M/s Charan Kamal Card Board Paper Mills Pvt. Ltd. and Kronos vide undertaking dated 09.02.2018 and pursuant to the undertaking furnished in C-Forms relating to these entities also as evident from e-mails dated 16.03.2018, 03.03.2018 and 08.02.2018 exchanged between the parties. These e-mails are from pages 812 to 815 of the paper book. Even the debit note dated 15.05.2017 against the invoice dated 06.05.2017 relating to Charan Kamal fortifies the contention of the petitioner. The allegations that Mr. Garg was made to sign 3-4 blank pages for the purposes of furnishing the guarantee are also denied. It is further stated that out of invoices Annexure R-3 (Colly), except in invoices 581, 637 and 638 (at pages 764, 770 and 776 of the application), rest of the invoices pertaining to the bills in which name of Charan Kamal has been mentioned were paid by the corporate debtor. The copies of cheques issued by the corporate debtor and bank memos alongwith the invoices relating to Charan Kamal are attached as Annexure A (Colly) with the rejoinder.

20. We have heard learned counsel for the parties and carefully perused the records.

21. The only question to be determined is whether there is existence of dispute between the parties relating to the operational debt before the issuance of the demand notice. If the respondent is able to bring his case within the said proposition that the petition is liable to be rejected. There are in all about 150 invoices between the parties which are from pages 50 to 785 of the paper book and these documents include the purchase and sale orders annexed as Annexure II/A. The invoices are from 19.08.2017 onwards. The chart of unpaid invoices from 16.06.2017 to 22.10.2017 is at Annexure II/B and it has been categorized

entity wise. First chart pertains to the invoices issued in the name of A.P. Enterprises Pvt. Ltd., Ludhiana from Sr. No. 1 to 37; A.P. Enterprises Pvt. Ltd., Chandigarh from Sr. No. 1 to 50; A.P. Enterprises Pvt. Ltd. Baddi, Sr. No. 1 to 11; Charan Kamal Card Board Paper Mills Pvt. Ltd., three invoices of the amount of ₹9,91,952/-, one invoice pertaining to Kronos Packaging Pvt. Ltd., of the amount of ₹5,34,872/-.

22. The learned counsel for the respondent referred to some of the invoices in order to support his contention. At Page No. 764 is the invoice dated 17.06.2017 issued by the operational creditor-petitioner. This is in respect of the good supplied to the tune of ₹5,07,955/-. The invoice has been prepared with name of the consignee as A.P. Enterprises Pvt. Ltd., as consignee and it has been invoiced as purchase through/buyer M/s Charan Kamal Card Board Paper Mills Pvt. Ltd.

23. The learned counsel for the petitioner vehemently contended that this was the manner in which the respondent has instructed the petitioner to invoice the supply of the goods. Reference is made to the e-mail dated 15.06.2017 (Page 761) from the respondent seeking the supply of the goods covered under this invoice, in which it is mentioned that the goods are to be dispatched in the name of M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., for which the sale order accordingly is at Page 763 of the paper book. The petitioner also preferred packing slip with the name of the consignee as the respondent-corporate debtor through M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., as at Page 765 of the paper book.

24. A similar reference is made to the purchase order dated 22.06.2017 (Page 767) with relevant invoice (Page 770) and the packing slip as at page 771 with the name of consignee as A.P. Enterprises through M/s Charan Kamal Card Board Paper Mills Pvt. Ltd.

25. We are unable to agree with the contention of the respondent because the order for supply of the goods was placed by the respondent-corporate debtor as is evident from various e-mails on record on the basis of which the invoices were prepared. It is rightly contented by the learned counsel for the petitioner that it may be for seeking certain benefits that the respondent instructed the petitioner to invoice the supply of goods in a particular manner.

26. The most important is the admission of the respondent-corporate debtor by way of e-mail at Page 792 of the paper book admitting the outstanding amount as claimed in this case. This e-mail even contains the admission in respect of Kronos and M/s Charan Kamal Card Board Paper Mills Pvt. Ltd. As already observed there is the unequivocal admission and unconditional undertaking of the Managing Director of the respondent-corporate debtor in the document dated 09.02.2018 Annexure II/D, wherein no objection with regard to the aforesaid aspect was ever raised. In this undertaking the supplies made in the name of M/s Charan Kamal Card Board Paper Mills Pvt. Ltd., and Kronos have clearly been admitted for which various cheques were issued and there was even subsequent correspondence.

27. It is not the version of the respondent that it raised any issue with the petitioner with regard to the story now sought to be propounded in the reply to say that there was a pre-existing dispute. For the first time such a version was

raised in reply to the demand notice and reiterated in reply to the instant petition.

The Hon'ble Supreme Court has settled the principles of law on the subject in

Mobilox Innovations Private Limited Versus Kirusa Software Private Limited

(2018), 1 SCC 353 as under:-

“51. 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.”

28. The other important aspect is that the respondent has tried to adjust in its record now relied upon, the payments made for Charan Kamal and Kronos as liabilities which the petitioner has to pay to them and making a counter claim. The copies of the bank statement has also been filed but respondent was unable to refer to the particular entry in the bank statement, which could relate to the payments specifically to the invoices in which the goods were to be delivered through Charan Kamal or Kronos.

29. The respondent could support its contention that the payments in respect of the invoices in the name of Charan Kamal or Kronos were ever made

from the account of those entities. The best evidence was the ledger account of the respondent which has admittedly not been attached with the reply. From the ledger account, the respondent could establish the defence that the amount paid in respect of the invoices so drawn was not the liability of the respondent-corporate debtor as a purchaser but the payments were being made by the respondent only on behalf of M/s Charan Kamal Card Board Paper Mills Pvt. Ltd. or Kronos to be recovered by the petitioner or by the respondent from them. In the absence of such an important record on behalf of the respondent, it cannot come out of the admission which appears on record in so many words. On the other hand, the petitioner has filed its copy of its ledger account in respect of the transactions with the respondent as at Annexure E from pages 149 to 190 of the rejoinder. The defence raised is only illusory and seems to be a made up version. We are of the firm view that the present is a case in which the respondent has not been able to show the existence of a dispute.

30. The other contention on behalf of the respondent was that the petitioner has not filed the bank certificate in terms of the Section 9(3)(c) of the Code. The petitioner in this regard has relied upon a letter dated 16.04.2018 requesting the State Bank of India where it is maintaining its account for issuance of certificate of last remittance by M/s A.P. Enterprises. The letter dated 16.04.2018 is Annexure II/Q. It was stated in the letter that as per record of the petitioner, the last remittance was made by the respondent in the bank account in the account of the petitioner maintained in State Bank of India to the tune of ₹5 lacs on 23.02.2018. It is submitted that the bank did not furnish the required certificate. It is the settled principle of law that filing of the certificate from the bank in terms of Section 9(3)(c) is not mandatory and in this case a genuine effort

was made by the petitioner to get the one. Otherwise the petitioner has also filed copies of the Bank statements of the account which it is maintaining with HDFC and State Bank of India where the deposits or credits have been received normally from the corporate debtor as at Annexure III. In any case, it is not the version of the respondent that any payment was made to the petitioner after the last payment amounting to ₹5 lacs.

31. We find that the application submitted by the petitioner is complete in all respects and in the absence of the existence of any dispute, the ingredients of Sub-section 5(i) of Section 9 of the Code are established. The petition, therefore, is admitted.

32. In view of the above the instant petition is admitted and 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.

33. 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.

34. 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 pass an order for liquidation of corporate debtor under Section 33 as the case may be.

35. In the instant case, the petitioner has not proposed the name of any Resolution Professional to be appointed as Interim Resolution Professional. Section 16 of the Code deals with the appointment and tenure of interim resolution professional. Sub-Section (3) of Section 16 says that where the application for corporate insolvency resolution process is made by an operational creditor and-

“(a) no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an insolvency professional who may act as an interim resolution professional;”

36. The Insolvency and Bankruptcy Board of India has issued a letter No.IBBI/IP/EMP/2018/01 dated 28.06.2018 addressed to the Hon'ble President of the National Company Law Tribunal that for the purpose of appointing Interim Resolution Professional/Liquidator, the Board has invited expression of interest from the qualified Insolvency Professional who are registered with the Board as per the guidelines prepared by the Board. The Bench-wise list of the Insolvency Professionals who have expressed interest to become Interim Resolution Professional/Liquidator has been enclosed with this letter. The list attached with the letter is valid from 01.07.2018 to 31.12.2018. We would appoint Mr. Somnath Gupta, Registered Professional, as mentioned at Serial No.1 of the letter, as the Interim Resolution Professional.

37. We further issue the following directions:-

- i) Appoint Mr. Somnath Gupta, Registration No. IBBI/IPA-002/IP-N00042/2016-17/10081, Address: 1019, Lane No I, Ramsharnam Colony, Pathankot, Punjab-145001, M: 70824-14848 e-mail ID: somgupta_62@rediffmailcom, as an Interim Resolution Professional;
- ii) The term of appointment of Mr. Somnath Gupta, shall be in accordance with the provisions of Section 16(5) of the Code;
- iii) 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';

- iv) 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;
- v) 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';

- vi) 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';
- vii) 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

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

A copy of this judgment be communicated to both the parties and the Registry shall also send copy of this judgment to the Interim Resolution Professional at his e-mail address forthwith.

Pronounced in open court

Sd/-
(Pradeep R.Sethi)
Member (Technical)

Sd/-
(Justice R.P.Nagrath)
Member (Judicial)

November 13, 2018
Yashpal