

BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH, MUMBAI  
C. P. NO. 10/I & BP/NCLT/MAH/2017

**Coram:** B. S.V. Prakash Kumar, Member (Judicial) &  
V. Nallasenapathy, Member (Technical)

In the matter under Section 9 of Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules 2016)

And

Ashok Alco-Chem Ltd. .... Applicant

V/s.

M/s. Unimark Remedies Ltd. .... Corporate Debtor

**Applicants' Counsel:** Sankalp Anantwan, Advocates for the Applicant.

**ORDER**

***(Heard & Pronounced on 24.02.2017)***

The Petitioner has filed this petition to initiate Insolvency Resolution Process u/s 9 of the Insolvency and Bankruptcy Code on the ground that the corporate debtor company failed to repay the debt owed to the operational creditor herein on invoices dated 19.2.2015, 26.2.2015, 7.3.2015, 9.4.2015, 12.4.2015 raised by the petitioner against the debtor company for the chemicals the Petitioner supplied to the debtor company.

2. The Petitioner has filed the copies of invoices dated 19.02.2015 for ₹10,67,360, dated 26.02.2015 for ₹10,61,996, dated 07.03.2015 for ₹9,92,438, dated 09.04.2015 for ₹6,97,438 and dated 12.04.2015 for ₹9,94,366 put together for an amount of ₹48,13,615 along with interest accrued upon, total amount the debtor company defaulted to pay has come to Rs.61,36,636/- by 20.11.2016. Despite the corporate debtor has been several times demanded to repay, it has failed to discharge the default occurred. Then finally the creditor gave statutory notice u/s 433 and 434 of the Companies Act, 1956 for he did not reply to said statutory notice dated 16.07.2016 issued to the Petitioner, the Petitioner filed winding up petition on 25.11.2016 before the Hon'ble High Court, Mumbai.

Since this case has been transferred from the Hon'ble High Court, Mumbai to this Tribunal on jurisdiction being transferred to this Bench, the Petitioner herein filed Form 5 of IB Rules, 2016 seeking relief u/s 9 of the Insolvency and Bankruptcy Code. Since the Petitioner is not under obligation to issue notice u/s 8, the Petitioner has again mentioned this Petition with Form 5 for the reliefs as mentioned under sections 14, 15 and 16 of the Code. On the day when debtor company raised an objection saying notice was not issued under section 8 of the Code, the Petitioner again gave a notice dated 16.02.2017 but so far no reply has come raising any objection to the debt owed by him.

3. The Petitioner Counsel further submits that since the Petitioner gave notice under section 434 (1) (a) of the Companies Act 1956 before filing the petition under sections 433 and 434 of the Companies Act 1956, this debtor company could not raise an objection stating that unless notice u/s 8 and the time 10 days mentioned in section 8 of IB Code is given to him, this Petition could not be filed.

4. On hearing submissions from the Petitioner, we are of the view that the debtor company could not raise such objection as this petition happens to be transferred petition from the Hon'ble High Court by virtue of jurisdictional change from Honourable High Court to this Tribunal.

5. On perusal of the Company Petition, the Petitioner has complied with furnishing the documents required under section 9 of the Code r/w IB Rules such as filing invoices reflecting the debt the corporate debtor owed to the Petitioner, giving notice to the corporate debtor before filing winding up petition and affidavit of service of the Petitioner saying that the corporate debtor has not raised any dispute in relation to debt owed to the Petitioner and no dispute is in existence as on date of filing of this Petition or subsequent to it.

6. For the reasons foregoing, this Bench is of the view that no dispute is in existence between the financial creditor and the corporate debtor in relation to the debt claim made in this company petition.

7. The Petitioner has furnished the details of name of the interim insolvency resolution professional and also consent of the said professional with a disclosure that no disciplinary proceedings pending against him.

8. In view of the reasons aforesaid, this Bench hereby declares moratorium with consequential direction as follows.

- (i) That this Bench, subject to provisions of sub sections (2) & (3) of section 14 of the Code, hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 and the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
- (ii) 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.
- (iii) That the provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- (iv) That the order of moratorium shall have effect from 24.02.2017 till the completion of the corporate insolvency resolution process as prescribed under section 12 of the Code.
- (v) That this Bench hereby directs to cause public announcement of the corporate insolvency resolution process immediately as specified under section 15 of the Code.

- (vi) That this Bench hereby appoints *Mr. Rajeev Mannadia*, Chartered Accountants with registration no. IBBI/IPA-01/IP-00320/2016-2017/1904 having address at Rustomjee Azziano, Flat No.1501, 15<sup>th</sup> Floor, A wing, Near Saket Complex, Majiwada Thane (W) – 400 601, email – mannadiarrajeev@yahoo.co.in, as Proposed Interim Resolution Professional to carry the functions as mentioned under the Insolvency and Bankruptcy Code.
9. Accordingly, this Petition is admitted.

Sd/-

**B. S.V. PRAKASHKUMAR**  
Member (Judicial)

Sd/-

**V. NALLASENAPATHY**  
Member (Technical)