

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

**CP (IB) No.124/Chd/Pb/2017**

**Under Section 9 of IBC, 2016.**

**In the matter of:**

Kamal Chemicals  
Having its office at F-251,  
Phase-VIII, Focal Point,  
Ludhiana – 141010 (Punjab).

... Petitioner-Operational Creditor

Vs.

M/s T.C.Terrytex Limited  
Having its registered office at  
Village Sarsini, AMB-CHD HIGHWAY,  
Near Lalru, Tehsil Derabassi, Lalru,  
Punjab – 140501.

...Respondent-Corporate Debtor

**Order delivered on: 08.01.2018.**

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

For the petitioner: Mr. Gaurav Mankotia, Advocate

For the respondent: Mr. Snehdip Oberoy, Advocate

**ORDER**

The instant petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be referred here-in-after as the ‘Code’) by M/s Kamal Chemicals, a proprietorship concern, through the sole proprietor Mr.Kamal Kant Singhania for initiating insolvency resolution process against the respondent-corporate debtor. There is an affidavit of Mr.Kamal Kant Singhania, proprietor in support of the contents of the application. The

application has been filed in Form No.5 as prescribed under Rule 6(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity the 'Rules').

2. The respondent-corporate debtor was incorporated on 30.08.2005 and allotted CIN U17220PB2005PLC028877. It has authorised share capital of ₹1,20,50,00,000/- and paid up share capital ₹1,12,31,82,800/-. The registered office of the respondent-corporate debtor is at Lalru, Derabassi Sub-Division in the State of Punjab and, therefore, the matter falls within the territorial jurisdiction of this Tribunal.

3. The petitioner-operational creditor, on demand and request of the respondent-corporate debtor had been supplying goods/materials to the respondent-corporate debtor as per the invoices/bills (Sales) and thereafter against entire outstanding payment of the supply of goods/materials, there was an adjustment/set-off in the books of account of the operational creditor as payment/part payment of the entire outstanding amount by way of purchase of items by the corporate-debtor as per the summary statements/calculation sheet attached at Annexure A-3. All the invoices raised are for the period from 06.09.2012 to 11.05.2017. The payments/part payments received from the corporate-debtor from time to time were duly debited and credited on regular basis in the running account of the corporate-debtor being maintained by the petitioner-operational creditor. There was balance amount in default to the tune of ₹70,33,514.60 as on 18.11.2017 after adjusting/setting off the amount of purchases made from the corporate-debtor. Copy of the ledger account of the corporate-debtor regularly maintained by the operational creditor is at Annexure

A-2 (pages 417 to 426 of the paper book). It is thus stated that the default has been committed by the corporate-debtor.

4. Along with the petition the operational creditor has also attached copies of two statements of its Bank accounts, where the deposits received from the corporate-debtor are being normally credited which is at Annexure A-4 (colly). Various bills of sales and purchases of goods between the parties are at Annexure A-1 (pages 22 to 416 of the paper book).

5. Before filing this petition, the petitioner sent a demand notice dated 06.11.2017 (Annexure A-5) as required by Section 8 (1) of the Code in Form No.3 as prescribed under Rule 5 (1) of the Rules. It is stated that along with the demand notice, the documents sent are, copy of the summary/detail of the sale/purchase bills; copy of the ledger account of the respondent-corporate debtor being maintained by the operational creditor and copies of all the bills and invoices. The notice was sent by speed post and postal receipt at Annexure A-6 at (page 502 of the paper book) shows that the weight of the parcel sent was 2240 grams and at page 503 is the tracking report of the postal department showing the item to have been delivered to the respondent-corporate debtor on 07.11.2017. The instant petition was filed on 23.11.2017, much after expiry of 10 days period of the service of demand notice as required by sub-section (1) of Section 9 of the Code.

6. The petitioner has also filed the affidavit dated 22.11.2017 stating that he has not received any notice of dispute from the corporate-debtor nor even any reply to the demand notice dated 06.11.2017, in order to comply with the requirement of clause (b) of Section 9 (3) of the Code. The affidavit is at Annexure A-7. Annexure A-8 is the certificate dated 15.11.2017 from the Axis

Bank, a financial institution certifying that no amount has been credited on behalf of the corporate-debtor in the account of the operational creditor since 06.11.2017- i.e. the date of demand notice.

7. When the matter was listed on 29.11.2017, the operational creditor was directed to file latest certificate of the financial institution in terms of Section 9 (3) (c) of the Code. In compliance therewith, the petitioner-operational creditor filed latest certificate dated 30.11.2017 from Axis Bank that no amount since 06.11.2017 has been deposited by the corporate-debtor in the account of the operational creditor. This certificate Annexure A is attached with the affidavit dated 05.12.2017 of the proprietor of the petitioner concern. This certificate, therefore, establishes that there is no deposit made by the corporate-debtor upto the date of filing of the instant petition, after the demand notice was sent.

8. Copy of this application was despatched by the operational creditor to the corporate-debtor on 27.11.2017 as per the postal receipt at page 518 of the paper book in order to comply with the requirement of rule 6 (2) of the Rules.

9. When the matter was listed on 29.11.2017, notice was directed to be issued to the corporate-debtor for 14.12.2017 by speed post as well as at the e-mail address of the respondent corporate-debtor available on the master data. The petitioner filed affidavit of service dated 05.12.2017 enclosing therewith copy of the postal receipt dated 04.12.2017 with the tracking report of the postal department, which is at Annexure C showing that the article was delivered to the corporate-debtor on 28.11.2017.

10. The respondent-corporate debtor filed objections to the instant petition. It is averred that the respondent had also been supplying goods/material in the form of "Yarn" to the operational creditor which fact has not been disclosed

by the petitioner. It is further stated that there was an oral arrangement between the parties wherein the respondent was required to supply "Yarn" against the price of the chemicals supplied by the petitioner and by making such adjustments, the outstanding amount was to be paid by the respondent. The aforesaid arrangement was working perfectly for the last couple of years, but recently the operational creditor stopped buying "Yarn" and backed out from the oral settlement between the parties. Since the petitioner has on its own withdrawn from the oral arrangement as was settled between the parties, it has resulted in huge increase in the debt being shown towards the corporate-debtor in the account books. It is alleged that the petitioner in the first place should abide by the arrangement so that the respondent is able to clear the outstanding dues.

11. It is further averred that the amount claimed by the petitioner is not correct as per the books of account being maintained by the respondent and the outstanding amount towards the petitioner is to the tune of ₹68,20,235/- and not ₹70,33,514.60 as claimed by the operational creditor. The respondent has attached copy of its ledger book being maintained from the year 2012 to 2017 as at Annexure R-1 relating to the account of the operational creditor.

12. The petition is said to be pre-mature as the default can be said to have occurred because of the failure of the petitioner-operational creditor to purchase "Yarn" from the respondent as agreed between the parties.

13. The petition is also defective as the respondent-corporate debtor never received the demand notice from the operational creditor and it is prayed that the petitioner may be put to strict proof thereof.

14. I have heard the learned counsel for the parties and perused the records quite carefully with their able assistance.

15. The first contention about challenge to the delivery of demand notice to the corporate-debtor, does not carry any force in view of the tracking report of the postal department showing delivery of the notice to the respondent on 07.11.2017. There is no averment in the objections that the address of the corporate-debtor as furnished by the operational creditor was incorrect. Rather, there is no challenge with regard to the delivery of the entire paper book, which was sent at the time of filing the instant petition and also receipt of notice of the instant petition issued by the Adjudicating Authority at the same address. Anyhow, the tracking report of the postal department with regard to delivery of the demand notice is the conclusive proof of the delivery and this objection seems to have been taken just for the sake of it.

16. The resolution process can be initiated on occurrence of the default by the corporate-debtor as per Section 8(1) of the Code. Admittedly the respondent-corporate debtor has committed default as according to the respondent itself, there is an outstanding liability of ₹68,20,235/- as on 11.05.2017 as per its own ledger account as at Annexure R-1 attached with the objections. The application filed in Form No.5 is complete in all respects as the required information has been furnished. The petitioner has also complied with various clauses (a), (b) and (c) of Section 9 (3) of the Code as already discussed.

17. Sub-section (5) of Section 9 of the Code reads as under:-

*“(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 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:*

*Provided that Adjudicating Authority, shall before rejecting an application under subclause (a) of clause (ii) give a notice to the applicant to rectify the defect in his application within seven days of the date of receipt of such notice from the adjudicating Authority.*

18. All the ingredients required in Clause (i) of Section 9 (5) of the Code are fulfilled. So far as the communication furnished by the Resolution Professional, proposed to be appointed as Interim Resolution Professional is concerned, that aspect would be discussed in the later part of the judgement.

19. Learned counsel for respondent, however, vehemently contended that it is not shown as to how and when the default can be said to have occurred. It was submitted that the instant petition has been filed simply to force recovery of the outstanding amount against the mutual understanding. It is further submitted that the petitioner unilaterally withdrew from the arrangements of buying "Yarn" from the corporate debtor which it had been doing for the past several years.

20. The ledger accounts furnished by both the parties show that the parties have continued business transactions since the year 2012. From the ledger accounts relied upon learned counsel for petitioner contended that till 25.11.2015 the respondent has been purchasing the goods from the petitioner and by that time the outstanding amount was ₹1,68,70,217/- and the respondent being in financial difficulty, the petitioner started purchasing "Yarn" from the respondent and this way, purchase of "Yarn" was made on various occasions apart from receiving part payments. The last sale made by the operational creditor, according to the learned counsel as reflected from the record to the respondent is dated 25.11.2015 and thereafter, the petitioner started purchasing material from the respondent-corporate debtor and the part payments were adjusted. The above factual position could not be disputed by the learned counsel for respondent from the records.

21. I am of the considered view that the petitioner cannot be forced to buy goods from the respondent-corporate debtor and it has every right to claim the outstanding amount which is overdue. The petitioner admittedly stopped making purchases from the respondent-corporate debtor from May 2017 and sent the demand notice under Section 8(1) of the Code which would have been



a sufficient alert for the respondent, to repay the outstanding amount. The respondent cannot raise a voice to say that there was no term fixed for payment for the outstanding amount on the ground that the transactions between the parties continued in the normal course of business since 2012 and that various payments have been made from time to time as reflected from the ledger account of both the parties. The above contention cannot be said to raising a 'dispute' which may be covered within the definition of the term as defined in sub-section (6) of Section 5 of the Code. If there is a difference of about ₹2 lacs in the total outstanding amount as per the books of account of the parties, that is for the Interim Resolution Professional or Resolution Professional as the case may be, to determine. The term 'default' is defined in sub-section (12) of Section 3 of the Code as per which non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be.

22. As per sub-section (1) of Section 4 of the Code relating to the Insolvency Resolution and Liquidation for Corporate Persons, the provisions contained in Part II of the Code apply to the matters relating to insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees and the petitioner undoubtedly falls within those eligible persons who can apply.

23. Though the operational creditor is not bound to propose the name of the Resolution Professional for being appointed as Interim Resolution Professional, yet it can do so in terms of sub-section (4) of Section 9 of the Code. In this case, the petitioner has proposed the name of Mr. Sanjay Kumar Aggarwal bearing Registration No. IBBI/IPA-002/IP-N00126/2017-18/10295 as the Interim

Resolution Professional who has given his consent in Form No.2 as at Annexure A-9. Mr.Sanjay Kumar Aggarwal has given the necessary particulars as required in Form No.2 which is found complete in all respects. There are no disciplinary proceedings pending against him. He is not serving as Interim Resolution Professional/Resolution Professional in any proceedings before any National Company Law Tribunal.

24. One of the objections raised by the corporate debtor is that there is concealment of material fact by the operational creditor with regard to the purchases made by the petitioner from the respondent. I am unable to agree to the above contention as there is a categorical assertion of the petitioner that the goods/materials were supplied as per the invoices/bills (sales) to the corporate debtor and thereafter against the entire outstanding payment of supply of goods/materials there was adjustments/set-off in the books of account of the operational creditor as payments/part payments of entire outstanding amount by way of **purchase of items of corporate debtor** as per the summary statement. So, there is no force in the contention that there is concealment of the material facts.

25. In view of the above, instant petition deserves to be admitted. The instant petition is admitted declaring 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;

(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.

26. 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.

27. 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.

28. I further issue the following directions: -

(i) Appoint Mr. Sanjay Kumar Aggarwal, Registration No. IBBI/IPA-002/IP-N00126/2017-18/10295, resident of #14, New Punjab Mata Nagar, Main Street, Pakhowal Road, Ludhiana -141013 (Punjab), email: [sanjayaggarwal.fcs@gmail.com](mailto:sanjayaggarwal.fcs@gmail.com); Mobile No.9876105414 as Interim Resolution Professional;

(ii) The term of appointment of Mr. Sanjay Kumar Aggarwal shall be for a period of 30 days from the date of his appointment as Interim Resolution Professional or as may be determined by the committee of creditors whichever is earlier;

(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 endeavour to constitute the Committee of Creditors at the earliest but not later than three weeks from the date of this order. It is hereby directed that the 'Corporate Debtor', its properties, 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 co-operation in

accessing books and records as well as assets of the 'Corporate Debtor';

(vi) 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' and

(vii) As required under Rule 27 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the Interim Insolvency Resolution Professional shall within seven days from today, appoint two registered valuers to determine the liquidation value of the Corporate Debtor in terms of Regulation 35.

29. It is further directed that the Interim Insolvency Resolution Professional shall positively file reports of events to this Tribunal every seventh day in relation to the 'Corporate Debtor'.

30. A copy of this order be communicated to both the parties and learned counsel for the petitioner shall supply copy of this order to the Interim Resolution Professional. Copy of this order be sent to the Interim Resolution Professional at his e-mail address by the Registry.

Sd/-

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

Pronounced  
January 08, 2018  
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