

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

CP (IB) NO. 37/Chd/Pb/2017

Under Section 9 of IBC, 2016

In the matter of :

Hero Steels Limited having its registered office at
 E-1, Qutab Hotel Complex, Shaheed Jeet Singh
 Marg, New Delhi-110016.

....Petitioner/Operational Creditor.

Versus.

Rolex Cycles Private Limited having its
 Registered office at 726, Industrial Area-B,
 Ludhiana (Punjab)-141003.

....Respondent/Corporate Debtor

Order delivered on: 13.07.2017

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

For the Petitioner: 1. Mr. G.S. Sarin, Practising Company Secretary and
 2. Mr. P.D.Sharma, Practising Company Secretary.

For the Respondent: Mr. Harsh Garg, Advocate.

Order (ORAL)

This petition has been filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for short to be hereinafter referred to as the 'Code') by the Operational Creditor. The application is filed in Form-5, as prescribed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, the 'Rules'). Copy of the petition along with entire Paper Book was despatched to the Corporate Debtor

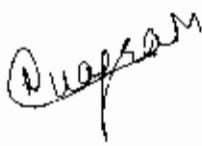
by Speed Post on 13.06.2017. The envelope containing the petition and the documents was returned with the report purporting to be made by the postal employee that the Corporate Debtor refused to accept the delivery of the postal article. The Track report of the Postal Department is at Annexure-2 attached with the affidavit dated 28.06.2017 of the authorised signatory of the 'Operational Creditor.'

2. The instant petition has been filed by the Operational Creditor, which is a company incorporated under the Companies Act, through Mr. J.S. Butran, Whole Time Director of the petitioner-company authorising him to initiate the insolvency resolution process against the Corporate Debtor vide resolution of the Board of Directors dated 07.04.2017, copy of which is at Annexure-2 (page 61). The resolution further authorises Mr. Butran to appoint advocate(s), attorneys, Chartered Account(s), Insolvency Resolution Professional (s), Company Secretary(s) etc. to represent the company and further authorised to do necessary acts in the progress of the case. The authority has been given by Mr. Butran in favour of G.S. Sarin (FCS 4025)/ Mr. P.D. Sharma (FCS 2285), partners, Sharma Sarin & Associates, SCO No. 186-188, First Floor, Sector 17-C, Chandigarh (Annexure 2A page-62).

3. It is represented by the Practising Company Secretaries and the petitioner that the goods were supplied to the respondent/Corporate Debtor vide bills/invoices annexed from pages 69 to 99 from 08.07.2015 to 31.05.2016 and these were despatched vide G.Rs. from 08.07.2015 to 31.05.2016, and all these documents are annexure-5 (colly) from pages 100 to 126. The details of the transactions w.e.f. 08.07.2015 to 31.05.2016 are as per the chart Annexure A-3. The copy of the ledger account of the

respondent maintained by the petitioner is from pages 64 to 66 and form part of Annexure-3. The balance outstanding against the respondent as on 03.06.2016 is entered as ₹2,08,00,577.99. The petitioner sent proforma of balance confirmation letter to the respondent as at page 68 of the Paper Book requesting the respondent to confirm the outstanding amount of ₹2,10,00,572.97. The respondent confirmed vide letter dated 03.11.2016 (page-67) Annexure-4 the balance outstanding due to be paid to the petitioner to the tune of ₹2,08,00,578/- No payment was made thereafter.

4. The petitioner sent Demand Notices in Forms-3 and 4 as prescribed in Rule 5 of the Rules to the Corporate Debtor by Speed Post. The Demand Notice was sent along with copies of all the 35 bills and 35 Goods Receipts and the computation chart as also the Balance Confirmation letter sent by the respondent. The Demand Notice was sent vide postal receipt Annexure-7. The copy of notice in Forms-3 and 4 are at pages 168 and 173 respectively of the Paper Book. The petitioner also attached copy of the Track Report of postal department showing the notice to have been delivered to the Corporate Debtor on 21.04.2017 but no response was received from the respondent. The petitioner has also filed copy of its statement of accounts maintained in the ICICI Bank, Ludhiana for the period 03.04.2017 to 09.06.2017 (page 147) to state that no amount was received from the Corporate Debtor in the account of the petitioner. Similarly, the petitioner has also relied upon the statement of its account maintained in the Punjab National Bank (Annexure-6, page 127). The Operational Creditor has also claimed interest @ 13.50 per annum and therefore, calculated the amount of default as ₹2,49,27,324/- (page 17).



5. Notice of the instant petition was issued to the respondent and appearance was made by Mr. Harsh Garg, Advocate on its behalf. The notice was duly served upon the respondent/Corporate Debtor on 07.07.2017, through the process serving agency of the Civil Court, Ludhiana. As directed in the order dated 04.07.2017, the notice was also sent by Speed Post. These facts are stated in the affidavit dated 08.07.2017 of the authorised signatory of the petitioner with which the postal receipt is attached and with Annexure R-5, the duly served notice/summons on the respondent by the process serving agency.

6. Learned counsel for the Corporate Debtor has filed objections to the instant petition along with the Power of Attorney dated 12.07.2017 and resolution of Board of Directors of respondent-company dated 08.07.2017 appointing him as its counsel. Copy of the same has been supplied to the Authorised Representative for the 'Operational Creditor'.

7. I have heard the Authorised Representative of the Operational Creditor, the learned counsel for the respondent and also perused the record. Sub-section (5) of Section 9 of the Code reads as under:-

"The Adjudicating Authority shall, within 14 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 proceedings 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 of, if*
 - a) *The application made under 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."*

8. The petition under Section 9 of the Code can be filed on expiry of 10 days from the date of demand notice and the invoices demanding the payment sent as per Section 8 of the Code. There is compliance of this provision as the instant petition was filed in the Registry on 13.06.2017 i.e. more than one month of receipt of demand notice by the 'Corporate Debtor'. As per Track Report at page 164 of the Paper Book, the notice was received by the respondent on 21.04.2017. The petition was listed for the first time before the Bench on 04.07.2017.

9. It is the settled principle that the petitioner is also to comply with the mandatory requirement of clauses (b) & (c) of sub-section (3) of Section 9 which are reproduced as under:-

"(3) The Operational Creditor shall, along with the application furnish-

(a) - - - - -;

(b) an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt;

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor."

10. The only ground raised in objections filed by the 'Corporate Debtor' is that no proper affidavit in terms of sub-clause (b) of Section 9 (3) has been given. The learned counsel for the 'Corporate Debtor' refers to the affidavit filed by the Authorised Representative of the petitioner-company at page 22 of the Paper Book filed in support of the contents of the application. It is contended that the affidavit does not contain the necessary averment in terms of clause (b) of sub-section (3) of Section 9 of the Code. I do not think that the affidavit in support of the contents of application should contain this averment. There is, however, a separate affidavit dated 08.06.2017 (page 247 of Paper Book) of the authorised signatory of the petitioner which fulfils the requirement of Section 9 (3) (b). The affidavit states that despite service of the Demand Notice, the petitioner has not received the payment from the Corporate Debtor nor any notice of dispute relating to the operational debt. So there is the compliance by the petitioner.

11. The instant petition also complies with the requirement of clause (c) of sub-section (3) of Section 9 of the Code. The petitioner has attached a certificate dated 12.04.2017 (Annexure-6) from the Punjab National Bank

maintaining accounts of the operation creditor that no amount has been received from the Corporate Debtor in the accounts of petitioner from 31.07.2016 to 31.03.2017. There is a further certificate (Annexure-10) issued by the same bank that no further payment has been received in this account during the period 01.04.2017 to 05.06.2017. There is also certificate issued by the ICICI bank maintaining the accounts of the Operational Creditor confirming that no amount has been received from the respondent in the accounts of the petitioner for the period from 01.04.2017 till date i.e. 06.06.2017 (page-250). Demand Notice was sent to the respondent on 20.04.2017.

12. It is also found that the written communication in Form-2 furnished by Mr. Anil Kumar, proposed I.R.P. is in the prescribed format and complies with all the requirements.

13. Other than the aforesaid objection, the respondent has rather admitted the outstanding debt to the tune of ₹2,08,00,578 in the written reply. The only other objection pertains to the demand of interest.

14. Coming to the claim of interest, the Authorised Representative for the Operational Creditor submits that there is a clause of interest printed on the back of the bills but that print out is not part of the bills placed on record. The Authorised Representative for the Operational Creditor further admits that in the copies of the invoices sent along with the Demand Notice, the aforesaid term of interest printed on the back of the bill was not sent. Anyhow, in the books of accounts maintained by the petitioner, the amount of interest has not been credited. It has also been held by this Tribunal in the **Wanbury Ltd. versus M/s. Panacea Biotech Ltd. (CP No. 8/2016)** that it was never the

intention of the legislature that the Tribunal should determine the amount and rate of interest and grant time to the company to pay the interest as per the directions. If the petitioner has any grievance regarding recovery of interest amount the petitioner may have the liberty to take recourse before the civil court. In any case, this controversy can be left to be determined in the meeting of the Committee of Creditors.

15. In view of the above discussion, the respondent/Corporate Debtor is found to have committed default; in which there is no dispute, the instant petition deserves to be admitted. The petition is, therefore, admitted and moratorium is granted with the following directions:-

- i) That the Bench 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; 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 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 passes an order for liquidation of Corporate Debtor under Section 33 as the case may be.

16. The order of moratorium shall have the effect from the date of admission of the application i.e. 13.07.2017.

17. Formal order of appointment of Interim Resolution Professional shall be issued on 20.07.2017 with further directions. Copy of this order be supplied to the Authorised Representative of the Operational Creditor and counsel for the Corporate Debtor.

Saj/-
(Justice R.P. Nagrath)
Member (Judicial)
Adjudicating Authority

July 13, 2017
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