

IN THE NATIONAL COMPANY LAW TRIBUNAL  
ALLAHABAD BENCH

Company Petition (IB)No.211/ALD/2017  
(Under Section 9 of Insolvency and Bankruptcy Code,2016)  
Rule 6 of the Insolvency and Bankruptcy  
(Application to Adjudicating Authority Rule,2016)

IN THE MATTER OF:

M/s Bhansali Engineering Polymers Limited  
(Having Office at:  
401,4<sup>TH</sup> Floor, Penunsula Heights,  
C.D.Barfiwala Road, Andheri (West)  
Mumbai- 400058, Maharashtra.)

.....Operational Creditor/ Applicant

VERSUS

M/s Crown Alba Writing Instrument India Pvt.Ltd.  
(Having its Registered Office at:  
201, City Centre,63/2, The Mall Kanpur-208004 (U.P)

.....Corporate Debtor



JUDGMENT/ORDER DELIVERED ON 10.05.2018

CORAM :

Sh. V.P. Singh, Hon'ble Member (Judicial)  
Ms Saroj Rajware, Hon'ble Member (Technical)

For the Applicant/ Operational Creditor: Rupendra Kumar Porwal, Adv.  
For the Respondent/ Corporate Debtor: S.K Gupta, Adv.  
Ram Kumar Mishra, Adv.

AS PER : M/s Saroj Rajware, Member Technical

Order/Judgment

1. This petition has been filed by the Petitioner / Operational creditor, *i.e. M/s Bhansali Engineering Polymers Limited* invoking provision of Section 9 of Insolvency and Bankruptcy Code 2016 for initiating Corporate Insolvency Resolution Process against the Respondent/ Corporate Debtor *i.e. Crown*

*Alba Writing Instrument India Pvt Ltd.*

→ Sd →

\_\_\_\_\_

2. Brief facts related to petition are as follows:

- (i) The Petitioners had supplied certain material like i.e. Petro Chemicals, resin/granules as per purchase order issued by the Respondent under various invoices no 2317,2520,2944,2945,3697 dated 12.08.2015, 24.08.2015,19.09.2015, 19.09.2015, 28.10.2015 for a total amount of Rs.50,93,099/- (Rupee Fifty Lakh Ninety-Three Thousand Ninety-Nine Only) to the respondent.
- (ii) The Petitioner alleges that despite repeated request the when respondent failed to pay the outstanding dues they issued Demand notice under section 8(1) of the IB Code on 25.10.2017 with a request to pay the debt within ten days from the receipt of the notice. However, the respondent failed to discharge the debt hence the petitioner filed this petition under Section 9 of the Code for imitating Corporate Insolvency Process against the Corporate Debtor.
- (iii) Hence the petition alleges that respondent is liable to pay interest at 18% p.a. as per condition mentioned in invoices, hence total outstanding dues including interest as on 20.09.2017 is **Rs.68, 85,469/-(Rupee Sixty Eight Lakh Eighty five thousand four hundred sixty nine only), (Invoices due of Rs.50,93,099.28 + Rs.17,92,370.06/- Interest thereon)** The form Computation in given in Tabular and marked as **annexure-6.**



—sd—

—

3. The petitioner in support of the case has annexed and relied upon the following documents.

- (i) Invoice No's 002317 ,002520 ,002944, 002945,003697 dated 12.08.2015 ,24.08.2015 ,19.09.2015,19.09.2015, 28.10.2015 raising amount of Rs.5,68,646/-, Rs.10,92,902/-, Rs.6,83,064/-, Rs.6,54,798/-, Rs.20,93,687/-

**( The copies of invoices is marked as Annexure no.6 in the petition)**

- (ii) Bank certificate in compliance of section 9(3)(c) of IB Code 2016 from Allahabad Bank where the account of Operational Creditor operates stating that that the said amount was not received in Account of Operational Creditor from Corporate Debtor during 01.04.2017 to 05.12.2017.

**(Bank transaction certificate is marked and annexed as Annexure No-7)**

- (iii) Affidavit to this effect that that there was no pre-existence dispute between Operational Creditor and Corporate Debtor as mandated under section 9(3) (b) of the Code. **(Affidavit is marked and annexed as annexure- A11 of the application)**

- (iv) A true copy of a letter dated 31.08.2016 regarding balance confirmation of the Debt by the Corporate Debtor **(marked and annexed as annexure no A-**

9)

— Sd —

— Sd —



- (v) Copy of Board Resolution dated 14.02.2016 Authorizing Mr D.N Mishra, GM- Legal to file insolvency proceedings. **(Authorization letter dated 14.02.2016 to make application of behalf of Operational Creditor is annexed and marked as Annexure A4)**
- (vi) Copy of Demand notice which was issued to Corporate Debtor which was received at their registered address. **(Copy of Demand Notice is annexed as Annexure No.3 in the application).**
- (vii) Copy of Ledger account of the Corporate Debtor reflecting outstanding due. **(marked and annexed as annexure no-12)**



4. Perusing the document annexed with the application, the petitioner has dully complied with the provision of section 9 of IB Code for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.
5. Ld.Counsel for the Corporate Debtor Company during argument raised no objection to the application and accepted the Outstansing Debt owed to the Corporate Debtor Company and opted not to file a reply.
1. Heard the Ld. Counsel for the Operational Creditor and Corporate Debtor and perused the records.
2. Since present matter is filed under the Provision of section 9 of IBC,2016, Hence it is relevant to read section 8 of IBC,2016 which reads as under:

— Sd —

— Sd —

- (1) *An operational creditor may, on the occurrence of a default, deliver a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor in such form and manner as may be prescribed. Persons who may initiate corporate insolvency resolution process. Initiation of corporate insolvency resolution process by the financial creditor. Insolvency resolution by the operational creditor.*
- (2) *The corporate debtor shall, within ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—*
- (a) *the existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice about such dispute;*
- (b) *the repayment of unpaid operational debt— (i) by sending an attested copy of the record of the electronic transfer of the unpaid amount from the bank account of the corporate debtor; or (ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.*



3. Since this Petition has been filed in the required format through the dully authorized person and the total amount claimed in default is of **Rs.68, 85,469 /- (Rupee Sixty-Eight Lakh Eighty-Five Thousand four hundred sixty-nine only)**. The respondents, in this case, did not file the reply. Petitioner succeeded in proving that the respondent failed to discharge his liability out of the purchase of good as per its purchase order. Despite demand notice, the respondent did not repay the amount and default on the side of the respondent stand proved in this case. The petitioner is therefore found entitled to initiate corporate insolvency resolution process as against the Respondent.

*Sd/-*

*Sd/-*

4. Further it is also matter of record that Operational Debt owed by Corporate Debtor is of more than One lakh Rupees and perusal of record shows that Corporate Debtor failed to raise dispute through reply to demand notice within ten days after receipt of Demand Notice as mandated under section 8 (2)(a) of the Code, hence there is no existence of dispute between Operational Creditor and Corporate debtor regarding outstanding debt.

5. The Petitioner, in this case, has complied with section 9 (3) (b) and 9(3)(c), an affidavit to the effect that there is no notice given by the corporate debtor relating to dispute and unpaid operational debt by the respondent is produced. The petitioner has further proposed the name of CS Shравan Kumar Visnoi as Insolvency Professional. As the petitioner fulfils the required criterion for invoking CIRP under Section 9 of the Code, this petition is liable to be admitted.

6. The Operational Creditor had not received the outstanding Debt from the Corporate Debtor, and the requirements as prescribed under IB Code have been completed by the Petitioner thus we are of the view that this Petition deserves 'Admission'. Hence Admitted.

7. Given the above, we at this moment admit this petition under Section 9 of the Code and declare a moratorium for the purpose referred to in Section 14 of the Code with the following direction:

(1) Subject to provisions of sub-sections (2) and (3), on the insolvency Commencement date, the Adjudicating Authority shall



—sd—

by order declare a moratorium on prohibiting all of the following, namely: —

(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 possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

(3) 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.

(4) The order of moratorium shall affect the date of 8<sup>th</sup> May 2018 till the completion of the corporate insolvency resolution process as prescribed under section 12 of the code.



8. Applicant has recommended name of CS Shravan Kumar Visnoi having Registration Number IBBI/IPA-002/IP-N00040/2016-2017/100079 as IRP in this matter but CS Shravan Kumar Visnoi is already appointed as IRP by this bench in matter of CP.NO(IB) 184/ALD/2017 (M/s Centenary Polytex Pvt.Ltd v/s Dhanashree Agro Product Pvt.Ltd.) hence, we appoint Mr. Anurag Goel having Registration Number IBBI/IPA-003/IP-N00060/2017-18/10501, email-anuraggoeliitk@gmail.com, mob.no-9810313145 as IRP in present matter.
9. IRP is directed to cause public announcement of CIRP immediately as provided in Section 15 of the Code.



The registry is directed to communicate this order to Operational Creditor, as well as to Corporate Debtor and also to IRP.

Urgent Photostat certified copies of this order, if applied for, be supplied to parties upon compliance of requisite formalities.

List on DT.28.05.2018 for the filing of the progress report.

—Sd—

(Ms. Saroj Rajware)  
Member (Technical)  
Dated-10.05.2018.

—Sd—

( V.P Singh)  
Member( Judicial)