

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**ALLAHABAD BENCH**

CP (IB) 184/ALD/2017  
(Under Section 9 of the Insolvency & Bankruptcy Code, 2016)

**IN THE MATTER OF**  
**Centenary Polytex Pvt. Ltd. ....Applicant/Operational Creditor**

*Versus*

**Dhanashree Agro Product Pvt. Ltd.**  
**.....Respondent/ Corporate Debtor**

**JUDGMENT/ORDER DELIVERED ON 24.04.2018**

**CORAM** : **SH. V.P SINGH, MEMBER (J)**  
**MS. SAROJ RAJWARE, MEMBER (T)**

**For the Petitioner:** Shri Sunil Kumar Tripathi , Advocate  
along with  
Shri Abhishek Mishra, Advocate

**For the Respondent:** Shri Pankaj Kumar , Advocate

**PER SE** : **SH. V.P. SINGH, MEMBER (J)**

**ORDER**



1. The **Centenary Polytex Pvt. Ltd.** (for brevity Operational Creditor) has filed the instant application under Section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code'), read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer for triggering the Corporate Insolvency Resolution Process in the respect of **Dhanashree Agro Product Pvt. Ltd.** (for brevity the 'Corporate Debtor').

2. Shri Rajiv Bansal, Director of the applicant company, has filed this application on behalf of the corporate applicant by board resolution dated 26.06.2017 whereby Shri Rajiv Bansal, Director of the company, has been authorized to file a necessary application under the provisions

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of Insolvency and Bankruptcy Code, 2016. A copy of the Board Resolution dated 26.06.2017 is annexed with the application as Annexure A. Further, on 29.07.2017 a demand notice of unpaid operational debt, copies of an invoice demanding payment of the amount involved in the default to the corporate debtor has been delivered as specified under as per Form 4 (under rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016). The operational creditor has stated that he has not received payment or notice of dispute from the corporate debtor even after expiry of the period of ten days from the date of delivery of the notice or invoice demanding payment.

**3.** Brief facts of the case are stated as under :

**i.** In part IV of the application, the applicant has mentioned the Total Amount of Debt as INR 48,18,511/- including interest till 15.07.2017 at the rate of 18%. Further interest payable from 16.07.2017 on pending payment till realization.

**ii.** Further in column II, part IV of the application it is stated that the Operational Debtor has purchased goods vide invoices dated 03.12.2014 and 17.12.2014 for the amount of Rs.21,28,256 and Rs.21,64,014 respectively and in Invoice No.1268 dated 03.12.2014, Operational Debtor has made part payment of Rs.4,31,965: Rs.5,00,000 and Rs.1,00,000 on 02.01.2015: 09.01.2015 and 05.01.2017 respectively and therefore amount due under said Invoice is Rs.10,96,291. & under Invoice No.1354 dated 17.12.2014 no amount has been paid and as such Rs.21,64,014/- is due and payable and hence total outstanding for both invoices is Rs.84,18,511/- which includes interest upto. 15.07.2017@18% per annum.

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Inv.	Date of Invoice	Date on which Debt fell Due	Due Amount (Rs.) (A)	Interest (Rs.) (B)
1268	03.12.2014	02.01.2015	10,96,291 (21,28,256- 10,31,965)	5,53,985
1354	17.12.2014	16.01.2015	21,64,014	10,04,221
Total Amount			32,60,305	15,58,206
Total Outstanding (A) + (B)				48,18,511 /-

4. Following list of documents has been annexed to present application to prove to prove the existence of operational debt and the amount in default.

1. Copy of purchase Order No. LSM/684 dated 30.10.2014 is annexed as Annexure-C.
2. Copy of Invoice No. 1268/14-15 dated 03.12.2014 is annexed as Annexure-D.
3. Copy of Invoice No. 1354 /14-15 dated 17.12.2014 is annexed as Annexure-E.
4. Copy of Lorry Receipt dated 03.12.2014 with regards to Invoice No. 1268 as Annexure-F.
5. Copy of Lorry Receipt dated 17.12.2014 with regards to Invoice No. 1354 is annexed as Annexure-G.
6. Copy of notice in Form-M dated 29.07.2017 sent by Operational Creditor to Corporate Debtor is annexed at Annexure-H.
7. Copy of Acknowledgement evidencing service of Form-4 Notice to the Corporate Debtor is annexed at Annexure-I.
8. Statement of Accounts is annexed at Annexure-J.
9. An affidavit by Authorised Signatory to the effect that there is no notice given by Corporate Debtor relating to a dispute of the unpaid operational debt is annexed at Annexure-K.
10. Copy of requisite fees paid as Annexure-L.

5. Having heard submission of Shri Sunil Kumar Tripathi , Advocate along with Shri Abhishek Mishra, Advocate for the Petitioner and Shri Pankaj Kumar , Advocate and perusal of above stated factual and legal position of the case we are of the view that the Applicant /Operation creditor has complied with the provision of Section 9 of the Code, The application made under section 9 (2) is complete; There is no repayment of the unpaid operational debt; The invoice or notice for payment to the corporate debtor has been delivered by the operational creditor, and no notice of dispute has been received by the operational creditor.

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At the time of argument, the only objection raised by Counsel of Corporate Debtor is that entry of the amount of Rs. 18,26,497/- is not made in the books of Accounts of M/s Centenary Polytex Private Limited. In reply to this objection, counsel representing the operational creditor drew our attention to Page 148 of the Petition, showing Ledger, wherein adjustment of the amount above was duly made.

A perusal of the application filed by <sup>an</sup> operational <sup>creditor</sup> shows that the same is found complete in conformity with the provision of Section 9 of the Code and Rules applicable. Applicant comes within the definition of operational creditor, which meets the requirement of Section 5(20) & (21). The application has been filed as per the territorial jurisdiction conferred in section 60 of IBC 2016. The operational creditor on the occurrence of a default has delivered a demand notice of unpaid operational debtor copy of an invoice demanding payment of the amount involved in the default to the corporate debtor- section 8 (1) and Form 3 and Form 4 (Rule 5 (1)).

Compliance of Sec 9 ,3(b) & (c) are also complied by the Applicant/Operational Creditor. At page no 149, an affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt is attached with the present application and 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 is also annexed as annexure "B" of the present application.

Hence, the present petition is admitted under the Section 9 of the I & B Code, with consequential directions given as under:

- I. As, no proposal for IRP is made in the present Application, therefore as per section 16 of the code, we hereby appoints **Mr Shravan Kumar Vishnoi**, from the Panel of Insolvency Professionals recommended by IBBI vide its letter dated 28 March 2018, as Interim Resolution Professional to carry the functions as mentioned under the Code .The list also contains the

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Email.Id [shravan.vishnoi@yahoo.com](mailto:shravan.vishnoi@yahoo.com), Registration No. IBBI/IPA-002/IP-N00040/2016-17/10079 of the proposed IRP. The Registrar (Designate) is directed to communicate the order to the IRP and obtain his consent and declaration in Form 2 within 3 days.

- II. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of a claim under Section 15 of the Code.
- III. The interim Resolution professional shall after collation of all claim received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.
- IV. The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17 18, 20,21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under a legal obligation under Section 19 of the Code extend every assistance and cooperation to the Interim Resolution Professional. IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the I& B Code, 2016.
- V. That the order of moratorium u/s 14 shall have effect from the date of this order, till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be.
- VI. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, 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 SARFESI Act, 2002; the recovery



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of any property by an owner or less or where such property is occupied by or in possession of the corporate debtor.

- VII. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.
- VIII. That the provisions of Section 14 sub - section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- IX. The Registry is at this moment directed to communicate this order to the operational Creditor and the Corporate Debtor after the completion of necessary formalities.
- X. The IRP shall inform the progress of insolvency proceedings and submit the report of the compliance of the directions of this order within 30 days to this Bench.

List the matter on 15.5.2018 for filing progress report.

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**SAROJ RAJWARE,**  
**MEMBER (T)**

**Dated: 24.04.2018**

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**V.P. SINGH,**  
**MEMBER (J)**

