

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
AT NEW DELHI**

**Filed on : 29<sup>th</sup> March , 2017**  
**Date of Decision: 13<sup>th</sup> April, 2017**

**Company Petition No. (IB)-42(ND)/2017**

**In the matter of**  
Under Section 9 of Insolvency and Bankruptcy Code, 2016

**M/s. RS Polychem** **.....Applicant**

**Versus**

**M/s Ekdantam Infra Pvt. Ltd.** **...Respondent**

**CORAM:**  
**MS. INA MALHOTRA, MEMBER (JUDICIAL)**

**For Petitioner (s)** Mr. Siddharth Sharma and Ms. Charu Tyagi,  
Advocates for the Applicant.

**For Respondent(s)**

**ORDER**

The petitioner, as proprietor of M/s. RS Polychem, has claimed to be an Operational Creditor within the definition as provided for in the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the "Code"), praying for initiation of Insolvency Resolution Process against the Respondent/Corporate Debtor on grounds of default in paying the principal amount of Rs.6,63,452/-, against invoices raised for supplying goods.

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2. As per averments, the petitioner supplied goods and raised invoices on the Corporate Debtor. Details of the unpaid transactions are reproduced to be as under:

<b>Invoice No.</b>	<b>Date</b>	<b>Invoice Value</b>	<b>Payment Due as on 29.03.2017</b>
016	17.05.16	130,205.00	15,355.00
017	21.05.16	108,660.00	108,660.00
24	23.06.16	148,547.00	148,547.00
25	23.06.16	137,982.00	137,982.00
38	16.07.16	104,361.00	104,361.00
40	28.07.16	148,547.00	148,547.00
	Total	778,302.00	<b>6,63,452.00</b>

3. The Operational Creditor had taken steps as required under section 8 in issuing a demand notice dated 28.02.2017 for the unpaid operational debt of Rs. 6,63,452/-, along with copies of invoices in the form and manner required under the Code. Copies of the same along with its postal record have been filed. The applicant submits that no reply has been received from the Corporate Debtor. An affidavit as mandated under section 9(3) (b) of the Code has been

filed deposing that no reply has been received from the Corporate Debtor disputing the unpaid operational debt.

4. Notice was also issued to the Corporate Debtor by this Bench, but none appeared. Given the facts of the case, this Bench is satisfied that the Operational Creditor is entitled to a legally recoverable debt of Rs.6,63,462/- for the goods supplied for which due notice was issued and remains undisputed till date. The copies of the invoices raised from time to time are duly annexed to the petition and are reflected in the Ledger Account maintained in respect of the goods supplied to the Corporate Debtor. Payments received from time to time have been adjusted in the ledger which reflects a running account. The petitioner submits that as against the total billing of Rs.14,88,452/-, the Corporate Debtor had paid Rs.8,24,990/- leaving the outstanding liability at Rs.6,63,462/-. The Corporate Debtor has not raised any dispute prior to the filing of the petition, either in respect of the amount claimed, or the quality of the goods supplied. Apart from the affidavit in terms of Section 9(3)(b) of the Code, copy of the statements of account maintained with their Banks viz. Central Bank of India and Bank of India, corroborate the Operational Creditors ledger account and does not show any payment/remittance made by the Corporate Debtor as claimed

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herein. Accordingly, this Bench hereby admits this petition filed under section 9 of the Insolvency and Bankruptcy Code, 2016. The Operational Creditor has named the Interim Insolvency Professional, viz. Mr. Rakesh Wadhwa who is duly registered with ICSI, having registration no. no IP-00010/2016-17/1025. His statement that no disciplinary proceeding is pending against him and that he is eligible to be appointed as a resolution professional in accordance with the provisions of Insolvency and Bankruptcy Board of India is on record. Mr. Rakesh Wadhwa is accordingly appointed as the provisional insolvency professional and shall take immediate steps in terms of Sec.14, as there would be a moratorium on the Corporate Debtor. The provisions of Sec.14 are reproduced as under:

***“14. A moratorium in terms of Section 14 is also declared prohibiting***

***(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.***

***(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 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 have effect from the date of such order till the completion of the corporate insolvency resolution process:***

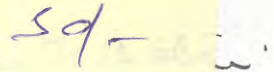
***Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section(1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.***

5. The insolvency resolution professional shall also take steps to cause the public announcement of the Corporate Insolvency Resolution Process and perform all such duties in terms of Sections 15, 17 & 18. All personnel of the Corporate Debtor including its promoters are expected to extend full cooperation to the interim

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resolution professional as is provided by Section 19 and any other provisions of the code. The insolvency professional shall submit his report to this Bench within four weeks.

6. The petition stands disposed of in above terms.



**(Ina Malhotra)**  
**Member Judicial**