

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

**IA No.361/2021
In
CP (IB) No. 406/Chd/Pb/2018
(Admitted Matter)
Under Section 60(5) of the Insolvency
and Bankruptcy Code, 2016**

In the matter of:

State Bank of India ...Financial Creditor
Vs.
M/s Nexgen Laminators Private Ltd. ...Corporate Debtor

And in the matter of IA No.361/2021:

Jalesh Kumar Grover
Resolution Professional
M/s Nexgen Laminators Private Limited
having its registered office at
SCO 818, 1st Floor, NAC, Manimajra
Chandigarh-160101Applicant/Resolution Professional

Vs.

- 1. M/s Batra Poly Chem Pvt. Ltd.**
B-XVI/701/14
Outside Hatta Narian Dass
Gill Road, Ludhiana
PB-141003 ... Respondent No.1
- 2. M/s Big Drum India Pvt. Ltd.**
Plot No.10, Ida Uppal,
Ramanthapur Main Road,
Hyderabad TG 500039 ... Respondent No.2

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3. **M/s Fryo Food Private Ltd.**
555, Peeli Kothi
Sabun Godam
Merrut-25002 ... Respondent No.3
4. M/s Fun Choice Private Limited
10-B, West Jawahar Nagar,
Lane No.9, Loni Road,
Shahadra Delhi East Delhi-110094 ... Respondent No.4
5. **M/s Punjab Pesticides Industrial Co-op Society Ltd.**
Kharar Kurali Road
village Khanpur
Mohali, Punjab-140001 ... Respondent No.5
6. **M/s SRS Meditech Limited**
Plot No.8, Sector 5
Main Mathura Road,
Ballabgarh, Haryana-121004 ... Respondent No.6

Order delivered on: 14 .03.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present:

For the Applicant : None
For the Respondent No.2 : Mr. Shivam Narang , Advocate

Per: Subrata Kumar Dash, Member (Technical)

ORDER

The present application is filed under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 by **Jalesh Kumar Grover, Resolution Professional**, M/s M/s Nexgen Laminators Private Limited (hereinafter referred to as

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'Applicant/Resolution Professional (RP)') against the respondents to issue directions for recovery of Rs.1,20,71,916/- (Rupees One Crore Twenty Lakhs Seventy One Thousand Nine Hundred and Sixteen Only) plus interest rate @24% from the date of default along with pendente lite interest till the date of receipt of payment from various respondents.

2. The brief facts stated in the application are that the CIRP of Corporate Debtor commenced vide order dated 25.11.2019. The RP made a public announcement inviting claims and constituted the Committee of Creditors (hereinafter referred to as '**CoC**') on 18.12.2019. The CoC held on 09.01.2020, approved the appointment of Mr. Jalesh Kumar Grover as RP and vide order dated 22.01.2020 this Adjudicating Authority confirmed the appointment of RP. The list of debtors is produced below:-

Sr. No.	Respondents	Principle Amount (Outstanding as on CIRP Date)
R-1	Batra Poly Chem Pvt. Ltd.	1,17,290
R-2	Big Drums India Pvt. Ltd.	6,51,105
R-3	Fryo Foods Private Limited	63,72,386
R-4	Fun Choice Private Limited	28,08,004
R-5	Punjab Pesticides Industrial Co-op Society Limited	1,39,203
R-6	SRS Meditech Limited	16,27,469
R-7	Sudarshan Poly Pack Industries	2,75,914
R-8	Barflex Polyfilms Private Limited	80,545
	Total	1,20,71,916

The applicant wrote to respondents for release of the outstanding balance as shown in Books of Accounts of Corporate Debtor. As per records, the applicant sent a recovery letter to respondent No.1 on 08.02.2020 for the release of an

outstanding amount of Rs.1,17,290/-. A reply to the demand letter was received on 04.03.2020 stating that their account was declared as Non-Performing Asset (hereinafter referred to as 'NPA'), due to which the respondents were not able to pay the amount. A recovery letter was sent to respondent No.2 for Rs.6,51,105/- on 08.02.2020, however, no reply was received. The demand notice dated 28.02.2020 was served and a reply dated 23.03.2020 was received stating that they did not owe any amount. The applicant wrote to respondent No.3 for the release of the outstanding amount of Rs.63,72,386/- on 08.02.2020 and a reply dated 29.02.2020 was received stating that they did not owe any amount. The demand notice was served on 28.02.2022 and no reply was received. A letter was served upon respondent No.4 on 05.02.2020 amounting to Rs.28,08,094/-. The demand notice dated 28.02.2020 was served and no reply was received. The letter dated 08.02.2020 for Rs.1,39,203/- was issued to respondent No.5 and a demand notice dated 28.02.2020 was served, however, no reply was received. The letter dated 08.02.2020 for Rs.10,96,861/- was issued to respondent No.6 and a demand notice dated 28.02.2020 was served but no reply was received. The letter dated 05.02.2020 amounting to Rs.2,75,914/- was issued to respondent No.7 and a demand notice dated 28.02.2020 was served but no reply was received. The letter dated 08.02.2020 amounting to Rs.80,545/- was issued to respondent No.8 and reply was received on 18.02.2020 stating that there is nothing to pay to the Corporate Debtor.

3. The counter-statement was filed by Respondent No. 2 vide diary No.00810/03 dated 17.03.2022 wherein it is submitted that Section 60(5) of IBC is

not intended to adjudicate issues between the Corporate Debtor and other parties against whom the Corporate Debtor may have some claims. It is not correct on the part of the applicant to share details of respondents in a single application. The applicant has no *locus standi* to file the application. There are two documents relied on by the applicant:-

- a) Copy of the letter dated 05.02.2020 (Annexure 8).
- b) Copy of reply dated 23.03.2020 sent on behalf of respondent No.2 (Annexure 9).

It is stated that the applicant has not furnished the statement to justify the treatment of an amount of Rs.6,51,105/-.It is further stated that the claim is time-barred and the adjudicating authority is not a recovery Court for solving contractual disputes.

4. The rejoinder was filed by the applicant vide diary No.00810/5 dated 12.08.2022 wherein it is stated that as per the Limitation Act suit for recovery of an outstanding amount can be filed within three years from the date of cause of action has arisen. In the present application the last transaction was based upon the invoice issued dated 18.12.2016 and CIRP commenced on 25.11.2019, the moratorium was declared. Therefore, the limitation does not apply as there are 23 days left for the applicability of the limitation period based upon that RP issued a letter to respondent No.4 to pay the outstanding amount. The respondent doesn't have any proof that they don't owe any money to the Corporate Debtor.

5. The short written submissions filed by the applicant vide diary no.00810/6 dated 06.10.2022 and by respondent No.2 vide diary No.00810/7 dated 17.11.2022 reiterating the above-mentioned facts.

6. We have heard the learned counsel for the respondent and have also perused the records carefully. We hold that as per the documents available on record i.e. the recovery letters dated 08.02.2020 sent to the various Respondents No. 1 to 8 and the replies received from Respondent Nos. 1,2,3,8, the genuineness of the claimed amount of Rs.1,20,71,916/- (Rupees One Crore Twenty Lakhs Seventy One Thousand Nine Hundred and Sixteen Only) is not ascertainable. Merely because, the demand notices were sent to the respondents by the applicant, does not establish the genuineness of these claims. Under sub-section 2(a) of Section 25 of the Insolvency and Bankruptcy Code,2016, the duties of the resolution professional to *“take immediate custody and control of all the assets of the corporate debtor, including the business records of the corporate debtor”*. Though, it is the duty of the Resolution Professional to take control and custody of the assets over which the corporate debtor has ownership, adequate evidence of the genuineness of the claim has to be brought on record to enforce the claim. Out of the 08 respondents on whom the recovery letter was served, only respondent Nos.1,2,3 and 8 have replied. All these respondents have refuted the claim of Resolution Professional that no amount is due. The Resolution Professional has failed to produce any reliable document in favour of these claims that this amount was due in course of present proceedings. The available records also indicate that the resolution professional is not able to effectively counter the statement of creditors that the amounts were not due against them. Thus, we are of the view that the very fact of debt is itself disputed and it is not within the mandate of this authority to adjudicate disputed claims. The applicant, however, is

at liberty to approach the appropriate forum to decide on the dispute over his claim, if so advised.

7. Therefore, IA 361/2021 is dismissed and stands disposed of accordingly.

-sd-14.03.2023
(Subrata Kumar Dash)
Member (Technical)

-sd-14.03.2023
(Harnam Singh Thakur)
Member (Judicial)

March 14, 2023
PRF/TB