

**IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH  
COURT III**

**C.P. No. 4650/IBC/MB/2019**

Under Section 9 of the Insolvency and  
Bankruptcy Code, 2016 read with  
Rule 6 of the Insolvency and  
Bankruptcy (Application to  
Adjudication Authority) Rule 2016)

*In the matter of*

**Mr. Shahaji Dange, Sole Proprietor  
of Shreya Precision Works**

Having registered office at: Office S.  
No. 78/1/4/19, Shree Gajanan  
Maharaj Nagar, Alandi Road, Dighi,  
Pune 411015

**.....Operational Creditor**

**Vs**

**Synergytech Automation Private  
Limited**

(CIN: U29119PN2003PTC018689)

Registered office at: Gat No. 205, A/P  
Kasurdi, Khedshivapur, Saswad  
Road, Bhore- 412205, Maharashtra

**.....Corporate Debtor**

**Order delivered on: 23.07.2021**

**Coram:**

Hon'ble Shri H.V. Subba Rao, Member (Judicial)

Hon'ble Shri Chandra Bhan Singh, Member (Technical)

**For the Applicant:** Mr. Amit Singh, Advocate

**For the Respondent:** None present

***Per: Shri H.V. Subba Rao, Member (Judicial)***

**ORDER**

1. This Company petition is filed by *Mr. Shahaji Dange, Sole Proprietor of Shreya Precision Works* (hereinafter called “Operational Creditor”) seeking to initiate Corporate Insolvency Resolution Process (CIRP) against *Synergitech Automation Private Limited* (hereinafter called “Corporate Debtor”) alleging that the Corporate debtor committed default in making payment to the Operational Creditor. This petition has been filed by invoking the provisions of Section 8 and 9 Insolvency and bankruptcy code (hereinafter called “Code”) read with Rule 6 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
2. The present petition is filed before this Adjudicating Authority on the ground that the Corporate Debtor failed to make payment of a sum of Rs. 8,80,659/- (Rupees Eight Lakhs Eighty Thousand Six Hundred and Fifty-Nine only).
3. The brief facts of the Operational Creditor are as follows:-
  - a. The Operational Creditor, Proprietor of Shreya Precision Works, supplied goods to Corporate Debtor as per the requirements of the Corporate Debtor. Accordingly, the Operational Creditor has sold and supplied various jig, fixtures and engineering goods to corporate Debtor which were duly accepted by the Corporate Debtor. Till date the Operational Creditor has sold and supplied goods worth Rs. 9,01,620/- (Rupees Nine Lakh One Thousand Six Hundred and Twenty only) to Corporate Debtor.
  - b. The Corporate Debtor has raised various purchase orders in favour of Operational Creditor for the

month of March to December, 2016 and March to June, 2017 for supply of various components like Round Pin, End Plate, Oblong Pin, Bearing Block, Bracket Fixed Side, Round Pin with threading etc. ("Purchase Orders").

- c. The Corporate Debtor has raised new requirement from time to time to Operational Creditor through mails starting from the month of May 2016 till December 2016.
- d. Total outstanding Debt Amount as per ledger account of Corporate Debtor maintained by the Operational Creditor from April 1, 2017 to January 10, 2019 is Rs. 8,80,659/-
- e. The Operational Creditor and the Corporate Debtor agreed for a credit period of 90 days; if payment is not received within credit period of 90 days, the invoice becomes due for payment and the Operational Creditor is entitled to receive interest @ of 12% on delayed payments.
- f. On October 15, 2019, the Corporate Debtor was served with a demand notice demanding payment of unpaid operational debt within ten days under rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.
- g. As per section 8(2) of the Insolvency and Bankruptcy code, 2016, the Corporate Debtor has failed to reply to the said demand notice within 10 days. By a reply dated November 7, 2019, the Advocate for the Corporate Debtor responded to the Demand Notice denying the liability of the Corporate Debtor to make any payment to the Operational Creditor. The

corporate Debtor in para 4 of the reply stated that the Corporate Debtor is not liable to pay any amount to the Operational Creditor and no such liability is outstanding in the Corporate Debtor records. But, as per the ledger statement of the Corporate Debtor which clearly states that there has been a purchase from the Corporate Debtor account, but no payment has been made in respect of the said purchases.

### **Findings**

1. On 05.04.2021, the counsels appearing on both sides were present through virtual hearing and the following order was passed by this Bench:

*“Counsels on both sides are present through virtual hearing. Counsel for the petitioner mentioned that the total debt is about Rs. 9 lakhs. The counsel for the respondent requested last chance to file their reply.*

*The bench notes of the fact that the petition has been filed in 2019 and several chances have been given to the respondent for filing their reply. However, the last chance is given to the respondent to file reply if any failing which the matter would be decided on its merit irrespective of whether a reply is received or not. List this matter on 11.05.2021 for final hearing.”*

2. Despite granting time, the respondent did not choose to file any reply nor present on 13.07.2021 for addressing final arguments. Therefore, having no other alternative, this bench

heard the arguments of the counsel appearing for the petitioner and reserved the matter for order.

3. Even though the Corporate Debtor did not choose to file any reply in the above company petition, the corporate debtor issued reply notice dated 07.01.2019 through their advocate Mr. L.G. Somvanshi in response to the demand notice issued by the Operational Creditor which was filed as Annexure 'G' at page 176 to the above company petition. The above reply got issued by the Corporate Debtor is a routine reply with usual denials. The main gist of the reply at Para 5 is necessary to ascertain the stand of the Corporate Debtor to decide the above Company Petition which reads as follows:

**Para 5:**

*“...My client states that your client had not provided goods and services as per purchase order. My client further states that your client has not supplied the material in time and hence my client got the same at late stage and therefore, my client was unable to comply with the demands of its customers and hence there was also delay to provide the same to the customers. Hence customers of my client debits account of my client and due to your client, my client has suffered monetary loss and lost his goodwill in market which cannot be compensated in money...”*

4. The contention of the Corporate Debtor from the above averments in Para 5 of the reply notice is that the Operational Creditor has not supplied the material in time and therefore the Corporate Debtor was unable to comply with the demands of its customers as a result of which the Corporate Debtor suffered monetary loss and lost his goodwill in the market which cannot be compensated in money.

5. Thus, it is very clear from the above averments in the notice that the only grievance of the Corporate Debtor is delay of supply of material by the Operational Creditor. It is important to observe here that the Corporate Debtor has utilized the goods without returning them to the Operational Creditor even admitting for arguments sake that there was a delay in supplying of materials by the Operational Creditor. Having utilized the material supplied by the Operational Creditor, the Corporate Debtor is legally bound to pay for it. The Corporate Debtor did not raise any pre-existing disputes before issuing the demand notice by the Operational Creditor under Section 8 of the Code. To add this, the Corporate Debtor got issued the reply beyond 10 days as an afterthought to avoid the claim of the Corporate Debtor. Therefore, the above plea of the Corporate Debtor cannot be considered as a pre-existing dispute as per the law laid down by the Hon'ble Apex Court as well as Hon'ble NCLAT in various judgements.
6. Apart from this, the Corporate Debtor did not choose to file any reply in the above Company Petition nor address any arguments, as a result of which the claim of the Operational Creditor remained unchallenged.
7. Therefore, for the reason stated above, there are no valid grounds warranting the rejection of the above Company Petition as the debt and default are clearly established and the debt is also within limitation. Thus, the present Company Petition satisfies all the necessary requirements for admission.
8. Under these circumstances, this tribunal is of the considered opinion that the above company petition is liable to be admitted and accordingly the same is admitted by passing the following:

**ORDER**

- a. The above Company Petition No. (IB) -4650(MB)/2019 is hereby allowed and initiation of Corporate Insolvency Resolution Process (CIRP) is ordered against Synergitech Automation Pvt. Ltd.
- b. Since the Operational Creditor has not suggested the name of IRP to perform the duties of the Interim Resolution Professional (IRP) in the petition, this Bench is appointing the IRP from the list furnished by the Insolvency and Bankruptcy Board of India (IBBI). This Bench hereby appoints **Ms. Mrudula Cletus Brodie** (camrudulkejdiwal@gmail.com), Insolvency Professional, Registration No: IBBI/IPA-001/IP-P01702/2019-2020/12681 as the interim resolution professional to carry out the functions as mentioned under the Insolvency & Bankruptcy Code, 2016.
- c. The Operational Creditor shall deposit an amount of Rs.2 Lakh towards the initial CIRP cost by way of a Demand Draft drawn in favour of the Interim Resolution Professional appointed herein, immediately upon communication of this Order.
- d. That this 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.

- e. 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.
- f. That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- g. That the order of moratorium shall have effect from the date of pronouncement of this order till the 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.
- h. That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.
- i. During the CIRP period, the management of the corporate debtor will vest in the IRP/RP. The suspended directors and employees of the corporate debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP.
- j. Registry shall send a copy of this order to the Registrar of Companies, Mumbai, for updating the Master Data of the Corporate Debtor.



Accordingly, this Petition is admitted.

The Registry is hereby directed to communicate this order to both the parties and to IRP immediately.

**Sd/-**

**CHANDRA BHAN SINGH  
MEMBER (TECHNICAL)**

**Sd/-**

**H.V. SUBBA RAO  
MEMBER (JUDICIAL)**