

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

C.P. (I.B) No.567/9/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE NATIONAL COMPANY LAW TRIBUNAL ,
AHMEDABAD BENCH ON 17.03.2020**

Name of the Company: Checkmate Services Pvt. Ltd
V/s.
Neesa Security Solutions Pvt. Ltd.

Section: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
-------	------------------------	-------------	----------------	-----------

1.


2.

ORDER

The present matter is kept for pronouncement of order.

The order is pronounced in open Court vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 17th day of March, 2020

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

C.P. (I.B.) No. 567/9/NCLT/AHM/2018

In the matter of:

CHECKMATE SERVICES PVT. LTD.,
Having its Registered Office at:
Aman Towers, GF 6 to 9,
Suvas Colony, Fatehgunj,
Main Road, Vadodara-390002.
Gujarat.

..... Petitioner

Versus

NEESA SECURITY SOLUTIONS PVT. LTD.,
Having its Registered Office at:
FF-1, Cambay Plaza, Cambay Grand,
B/H Perd Centre, Nr.Sola Overbridge,
Thaltej, Ahmedabad-380054
Gujarat.

.....Respondent

Order delivered on 17.03.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Ms. Amrita A. Patel, Advocate for the Petitioner/Operational
Creditor.

Mr. Jainish Shah, Advocate for the Respondent/Corporate
Debtor.

↙

↘

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, Checkmate Services Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) against the Corporate Debtor Company namely, Neesa Security Solutions Private Limited.
2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) – U74999GJ1992PTC017920. The registered office of the Petitioner is situated at Amaan Towers, GF 6 to 9, Suvas Colony, Fatehgunj, Main Road, Vadodara. The present Petition is filed through Authorised Person Shri Mukesh Ramanlal Desai having address: Amaan Towers, GF 6 to 9, Suvas Colony, Fatehgunj, Main Road, Vadodara.
3. The Respondent/Corporate Debtor, namely Neesa Security Solutions Private Limited was incorporated on 18.11.2009 with CIN: U93000GJ2009PTC058615. The authorised capital of the company is INR.5,00,000.00 (Rupees Five Lakhs Only) and the paid-up capital as on 31.07.2018 i.e., INR.1,00,000.00 (Rupees One Lakh

Only). The registered office of the Corporate Debtor Company is situated at: FF-1, Company Plaza, Cambay Grand, B/H Pert Centre, Near Sola Over Bridge, Thaltej, Ahmedabad.

4. The present petition has been preferred by the Operational Creditor, Checkmate Services Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, Neesa Security Solutions Private Limited. It is submitted by the Petitioner that the Respondent/Corporate Debtor is indebted to the Petitioner for **INR. 4,48,60,568** (Rupees Four Crore Forty Eight Lakhs Sixty Thousand five Hundred and Sixty-Eight Only. The above amount includes principal amount of debt of INR.2,58,14,257, and interest of INR. 1,90,46,311 thereon i.e., the total debts as calculated up to 31.03.2018. The applicant also claims further interest @ 18% per annum from 01.04.2018 till its realization. In this regard various invoices/bills were raised by the Operational Creditor in proportion to the work carried on by the Operational Creditor and the same were duly accepted by the Corporate Debtor.





5. **The Applicant has enclosed the list of 133 invoices which are between 31.03.2013 to 31.05.2015.** It is submitted that the said invoices/bills are still outstanding and have remained unpaid till date. That as on date there is an outstanding amount of INR.4,48,60,568.000 (Rupees Four Crore Forty Eight Lakhs Sixty Thousand five Hundred and sixty eight only), which is **due and defaulted and payable by** the Corporate Debtor. **Date on which the first Default occurred is 30.04.2013.**
6. It is submitted that the Form No.3 demand notice was issued by the operational creditor on 31.03.2018 under the provisions of Insolvency and Bankruptcy Code, 2016.
7. It is submitted that the Operational Debt in question became due and payable pursuant to security services availed by NEESA from Checkmate Services Pvt Ltd. for the **period between 30.04.2013 to 30.06.2015.**
8. It is submitted that the Respondent did not make regular payments towards the bills raised by the petitioner, therefore, the petitioner sent various reminders on phone, via e-mails and held various meetings, regarding the outstanding payments from Corporate Debtor.



9. It is submitted that the Corporate Debtor issued six cheques drawn on Axis Bank towards payment of outstanding dues to CSPL in the year 2013, which were returned due to insufficient funds. The details of those cheques are as follows.

Cheque No.	Date	Amount
008248	10.09.2013	2,50,000.00
111196	30.11.2013	1,00,000.00
111197	08.12.2013	1,00,000.00
111198	08.12.2013	1,00,000.00
008247	10.07.2013	2,50,000.00
111199	12.12.2013	1,00,000.00

10. It is submitted the corporate debtor failed to clear the dues inspite of various reminders and assurance, a winding up notice was issued by the CSPL dated 16.09.2016. Later, CSPL resolved to issue demand notice under IBC, 2016 on 11.11.2017. Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 came to be issued on 31.03.2018 to the registered office of NEESA. The said notice was returned with the endorsement of left on the envelope. **A copy of the notice was also sent on the registered E-mail id of the NEESA as available on the website of Ministry of Corporate Affairs, which also returned.**

11. It is submitted that the applicant filed the captioned petition in the requisite form and after payment of due fees on 17.09.2018. Notice came to be issued by this Hon'ble Tribunal on 15.11.2018. The said notice also returned and therefore the applicant herein was directed to make a paper publication the notice as directed was published in DNA, Ahmedabad Edition on 29.03.2019.
12. The Applicant's Prayer before this Adjudicating Authority is to Cause public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 to be dismissed and be pleased to pass any further order in the interest of justice.
13. Now, the Petition is filed on 22.10.2018 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for **the unpaid Operational Debt due of INR.4,48,60,568.00**
14. The case was taken up by this Adjudicating Authority on 15.11.2018, 04.01.2019, 21.02.2019, 02.04.2019, 18.06.2019, 30.07.2019, 20.08.2019, 16.09.2018, 01.10.2019, 23.10.2019, 18.11.2019 and 04.12.2019. **The Respondent or its counsel did not attend on 15.11.2018, 04.01.2019, 02.04.2019, and**

18.06.2019. The Counsel for the Respondent appeared on 30.07.2019 and requested some time to file vakalatnama.

15. **On 16.09.2019 the Learned Counsel for the Respondent did not propose to file any reply. This Adjudicating Authority sought the clarification from the Learned Counsel, whether any written communication from the Corporate Debtor or acknowledgement of debt is available with him, he denied having any such letter from the Corporate Debtor. The Learned Counsel was asked to provide the Board Resolution of the Company or letter from the Company about admission of debt and the date of admission of debt due. No Letter/Board Resolution has been submitted by the Learned Lawyer appearing for the Corporate Debtor to this effect.**

16. The matter was finally heard on 04.12.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may be admitted and an Interim Resolution Professional appointed in accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the Corporate Insolvency Resolution Process be initiated as per Section 9 of the Insolvency



and Bankruptcy Code, 2016 and the moratorium period may also be declared.

17. Further, the Operational Creditor **has not suggested any** name of an Interim Resolution Professional (“IRP” for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

OBSERVATIONS

18.

18.1 The Application has been filed on 22.10.2018 for **operational debt due** and defaulted of INR.4,48,60,568.00 (Rupees Four Crores Forty Eight Lakhs Sixty Thousand Five Hundred Sixty Eight Only).

18.2 **The List of invoices enclosed (Page No.30 of the Paper Book of the Applicant) are related the period between 30.04.2013 to 30.06.2015 which are more than 3 years old from the date of filing the Application.**

18.3 **The Counsel for the Respondent during the hearing indicated the admission of debt verbally but he was asked to give in writing which has not been submitted and there is no such acknowledgement of debt from the Company after the date of default. No such acknowledgement letter of the Corporate**

f



Debtor is also produced by the Operational Creditor in support of its claims.

18.4 Date of first default is **30.04.2013**.

18.5 Application is filed beyond the period of limitation **as the date of default is 30.04.2013 and the application has been filed on 22.10.2018 under Section 9 of IBC, 2016.**

18.6 Some Cheques were issued between 10.09.2013 to 12.12.2013 which were reportedly returned unpaid. The Cheques were also issued prior to three years of filing this application.

ORDER

19. Considering the material, papers filed by the Petitioner on record arguments of the Counsels of both parties and the facts mentioned in the Para No. **18, 18.1, 18.2, 18.3, 18.4, 18.5,& 18.6** this Adjudicating Authority **rejected the Application on the ground of Limitation.**

a) **This Application is barred by Limitation as the Application has been filed on 22.10.2018 whereas, the date of default is 30.04.2013.**


b) **The List of invoices enclosed as per the list (Page No.30 of the Paper Book of the Applicant) are related to the period between 30.04.2013 to 30.06.2015 which are more than 3 years old from the date of filing the Application.**




- c) **The Counsel for the Respondent during the hearing indicated the admission of debt verbally but he was asked to give in writing which has not been submitted and there is no such acknowledgement of debt from the Company after the date of default. No such acknowledgement letter of the Corporate Debtor is also produced by the Operational Creditor in support of its claims.**
- d) **Date of first default is 30.04.2013.**
- e) **Some Cheques were issued between 10.09.2013 to 12.12.2013 which were reportedly returned unpaid. The Cheques were also issued prior to three years of filing this application.**

20. The Registry is directed to communicate the authenticated copy of this order to the Parties concerned through Speed Post/Registered Post at the earliest.

Hence, this Application CP(IB)No.567/9/NCLT/AHM/2018 is rejected with the **above observations and directions as to no Cost.**


(Prasanta Kumar Mohanty),
Adjudicating Authority
Member (T)


(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member (J)