

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


**C.P. (I.B) No.430/NCLT/AHM/2018**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 21.11.2019**

Name of the Company: Larsen & Toubro Limited  
V/s  
Dhorajia Engineering Company Pvt  
Ltd

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Rahel S. Patel a/w Kanya A. Shah	} Advocates	operational creditor	
2.	1/2 Nandanati Associates			


**ORDER**

The Petitioner is represented through learned counsel.

The Order is pronounced in the open court vide separate sheet.

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER TECHNICAL**

Dated this the 21st day of November, 2019

  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. No. (IB) 430/9/NCLT/AHM/2018**

**In the matter of:**

**Larsen & Toubro Limited.**  
N.M. Marg  
Ballard Estate  
MUMBAI 400 001

**Petitioner**  
Operational Creditor

**Versus**

**Dhorajia Engineering Company Private Limited**  
55, Madhuban  
Near Madalpur under bridge  
Ellisbridge  
Ahmedabad 380 006  
Gujarat State

**Respondent**  
Corporate Debtor

**Order delivered on 21<sup>st</sup> November, 2019.**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)  
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

Advocate Ms. Kanya A. Shah i/b. Nanavati Associates for  
petitioner

**ORDER**

**[Per: Ms. Manorama Kumari, Member (Judicial)]**

1. Mr. Sanjay Prabhakar Dhole, being authorised representative of M/s. Larsen & Toubro Limited filed this Petition on 07<sup>th</sup> August, 2018 under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.





2. The applicant/operational creditor is a limited company having identification No. L99999MH1946PLC004768 and having registered office Ballard Estate, Mumbai 400 001 is a multi-national company engaged in manufacturing and supply of heavy equipment.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 11.05.1988 having identification No. U29199GJ1988PTC010687 and having registered office at Ellisbridge, Ahmedabad 380 006, Gujarat State. Authorised share capital of the respondent company is Rs. 55,00,000/- and paid up share capital is Rs. 51,40,030/-.
4. The applicant/Petitioner has submitted that a site support agreement (**page No. 105-111** of the petition) was executed and entered into between the operational creditor and corporate debtor for support services of Scania P380 Tipper Trucks supplied by the operational creditor for the corporate debtor's work site for Western Coal Fields Ltd. in Maharashtra. The said agreement was valid from 02.05.2011 up to 03.12.2013.
5. The corporate debtor, vide letter dated 01.01.2014 (**page No. 112** to the petition), had renewed the site support agreement for a period of further two years till 31.12.2015 on the same terms and conditions except the condition



pertaining to revision of charges, which was revised at the rate of Rs. 54,000/ per month excluding taxes.

6. That, as per the terms of the agreement (**page No. 113-196** of the application), the operational creditor had raised several invoices towards the supply of services and spare parts to the corporate debtor. That, on **06.07.2015** the corporate debtor had made a part payment of Rs. **10,00,000/-** to the operational creditor, however, no further payments had been received by the operational creditor after 07.07.2015. In support of said statement, the petitioner has placed summary of accounts as on 30.09.2015 issued by ICICI Bank (**page No. 20** of the petition).
7. That, the operational creditor vide letter dated 28.02.2015, (**page No. 197** of the application), had sought confirmation from the corporate debtor about the outstanding balance, amounting to **Rs. 55,06,695/- (Rupees fifty-five lacs six thousand six hundred ninety-five only)** as on **31.12.2014** payable by the corporate debtor to the operational creditor.
8. It is further submitted that the operational creditor had addressed an e-mail, (**page No. 198** to the application), requesting the corporate debtor to release the payments of outstanding dues amounting to **Rs. 58,06,150/-**. That, in response to the letter dated **28.02.2015**, the corporate

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debtor had acknowledged its liability towards the amount of Rs. 55,06,695/- by affixing respondent company's seal on the letter dated 28.02.2015 of the operational creditor, (page **No. 197** of the application).

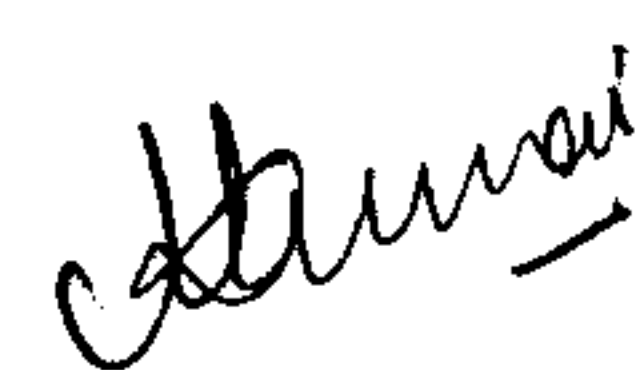
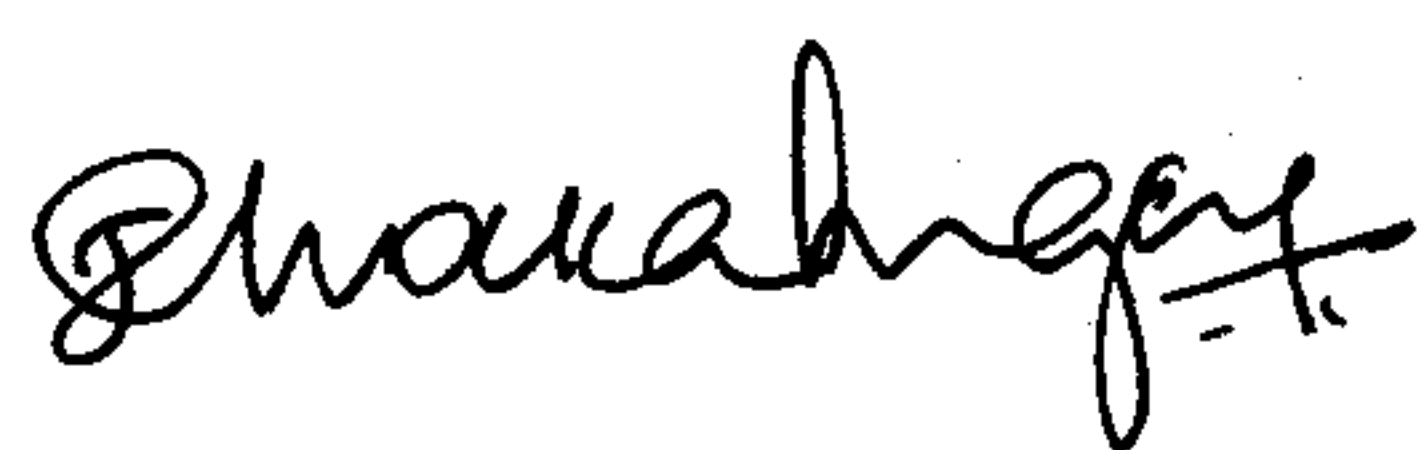
9. It is further submitted by the operational creditor that vide several emails, as reflected at page **No. 201-216** to the application, addressed to the corporate debtor, sought the payments of the outstanding amount due and payable, however, the corporate debtor, till date has not responded to any of the aforesaid requests. That, the operational creditor had also provided the corporate debtor with the statement of outstanding balance as per its books of accounts which was never disputed by the corporate debtor. That, the operational creditor had addressed a letter dated 13.10.2015, (page **No. 217** of the petition), to the corporate debtor seeking confirmation for the outstanding dues payable by the corporate debtor as on 30.09.2015 and the said letter was duly received and stamped by the corporate debtor on **18.01.2016**, confirming outstanding payment as stated by the operational creditor. That, the operational creditor had further addressed a letter to the corporate debtor calling upon the corporate debtor to make payments towards the outstanding dues amounting to Rs. 56,23,806.45, on the basis of balance confirmation statement which was enclosed therein, (**page No. 220** of the application). The said letter was duly received and stamped

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by the corporate debtor on 13.09.2016, confirming the outstanding payment as stated by the operational creditor.

10. That, on expiry of the site support agreement and several reminders being sent to the corporate debtor, the operational creditor was left with no other option but to issue a letter dated 01.05.2017 calling upon the corporate debtor to pay the amount of Rs. 56,23,806.45. That, copy of said demand notice is annexed at page Nos. **223-226** of the petition. That, on receiving no response to the said demand letter dated 01.05.2017, the operational creditor had issued second letter demanding dues as annexed at page **No. 227-232** of the petition, calling upon the corporate debtor to pay an amount of Rs. 56,23,806.45. That, as the operational creditor did not get any response from the corporate debtor, as a last resort, issued demand notice dated 02.05.2018, as annexed at page **No. 2-6** of the separate list of documents, in form 3 under the provisions of the IB Code, demanding payment in respect of the unpaid dues of **Rs. 56,23,806.45 (Rupees fifty-six lacs twenty-three thousand eight hundred six and paise forty-five only)** from the corporate debtor. That, the said demand notice under Section 8 of the I & B Code was duly delivered to the respondent on 04.05.2018 as per the track report submitted by the applicant.



11. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Power of attorney dated 23.06.2017 authorising Mr. Sanjay Prabhakar Dhole to initiate CIRP	16-17
2	Computation/calculation/determination of total debt	18-19
3	Bank statement from 01.04.2015 to 03.08.2017 of ICICI Bank	20-104
4	Site support agreement	105-111
5	Letter dated 01.01.2014	112
6	Invoices issued by operational creditor	113-196
7	Letter dated 28.02.2015	197
8	e-mail dated 02.04.2015	198-201
9	e-mail dated 14.07.2015	202-209
10	e-mail dated 07.10.2015	210-216
11	Letter dated 13.10.2015	217-219
12	Letter dated 31.03.2016	220-222
13	Demand letter dated 01.05.2017	223-226
14	Demand letter dated 01.07.2017 along with proof of despatch	227-232
15	"C" forms issued by corporate debtor	233-236
16	Track report of service of demand notice dated 01.07.2017 by Registered speed post	237
17	Track report of service of demand notice dated 01.07.2017 by courier	238-241
18	Envelope of the demand notice dated 01.07.2017 despatched by RPAD but refused by corporate debtor along with track report.	242-245

The applicant has also submitted additional documents viz. copy of demand notice dated 02.05.2018 issued u/s 8 of the IB Code and postal receipt thereof.

### **Findings**

12. Heard learned lawyer appearing for the petitioner also seen the documents annexed to the application.
13. On filing of the instant application, notice was issued through registry but none appeared on behalf of the respondent. Thereafter several notices have been issued to the respondent and the paper publication has also been

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effected but none appeared. As such service of notice is complete. Hence the matter was heard in absence of respondent.

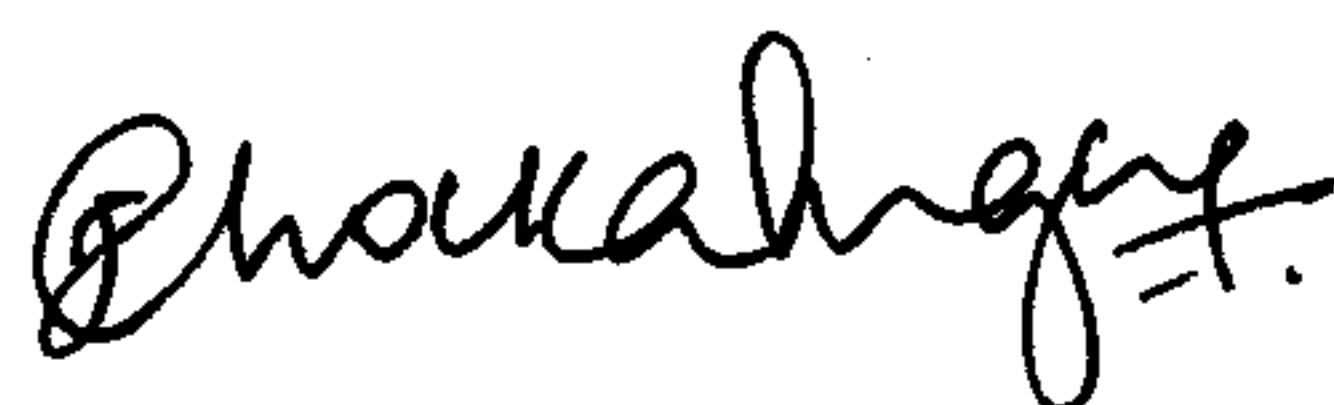
14. On perusal of the records it is also found that the respondent has not raised any dispute regarding the operational debt payable to the operational creditor on receipt of demand notice dated 02.05.2018 issued under Section 8 of the I & B Code.
15. On perusal of the records it is also found that the letters sent to the corporate debtor by the operational creditor for confirming the balance outstanding has been duly stamped, signed and received by the corporate debtor on 31.12.2014. The corporate debtor has also acknowledged its liability towards the operational creditor vide its letter dated 28.02.2015. The corporate debtor has further confirmed the outstanding payable to the operational creditor vide letter dated 18.01.2016.
16. It is also a matter of record that the operational creditor had sent a letter dated 31.03.2016 forwarding therewith the details of pending invoices for the period from 14.10.2014 to 29.05.2015. The said letter is/was duly acknowledged by the corporate debtor and the said letter bears the seal and signature of the corporate debtor company.

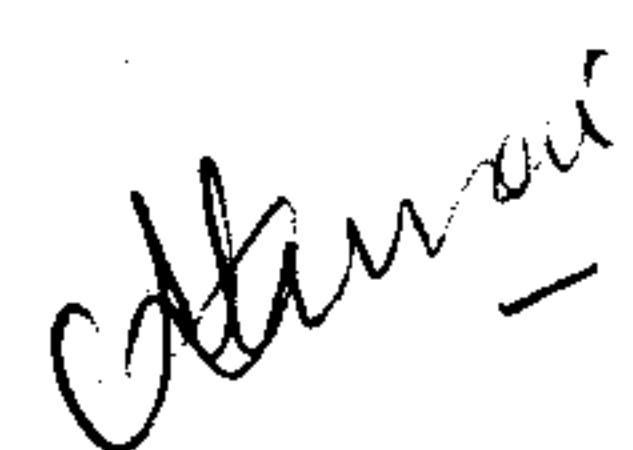
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17. From the above, it is evident that from time to time the corporate debtor has acknowledged the debt and has not raised any dispute. As per the summary of account issued by ICICI Bank, the last payment made by the corporate debtor was for Rs. 10.00 lacs on 06.07.2015.
18. It has been observed in **Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC** that while examining an application under Section 9 of the Act, will have to determine the following: -
- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
  - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?  
**and**
  - (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.





19. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of IB Code as enshrined in the Code and the application is complete in all respect. That, service is complete and no dispute has been raised by the respondent. That, Applicant falls within the meaning of Operational Creditor as per sub-section (20) of Section 5 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default which is payable in law and is not barred by Law of Limitation Act.

20. That, the Application filed by the Applicant is complete in all respects.

21. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Insolvency Resolution Professional to



make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

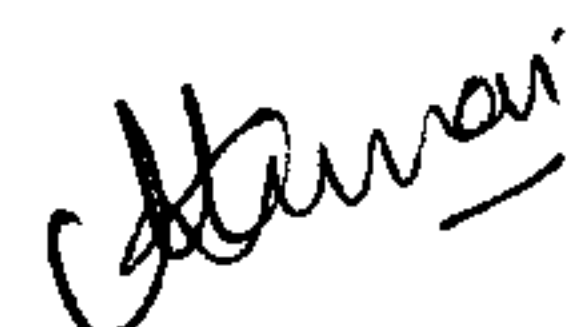
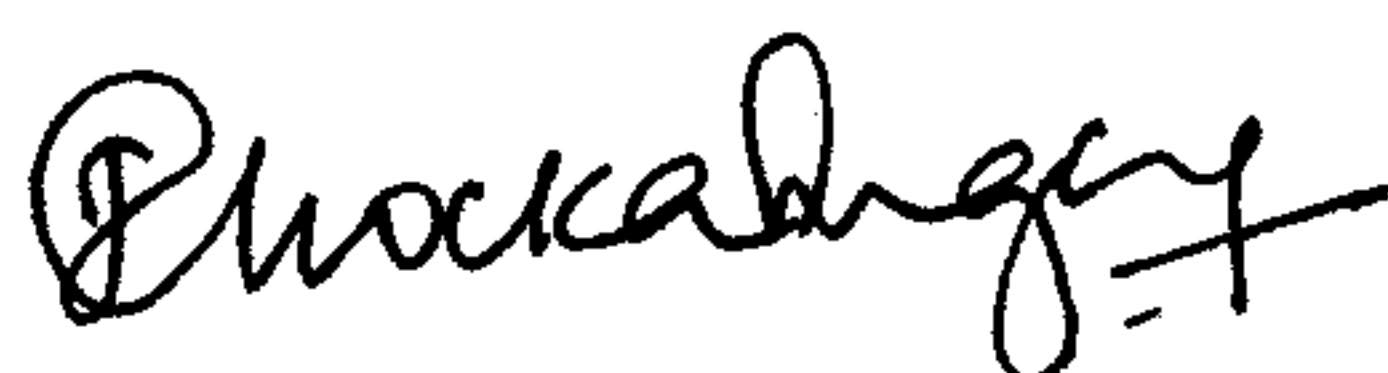
22. From the above stated discussion and on the basis of material available on record it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
23. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
  - (i) 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;
  - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) 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 (54 of 2002);

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(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

24. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
25. The order of moratorium shall have effect from the date of receipt of authenticated copy 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.
26. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Shri Kiran Shah, CA, 608, Sakar 1, Nr. Gandhigram Railway Station, Off. Ashram Road, Ahmedabad 380 009 having IBBI registration No. IBBI/IPA-001/IP-P00480/2017-18/10868 to act as an interim resolution professional under Section 13(1)(c) of the Code.



27. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.
28. This Petition stands disposed of accordingly with no order as to costs.
29. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Resolution Professional.

  
**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**

  
**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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