In the National Company Law Tribunal
Mumbai Bench
Court-III

C.P.(IB)-3713/(MB)/2019

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

In the matter of

M/s Nicotra India Pvt Ltd,
Shop No.2F-201, 2nd Floor,
Plot No. 1 & 2, LSC, Block-G,
Kondali Gharoli,
Mayur Vihar Phase – III,
Delhi – 110096
.... Applicant/ Operational Creditor

V/s.

M/s Savlon Aircon Pvt Ltd,
402, Rahjans Apt,
Gavdevi Road,
Opp. Bus Stop Thane,
Thane MH 400 602
...... Respondents/ Corporate Debtor

Order delivered on: **18.01.2022**

Coram:

Hon'ble Shri H V Subba Rao, Member (Judicial)
Hon'ble Shri Chandra Bhan Singh, Member (Technical)

For the Petitioner(s) : Mr. Raghavendra Mehrotra, Advocate, a/w Adv. Riya Sayyed.

For the Respondent(s) : Mr. Rajan Agarwal, Counsel.

Per: Chandra Bhan Singh, Member (Technical).

ORDER

1. This Application has been filed by M/s Nicotra India Pvt Ltd, Delhi-110096 (hereinafter called "Operational Creditor") u/s 9 of the Insolvency & Bankruptcy Code, 2016 read with Rule 6 (Application to Adjudicating Authority) of the Insolvency & Bankruptcy Rules, 2016 seeking to initiate Corporate Insolvency Resolution Process against M/s Savlon Aircon Pvt Ltd, Thane, Maharashtra, (Corporate Debtor) for a total Operational debt amount of Rs.52,30,945/- (Rs.38,71,942/- + Interest @ 18% p.a. accrued thereon of Rs.13,59,003/-) as on 31.03.2019. The details of the outstanding liability calculation sheet for Rs.38,71,942/- as on 31.03.2019 is as under:-

ANNEXURE 'A-4'

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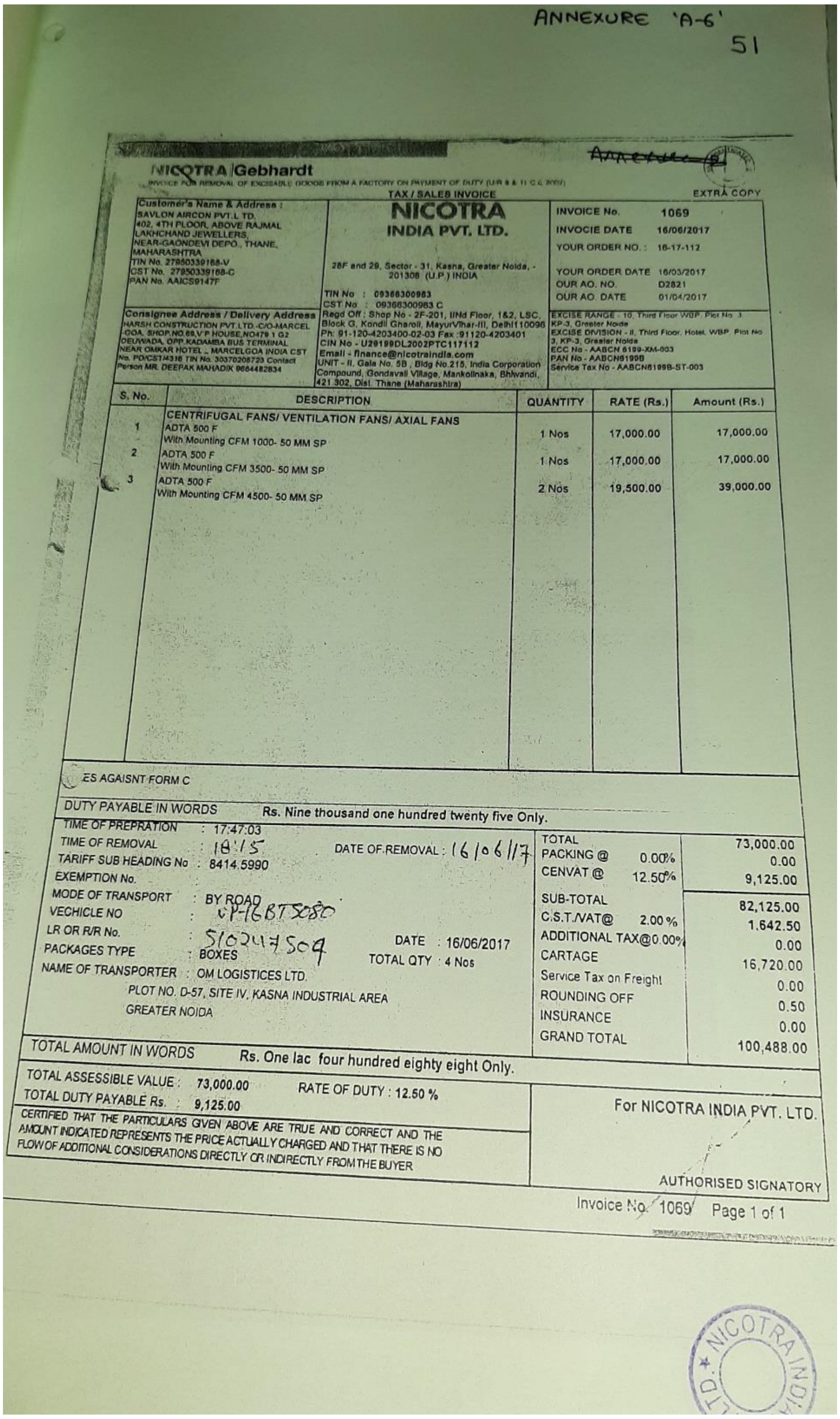
CUSTOMER NAME : SAVLON AIRCON PVT.L TD. - THANE
Liability Calculation Sheet as on 31 MARCH 2019

Invoice No	Date	Invoice Amount
5246	08/02/2017	381,385.00
5279	10/02/2017	138,991.00
5864	17/03/2017	947,403.00
5884	17/03/2017	56,165.00
5885	17/03/2017	22,077.00
170	18/04/2017	332,126.00
171	18/04/2017	102,231.00
172	18/04/2017	55,080.00
173	18/04/2017	62,669.00
769	26/05/2017	496,274.00
770	26/05/2017	222,482.00
771	26/05/2017	718,756.00
781	26/05/2017	58,010.00
782	26/05/2017	52,785.00
783	26/05/2017	69,940.00
784	26/05/2017	55,080.00
1069	16/06/2017	100,488.00
		3,871,942.00

A snap shot of one of Invoices No.1069 dated 16.06.2017 for Rs.1,00,488/-, allegedly outstanding is as below:-



ANNEXURE 'A-6'
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NICOTRA Gebhardt
INVOICE FOR REMOVAL OF EXCISABLE GOODS FROM A FACTORY ON PAYMENT OF DUTY (U/R 8 & 11 C.E. 2002)
TAX / SALES INVOICE
EXTRA COPY

Customer's Name & Address :
SAVLON AIRCON PVT.L TD.
402, 4TH FLOOR, ABOVE RAJMAL LAKHCHAND JEWELLERS, NEAR-GAONDEVI DEPO., THANE, MAHARASHTRA
TIN No. 27950339168-V
CST No. 27950339168-C
PAN No. AAICS9147F

NICOTRA INDIA PVT. LTD.
28F and 29, Sector - 31, Kasna, Greater Noida, - 201308 (U.P.) INDIA
TIN No : 09366300963
CST No : 09366300963 C
Regd Off : Shop No - 2F-201, IINd Floor, 1&2, LSC, Block G, Kondli Gharoli, MayurVihar-III, Delhi110096
Ph: 91-120-4203400-02-03 Fax :91120-4203401
CIN No - U29199DL2002PTC117112
Email - finance@nicotraindia.com
UNIT - II, Gala No. 5B , Bldg No.215, India Corporation Compound, Gondavali Village, Mankolinaka, Bhiwandi, 421 302, Dist. Thane (Maharashtra)

INVOICE No. 1069
INVOCIE DATE 16/06/2017
YOUR ORDER NO. : 16-17-112
YOUR ORDER DATE 16/03/2017
OUR AO. NO. D2821
OUR AO. DATE 01/04/2017

Consignee Address / Delivery Address
HARSH CONSTRUCTION PVT.LTD.-C/O-MARCEL -GOA. SHOP.NO.69,V P HOUSE,NO479 1 G2 DELWADA, OPP.KADAMBA BUS TERMINAL NEAR OMKAR HOTEL _ MARCELGOA INDIA CST No. PD/CST/4316 TIN No. 30370208723 Contact Person MR. DEEPAK MAHADIK 9664482834

EXCISE RANGE - 10, Third Floor WBP, Plot No. 3 KP-3, Greater Noida
EXCISE DIVISION - II, Third Floor, Hotel, WBP Plot No 3, KP-3, Greater Noida
ECC No - AABCN 6199-XM-003
PAN No - AABCN6199B
Service Tax No - AABCN6199B-ST-003

S. No.	DESCRIPTION	QUANTITY	RATE (Rs.)	Amount (Rs.)
	CENTRIFUGAL FANS/ VENTILATION FANS/ AXIAL FANS			
1	ADTA 500 F With Mounting CFM 1000- 50 MM SP	1 Nos	17,000.00	17,000.00
2	ADTA 500 F With Mounting CFM 3500- 50 MM SP	1 Nos	17,000.00	17,000.00
3	ADTA 500 F With Mounting CFM 4500- 50 MM SP	2 Nos	19,500.00	39,000.00

ES AGAISNT FORM C
DUTY PAYABLE IN WORDS Rs. Nine thousand one hundred twenty five Only.

TIME OF PREPRATION : 17:47:03
TIME OF REMOVAL : 18:15
DATE OF REMOVAL : 16/06/17
TARIFF SUB HEADING No : 8414.5990
EXEMPTION No.
MODE OF TRANSPORT : BY ROAD
VECHICLE NO : UP-16BT5080
LR OR R/R No. : 5102417504
PACKAGES TYPE : BOXES
DATE : 16/06/2017
TOTAL QTY : 4 Nos
NAME OF TRANSPORTER : OM LOGISTICES LTD. PLOT NO. D-57, SITE IV, KASNA INDUSTRIAL AREA GREATER NOIDA

TOTAL	73,000.00
PACKING @ 0.00%	0.00
CENVAT @ 12.50%	9,125.00
SUB-TOTAL	82,125.00
C.S.T./VAT@ 2.00 %	1,642.50
ADDITIONAL TAX@0.00%	0.00
CARTAGE	16,720.00
Service Tax on Freight	0.00
ROUNDING OFF	0.50
INSURANCE	0.00
GRAND TOTAL	100,488.00

TOTAL AMOUNT IN WORDS Rs. One lac four hundred eighty eight Only.

TOTAL ASSESSIBLE VALUE : 73,000.00 RATE OF DUTY : 12.50 %
TOTAL DUTY PAYABLE Rs. : 9,125.00
CERTIFIED THAT THE PARTICULARS GIVEN ABOVE ARE TRUE AND CORRECT AND THE AMOUNT INDICATED REPRESENTS THE PRICE ACTUALLY CHARGED AND THAT THERE IS NO FLOW OF ADDITIONAL CONSIDERATIONS DIRECTLY OR INDIRECTLY FROM THE BUYER

For NICOTRA INDIA PVT. LTD.
AUTHORISED SIGNATORY

Invoice No. 1069 Page 1 of 1

2. The submissions of the Applicant/ Operational Creditor in this matter are as follows:-

a) The Operational Creditor submits that the present Application is filed u/s 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 (Application to Adjudicating Authority) of the Insolvency and Bankruptcy Rules, 2016 owing to the defaults made by the Corporate Debtor in making payment of the amount due to the Applicant.

b) The Operational Creditor submits that the Corporate Debtor approached the Operational Creditor to get the supply of Demper, Diffuser, Grills, etc. based on which the Purchase Order was made.

c) The Operational Creditor further submits that they raised Invoices for the supplies as per the Purchase Order and they were duly accepted by the Corporate Debtor without any protest or objection. The Petitioner also submits that mutually decided terms for the Invoice payment were issued by the Corporate Debtor. After making certain initial and random payments the Corporate Debtor delayed and intentionally avoided making payments after duly the products and services to their satisfaction.

d) As per the Operational Creditor, the Respondent/ Corporate Debtor has confirmed the liability on 04.04.2018. The Respondent Debtor again confirmed its liability in its email dated 04.02.2019, reproduced below:-

> "*Dear Sir, This is with reference to the discussions had with you during our visit to our office , we hereby confirm that the balance outstanding payments of Rs.38.71 lacs shall be released by 28th Feb 2019. We sincerely regret the delay in release of the payments.*
>
> *Thanks and Regards,*
> *Laxman Sahane*
> *+91 9870 00 5711*
> *M/S. SAVLON AIRCON PVT.LTD.*"

e) The Petitioner submits that even after the assurance in the above email, the Respondent Debtor failed to make payments. Therefore, the Operational Creditor issued a statutory demand notice on 29.05.2019 under Section 8 of the Code requesting to unconditionally repay the unpaid and admitted operational debt within 10 days. The Petitioner submits that the Corporate Debtor had not replied to this demand notice within the stipulated time.

3. **Submissions by the Corporate Debtor** :-

a) The Corporate Debtor submits that the Operational Creditor filed this Petition with a *mala fide* intent to recover money from the Corporate Debtor and not a resolution of insolvency as envisaged being the first objective of the Code. The Corporate Debtor pleads that the objective of the Code is to revive and continue the Company and not winding up of the Corporate Debtor Company.

b) The Corporate Debtor denies that the total outstanding dues is of Rs. 52,30,945/- on 31.03.2019, including interest of Rs. 13,59,003/-. The Corporate Debtor further submits that there was no understanding between the Corporate Debtor and the Petitioner/ Operational Creditor to levy interest @ 18% p.a. for delayed payment of any amount against any Invoice raised by the Applicant. The Respondent also submits that the Invoices raised by the Operational Creditor did not contain any such stipulation.

c) According to the Corporate Debtor, they had replied to the demand letter of the Operational Creditor dated 29.05.2019, vide their letter dated 28.07.2019 citing certain allegedly pre-existed issues/ disputes between the Applicant and the Corporate Debtor prior to 31.05.2019. A copy of the email dated 28.07.2019 is reproduced below:-

"28 July 2019
To,
M/s Nicotra India Pvt Ltd
Shop No. 2F-201, 2nd Floor,
Plot No.1 & 2, LSC, Block-G,
Kondi Gharoli, Mayur Vihar Phase III,
Delhi – 110096
Subject: Your Demand Notice dated 29/05/2019
Madam/Sir,
We are in receipt of your above demand notice.

1. *Your demand notice was not sent at our registered office. It was sent at other office not regularly visited by directors. It was received by Directors only yesterday. So there is delay in reply.*
2. *We draw your kind attention to an L C Of Rs. 5,29,761/- was drawn and bills of same amount were adjusted against that L.C. Was duly retired by us on maturity date. It seems that you have not given full credit for that to us.*
3. *We also draw your attention to amount due to us from your side on account of direct work order of supply of TUBE Axial Fansat GCP, World One. There is Rs. 14,13,228/- payable by you to us. Mail correspondence regarding the same is attached herewith.*
4. *We also draw your attention to huge loss suffered by us due to your refusal to supply as Direct Driven Vane Axial Fan at GCP, The Park, Lodha after accepting our purchase order. We appointed our staff from February 2017 for the project relying on your delivery promise. We have to find other supplier and our project was delayed for 4 months which resulted in loss of 28,00,000/- plus on staff.*

We request you to come to our office and settle all issues. Whatever balance payment is due to you shall be paid immediately.
Thanking you,

Yours Sincerely
For Savlon Aircon Private Limited
Sd/-
Director."

d) The Corporate Debtor submits that the Corporate Debtor awarded two contracts to the Applicant for supply of ventilation system axial fan and ventilation system as jet fan ("goods"). The Applicant gave its quotation for supply of goods and based on the quotation, the Corporate Debtor gave its quotation to a Third party viz. Lodha Group. The Applicant required immediate payment on supply of goods and therefore, the Corporate Debtor arranged financial assistance from a Group Company of the Lodha Group, Capacity Projects Pvt Ltd ("CPPL"). The CPPL made direct payment to the Applicant. The Corporate Debtor further submits that it was agreed between the Applicant and the Corporate Debtor that the difference in price (difference between the price quoted by the Applicant to Corporate Debtor and by the Corporate Debtor to the Third party purchaser) would be paid to the Corporate Debtor by the Applicant. According to the Corporate Debtor, the Applicant has received payment directly from CPPL including margin of the Corporate Debtor amounting to Rs.14,13,228/-. The Corporate Debtor alleges that the rate difference of Rs.14,13,228/- has not been passed on by the Applicant to the Corporate Debtor. The Corporate Debtor submits that several emails were issued to the Operational Creditor, especially of date 02.04.2019 requesting for this amount.

e) The Corporate Debtor further submits that the Corporate Debtor awarded another contract to the Applicant for supply of Axial fans to the Corporate Debtor. The Applicant was required to submit the information related to the Axial fan to the Corporate Debtor and the Corporate Debtor was required to submit the information received from the Applicant to a Group Company of the Lodha Group for approval of equipment, materials etc. According to the Corporate Debtor the Applicant submitted two material Approval Submittals which were approved conditionally by the Lodha Group for want of valid AMCA Certification for Axial Fan. The Corporate Debtor submits that the Applicant failed to submit valid AMCA Certificates for the Axial Fans which were to be delivered to Lodha Group by the Corporate Debtor. The Corporate Debtor reminded the Applicant to update the AMCA Certificate status and to confirm the delivery status of Axial Fans. The Applicant kept stalling for a period of four months and thereafter, in complete breach of contract, did not supply/ deliver the Axial Fans because of which the Corporate Debtor had to suffer huge losses amounting to Rs.29,37,661/- on account of labour cost which were deployed by the Corporate Debtor for installation, testing, commissioning of Axial

Fans. Also, the Corporate Debtor had to engage another vendor/ supplier, viz. Flaktwoods ACS (India) Pvt Ltd for supply of Axial fans at an additional cost of Rs.13,14,539/-. The Corporate Debtor submits that the Corporate Debtor is entitled to receive Rs.42,52,500/- from the Applicant towards the losses incurred by the Corporate Debtor due to breach of contract by the Applicant.

f) The Corporate Debtor further submits that on the request of the Corporate Debtor, a Letter of Credit ("LC") was issued in favour of the Applicant by GP Parsik Sahakari Bank Ltd for an amount of Rs.5,29,761/-. Upon expiry of LC, the Applicant has given credit of only Rs.3,65,512/- to the Corporate Debtor and not of Rs.5,29,761/-. The Corporate Debtor alleges that the Applicant has misappropriated a sum of Rs.1,64,349/- which is still due and payable to the Corporate Debtor by the Applicant.

g) The Corporate Debtor reiterates that the purpose of the Code is "resolution" and not "recover" or "winding up" and claims that the Corporate Debtor is a solvent company. Therefore, the Corporate Debtor pleads that the Petition of the Applicant be dismissed with penalty u/s 65 of the Code.

FINDINGS

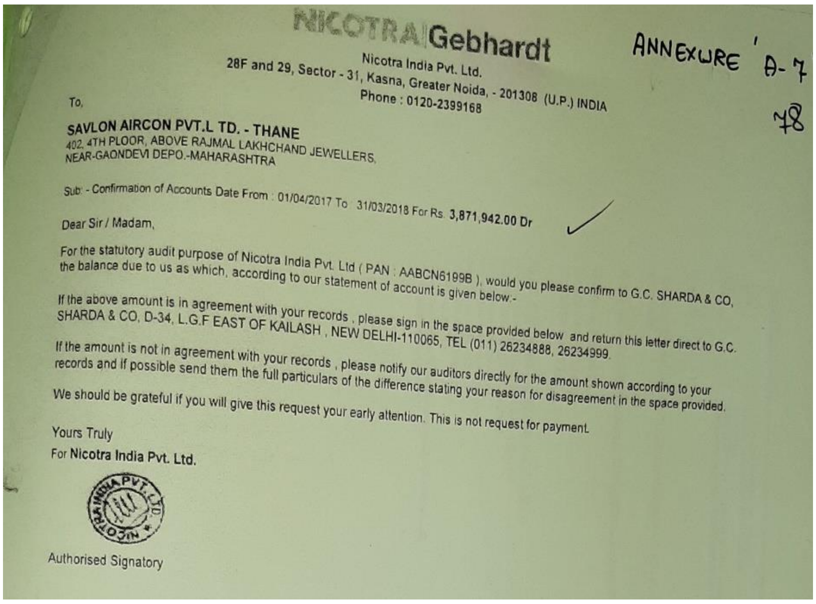
4. The present Petition CP No. CP(IB)-3713(MB)/2019 has been filed u/s 9 of the IBC 2016 by Operational Creditor M/s Nicotra India Pvt Ltd against M/S Savlon Aircon Pvt Ltd, the Corporate Debtor, for a purported default of a total outstanding amount of Rs.52,30,945/-. Out of this total outstanding, principal amount is Rs.38,71,942/- and the Interest claimed @ 18% uptill 31.03.2019 is Rs.13,59,003/-.

5. The Bench notes that this Petition was filed on 09.10.2019 and the Invoices raised are from 08.02.2017 to 16.06.2017. Therefore, it is well within limitation. The Operational Creditor had supplied Demper, Diffuser, Grills etc to the Corporate Debtor against purchase order raised upon the Operational Creditor by the Corporate Debtor. Also, Operational Creditor had raised invoices for the said supplies as per the purchase order. The delivery challan is also attached for all the invoices in the Petition. However, the Bench notes that a rate of interest claimed by the Petitioner of 18% does not figure on the invoices or in any other document and, therefore, is not admissible as claimed by the Petitioner.

6. The statutory demand notice was initially served by the Petitioner u/s 8 of the IBC read with Rule 5 of the IBC Act,

2016 on 29.05.2019. However, no reply was received from the Corporate Debtor within the stipulated time.

7. The Bench notes that the Operational Creditor has submitted an account confirmation statement by the Corporate Debtor dated 04.04.2018 where the Corporate Debtor has confirmed the balance amount due to Nicotra India Pvt Ltd. A snap shot of confirmation of balance as provided by Corporate Debtor is as below:-



NICOTRA Gebhardt

ANNEXURE 'A-7

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Nicotra India Pvt. Ltd.
28F and 29, Sector - 31, Kasna, Greater Noida, - 201308 (U.P.) INDIA
Phone : 0120-2399168

To,

SAVLON AIRCON PVT.L TD. - THANE
402, 4TH PLOOR, ABOVE RAJMAL LAKHCHAND JEWELLERS,
NEAR-GAONDEVI DEPO.-MAHARASHTRA

Sub: - Confirmation of Accounts Date From : 01/04/2017 To 31/03/2018 For Rs. 3,871,942.00 Dr

Dear Sir / Madam,

For the statutory audit purpose of Nicotra India Pvt. Ltd (PAN : AABCN6199B), would you please confirm to G.C. SHARDA & CO, the balance due to us as which, according to our statement of account is given below:-

If the above amount is in agreement with your records , please sign in the space provided below and return this letter direct to G.C. SHARDA & CO, D-34, L.G.F EAST OF KAILASH , NEW DELHI-110065, TEL (011) 26234888, 26234999.

If the amount is not in agreement with your records , please notify our auditors directly for the amount shown according to your records and if possible send them the full particulars of the difference stating your reason for disagreement in the space provided.

We should be grateful if you will give this request your early attention. This is not request for payment.

Yours Truly

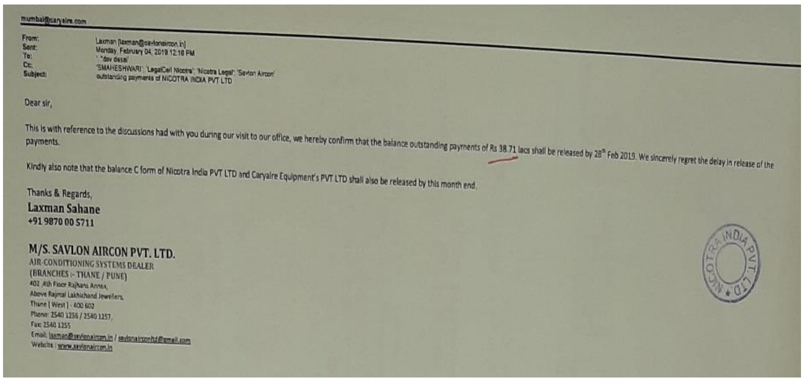
For Nicotra India Pvt. Ltd.

NICOTRA INDIA PVT. LTD.

Authorised Signatory

8. The Bench further notes that again on February 04, 2019 by an email dated 04.02.2019 addressed by the Corporate Debtor to the Petitioner, the Corporate Debtor has confirmed the outstanding balance payment of Rs.38.71 lakhs, which he promised would be released by February 28, 2019. The email further goes to mention that the Corporate Debtor regrets the delay in the release of the

payment. For reference, a snap shot of the email sent by the Respondent to the Petitioner is as under:-


mumbai@caryaire.com

From: Laxman [laxman@savlonaircon.in]
Sent: Monday, February 04, 2019 12:10 PM
To: 'dev desai'
Cc: 'SMAHESHWARI'; 'LegalCell Nicotra'; 'Nicotra Legal'; 'Savlon Aircon'
Subject: outstanding payments of NICOTRA INDIA PVT LTD

Dear sir,

This is with reference to the discussions had with you during our visit to our office, we hereby confirm that the balance outstanding payments of Rs 38.71 lacs shall be released by 28th Feb 2019. We sincerely regret the delay in release of the payments.

Kindly also note that the balance C form of Nicotra India PVT LTD and Caryaire Equipment's PVT LTD shall also be released by this month end.

Thanks & Regards,
Laxman Sahane
+91 9870 00 5711

M/S. SAVLON AIRCON PVT. LTD.
AIR-CONDITIONING SYSTEMS DEALER
(BRANCHES :- THANE / PUNE)
402 4th Floor Rajhans Annex,
Above Rajmal Lakhichand Jewellers,
Thane (West) - 400 602
Phone: 2540 1256 / 2540 1257,
Fax: 2540 1255
Email: laxman@savlonaircon.in / savlonairconltd@gmail.com
Website : www.savlonaircon.in

NICOTRA INDIA PVT. LTD.

9. The Bench notes that the Respondent has not raised any cogent argument against the debt except saying that the attempt of the Petitioner is to brow beat the Respondent into submissions and that the present Petition is filed with the *mala fide* intent to recover money from the Respondent. Regarding the confirmation of accounts of Rs.38,71,942/- the Respondent mentions that it was only provided to the Petitioner for statutory audit purposes and that they have fraudulently obtained such confirmation from the Respondent.

10. The Bench finds that there is no substance in the argument advanced by the Respondent and there is a clear case of Operational debt and confirmation of debt on more than one occasion by the Respondent Company. Therefore, the Bench arrives at the conclusion that there is an "operational debt" as per the section 3(11) of the Code and "default" as per section

3(12) of the Code and, therefore, the Petition is liable to be Admitted.

11. In part III of the Petition regarding the proposed Interim Resolution Professional, the Petitioner has mentioned the Hon'ble NCLT to appoint a person as Interim Resolution Professional. Accordingly, this Bench appoints Mr. Jagdish Ratanlal Ahuja, Registration No. IBBI/IPA-002/IP-N00401/2017-2018/11175, email: pcsjrahuja@gmail.com, Mobile No.9323144390 to act as Interim Resolution Professional in this matter. Upon Admission of the Application and declaration of "**Moratorium**" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under Section 13 read with Section 15 of the Code. He shall perform the duties as an Interim Resolution professional as defined under Section 18 of the Code and inform the progress of the Resolution process and compliance of the directions of this Order within 30 days to this Bench. A liberty is granted to intimate even at an early date, if need be.

12. Having admitted the Petition/ Application the provisions of "**Moratorium**" as prescribed u/s. 14 of the Code shall come into operation. As a result, institution of any suit or parallel proceedings before any Court of Law are prohibited. The assets of the Corporate Debtor must not be liquidated until

the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "**Moratorium"** period. This direction shall have effect from the date of this Order till the completion of Insolvency Resolution process. Accordingly, CP(IB)-3713/(MB)/2019 stands **"Admitted".** The Corporate Insolvency Resolution Process shall commence from the date of this Order.

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

Sd/-	Sd/-
Chandra Bhan Singh	H V Subba Rao
Member (Technical)	Member (Judicial)