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IN THE NATIONAL COMPANY LAW TRIBUNAL
PRINCIPAL BENCH
AT NEW DELHI

Company Petition no. (IB)- 831 (ND)/2019

Under Section 9 of the Insolvency and Bankruptcy Code, 2016

In the matter of:

SOFTTECH COMPUTERS DELHI LIMITED

.....Operational Creditor

Versus

P.G MICRO SYSTEMS PRIVATE LIMITED

...Corporate Debtor

Judgment delivered on: 19.07.2019

CORAM:
CHIEF JUSTICE (RTD) M.M. KUMAR,
HON'BLE PRESIDENT

DEEPA KRISHAN,
HON'BLE MEMBER (TECHNICAL)

For Operational Creditor

Mr. Varun Tandon, Advocate.

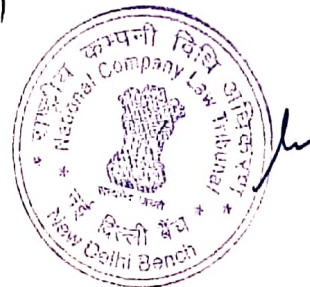
For Corporate Debtor:

Mr. Subhojoy Banerjee, Advocate.

CP

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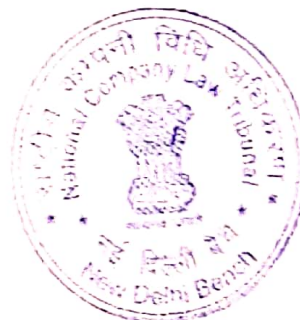
ORDER

M.M. KUMAR, PRESIDENT

1. This is an application filed under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rule') with a prayer to admit the company petition for initiation of Corporate Insolvency process in respect of respondent corporate debtor.
2. The Respondent M/s P.G. Micro Systems Private Limited, bearing CIN No. U72200DL2004PTC127329 is incorporated on 02.07.2004, having its registered office at C-266, Gali No.8, Majlis Park, New Delhi 110033.
3. It is the case of the petitioner that the corporate debtor used to purchase laptops and desktops of Dell from the Operational Creditor as per the requirement. In terms of the arrangement between the parties, the operational creditor used to raise invoices against the goods provided to the Corporate Debtor. As on date, the Corporate Debtor owes a sum of Rs.28,40,966/- to the Operational Creditor. The



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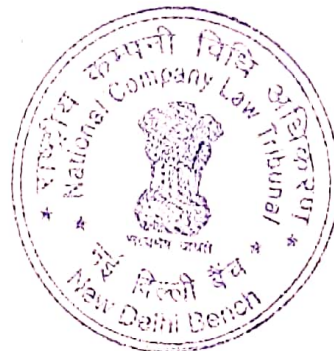


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applicant has also placed copies of the Invoices raised to the Corporate debtor.

4. It is stated that that as per the Accounts Statement for the year of 2015-16, the Corporate Debtor owed the Operational Creditor an amount of Rs.28,00,092/-.
5. It is submitted by the applicant that the Corporate Debtor issued a cheque bearing number 052334 dated 31.03.2016 amounting to Rs. 28,00,092/- drawn on Oriental Bank of Commerce, Sector 14, Gurgaon Branch towards discharge of the existing liability against the outstanding dues.
6. It is contended that the aforesaid cheque issued by the Corporate Debtor was dishonoured as the payment was stopped by drawer, notice of which was sent to the Corporate Debtor under Section 138(b) of the Negotiable Instruments Act, 1881. Upon dishonor of the abovementioned cheque, the amount payable by the Corporate Debtor to the Operational Creditor is Rs. 28,40,966/.
7. Thereafter the Operational Creditor issued a Demand Notice dated 05.11.2018 in form of Form-3 under 'Section 8 of the Insolvency and Bankruptcy Code, 2016 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 .

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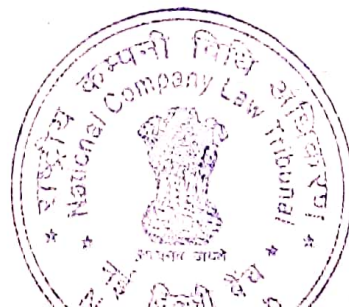


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8. It is claimed in the petition that the Corporate Debtor continues to be in default as regard to payment of the sum of Rs.28,40,966/-due to non-payment for the goods provided to them by the Operational Creditor.
9. An affidavit dated 28.03.2019 verifying that the applicant has not received any letter of dispute from the corporate debtor towards the unpaid amount of debt under Section 9 (3)(b) of the Code, has been filed along with the application.
10. The Respondent Corporate Debtor has filed its reply on 20.05.2019 and raised objections against admission of the present application. It is submitted that there is a pending dispute between the parties as proceeding under Section 138 of Negotiable Instrument Act is pending for adjudication in respect of the claimed operational debt.
11. The respondent has denied that the claimed operational debt is pending and due to be paid to the applicant. He has even denied the issuance of any cheque for the said liability. It is alleged that the cheque has been misused by the applicant and dispute in this regard exist between the parties.
12. The main assertion of the respondent is that the proceeding under Section 138 Negotiable Instrument Act is pending between the



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parties and therefore, the present petition is liable to be rejected on this count alone.

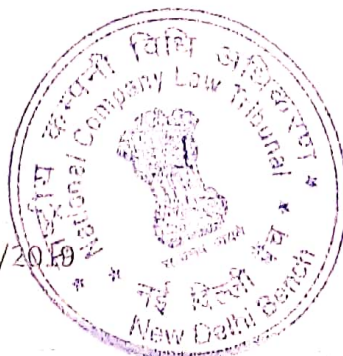
13. We have heard learned counsel for the parties at some length and perused the paper book with their assistance.

14. On behalf of the petitioner it has been vehemently argued that although the goods were supplied and invoices were issued from 02.04.2015 to 25.12.2015 (Pages 21 to 182) yet the claim made in the petition is within the period of limitation. According to the learned counsel, the issuance of cheque on 01.03.2016 for the defaulted amount itself shows that the respondent have acknowledged the debt and the fact of amount being due. It has also been pointed out that the allegations in the reply that the cheque has been misused by the petitioner or there is a dispute in existence within the meaning of Section 8 is wholly unfounded. In support of his submission, learned counsel has placed

reliance on the judgment of the Appellate Tribunal rendered in the case of *Sudhi Sachdeva Vs. APPL Industries Limited in Company Appeal (AT) (Insolvency) No. 623 of 2018*.

15. On behalf of the respondent, it has been argued that the cheque has not been signed by the respondent or by any of its authorised





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representative. It is insisted that the cheque is a fabricated document and the same has been sent to Forensic Science Laboratory for authentication of signature. Therefore, not only the claim made is beyond limitation but the claim is bogus.

16. Having heard the learned counsel for the parties, we are of the considered view that this petition warrants admission. There is no dispute raised in the reply with regard to the amount claimed and that it is due and payable. It is well settled that once the cheque has been issued then it amounts to acknowledgement of debt within the meaning of Section 18 of the Limitation Act, 1963 and the pendency of proceeding under Section 138 of the Negotiable Instruments Act, 1881 is no bar for initiation of Corporate Insolvency Resolution Process under Section 9 of the Code, 2016. The issue is no longer *res integra* and the reliance has been rightly placed on the judgment of the Sudhi Sachdeva's case (Supra) wherein the learned Appellate Tribunal has held as under:-

".....The pendency of the case under Section 138/141 of the Negotiable Instruments Act, 1881, even if accepted as recovery proceeding, it cannot be held to be a dispute



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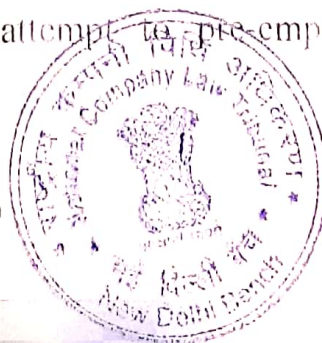
pending before a court of law. Thereby we hold that the pendency of the case under Section 138/441 of Negotiable Instruments Act, 1881 actually amounts to admission of debt and not an existence of dispute."

17. A perusal of the aforesaid para shows that the pendency of the proceedings under Section 138 of the Negotiable Instruments Act, 1881 cannot be regarded as a dispute pending before a court of law or creates any bar for initiation of Corporate Insolvency Resolution Process. The Hon'ble Appellate Tribunal has also clarified that the issuance of cheque in fact amount to admission of debt which in the present case would mean acknowledgement under Section 18 of the Limitation Act, 1963.

18. We must deal with the submissions made by the respondent that the signature on the cheque are fabricated. A perusal of para 5 of the reply filed by the respondent under the caption 'Preliminary Objections' shows that the petitioner has misused/manipulated and fabricated have indulged the fabrication. The aforesaid para is extracted below for facility of reference:-

"5. It is submitted that the present proceedings is an attempt to pre-empt the outcome of the

CPA



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prosecution under Section 138 NI Act concerning the same transaction to avoid consequences of filing false before JMFC, Gurgaon. The petitioner has lost all hope of any success in the same and at the same time fearing action for indulging into manipulation and fabrication. The said proceedings are clear misuse of cheques in the hand of petitioner for which parties have already approached appropriate legal forums. It is submitted that adjudication of the present matter would prejudice the issue which already pending before the court of JMFC Gurgaon."

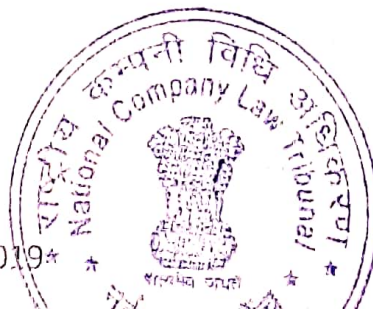
19. A similar plea has also been raised in para IV of the reply on merit which shows 'that the cheque in question is being misused and facts are being manipulated by the petitioner'. We repeatedly ask the counsel for the respondent about the details of the fabrication. However, no satisfactory answer has been tendered. The allegation of the fabrication without any detail remain bald assertion and cannot be gone into. The strict provisions of CPC are not applicable to the



proceeding in question yet broad principles are applied which require that the details of fabrication or fraudulent transactions are required to be specifically pleaded and the details thereof must be given. In the present case even the photocopy of the cheque with the admitted signature of the party respondent have not been shown nor has any such document been attached. It is further appropriate to notice that no reply to the notice issued under Section 8 of the Code was given. A perusal of reply leaves a distinct impression that the respondents have adopted a causal approach in the instant proceedings. Accordingly, we are not persuaded to accept the contentions raised by the respondent and reject the same.

20. "Operational debt" has been defined under Section 5 (21) of the Code as follows:

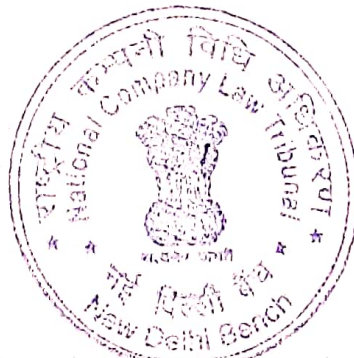
"Operational Debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;



“Operational creditor” has also been defined at section 5(20) as follows:

“Operation Creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred”.

21. From the definition of “Operational creditor” and “Operational Debt”, it can be seen that the applicant has placed sufficient evidence to prove its claim. Goods have been supplied to the respondent and invoices were raised towards the supply of said goods. There was a default in payment of the claimed amount, and the respondent failed to establish the fact that there is a pending dispute between the parties in respect of the amount claimed. In light of the same, such application deserves to be admitted for triggering Corporate Insolvency Resolution Process against the respondent corporate debtor.



22. In the aforesaid background we are satisfied that the present petition is complete and there has been default in payment of dues by the respondent. Therefore, on fulfilment of the requirements of section 9 (5) (i) (a) to (d) of the Code, the present petition is hereby admitted.
23. In pursuance of Section 13 (2) of the Code we direct that public announcement shall be made by the Interim Resolution Professional immediately (3 days as prescribed by Regulations) with regard to admission of this application under Section 9 of the Code.
24. We also declare moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d). Thus, the following prohibitions are imposed:

“(a) 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;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;






(c) 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;

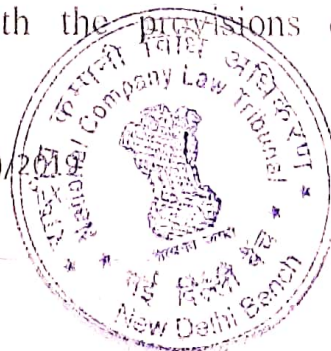
(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor."

25. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor and may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition as per the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3)(b) of the Code.

26. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code'. Rules and

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Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day to day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

27. The applicant has not proposed the name of the IRP in the application. The Insolvency and Bankruptcy Board of India has recommended a panel of Insolvency Professionals for appointment as Insolvency Resolution Professional in compliance with Section 16 (3) (a) of the Code in order to cut delay. Accordingly, we appoint Mr. Praveen Kumar Aggarwal as an Interim Resolution Professional. His registration number is IBBI/IPA-001/IP-

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P00720/2017-2018/11258, EMAIL ID - pkaggarwal@gmail.com.

The aforesaid Interim Resolution Professional has no disciplinary proceeding pending against him nor has anything else been pointed out with regard to his antecedents. The Interim Resolution Professional has filed necessary declaration in accordance with the IBBI Regulations and the provisions of the Code.


28. The petitioner is directed to pay a sum of Rupees two lakhs to the Interim Resolution Professional to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. This shall however be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the petitioner.

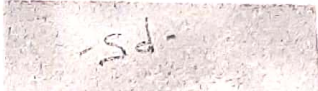
29. The office is directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of





Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

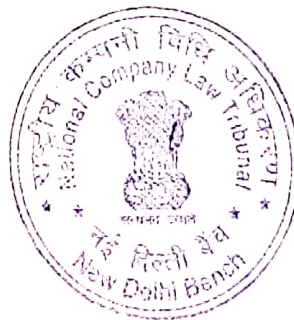

(M.M. KUMAR)
PRESIDENT

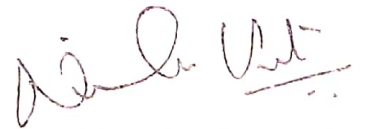

(DEEPA KISHAN)
MEMBER (T)

NOTE

Pronounced today in open court in pursuance of power under Rule 151 of NCLT Rules, 2016 as Chief Justice (Rtd.) M.M. Kumar, Hon'ble President is not holding Court today.


31.7.19




(Nirmala Vincent)
Court Officer

Vidya
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31/7/19
सहायक पंजीयक
ASSISTANT REGISTRAR
राष्ट्रीय कम्पनी विधि अधिकरण
NATIONAL COMPANY LAW TRIBUNAL of 15
C.G.O. COMPLEX, NEW DELHI-110003

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