

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

C.P. (I.B) No.117/9/NCLT/AHM/2019

Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.01.2021

Name of the Company: Durga Enterprise
V/s
Vishvakarma Road Equipment Co Pvt.Ltd

Section: Section 9 of the Insolvency and Bankruptcy Code

ORDER

The case is fixed for pronouncement of order.

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

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 27th day of January, 2021



BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT NO. 1

CP (IB) No.117/9/NCLT/AHM/2019

(Application for initiating Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of :

Durga Enterprise
Plot No. 1114/B, 4th Floor,
Phase, GIDC, Estate,
Vithal Udhyognagar-388121,
Gujarat

..Operational Creditor

V/s.

**Vishvakarma Road Equipment Co. Pvt.
Ltd.,**
Nr S D Chambers, Borsad,
Vasad Chokdi,
Anand-Gujarat-388540

..Corporate Debtor

Order reserved on 18.01.2020
Order pronounced on 27.01.2021



Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Learned Counsel Mr. Viral Shah for the Operational Creditor.

Corporate Debtor Ex-parte.

ORDER

[Per : VIRENDRA KUMAR GUPTA (T)]

1. This Application is filed under **Section 9** of the Insolvency & Bankruptcy Code, 2016 by the Operational Creditor- Durga Enterprise to initiate Corporate Insolvency Resolution Process against Corporate Debtor Vishvakarma Road Equipment Co. Pvt. Ltd. The principal outstanding debt is of **Rs. 4,85,545/-** (Rupees Four lacs Eighty Five Thousand Five hundred forty five only).
2. The brief facts of the case are as under :
 - 1) The Operational Creditor is a Sole Proprietorship. The Operational Creditor had supplied the goods i.e. MS Plate, H.R. Sheet, CRC Sheet, MS Roundbar, MS Angle, MS Flate, MS Channel and other MS items, which aggregating to total amount of **Rs. 4,85,545/-** .
 - 2) It is submitted that Operational Creditor as per the terms and conditions supplied the goods to the Corporate Debtor in the year 2017 raising Invoices Nos. (i) 242662 dtd 04.04.2017 (ii) 91970 dtd 04.04.2017 (iii) 150913 dtd 19.04.2017. In support of this all the Invoice(s) are attached with the application.



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- 3) It is submitted that despite repeated reminders the Corporate Debtor failed to pay the operational dues. Hence, the Operational Creditor issued Demand Notice under *Section 8 of the Insolvency & Bankruptcy Code, 2016*. The Notice was duly served to the Corporate Debtor on 12.12.2018. In spite of receipt of Demand Notice, the Corporate Debtor did not clear outstanding, nor replied to the Notice pointing out any dispute/objection towards amount claimed or the quality/quantity of goods supplied. Hence, this Application to initiate Corporate Insolvency Resolution Process (CIRP) of the Corporate Debtor.
- 4) We perused the record, the Corporate Debtor neither appeared nor filed any Affidavit-in-Reply. Hence, the matter proceeded for Ex-parte hearing in absence of the Corporate Debtor or its objection.
- 5) The Learned PCA for the Operational Creditor submitted that an Affidavit under Section 9(3) (b) of the Insolvency & Bankruptcy Code, 2016 has also been filed. However, it does not contain the particulars as specified. However, it



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mentions that contains are in petition is true, hence, we ignore this technical flow. It is also noted that applicant has in the synopsis mentions that either any dispute was raised nor any payment had been made.

- 6) We heard Learned Counsel for the Operational Creditor and material available on record.
- 7) The Operational Creditor has produced the relevant Invoices in favour of the Corporate Debtor which are outstanding. However, the Corporate Debtor committed default in paying the debt. All evidences prove that the debt is due and payable by the Corporate Debtor to the Operational Creditor.
- 8) The Operational Creditor did not submit the name of Resolution Professional for appointment of 'IRP' and left to the discretion of this Adjudicating Authority. The Application is defect free and complies with the requirements of Insolvency & Bankruptcy Code, 2016 and regulations made thereunder. We admit the application and order as under :



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ORDER

1. The application is admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

(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.*



2. The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, this Adjudicating Authority hereby appoint Ms. Indira Suresh Vora, Insolvency Professional, IBBI/IPA-001/IP-

P01264/2018-2019/12000 to act as an IRP under Section 13(1) (c) of the Code.

3. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
4. This Adjudicating Authority direct the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.



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5. 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of Rs. 25,000/- (Rupees Twenty Five Thousand only) to the IRP within two weeks from



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