

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

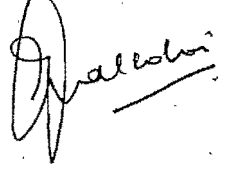
C.P. (I.B) No.44/NCLT/AHM/2018

**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 15.10.2019**

Name of the Company: VE Commercial Vehicles Ltd.
V/s.
Eagle Corporation 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.	MS. GARIMA MALHOTRA	Adv	VE Commercial (Operational Creditor)	
2.				

ORDER

The Petitioner is represented through learned counsel.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 15th day of October, 2019

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

C.P. No. (IB) 44/9/NCLT/AHM/2018

In the matter of:

VE Commercial Vehicles Limited
Mumbai Nasik Bypass
Dapoda Village
Mankoli Naka
Nr. Anjur Petrol Pump
Bhiwandi
THANE 421 302

Also at

3rd Floor, Select City Walk
A-3 District Centre,
Saket
NEW DELHI – 110 017

Petitioner
Operational Creditor

Versus

Eagle Corporation Private Limited
Shop No. G-01/2
"ONYX – 2", Jalaram Mandir Road
Paldi,
AHMEDABAD – 380 007

Respondent
Corporate Debtor

Order delivered on 15th October, 2019.

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

Appearance:

Advocate Ms. Garima Malhotra for petitioner

ORDER

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

1. Mr. Goutam Prasad Sharma, Junior Manager, on behalf of the operational creditor M/s. VE Commercial Vehicles Limited filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the

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Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"].

2. The applicant/operational creditor is a limited company registered under the Companies Act having identification No. U74900DL2008PLC175032 and having office at Thane, Maharashtra State and New Delhi is engaged in the business of providing services, repairs, maintenance and spare parts to heavy vehicles for customers across India.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 14.02.2001 having Identification No. U51909GJ2001PTC039262 having registered office at Paldi, Ahmedabad 380 007, Gujarat State. Authorised share capital of the respondent company is Rs. 5,00,00,000/- and paid up share capital is Rs. 2,50,00,000/-.
4. The applicant/Petitioner has submitted that Volvo Trucks India, is a unit of the operational creditor and is engaged in the business of providing services, repairs, maintenance and spare parts to heavy vehicles and was carrying out service/repairs of the vehicles owned by the corporate debtor and also maintaining the same from time to time. That, based on the assurance given by the respondent to clear payment of the invoices raised by the operational

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creditor towards repairs of the vehicles owned by the respondent, the operational creditor carried out regular repairs diligently from their nearest service depot and the same were duly acknowledged by the corporate debtor. That, during the course of business, regular repairs were carried out on the vehicles owned by the corporate debtor and necessary parts were replaced as per the orders and specifications given by the corporate debtor. That, towards the value of the spare parts replaced, labour charges, service and maintenance carried out on the vehicles owned by the corporate debtor, the operational creditor raised various invoices from time to time and duly furnished the same to the corporate debtor. The details of the pending invoices raised upon the corporate debtor is annexed at page No. 17 to 271 as annexed "A-2" (Colly.) to original petition.

5. It is further submitted by the applicant that in or around 2016, it came to the notice of the operational creditor that the corporate debtor was no longer interested in clearing the above said invoices raised upon the corporate debtor and the corporate debtor was dithering in releasing the payments. That, after part payment of Rs. 2,21,388/-, the corporate debtor failed to make any further payment, the operational creditor vide letter dated 15.05.2016 brought to the notice of the corporate debtor that an amount of Rs. 50,61,858/- (Rupees fifty lacs sixty-one thousand eight hundred fifty-eight only) is due and payable by the

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respondent against the invoices raised by the operational creditor. That, left with no other option, the operational creditor send notice dated 19.04.2017 but the corporate debtor failed to clear the outstanding. Ultimately, the operational creditor was constrained to issue demand notice calling upon the corporate debtor to pay the overdue amount but the corporate did not make any reply to the notice also which was received by the corporate debtor on 26th September, 2017 but the corporate debtor failed to rely the said notice.

6. It is further submitted by the operational creditor that the corporate debtor is liable to clear the invoices raised upon the corporate debtor amounting to **Rs. 50,61,906/- (Rupees fifty lacs sixty-one thousand nine hundred six only) along with interest @ 24% per annum payable from May, 2016 for an amount of Rs. 15,18,557/-.**
7. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Special Power of Attorney in favour of the representative of the operational creditor	14-16
2	Unpaid invoices raised upon the corporate debtor	17-271
3	Ledger account maintained by the operational creditor	272-274
4	Final reminder dated 19.04.2017	275
5	Legal notice dated 15.05.2017	276-278
6	Demand notice dated 19.09.2017	279-287
7	Postal receipts evidencing delivery of demand notice	288-291
8	Bank statements of operational creditor evidencing that the corporate debtor has not paid the due and admitted amount of Rs. 50,61,906/-	292-390

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8. None appeared on behalf of the respondent. On perusal of the records it is found that notice was issued on several occasions through petitioner as well as through registry. On perusal of the record it is found that publication was effected by the petitioner, but none appeared, hence the matter has been heard in absence of the respondent.

Findings

9. Heard learned lawyer appearing on behalf of the applicant and also seen the documents annexed to the application.
10. On filing of the instant application, notice for the first time was issued but none appeared on behalf of the respondent. Despite giving number of opportunities, none appeared on behalf of the corporate debtor nor filed any reply. Even after paper publication made on 08.11.2018, none appeared on behalf of the respondent. Therefore, this Adjudicating Authority had to hear the matter in absence of respondent.
11. On perusal of the records it is found that the respondent has not raised any dispute regarding the operational debt payable to the operational creditor even after receipt of demand notice. That, the operational creditor has filed affidavit along with ratified power of attorney authorising Mr. Gautam Prasad Sharma for filing application under IB Code.
12. While examining an application under Section 9 of the Act, will have to determine the following: -

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- (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?

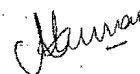
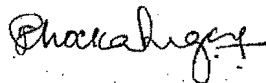
13. At this stage it is desirable to refer the judgement in ***Innoventive Industries vs. ICICI Bank [2018] 1 SCC 407*** the Hon'ble Supreme Court after setting out some of the sections of the Code, laid down the scheme of the Code, came to financial and operational creditors triggering the Code against a corporate debtor, it held:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and it is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to section 3 (11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3 (6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The Corporate Insolvency Resolution Process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.

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14. 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. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of 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.
15. That, the Application filed by the Applicant on 22nd December, 2017 is complete in all respect.
16. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Sunil Kumar Agarwal, Tower 6/603 Devnandan Heights, Near Poddar School, New C.G. Road, Chandkheda, Ahmedabad 382 424 (anjil91111@hotmail.com) (Mobile: 95866 44998) having registration No. IBBI/IPA-001/IP-P01390/2018-19/12178 to act as an interim resolution professional under Section 13(1)(c) of the Code.
17. 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.

18. 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.

19. 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;

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- (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);
- (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.

20. 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.

21. 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.

22. This Petition stands disposed of accordingly with no order as to costs.

Shri. Anand K. Singh

Shri. Anand K. Singh

23. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.



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



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

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