

**BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No. 582/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 23.10.2020**

Name of the Company: Maximaa Systems Ltd
V/s
Radha Madhav Corporation Ltd

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.				
2.				

ORDER

PCS, Mr. Kunjal Dalal appeared on behalf of the Petitioner.

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


**MANORAMA KUMARI
(MEMBER JUDICIAL)**

Dated this the 23rd day of October, 2020

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

C.P. No. (IB) 582/9/NCLT/AHM/2019

In the matter of:

Maxima Systems Limited

B-1, Yashkamal,
Tithal Road
VALSAD 396 001
Gujarat State

:

Petitioner
Operational Creditor

Versus

Radha Madhav Corporation Limited

Survey No. 50/9
Adaman Industrial Estate
Village Kadaiya
NANI DAMAN 396 210

:

Respondent
[Corporate Debtor]

Order delivered on 23rd October, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

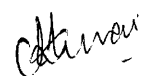
Petitioner : Mr. Kunjal Dalal, PCS

ORDER

1. Mr. Kunal Manojbhai Shah, Executive President, being the authorised signatory, on behalf of **M/s. Maxima Systems Limited**, filed this Petition 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.

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2. The applicant/operational creditor is a limited company having Identification Number L27100GJI990PLC014129 and having its registered office at Valsad, Gujarat State.
3. The respondent/corporate debtor is a limited company registered on 07.01.2005 under the provisions Companies Act and having identification No. L74950DD2005PLC003775 and having registered office at Village Kadaiya, Nani Daman. Authorised share capital of the respondent company is Rs. 114,00,00,000/- and paid up share capital is Rs. 86,34,20,000/-.
4. The applicant/operational creditor has stated that, a total sum of **Rs. 39,33,537/- (Rupees thirty-nine lacs thirty-three thousand five hundred thirty-seven only)** is due and payable by the corporate debtor towards supply of goods, as per summary of various bills annexed to the application (page 31). That, despite several reminders and follow-up, the corporate debtor has not made payment of 16 invoices (page 15-30) raised by the applicant on the corporate debtor during the period from 15.11.2018 to 21.02.2019.
5. The applicant/operational creditor has further stated that, having failed to receive the outstanding amount, the applicant was compelled to issue demand notice under section 8 of the I & B Code in form 3 dated 26.04.2019 calling upon the respondent to pay total outstanding of Rs. 39,33,537/- (Rupees thirty-nine lacs thirty-three thousand five hundred thirty-seven only) and the notice is duly delivered to the respondent on 27.04.2019.
6. The applicant in support of its claim has furnished copy of documents like; affidavit in support of the application, Board Resolution dated 28.02.2019 authorising Executive



President of the applicant company to issue demand notice, to sign, execute and file application u/s 9 of the I & B Code, demand notice in form 3, affidavit of no dispute, copy of invoices, calculation of interest, bank certificate, copy of demand notice etc.

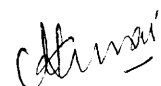
7. The respondent/corporate debtor filed affidavit in reply inter alia stating that the claim of the applicant is barred by the laws of limitation, the applicant has suppressed the facts which are material for deciding the issue and there is pre-existing dispute with sister concern of the applicant - Ezzenzaa Lifescience Limited.

Findings:

8. On perusal of the records it is found that the instant petition filed on 15.07.2019 came to be notified for hearing for the first time on 09.08.2019. Thereafter, advocate from the side of respondent was present from 15.11.2019 till 26.02.2020, however, from 27.05.2020, no one appeared for the respondent. Today, during the course of final hearing also none remained present on behalf of the respondent. On perusal of the record it is found that, as per postal receipt evidencing dispatch submitted by the applicant notice was served upon the respondent, as such service is complete. Therefore, the matter is heard in absence of the respondent.
9. Heard the learned PCS appearing on behalf of the applicant and perused the application and the documents attached to the application/reply.

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10. On perusal of the records it is found that the objection/ contention raised by the respondent that the application is barred by limitation is incorrect. As per the working of computation of default (page 31) the first invoice raised by the applicant is dated 15.11.2018 and the last bill is dated 21.02.2019. Therefore, the claim is very well within the limitation period. As regards the issue regarding pre-existing dispute, the respondent itself has admitted that the issue with regard to quality of goods is related to one M/s. Ezzenzaa Lifescience Limited - sister concern of the applicant.
11. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 26.04.2019 has been served upon the corporate debtor.
12. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor, even after receipt of the notice under Section 8 of the I & B Code.
13. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
14. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.



15. 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.

16. Thus, under the facts and circumstances and as discussed herein 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 I & B Code. That, service is complete and no dispute has ever been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

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

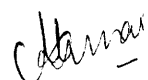
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claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim 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 evident that the corporate debtor has committed default in payment of operational debt and, therefore, 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;
 - (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. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Saaurabh Jhaveri, 620, Jolly Plaza, 6th Floor, Athwagate, Surat 395 001 (sjhaveri333@gmail.com) (Mobile: 9824440137) having registration No. IBBI/IPA-002/IP-N00068/2017-18/10146 to act as an interim resolution professional under Section 13(1)(c) of the Code.
23. This Petition is accordingly admitted.
24. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.



25. 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.


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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