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

CP(IB) 573 of 2019

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

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING BEFORE THE AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 09.03.2021

Name of the Company:

Varun Glass & Frit Pvt Ltd
V/s
Maruti Glaze Tiles Pvt Ltd

Section:

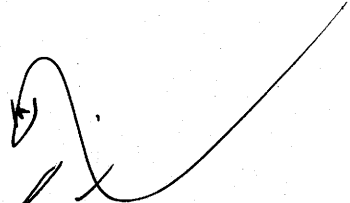
9 of the Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 9th day of March, 2021.

**09BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) No.573/9/NCLT/AHM/2019

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

In the matter of:

M/s Varun Glass & Frit Pvt. Ltd.

Regd. Office at;
4th Floor, Heritage, Nr. Grand Bhagwati,
S.G Highway, Ahmedabad
Gujarat

..Operational Creditor

Versus

M/s. Maruti Glaze Tiles Private Limited

(CIN NO. U26933GJ1994PTC023267)

Regd. Office at;
Opp. ONGC Colony, Vijapur Road,
Mehsana,
Gujarat-384002 IN

...Corporate Debtor

Order reserved on 02.03.2021

Date of Pronouncement of Order 09.03.2021

Coram: MADAN B. GOSAVI, MEMBER(J)

VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Ld. Counsel Mr. Arjun Seth appeared for the operational creditor.

Ld. PCS Mr. Alkesh Jalan appeared for the corporate Debtor.



ORDER**[Per VIRENDRA KUMAR GUPTA, MEMBER (T)]**

1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred to as "**IB Code**") by Operational Creditor M/s Varun Glass & Frit Pvt. Ltd. to initiate the Corporate Insolvency Resolution Process against Corporate Debtor M/s Maruti Glaze Tiles Private Limited for the default amount of Rs. 14,07,981/- including interest.
2. The operational creditor submitted that the operational creditor has supplied the ceramic Glaze to the corporate debtor and raised the invoices against the supplied goods, 14 invoices were raised by the operational creditor between 03.06.2017 to 16.12.2017, for the amount of Rs. 12,12,608/-. The corporate debtor made the payment of Rs. 1,00,000/- out of a said default amount.
3. The operational creditor sent a demand notice in form 3 on 09.05.2019 under section 8 of IB Code read with Rule 5 (1) Insolvency and Bankruptcy Code (Application to the Adjudicating Authority) Rules, 2016 (hereinafter referred to

as a “**AA Rules**”) after default committed by the corporate debtor in payment even after numbers of reminders and request. On perusal of the service report attached with the application. It shows that the demand notice was duly delivered to the corporate debtor. The corporate debtor has not made any reply to the demand notice till date.

4. Thereafter, the operational creditor has filed the instant petition before this Adjudicating Authority. The corporate debtor has filed the reply to the instant petition and submitted that the on perusal page 4 of demand notice issued by the advocate of the operational creditor, its shows that said demand notice was issued for and on behalf of M/s Shah Krit Kumar Ni-Co. rather than for and on behalf of the operational creditor, therefore, the demand notice is defective, and the present application is liable to be rejected on this ground.

5. The corporate debtor submitted that the operational creditor has mentioned the default amount to the tune of Rs. 14,07,981/- including interest @18% P.A, however, there is no such clause of interest in the invoices. The counsel of the

corporate debtor further submitted that all the mentioned dates of invoices in demand notice are wrong, and in contradiction with the invoice dates, therefore, the claim of the operational creditor is uncrystallized, if there is no crystallized claim then debt can't be due and payable. It is also stated by the corporate debtor that demand notice issued by the operational creditor is not in form 4 which is mandatory, the corporate debtor has referred the *Company Appeal (AT) Insolvency No. 1354 of 2019 titled as Neeraj Jain Director of M/s Flipcart India Private Limited*, wherein, the corporate debtor has produced the para 47 of the said judgment, wherein, the Hon'ble NCLAT held that if the notice is issued in form 3 then invoices along with demand notice are not mandatory.

6. The corporate debtor submitted that the details mentioned in the application form in part V at point no 6 and the details mentioned in the demand notice in form 3 in point 6 are different. In the application form the operational creditor has mentioned the statute/ Acts and terms of invoices, in the demand notice operational creditor has mentioned only payment terms- 40 days and agreed with the term of 20 days

additional credit period. The corporate debtor also objected on the ground that the said demand notice was issued after two years from the date of default which is illegal.

7. It is also submitted by the corporate debtor that, the corporate debtor is entitled to recover more than the claim/default amount from the group company of the operational creditor, therefore, the corporate debtor was under the impression that the amount would be set off against the amount which is due toward the operational creditor.
8. The operational creditor filed the rebuttal to the written submissions filed by the corporate debtor and submitted in response to the objection raised by the corporate debtor in respect to the demand notice that demand notice issued by the operational creditor complied with all the criteria as per the relevant provisions of IB Code, and the same was issued by the advocate of the operational creditor, Mr. Arjun Seth who was authorized vide board resolution dated 27.04.2019. The word from and on behalf of shanty Kiriti Kumar ni. Co. mentioned on page 4 of the said demand notice was mentioned inadvertently which shall not vitiate the validity of

said demand notice. However, the said defect was cured by the operational creditor through the issuance of a letter dated 29.08.2020 by the advocate on behalf of the operational creditor. The operational creditor further submitted that the Hon'ble NCLAT in Company Appeal (AT) (Insolvency) No. 12 of 2018 held that if any defect is found in the demand notice, the operational creditor must be allowed to remove the defect.

9. The operational creditor has rebutted and submitted that the plea of the corporate debtor in respect to the interest component that in *Majit Kaur Sran Versus Tricolite Electrical Industrial Limited, Company Appeal (AT) (Insolvency) No. 894 of 2019* that interest component can't be the ground of dispute within the meaning of section 9 f IB code.

10. Heard counsels of the operational creditor as well as corporate debtor and gone through the entire record. It is noted that the objection raised by the corporate debtor that the demand notice dated 09.05.2019 was issued for and on behalf of the corporate debtor is not valid. On perusal of the said demand notice, it is noted that said demand notice was

issued on behalf of the operational creditor, all the details mentioned in the demand notice is in proper order except one point as raised by the corporate debtor, hence if any word mentioned in the demand notice inadvertently can't vitiate the entire proceeding. It is also noted that Mr. Arjun R. Seth of M/s Arjun Seth & Associates was appointed as a solicitor & Advocate vide board resolution dated 17.04.2019 of the operational creditor to act and pursue the matter on behalf of the operational creditor. It is also noted that the objection raised by the corporate debtor in respect to the interest component is immaterial for the initiation of the Corporate Insolvency Resolution Process.

11. The objection raised by the corporate debtor that the terms of payment are different from what is stated in the demand notice and also submitted that if the debt is not crystalized then it can't be said that the debt is due and the default has occurred. This contention of this the corporate debtor is also not valid, as at no point of time the corporate debtor has not denied that the amount is not due, moreover, out of 14 invoices, 5 five invoice's terms of payment are given as 40 days and on remaining invoices the terms of payment

mentioned as zero periods, further, both the parties have accepted that 20 days credit period was given by the operational creditor for the payment of the said default amount. Even after considering the last date of invoices i.e. 16.12.2017 and after considering the given payment terms of 20 days, the date has been passed and payment is due. If, the amount of debt is due and not paid, and is payable is sufficient for proving the default as per section 3 (12) of the IB Code, the particular date of default is not required to be established;

Section 3 (12)

“Default” means non-payment of debt when whole or any part or installment of debt has become due and payable and is not paid by the debtor or corporate debtor, as the case may be;

12. The submission made by the corporate debtor in the respect that the demand if served in form 3 should not be accompanied with invoices is not proper, as per section 8 of IB code read with rule 5 (1) has clearly stated that demand notice shall be issued in either form 3 and form 4, and if the demand notice is issued in form 3 that may be accompanied

with invoices. In the present application, the operational creditor had issued the demand notice in form 3 along with invoices. However, a perusal of the judgment in *Neeraj Jain Director (Supra)*, which is referred by the corporate debtor it is noted that the Hon'ble NCLAT has not held that if the invoices are attached with demand notice issued in form 3 shall vitiate the proceedings, and the application under section 9 would be liable to be dismissed. The submission of the corporate debtor is also denied that demand notice issued after two years from the date of default is illegal. The IB code does not prescribe any specific period for the issuance of demand notice. The said demand was well within the limitation period and valid.

13. The submission of the corporate debtor in respect that there are more dues from the group of operational creditor that amount claimed in the present application, hence, the corporate debtor was under impression that the said dues shall be set off against the default is also rejected. The IB Code does not bar to initiate the proceedings on such ground set off or if any amount is to be recovered from the operational creditor, and such ground can't be the base for

dismissal of the present petition. Further, no material has been brought on record, hence this plea unsubstantiated as such and thus, of no help to this case. We are of the concerned view that all the invoices raised by the operational creditor are well within the limitation period. The first invoices raised on 03.06.2017 wherein terms of payment 40 days has been mentioned and the last invoice raised on 16.12.2017 wherein payment terms zero mentioned and both the parties admitted that 20 days credit period was given for the payment of the due amount. It is also not disputed by the corporate debtor that the amount is not due. The demand notice was issued on 09.05.2019 which is much later than the date of default, hence the default has occurred in terms of section 3 (12) of the IB code. The present petition is defect-free and complies with all the relevant provisions of the IB Code. The operational creditor has not proposed the name of Resolution Professional, the same is not mandatory in the present application. In view of the above observations the present application is allowed with the following directions;

ORDER

I. The instant 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.*

II. The order of moratorium shall have effect from the date 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 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.

III. The operational creditor has not recommended any Resolution Professional to appoint as an IRP, hence, we hereby **appoint Mr. Ravindra Kumar Goyal having registration No. IBBI/IPA-001/IP-P02019/2020-2021/13098**, email Id, ravindra1960_goyal@yahoo.co.in to act as an IRP under Section 13(1) (c) of the Code.

IV. The IRP shall perform all functions as contemplated, *inter-alia*, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under a legal obligation under Section 19 of the IB 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 the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

V. This Adjudicating Authority directs the IRP to make a public announcement for initiation of Corporate

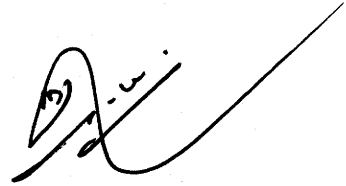
Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

- VI. It is further directed that the supply of goods/service to the Corporate Debtor Company continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- VII. The IRP shall be under duty-bound 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 an obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.
- VIII. 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 the date of receipt of this order for the purpose of smooth conduct of Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report.

- IX. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order.
- X. Accordingly, **CP(IB) No. 573/9/NCLT/AHM/2019** is allowed and disposed of.



(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)

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