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

CP(IB) 471 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 01.03.2021

Name of the Company: SVM Cera Pvt Ltd
V/s
Apple Tiles Pvt Ltd

Section: 9 of 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 1st day of March, 2021.

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

CP (IB) No.471/9/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 Svm Cera Private Limited
having an address at:
5188/A, GIDC Ankleshwar Bharuch
Gujarat:- 393002

..Operational Creditor

Versus

M/s. Apple Tiles Private Limited
(CIN NO. U26914GJ2006PTC049248)
Having an address at:
Survey No. 105/P/1-2 of Vill.
Makansar National Hihway
8-A, Tal. Morbi, District- Rajkot,
Bandhunagar, Gujarat- 363642

...Corporate Debtor

Order reserved on 16.02.2021
Date of Pronouncement of Order 01.03.2021

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

Appearance:

Learned Counsel Ms. Natasha D Shah a.w. Learned PCS Mr. Amrish Gandhi appeared for the operational creditor.
Ld. Counsel Mr. Shrijit G Pillai appeared for the Corporate Debtor.

ORDER
[PerBench]

1. The present application is filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 by Operational Creditor M/s Svm Cera Private Limited, to initiate Corporate Insolvency Resolution Process against Corporate Debtor M/s. Apple Tiles Private Limited for the default amount of Rs. 39,85,590/- including interest.

2. The operational creditor stated that goods were supplied to the corporate debtor in the ordinary course of business and raised the invoices against the supplied goods. There were 16 (sixteen) invoices raised by the operational creditor from 10.11.2017 to 06.06.2018 for the supplied goods and handed over all the raised invoices to the corporate debtor.

3. The operational creditor submitted that many a times communications were made with the corporate debtor by the operational creditor through emails and telephonic conversation for making the payment of the amount for supplied goods but, all the times' corporate debtor ignored the request of the operation creditor for making the payment.

4. The operational creditor sent a demand notice under section 8 of Insolvency and Bankruptcy Code, 2016 in form 3 as well as form 4 to the corporate debtor on 03.06.2019. The operational creditor did not receive a reply to such demand notice from the corporate debtor, thereafter, the Corporate Debtor filed the present application.

5. The corporate debtor filed its reply to the present application and submitted that the present application is not maintainable as there is a pre-existing dispute between the corporate debtor and operational creditor as regards to the quality of the material supplied. The Corporate Debtor relied upon the email dated 06.11.2019 sent by one of the ex-employee of the operational creditor wherein, it is stated that goods supplied to the corporate debtor were of substandard quality. Further, the corporate debtor submitted that the operational creditor did not state that how the calculation of interest of Rs. 8,01,241/- had been made.

6. The corporate debtor stated that time and again it was informed to the operational creditor to take back the sub-standard quality of the Glaze frit mixture tiles supplied by the operational creditor, but, the applicant company always tried to avoid such goods to take back. In response to this point, the operational creditor

denied the allegation of supply of sub-standard quality's goods and submitted that the corporate debtor had accepted all the goods after testing in their laboratory. Moreover, goods supplied vide two invoices dated 27.05.2018 and 21.06.2018 were taken back by the operational creditor at the request of the corporate debtor that the company wanted to diversify to produce different product using frits of cheaper quality in prevailing recessionary circumstances in the market. The applicant, operational creditor further submitted that as per instructions mentioned on invoices, the applicant company though usually not take back the supplied goods but due to long business relations with the corporate debtor, the operational creditor had taken back the supplied goods, and therefore these specific instances could not be a proper basis to say that all goods supplied had quality issues.

7. Heard both counsels of the operational creditor as well as the corporate debtor and perused the record. The invoices raised by the applicant corporate debtor from 10.11.2017 to 06.06.2018 are well within the limitation. The date of default for the first invoice is 10.02.2018 and the date of default for the last invoice is 06.09.2018. The objections raised by the corporate debtor in regard to pre-existing debt are based on oral communications only and have not been substantiated by bringing cogent

evidence/ material on record. This is a mistake of a table arrangement to avoid CIRP. The reliance on the email sent by the ex-employee of the operational creditor on 06.11.2019 is also not of any help as the said email has been issued after filing the present application. If any pre- existing dispute was subsisting between the corporate debtor and operational creditor in respect to the supply of sub-standard quality of goods then such fact was to be brought into notice of operational creditor within 10 days from the date of acceptance of demand notice as envisaged under section 8 of IB Code. In our view, the Corporate Debtor has miserably failed to establish the case of a pre-existing dispute.

8. It is also noted that the corporate debtor has, at no point of time, disputed that the goods were not supplied to the corporate debtor as well as not disputed the invoices raised by the operational creditor for supplied goods. The objection raised by the corporate debtor in respect to interest calculation by the operation creditor on principal amount is immaterial for initiation of CIRP. The present application is defect-free and complete in terms of provisions of the IB Code and regulations formulated thereunder. The operational creditor has suggested the name of IRP though it is not mandatory in the application filed under section 9 of the IB Code. Hence, we agree to the the name suggested by the

operational creditor to be appointed as IRP. In view of the above discussion the present application is allowed with the following directions;

ORDER

I. 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.

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 proposed the name of the Interim Resolution Professional(IRP). Therefore, this Adjudicating Authority hereby appoints **Mr. Bhavan Trivedi having registration No. IBBI/IPA-001/IP-N00335/2017-2018/10605** 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. 471/9/NCLT/AHM/2019** is allowed and disposed of.

XI. The matter to be listed on 03.03.2021 for further consideration.

(Virendra Kumar Gupta)
Member (Technical)

(Madan B. Gosavi)
Member (Judicial)

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