Addl. 1

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2

CP(IB) 310/NCLT/AHM/2020

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 15.02.2021

Name of the Company: Nice Ceramic Pvt Ltd
V/s
K-Mark Bizsol Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code, 2016.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(through video conferencing)

None appeared on behalf of parties.

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 February, 2021

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 310/9/NCLT/AHM/2020

In the matter of:

M/s. Nice Ceramic Private Limited
S. No. 13/P, 8-A National Highway
Opp. Lalpar Village
Nr. Rangoli Laminates
MORBI 363 642
GUJARAT STATE : **Petitioner**
Operational Creditor

Versus

M/s. K – Mark Bizol Private Limited
Office No. 3
First Floor, Ceramic Plaza 1
Morbi 363 642
GUJARAT STATE : **Respondent**
[Corporate Debtor]

Order delivered on 15th February, 2021

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

Appearance:

Petitioner	:	Mr. Ashwin R. Patel, Advocate
Respondent	:	Mr. Tirth Nayak, Advocate

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Nilesh Virjibhai Vasavadiya, Director of **M/s. Nice Ceramic Private 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.

2. The applicant/operational creditor, a private limited company, having identification No. U26933GJ2003TC042059 and having its registered office at Morbi, engaged in manufacture of vitrified tiles, has submitted that as on 23rd June, 2020, the respondent is indebted a total sum of **Rs. 3,16,91,340/- (Rupees three crores sixteen lacs ninety-one thousand three hundred forty only) which include interest amount of Rs. 98,32,400/-** towards supply of goods made during the period from 24.05.2018 to 18.11.2018 under 52 invoices. That, the default occurred on 13.06.2019.

3. In support of its claim, the applicant has annexed to the application copy of the documents like; resolution dated 16.06.2020 authorising Director of the company to initiate CIRP against the corporate debtor, calculation of debt due, invoices, lorry receipts, statement of bank account, demand notice dated 29.06.2020, ledger account etc.

4. The applicant has stated that despite repeated reminders the respondent has not paid the outstanding operational debt, therefore, the applicant was compelled to issue demand notice under Section 8 of the I & B Code in form 3 on 29.06.2020 calling upon the respondent to clear the operational debt.

5. The respondent/corporate debtor is a public limited company registered under the provisions Companies Act, 1956, on 22.09.2015 and having identification No. U51101GJ2015PTC084559 and having registered office at Morbi, Gujarat State are engaged in the business of supplying and trading of vitrified tiles, walls tiles, flooring tiles etc. Authorised share capital of the respondent company is Rs.10,00,000/- and paid up share capital is Rs. 5,00,000/-.

6. Mr. Upendrabhai Bhagvanjibhai Kasundra, Director of the respondent/corporate debtor filed affidavit in reply inter alia stating that one Mr. Rohit Chaturbhai Kavar, 80% stakeholder and holding the position of Managing Director was looking after all the affairs of the respondent company. That, during the period between 2015 and 2019 Mr. Rohit Kavar made various transactions on behalf of the corporate debtor including sale and purchase of materials and the details of such transactions are known to Mr. Rohit Kavar only. That, all computer systems and books of accounts etc. are/were in the possession of Mr. Rohit Kavar who has fraudulently resigned from the respondent company and has been absconding. Therefore, the deponent is not in a position to comment or provide any specific details in respect of the said transactions which are subject matter of the present proceedings.

00 The respondent has further stated that Mr. Rohit Kavar had issued cheques using forged signatures of the deponent and have given the same to various companies and there are various proceedings pending in respect of the same. That Mr. Rohit Kavar had undertaken various transactions at his own discretion and without the knowledge and prior approval of the company and other directors. In view of the above, the corporate debtor and the deponent have filed complaint before Kadavantra Police Station, Cochin, Kerala as well as Police Inspector, Morbi on 04.10.2019.

00 It is further submitted by Mr. Upendrabhai Bhagvanjibhai Kasundra, Director of the respondent company that a criminal complaint has also been filed against the absconding director before the Hon'ble JMFC Court, Ernakulam and concerned police station at Ernakulam, Kerala, a copy of which has been annexed to the reply. That, the deponent has also given a public advertisement

dated 12.02.2020 in the newspaper disclosing the aforementioned facts.

Findings:

7. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.

8. On perusal of the records it is found that the petition filed on 04.08.2020 was notified for the first time on 16.09.2020. Demand notice under section 8 of the I & B Code dated 29.06.2020 has been issued by Mr. Nilesh Vasavadiya, director of the petitioner company on the basis of authority given vide resolution dated 16.06.2020. Petitioner has filed copy of track report establishing that the demand notice was served upon the respondent.

9. Record shows that the petitioner had raised total 52 invoices towards supply of goods during the period between 24.05.2018 and 18.11.2018 and according to the petitioner the respondent had made one payment of Rs. 1,72,458/-.

10. On perusal of the record it is found that, at the bottom of each invoice under the head "terms and conditions" it is categorically mentioned that **"payment conditions bill date to 30 days. After 30 days paid interest 1% in full consignment"**. Thus, on delivery of each consignment, after 30 days, each bill will fall due, therefore, default date differs according to the bill date.

11. While going through the objection filed by the corporate debtor, it is found that the corporate debtor has annexed to the reply, one letter addressed to the Registrar of Companies, Ahmedabad (page 8), wherein, subject of the letter is shown as **"non-acceptance of notice of resignation**

of the Director Mr. Rohit Chaturbhai Kavar, DIN 07262749)". It appears that, by this letter, the corporate debtor is trying to interpret that, all the transactions are done by Director Mr. Rohit Chaturbhai Kavar and as such the corporate debtor (Mr. Upendrabhai Bhagvanjibhai Kasundra, Director) is not aware about the cheques/ transactions, all the transactions are done without the knowledge of the corporate debtor by forging signature and, to that effect the deponent has filed a complaint. Further, as of now, Mr. Rohit Kavar is not available as he has gone underground. On perusal it is also found that the letter does not bear date of issuance. Similarly, the document annexed at page 9 to the reply also does not bear date. Under such circumstances it is difficult to believe the veracity of the letter placed at page 9 also.

12. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.

13. 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.

14. 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.

15. 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'.

16. 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.

17. 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. No dispute has 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.

18. 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 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. Therefore, the Adjudicating Authority hereby appoint Mr. Ashish Shah of Ashish Shah & Associates, 402 "Shaival Plaza", 4th Floor, Gujarat College Road, Beside Hope Hospital, Ellisbridge, Ahmedabad 380 006 (ashish@ravics.com 9825940391) having IBBI Registration No. IBBI/IPA-002/IP-N00214/2017-18/10666 to act as an interim resolution professional under Section 13(1)(c) of the Code.

24. This Petition is accordingly admitted.

25. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.

26. 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.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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