

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

**C.P. (I.B) No.243/NCLT/AHM/2019**

**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 16.12.2020**

Name of the Company: Tyco Fire & Security India Pvt Ltd  
V/s  
Mehta & Associates Fire Protection  
Systems Pvt Ltd  
Section 9 of the Insolvency and Bankruptcy Code,  
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

**ORDER**

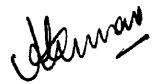
(Through Video Conferencing)

Advocate, Mr. Arjun Sheth is present on behalf of the respondent.

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER (TECHNICAL)**



**MANORAMA KUMARI  
MEMBER (JUDICIAL)**

Dated this the 16th day of December, 2020.

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

**C.P. No. (IB) 243/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Tyco Fire & Security India Private Limited**

D-601, Campus-D, 6<sup>th</sup> Floor

RMZ Centennial

Kundalahalli Main Road

**BANGALORE 560 048**

:

**Petitioner**

Operational Creditor

**Versus**

**M/s. Mehta and Associates Fire Protection  
Systems Private Limited**

403, Sachet IV, Prernatirth Derasar Road

Jodhpur, Satellite

**AHMEDABAD 380 015**

:

**Respondent**

[Corporate Debtor]

**Order delivered on 16<sup>th</sup> December, 2020**

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

**Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

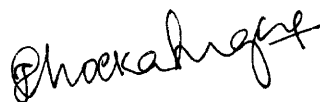
Petitioner : Mr. Abdul Vohra, Advocate

Respondent : Mr. Arjun Sheth, Advocate

**ORDER**

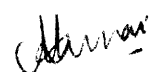
**Per se : Ms. Manorama Kumari, Member (Judicial)**

1. Mr. Nilesh Shaileshbhai Patel, Sr. Project Engineer of **M/s. Tyco Fire and Security India 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 is a private limited company incorporated under the Companies Act, 1956 having identification number U05190KA1991PTC037495 and having registered office at Bangalore engaged in the business of fire safety and security equipment.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 15<sup>th</sup> October, 1984 and having identification No. U27310GJ1984PTC007345 and having registered office at Satellite, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 70,00,000/- and paid up share capital is Rs. 64,40,010/-.
4. It is stated by the applicant that, against purchase order dated 21.04.2015 (page 25) it had supplied 38 units of 200 bar inergen cylinders to the respondent and had raised invoice dated 23.02.2016 (page 27) for Rs. 26,74,440/-. That, despite repeated requests the respondent has failed to make payment of the outstanding amount, therefore, this petition.
5. The applicant has further stated that having left with no alternative, the applicant was compelled to issue demand notice dated 20.03.2018 (page 30) in form 4 under Section 8 of I & B Code. That, as per ledger statement of the applicant, an amount of **Rs. 36,08,222/- (Rupees thirty-six lacs eight thousand two hundred twenty-two only)** stands to be outstanding and payable by the corporate debtor as on 20.03.2018. That, upon receiving the notice, legal representative of the corporate debtor replied vide letter dated 27.03.2018 (page 32) negating the operational debt due from the corporate debtor. That, the operational creditor issued a detailed para-wise letter dated 13.04.2018 (page 35) which was replied by the respondent vide letter



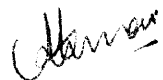
dated 16.05.2018 (page 37) again negating the unpaid operational debt due from the corporate debtor but admitted issuing the purchase order for 38 units of 200 bar inergen cylinder.

6. The applicant has further submitted that the same cylinder numbers have been supplied by the operational creditor to the corporate debtor as mentioned in the purchase order and the same had been duly accepted by the corporate debtor. That, third party inspection was done with respect to the supply of 38 units 200bar inergen cylinder with part Code 438809 and it is clear from the inspection report that the cylinders were supplied to the corporate debtor.
7. In support of the application, the applicant has filed copy of Board Resolution authorising Mr. Nilesh Shaileshbhai Patel to initiate CIRP proceedings against the respondent company, purchase order dated 21.04.2015, invoice dated 23.02.2016, email communication dated 03.05.2018 confirming outstanding amount, inspection certificate dated 03.09.2015, demand notice dated 20.03.2018, ledger statement, bank statement etc.
8. The respondent filed affidavit in reply raising various objections like; the respondent has not received any notice either from the petitioner or from the Registry of NCLT, not seen any newspaper publication of notice of the present matter, the petitioner has supplied wrong product etc.

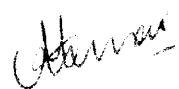
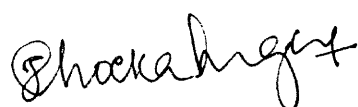
**Findings:**

9. Heard learned counsels appearing for both the sides and perused the documents annexed to the application.

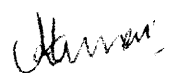




10. On perusal of the records it is found that the applicant has filed rejoinder to the instant petition and the respondent has filed written submissions. While going through the reply filed by the respondent it is observed that the contentions raised are illusory and not supported by any valid document. In para 15 to the reply, the respondent has admitted that due to oversight the respondent has set out the old code of the cylinders and accordingly the applicant had supplied the material. No document is produced by the respondent showing that the goods supplied by the petitioner has been sent back. Had there been any serious problem with regard to quality/specifications of the cylinders, the respondent could have sent back the same to the applicant. On perusal of the record it is also found that the order dated 23.04.2015 placed by the respondent (page 25 to the application) is for 38 pieces 200bar Inergen Cylinder having part code 438809. In the purchase order amendment (page 26) dated 28.04.2015 there is no mention about the change in specification/quality of the cylinders to be supplied by the applicant. Page No. 27 is the copy of invoice dated 23.02.2016 raised by the applicant on the respondent which also shows that the specification of the goods supplied by the applicant is as per the order of respondent. Page No. 28 is the copy of email dated 03.05.2018, sent to the applicant by the respondent, admitting the operational debt and promising to release the payment within 3-4 days.
11. Notwithstanding the contentions raised in the reply filed by the respondent, the record shows that there is/was no dispute with regard to quality/specification of the goods supplied by the applicant. More so when the respondent has failed to file any valid document to substantiate such claim, the objections raised by the respondent is not sustainable in the eye of law.



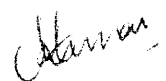
12. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
13. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
14. 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.
15. 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

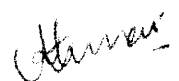
exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

16. 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.
  
17. 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.
  
18. 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;



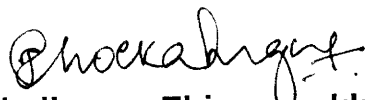


- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
  - (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any 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.
19. 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.
20. 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.
21. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Nimai Gautam Shah, 605-606-607, Silver Oaks, Nr. Mahalaxmi Char Rasta,

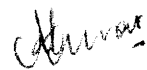


Paldi, Ahmedabad 380 007 ([enjabd@gmail.com](mailto:enjabd@gmail.com)) having registration No. IBBI/IPA-001/IP-P00154/2017-18/10323 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code.

22. This Petition is accordingly admitted.
23. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
24. 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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