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BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

IA 219 of 2019 in C.P. (I.B) No. 195/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 20.09.2019

Name of the Company: Agrawal Coal Corporation Pvt. Ltd.
V/s.
Shriram Cement Ltd.

Section of the Companies Act: Relisting of application

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	MANMEET SINGH	ADV	PET	<i>f.</i>
2.				

ORDER

The Petitioner is represented through their respective Learned Counsel(s).

The case is fixed for pronouncement of order.

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

Manora
(MANORAMA KUMARI)
MEMBER (JUDICIAL)

Harihar Prakash Chaturvedi
(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 20th day of September, 2019.



**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**

I.A. 219/NCLT/AHM/2019

in

In C.P. (I.B.) No. 195/9/NCLT/AHM/2018

along with

C.P. (I.B.) No. 195/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

In the matter of:

M/s. Agarwal Coal Corporation Pvt. Ltd.
Matra Kripa,
2, Chameli Park,
Nr. Goyal Nagar,
Indore - 462016,
Madhya Pradesh.

..... Petitioner/ Operational Creditor

Versus

M/s. Shriram Cement Limited,
S. No. 47/P, Village Hadad,
Tal. Danta,
Dist. Banaskantha,
Hadad - 385110,
Gujarat.

..... Respondent/ Corporate Debtor

Appearance:

Mr. Navin Pahwa, Sr. Advocate along with Mr. Mandeep Singh,
Advocates for the Petitioner/Operational Creditor.

Mr. Keval Barot, Advocate for the Respondent/ Corporate Debtor.



Order delivered on 20th September, 2019

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ORDER

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. The Applicant/Operational-Creditor, through the present I.A. No. 219 of 2019 has brought to notice of this Adjudicating Authority about an order passed by the Hon'ble NCLAT in Company Appeal (AT) Insolvency No.594 of 2019 in the matter of M/s. Agarwal Coal Corporation Pvt. Ltd. Vs. M/s. Shriram Cement Ltd. whereby allowing the above said appeal it pleased to set aside the impugned order dated 17.08.2018 passed by this Bench, wherein, this Adjudicating Authority had rejected the I.B. Petition filed by the Operational-Creditor on the ground of limitation as being time-barred.
2. The Hon'ble NCLAT, while allowing the appeal in the above referred decision has pleased to observe and held as below:
"2. Notice was issued on Respondent but the Corporate Debtor do not choose to appear. In the circumstances, we heard the case on merit and following observations were made on 11th December, 2018:-

ORDER

11.12.2018: Learned counsel for the Appellant submits that Adjudicating Authority wrongly rejected the application preferred by Appellant under section 9 on the ground that the claim is barred by limitations. He referred to the



agreement reached between the parties on 01st March 2017 (page 46), the winding up petition preferred by the Appellant before the Hon'ble High Court of Gujarat, Ahmadabad in Company Petition No. 10 of 2015 with regard to same very claim and the Debt Settlement Agreement dated 01st March 2017 reached between the parties which was noticed by the Hon'ble High Court of Gujarat. We find that Debt Settlement Agreement is on Page 46 which shows terms of payment and Hon'ble High Court of Gujarat order dated 20th July 2017 is at Page 78 wherein the settlement has been noticed by the Hon'ble High Court. Thus, prima facie a case has been made out that the claim is not barred by limitation.

Inspite of service of notice a Respondent has not appeared. However, to give another opportunity we issue fresh notice on Respondent by email only. Dasti service is permitted. Appellant will also produce a copy of this order before the management of concerned officers of the Respondents. If Respondent so choose not to appear, we may pass order ex-parte on basis of records and observations made in the appeal.

Place the case 'for admission' on 03rd January 2019 within first two cases."

3. Subsequently, notice through email was issued and served. The Appellant has also made dasti service on Mr. Ajay Kumar Bishnoi, Director; Mr. Alampallam Vedam Ramalingam, Director; Mr. Perintalmanna Venkatarama Krishana Kumar, Director and Mr. Arun Kumar Ganesan, Director i.e. all four Directors of the Corporate Debtor. Inspite of service of notice no appearance has been made nor any reply filed by the Corporate Debtor.



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4. On 11th December, 2018, we have noticed the arguments and documents with reference of pages and we held that a prima facie case has been made out that the claim was not barred by limitation.

5. On hearing learned counsel for the Appellant and on perusal of the record, we hold that the claim of appellant is not barred by limitation, for the reasons already noticed on 11th December, 2018 and recorded above. The Adjudicating Authority failed to appreciate the relevant facts while passing the impugned order.

6. For the reasons aforesaid, we set aside the impugned order dated 17th August, 2018 and remit the matter to the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad to admit the application under Section 9 in absence of any pre-existing dispute and paper being complete, after notice to the Respondent to enable the Respondent to settle the matter before admission of the application under Section 9 of I&B Code, if it so decides.

7. The appeal is allowed with aforesaid observations and directions. No costs."

3. Thus, in the light of the above given direction, the present I.B. Petition needs to be considered afresh on its merits for the purpose of its admission or otherwise. The appropriate order on admission to be passed after hearing the parties and if the present I.B. petition is found complete as per the provisions of the I.B. Code. Therefore, the present I.A. No.



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219 is allowed and the main CP (IB) petition No. 195/NCLT/AHM/2018 already stands restored as per the direction of Hon'ble NCLAT on the file of this Bench for hearing and disposal on its merits.

4. Since, the arguments from both sides in respect of the main I.B. Petition were also heard in compliance of the direction of the Hon'ble NCLAT issued in appeal by remanding back the matter to this Bench, to admit the I.B. petition under Section 9 in absence of any pre-existing dispute and paper being complete, therefore, we proceeded to issue notice to the Respondent to either settle the matter before admission or otherwise or proceed with the matter for hearing on its merits. In response thereto, the Respondent/ Corporate-Debtor appeared and filed an affidavit of Mr. Bhruhu Kumar P. Bhatt its Manager-Admin. The Respondent Company through this affidavit has categorically stated that the Corporate-Debtor duly acknowledges and admits the claim of the Operational-Creditor. Thus, the Respondent/Corporate-Debtor is having no objection if the present I.B. Petition (filed under Section 9 by the Operational-Creditor) is admitted to initiate the C.I.R.P.
5. By taking into consideration of the above given facts as narrated in affidavit of the Corporate-Debtor there remains no dispute/pre-existing prior to the filing of the I.B. Petition or after the issuance of demand notice. Therefore, this



Court is bound to proceed to admit the present I.B. Petition unless it is found incomplete under the provisions of the I.B. Code.

6. Since, this bench, vide its order dated 07.08.2018 had rejected the I.B. Petition only on the ground of limitation and such order stands set aside by the Hon'ble NCLAT in the present appeal and there was no notice earlier issued under Section 9(5) of the Code by stating that the present I.B. Petition *prima-facie* appear to be incomplete. Therefore, in our humble view, there appear nothing adverse on record to show that the present I.B. Petition is not filed in conformity with the provisions of I.B. Code and the Relevant Rules made thereunder. Moreover, the present I.B. Petition is filed by the authorised signatory of the Operational-Creditor, which seems to be in order because the authorised signatory is duly authorised by a Board Resolution dated 02.04.2018 passed by the Operational-Creditor-Company by authorising its manager Mr. R. P. Singh for filing the present I.B. Petition.

7. It is now a matter of record that the present Corporate-Debtor has admitted its liability/ debt by way of its affidavit dated 03.06.2019. Hence, such admission is found as best evidence that the debt is well established and a default has



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been occurred in making repayment of such debts. That is why, the Corporate-Debtor has fairly conceded with the facts of the present I.B. Petition and expressed its no objection to admit the present I.B. Petition so as to trigger the Corporate Insolvency Resolution Process ("C.I.R.P.") in respect of it.

8. In addition to the above stated admission, we further examined the merits of the applicant's claim. As per the record, the Petitioner/Operational-Creditor was engaged in the business and trading of coal in India and the Respondent was engaged in the business of manufacturing and supplying of cement, PPC cement and OPC cement etc. Therefore, the Operational-Creditor had supplied to the Corporate-Debtor against high seas sales agreement on 08.10.2012 and purchase order dated 17.10.2012 certain materials towards which, the initially the Corporate-Debtor was making a regular payment. However, later on its payment became irregular and it committed default. Hence, the Operational-Creditor was constrained to issue a demand notice to the Corporate-Debtor on 14.02.2018, to which, the Operational-Creditor did not receive any reply or notice from the Corporate-Debtor side so as to dispute the unpaid Operational-Debt.



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9. It is also a matter of record that prior to issuance of the demand notice, there was a debt settlement agreement, entered between the Operational-Creditor and the Corporate-Debtor on 01.03.2017 for settlement of entire debt of **Rs.58,19,490/-** (Rupees Fifty-Eight Lakhs Nineteen Thousand Four Hundred Ninety Only) as a full and final settlement. However, the Corporate-Debtor did not honoured the terms and conditions of the said debt-settlement-agreement and made only a part payment. Hence, the present Operational-Creditor was constrained to file the present I.B. Petition seeking for the initiation of Corporate-Insolvency-Resolution-Process in respect of the Corporate-Debtor-Company.

10. In support of the present application, the Petitioner has furnished a copy of the Bank Statement of the UCO Bank by confirming the non-receipt of amount of debts from the Corporate-Debtor-Company.

11. As the Petitioner/Operational-Creditor has also suggested the name of an IRP, Mr. Umesh Harjivandas Ved in the present I.B. Petition.

12. For the aforesaid reason, present I.B. Petition is found complete and deserves for admission. Hence, the present



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I.B. Petition is admitted and the Corporate Insolvency Resolution Process is initiated in respect of the Corporate-Debtor-Company with following observations / directions.

13. Hence, this Adjudicating Authority hereby appoints **Mr. Umesh Harjivandas Ved (Email ID: umesh@umeshvedcs.com, Add: 304, Shopper's Plaza-5, Govt. Servants' Co-Op. Housing Society, Opp. Municipal Market, C.G. Road, Navrangpura, Ahmedabad 380 009) having Registration No. IBBI/IPA-002/IP-N00136/2017-18/10376 as an Interim Resolution Professional.**

14. Further, this Adjudicating Authority hereby order for declaration of moratorium under Section 13(l)(a) prohibiting the following as laid down in Section 14 of the Code, which are described as under:

I. Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following namely:-

- 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*



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property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 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 supply of essential goods or services to the corporate debtor as may be specified may not be terminated or suspended or interrupted during moratorium period.

i. The moratorium order in respect of (a), (b), (c) and (d) above shall not apply to the transactions notified by the Central Government.

ii. However, the order of moratorium shall not apply in respect of supply of essential goods or services to Corporate Debtor.

iii. The Applicant shall also make public announcement about initiation of Corporate Insolvency Resolution Process, as required by Section 13(1)(b) of the Code.

15. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

16. An authentic copy of this order be communicated by the Operational-Creditor as well as by this Registry to the Corporate-Debtor-Company, and to the Interim-Resolution-Professional and also to the Registrar of Companies at the


earliest.




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17. With the aforesaid direction, the present IB-Petition stands admitted for the purpose of Corporate Insolvency Resolution Professional.


Manorama Kumari,
Adjudicating Authority
Member (Judicial)


Harihar Prakash Chaturvedi,
Adjudicating Authority
Member (Judicial)

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