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

TP 196 of 2019 [CP (IB) No. 44/9/NCLT/AHM/2019]

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

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE
THE NATIONAL COMPANY LAW TRIBUNAL , INDORE BENCH ON 08.01.2021

Name of the Company: M/s. Micros Sugar Engineering
Solution (P.) Ltd.
V/s
M/s. Raj Rajeshwari Sugar Pvt. Ltd.

Section: 9 the Insolvency & Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

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


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Dated this the 8th day of January, 2021.

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
INDORE BENCH AT AHMEDABAD
COURT NO. 1**

TP 196 of 2019 [CP (IB) No.44/9/NCLT/AHM/2019]

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

In the matter of :

M/s. Microsugar Engineering Solution (P) Ltd.

(through CEO Mr. Kuldeep Singh)

Regd. Office at:

674/ 1, 2nd floor, Mahalakshmi Plaza Building,

Shakti Khand-III, Indirapuram,

Ghaziabad, Uttar Pradesh-201014

..Operational Creditor

V/s.

M/s. Raj Rajeshwari Sugar Pvt. Ltd.

Regd. Office at;

Railway Station road,

Village – Mohpani,

Indira Ward, Gadarwara,

Narsinghpur MP – 487551

..Corporate Debtor

Order reserved on 31.12.2020

Order pronounced on 08.01.2021

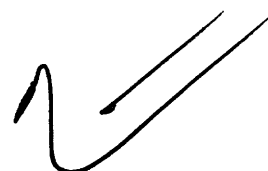
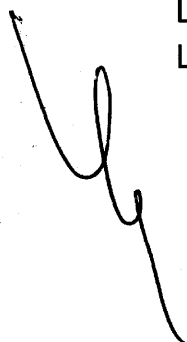
Coram: MADAN B. GOSAVI, MEMBER(J)

VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Learned Counsel Ms. Noopur Dalal for the Operational Creditor.

Learned Counsel Mr. Jaimin Dave for the Corporate Debtor.



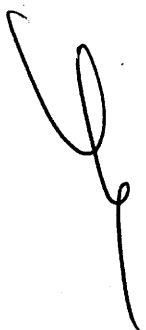
ORDER

[Per : M.B. GOSAVI, MEMBER (J)]

1. This Application is filed under **Section 9** of the Insolvency & Bankruptcy Code, 2016 by the Operational Creditor **M/s. Micros Sugar Engineering Solutions (P) Ltd.** to initiate Corporate Insolvency Resolution Process against the Corporate Debtor **M/s. Raj Rajeswari Sugar Pvtl Ltd.**, on the ground that the Corporate Debtor committed default in paying the operational dent of **Rs. 13,24,748/-** (Rupees Thirteen lacs twenty-Four thousand Seven hundred forty eight only).
2. The following facts are not in dispute wide purchase order dated 13.12.2016 (Annexure-v). The Corporate Debtor requested Operational Creditor to supply One Complete Cane Unloader. With the said purchase order the Operational Creditor gave post-dated cheques (in short "PDC") of Rs. 11,15,525/- . By Invoice no.6 dated 05.07.2017 the Operational Creditor supplied the materials which was received by the Corporate Debtor. Vide letter dated 13.07.2017 the Corporate Debtor brought to notice of the Operational Creditor that as many as 13 other items,

required for proper installations of the Crane Unloader were not supplied. Again by letter dated 26.07.2017 the Corporate Debtor informed that the Operational Creditor to supply short fall of the goods and stop payment of "PDC".

3. It is also admitted fact that on 10.08.2017 the Operational Creditor did not supply remaining items to the Corporate Debtor. On 18.08.2017 the Operational Creditor informed the Corporate Debtor that short fall material was not available. However, on 06.09.2017 the Operational Creditor supplied the short fall material to the Corporate Debtor and the claimed payment due under the Invoices.
4. The Operational Creditor states that since the Corporate Debtor did not clear the dues, the Demand Notice has been served on the Corporate Debtor dated 05.12.2018. In-spite of receipt of notice the Corporate Debtor did not pay the debt due. Hence, this application to initiate Corporate Insolvency Resolution Process of the Corporate Debtor.
5. Notice of this application was duly served on the Corporate Debtor and one of its Director Mr. Rajendra Patel filed affidavit-in-reply. We have gone through the reply. The Corporate Debtor



raised three defences for our consideration (i) the Operational Creditor did not supply the goods ordered in its entirety in time . Due to the late supply it put to exorbitant loss (ii) they already raised to dispute about the later delivery of the goods prior to the demand notice (iii) the Operational Creditor did not served the Demand Notice under Section 8 of the Insolvency & Bankruptcy Code, 2016. Hence, this application is not maintainable.

6. We have heard Learned Counsel Ms. Noopur Dalal for the Operational Creditor and Learned Counsel Mr. Jaimin Dave for the Corporate Debtor at length. They also submitted their written notes of arguments.
7. It is not in dispute that the Operational Creditor supplied the material sought for by the Corporate Debtor. Some of the materials delivered after 9 months from the date of purchase order. In purchase order the said material was claimed within 15 days from its date and the purchase order was supported with the "PDC" for the price of the goods supplied. In view of the above facts, it is to be held that the goods were supplied by in-ordinate delay. But question is whether it can be considered pre-existing dispute? The Operational Creditor vide letter dated 25.07.2017

(page no. 34 of the application) acknowledged short fall of the goods, which was prior to the Demand Notice but the fact remained on record is that later on the remaining goods were supplied by the Operational Creditor and Corporate Debtor accepted the same without any protest. It shows that the Corporate Debtor gave us its dispute relating to late delivery and now they cannot use that fact as defence.

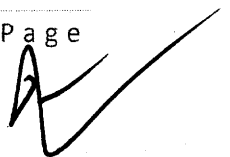
8. Besides above there is one more aspect needs our consideration.

The Operational Creditor stated that in-spite of receipt of Demand Notice the Corporate Debtor did not pay the debt nor replied to the notice pointing out so called dispute. As against this Corporate Debtor contended that the Demand Notice has never been served upon them.

9. It is now well settled law that delivery of Demand Notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 is *Sine qua non* for initiating the Corporate Insolvency Resolution Process of u/s 9 of the Insolvency & Bankruptcy Code, 2016 against the Corporate Debtor. Learned Counsel for the Corporate Debtor relied upon various judgements/orders to substantiate these arguments i.e. *(a) Krystal Integrated Services (P.) Ltd. vs*

Indiaontime Express (P.) Ltd. [2019] 216 Comp. Case 61 (NCL-AT)
(b) Rajesh Arora vs. M Y Agro (P.) Ltd. reported in [2018] 145 SCL
44 (NCL-AT) (c) Rama Sanjay Builders & Contractors (P.) Ltd. vs.
Kukreja Rubber Mills (P.) Ltd. [2018] 147 SCL 445 (NCL-AT)

10. We have gone through all the order(s) relied by the Learned Counsel for the Corporate Debtor. We note that the facts and evidences were altogether different. In some of the cases, the Demand Notice was sent but not delivered because of shifting of registered office of Corporate Debtor. In some other cases notice was served for some other reasons.
11. It has consistently been hold by the Hon'ble National Company Law Appellate Tribunal that non -delivery of the Demand Notice to the Corporate Debtor is the ground to reject the application under Section 9 of the Insolvency & Bankruptcy Code, 2016.
12. With this we now consider the facts in this case. As per the part-II of the application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 by the Operational Creditor in Form -V as per Rules 6 of the *Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016* the registered officer of the Corporate Debtor is mentioned as "Railway Station Road, Village-



Mohpani, Indira Ward, Gadarwara, Narsinghpur, MP -487551”
whereas the Demand notice was sent by Regd Post A.D at the
address mentioned as “Raj Rajeshwari Sugar Pvt Ltd.,
Narsinghpur, MP -487551 , Gadarwara, S.O. “. This evidence
shows that Demand Notice was rightly sent to the registered
office of the Corporate Debtor. Postal track report in this regard
shows that the notice was served upon the Corporate Debtor. It
is not in dispute that the Corporate Debtor did not reply the
notice within 10 days raising any dispute.

13. The Operational Creditor filed the affidavit stating that the they
did not receive reply of the notice from the Corporate Debtor
pointing out any disputes. They did not receive the payment as
claimed by them and thereby compliance provision 9(3) (b) & (c)
of the Insolvency & Bankruptcy Code, 2016. The application is
defect free. The Operational Creditor did not suggest the name of
the Resolution Professional for appointment as the “IRP” and left
to the discretion of this Adjudicating Authority. We admit the
Corporate Insolvency Resolution Process (CIRP) under Section 9
of the Insolvency & Bankruptcy Code, 2016 and proceed to pass
following order :

Page

ORDER

1. 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.*

2. The Operational Creditor has not proposed the name of the Interim Resolution Professional(IRP). Therefore, this Adjudicating Authority hereby appoint **Mr. Amresh Shukla,**
Insolvency Professional, IBBI/IPA-001/IP-P00120/2017-

2018/10255 to act as an IRP under Section 13(1) (c) of the Code.

3. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17,18,20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the 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 appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.
4. This Adjudicating Authority direct the IRP to make public announcement of 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.
5. 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 Adjudicating Authority approves the Resolution Plan under sub-section (1) of the 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.

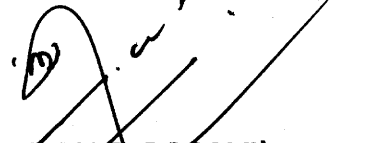
6. It is further directed that the supply of goods/service to the Corporate Debtor Company, it continuing, shall not be terminated or suspended or interrupted during moratorium period.
7. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of Rs. 50,000/- (Rupees Fifty 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 alongwith First Progress Report.

8. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
9. Accordingly, TP 196 of 2019 [CP(IB) No. 44/9/NCLT/AHM/2019] is allowed.
10. The matter to be listed on 26.02.2021 for further consideration.



(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)



(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Signed on this, the 8th January, 2021.