

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
KOLKATA BENCH  
KOLKATA**

**CP (IB) No. 1689/KB/2018**

**IN THE MATTER OF:**

**An application under Section 9 of the Insolvency and Bankruptcy Code, 2016**

**-And-**

**IN THE MATTER OF:**

M/s. Wittur Elevator Components India Private Limited, No. 3&4, Adjacent to SIPCOT Village, Sriperumbadur, Kanchipuram District - 402105, Tamilnadu

... Petitioner

**-Versus-**

**IN THE MATTER OF:**

M/s. Ocean Elevators Pvt. Ltd., G-II, Utility Block, Ganga Tower LCT Ghat, Manipura, Patna-800001, Bihar

And at No. 363, Gagiwala Estate(Near Gupta Dyieng Pandesara), GIDC, Surat - 394221

...Respondent

Coram: Shri Jinan K.R., Hon'ble Member (Judicial)  
Shri Harish Chander Suri, Member(Technical)

For the Operational Creditor:

1. Mr. Arnab Dutta, Advocate





For the Corporate Debtor :

1. Mr. Rajesh Kr. Kejriwal, FCA

Date of pronouncement of the Order : 22-08-2019

## O R D E R

Per Shri Jinan K.R., Member(Judicial)

1. This is an Application filed by M/s. Wittur Elevator Components India Private Limited / Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016, read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating Corporate Insolvency Resolution process (in short CIRP) as against the against M/s. Ocean Elevators Pvt. Ltd., /Corporate Debtor, on the allegation that the Corporate Debtor committed default in payment of Rs. 86,79,612/- (Rupees Eighty six lacs seventy nine thousand six hundred twelve only), as the outstanding amount due to the Operational Creditor.

2. The Operational Creditor contends that they are dealing with supply of elevator components and undertakes supply of such materials to its customers and that the Operational Creditor have had business transactions with the Corporate Debtor. The Operational Creditor, during the course of business transactions with the Corporate Debtor had supplied elevator components as described in the invoices referred to in Annexure-I. The Corporate Debtor, who received the goods, failed in payment of the total amount on account of receipt of goods by the Corporate Debtor to the tune of Rs. 86,79,612/- (Rupees Eighty six lacs seventy nine thousand six hundred twelve only). The Operational Creditor demanded the amount by way of certain E-mails of various dates, lastly on 06-11-2016. In response to the demand, the Corporate Debtor issued seven cheques which was dishonoured for the reason of blocking of account and thereby the

Operational Creditor issued a notice under the provisions of Negotiable Instrument Act, 1881 and initiated criminal prosecution against the Corporate Debtor and it is pending before the Judicial Magistrate, Sriperumbadur. Thereafter, the Operational Creditor again issued demand notice under Section 8 on 26-04-2018. Despite receipt of the demand notice, the Corporate Debtor has not sent any reply nor raised any dispute. Hence, the Operational Creditor filed this Application for initiating CIRP as against the Corporate Debtor under Section 9 of the Code.

3. The Corporate Debtor entered appearance and filed reply affidavit contending in brief the following:

The Application is not maintainable. Mr. Ram Mohan, who had filed this Application has no authority to initiate CIRP as against the Corporate Debtor. The Application is incomplete and therefore, is liable to be dismissed in limine. The Application does not contain any particulars with regard to nature of alleged disputes between the parties. The purported claim of the Operational Creditor as against the Corporate Debtor is hopelessly barred by the laws of limitation and therefore, this Application is liable to be dismissed in limine. Except the invoices dated 31-10-2014 appearing at Pages 34-35 of the Application, none other invoices have been evidently raised on the Corporate Debtor. Such other invoices were raised on an entity Ocean Elevators(Surat). The Corporate Debtor does not have any connection with the said Ocean Elevators(Surat) whatsoever. Therefore, the corporate Debtor does not have any privity of contract with the Operational Creditor, as a result of which, the purported dues towards the Operational Creditor cannot be claimed from the Corporate Debtor. In any event, the invoices raised on the Corporate Debtor appearing at pages 34 and 35 of the said Application are hopelessly barred by laws of limitation. The contents of the letters referred to in the Application dated 08-09-2015, 31<sup>st</sup> September, 2015 and 6<sup>th</sup> November, 2016 are incorrect and untrue.

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The Operational Creditor procured several undated cheques amounting to Rs. 21,00,000/- (Rupees Twenty one lakh) from the Corporate Debtor. Such cheques were issued under the coercion and duress. The cheques were issued in or around December, 2014. However, the same did not contain any date and the same was issued as a security payment for the purported amount due. The Operational creditor with mala fide intention for the purpose of making unjust enrichment at the behest of the Corporate Debtor, presented the cheques before the Bank, thereby committed breach of such agreement. The Corporate Debtor is not liable to pay any amount as claimed by the Operational Creditor. The Corporate Debtor denied that any amount of Rs. 86,79,612/- (Rupees Eighty six lacs seventy nine thousand six hundred twelve only) or any part thereof as due and payable by the Corporate Debtor to the Operational Creditor. Upon the above said contentions, the Corporate Debtor prays for dismissal of the Application with exemplary cost.

4. This application was taken up for hearing on 01-07-2019. The Ld. Counsel failed to bring to our notice the authorisation to initiate CIRP and prays for giving time to cure the defect. By granting seven days, we adjourned the case for filing supplementary affidavit and for hearing to 13-08-2019. On 13-08-2019, when the case was taken up for hearing the defect, as directed, has not been cured and the case was adjourned for hearing, as requested, to 14-08-2019. When the case was again came up for hearing on 14-08-2019, no body turned up on the side of the Operational creditor. The Ld. Counsel appearing for the Corporate Debtor was heard. Perused the records.

5. The Wittur Elevator Components India Private Limited, dealing in supply of elevator components. The business transactions in between the Operational Creditor and the Corporate Debtor has not been denied in the reply affidavit filed on the side of the Corporate Debtor. The Ld. Counsel appearing for the Corporate Debtor submits that since letter of authority, authorising the signatory, Mr. Ram Mohan, has not been produced as

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directed, the Application is liable to be rejected. He also contends that there is no privity of contract in between the Operational Creditor and the Corporate Debtor, in respect of invoices other than the invoices referred to in page Nos. 34 and 35.

According to him, except the said invoices, the invoices referred to for proving delivery of goods not delivered to the Corporate Debtor here in this case in hand but to Ocean Elevators(Surat). According to him Ocean Elevators(Surat) referred to in the invoices have no connection with the Corporate Debtor and therefore, the amount referred to in the said invoices is not liable to be paid by the Corporate Debtor.

We have carefully screened the invoices. The invoices proving supply of goods related to the Corporate Debtor / Ocean Elevators Pvt. Ltd., seen referred to at pages 34 and 35. That invoices are therefore, not challenged on the side of the Corporate Debtor. On a reference to the invoices, annexed with the Application as Annexure -I, we find some force in the submission on the side of the Ld. Counsel. The undisputed invoices proving supply of goods are invoice No. 14/1208 and 14/1231 dated October 31, 2014. In regards the delivery of the goods referred to in the said invoice seen not challenged and there is no pre-existing disputes stands established in the case in hand.

6. As per the definition of As per section 3(12) "Default" *'means non payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid the debtor or the corporate debtor, as the case may be* So, being failed to prove any pre-existing dispute as regards the goods admittedly received by the Corporate Debtor as per the invoices referred to at page Nos. 34 and 35, we are of the considered opinion that the amount referred to in the above said invoices is found due.

The Corporate Debtor has no case that despite demand, the above said amount has been paid to the Operational Creditor. As per the Invoice

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No. 14/1208, at page No. 30, the total amount due is Rs. 10,33,251=00 (Rupees ten lakh thirty three thousand two hundred fifty one only) and as per Invoice No. 14/1231 at Page 31, the total amount due is Rs. 10,69,970=00 (Rupees Ten lakh sixty nine thousand nine hundred seventy only). So more than Rs. 20 lakh is found due from the Corporate Debtor to the Operational Creditor. Therefore, filing of this Application is perfectly maintainable on the strength of invoices referred to as above.

7. At this juncture, a contention was raised on the side of the Corporate Debtor that the claim of the Operational Creditor is barred by laws of limitation. The invoices truly were generated on 31-10-2014. This Application was filed on 29-11-2018. However, on a perusal of the records, it is understood that the Operational Creditor has demanded the amount by way of issuing E-Mail as well as statutory notice under section 138 of the Negotiable Instrument Act, 1881 and copies of notice were produced along with the Application and marked as Annexure '7'. These notices were seen delivered to the Corporate Debtor on 16-12-2017.

A reference to the demand notice shows that the Corporate Debtor had issued Cheque dated 13-09-2017 allegedly for payment of the debt due to the Operational Creditor. In regard to issuance of the cheque, a contention was raised on the side of the Corporate Debtor that those cheques were undated cheques issued to the Operational Creditor as a security for payment of the purported amount due. However, there is no supporting evidence produced on the side of the corporate Debtor along with reply affidavit to prove that those cheques were issued to the Operational Creditor as the security as attempted to establish at the time of argument. As there are no evidence strengthened on the side of the Corporate Debtor in regard to issuance of the cheques, it appears to us that cheques being issued on 13-09-2017, it could not be held that the claim is barred by limitation. The said contention raised on the side of the Corporate Debtor is, therefore, found not sustainable under law.

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8. In regard to letter of authority, though the Ld. Counsel, appearing for the Operational Creditor, failed to bring to our notice the proof of authority, at the time this case was heard on 01-07-2019, on a careful screening of the Application, we are satisfied that the Operational Creditor had produced Annexure 'B', a copy of resolution of the board meeting held on 12-10-2017 authorising the signatory, Mr. Ram Mohan, to initiate legal proceedings against the Corporate Debtor. Therefore, the Operational Creditor has succeeded in proving that the authorised representative, who filed this Application has been given specific authorisation to initiate proceedings, like the nature initiated by him. Accordingly, the said contention is found devoid of any merit.

9. Though the Ld. Counsel, appearing for the Corporate Debtor, was able to convince us that out of 7 invoices, allegedly issued to the Corporate Debtor, two invoices dated 31-10-2014 Invoice No. 14/1208 and 14/1231) were not delivered to the Corporate Debtor. However, the evidence available in the case being satisfactorily established that the above said two invoices were delivered to the Corporate Debtor and the goods valued above Rs. 20 lakh (Rupees Twenty Lakh only) has been supplied to the Corporate Debtor it has come out in evidence that the outstanding amount liable to be paid by the Corporate Debtor exceeds Rs. 20 Lakh (Rupees Twenty Lakh only). Accordingly, an Application of this nature is perfectly maintainable.

Being satisfied that the Application is maintainable, the next question is whether the Applicant has complied with all the provisions to be meted under Section 9 (5) of the Code. The applicant has produced an affidavit in compliance of Section 9(3)(b) and a certificate issued from the Bank in compliance of Section 9(3)(c). Therefore, the Operational Creditor herein succeeded in establishing that an operational debt above Rs. 20 Lakh (Rupees Twenty Lakh only) is legally due and the Corporate Debtor has no case that the said amount is not payable to the OC. The occurrence of default stands established in the case in hand. Accordingly, this Application

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deserves consideration. It is liable to be admitted. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the above said discussions, the Application is liable to be admitted upon the following among orders:-

### **O R D E R**

- i) The application filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 for initiating Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Ocean Elevators Pvt. Ltd is hereby **admitted**.
- ii) We hereby declare a moratorium and public announcement in accordance with Sections 13 and 15 of the IBC, 2016.
- iii) Moratorium is declared for the purposes referred to in Section 14 of the Insolvency & Bankruptcy Code, 2016. The IRP shall cause a public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims under Section 15. The public announcement referred to in clause (b) of sub-section (1) of Section 15 of Insolvency & Bankruptcy Code, 2016 shall be made immediately.
- iv) Moratorium under Section 14 of the Insolvency & Bankruptcy Code, 2016 prohibits the following:-
  - a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;
  - (b) Transferring, encumbering, alienating or disposing of by

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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 Securitization 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.

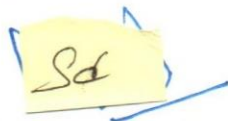
- v) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated, suspended, or interrupted during moratorium period.
- vi) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
- vii) The order of moratorium shall have effect from the date of admission till the completion of the corporate insolvency resolution process.
- viii) Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.
- ix) Shri Rajesh Keshri, IP Registration Number IBBI/IPA-001/IP-P00490/2017-18/10878, E-Mail [keshri.co@gmail.com](mailto:keshri.co@gmail.com), Mobile Number- 9433080179 is hereby appointed as Interim

Resolution Professional by this Tribunal for ascertaining the particulars of creditors and convening a meeting of Committee of Creditors for evolving a resolution plan.

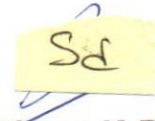
- x) The Interim Resolution Professional should convene a meeting of the Committee of Creditors and submit the resolution passed by the Committee of Creditors and shall identify the prospective Resolution Applicant within 105 days from the insolvency commencement date.
- xi) The Corporate Applicant is directed to deposit Rs.3,00,000/- (Rupees Three Lacs Only) in the ESCROW Account in SBI to be operated through the Registrar NCLT, Kolkata Bench, for the purpose of meeting the preliminary expenses for initiating the CIR Process by the IRP with in one week.
- xii) Registry is hereby directed under section 9(5) of the I & B Code, 2016 to communicate the order to the Operational Creditor, the Corporate Debtor and to the I.R.P. by Speed Post as well as through E-mail.

10. List the matter on ~~25.8.2019~~ for filing of the progress report.

11. Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



**(Harish Chander Suri)**  
**Member(Technical)**



**(Jnan K.R.)**  
**Member (Judicial)**

Signed on this, the 22<sup>nd</sup> day of August, 2019.

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