(5)

NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON 10.08.2018

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER - JUDICIAL

| | |
|---|---|
| APPLICATION NUMBER | : |
| PETITION NUMBER | : CP/811/ (IB)/2018 |
| NAME OF THE PETITIONER(S) | : BALAJI TECH INDUSTRIES |
| NAME OF THE RESPONDENT(S) | : APNA SCIENTIFIC SUPPLIES PVT LTD |
| UNDER SECTION | : 9 RULE 6 |

| S.No. | NAME (IN CAPITAL) | DESIGNATION / REPRESENTATION BY WHOM | SIGNATURE |
|---|---|---|---|
| | R. Sathish Kumar | Advocate counsel for Petitioner | [signature] |

**IN THE NATIONAL COMPANY LAW TRIBUNAL,**
**SIGNLE BENCH, CHENNAI**

CP/811/(IB)/CB/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

**M/s. Balaji Tech Industries.**
*... Operational Creditor*

Vs.

**M/s. Apna Scientific Supplies Private Limited.**
*... Corporate Debtor*

*Order delivered on 10th of August, 2018*

CORAM:

**CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)**

*For Operational Creditor(s) : Mr. R.Sathishkumar, Counsel*
*For Corporate Debtor (s) : Ex-parte*

## ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J):

1. Under Adjudication is CP/811/(IB)/CB/2018 that has been filed by the Operational Creditor under Section 9 of the Insolvency & Bankruptcy Code, 2016 (in short, 'I&B Code, 2016') r/w the Insolvency & Bankruptcy (Application to Adjudicating Authority)

Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. As seen from the record, on 05.07.2018 the Registry was directed to issue notice to the Corporate Debtor and the Operational Creditor was also permitted to serve private notice on the Corporate Debtor and the case was posted to 25.07.2018. On 25.07.2018, the Operational Creditor has filed an Affidavit along with acknowledgement. In spite of receipt of notice, there was no representation on behalf of the Corporate Debtor, and the Corporate Debtor was proceeded *ex-parte* on 25.07.2018.

3. Heard the learned Counsel for the Operational Creditor and perused the pleading including the documents placed on the file.

4. The Operational Creditor has claimed an outstanding debt to the tune of Rs.2,87,500/- along with interest due and payable as on 04.05.2018.

5. The brief facts of the case are that the Operational Creditor is engaged in Fabrication related works in India. The Corporate Debtor viz., M/s. Apna Scientific Supplies Private Limited has approached the Operational Creditor and expressed an interest in purchasing spare parts from it, and accordingly, the Operational Creditor had agreed to supply the spare parts to the Corporate Debtor. The Purchase Order stipulating the terms and conditions therein including delivery and payment is placed at page 15 of the typed set filed with the Application, for which the Operational Creditor raised Invoices which are placed at pages 16 and 17 of the typed set filed with the Application. The correspondence between the Operational Creditor and the Corporate Debtor demanding the long pending outstanding dues are placed at pages 18 to 22 of the typed set filed with the Application. On 19.10.2016,

the Corporate Debtor had sent a letter to the Operational Creditor, the copy of which is placed at page 23 of the typed set filed with the Application wherein the Corporate Debtor has made a request to the Operational Creditor to wait for some time for it to solve the issue and release the payments.

6. The Operational Creditor has sent a Demand Notice dated 04.05.2018 under Section 8 of the I&B Code, 2016, to the Corporate Debtor wherein the amount claimed; the details of transaction on account of which debt fell due and the date of default are being mentioned. The copy of notice is placed at pages 24 to to 26 of the typed set filed with the Application, which has been delivered on 05.05.2018. The postal receipts of sending the notice and acknowledgment thereof are placed at page 26A of the typed set filed with the Application to which a reply was given by the Corporate Debtor making a request to wait for a year or two for it to solve the issue and release the payments, the copy of which is placed at page 27 of the typed set filed with the Application.

7. The Operational Creditor has complied with Section 9 (3) (b) & (c) of the I&B Code, 2016, by filing Affidavit, wherein under para 4, it has been deposed that the Corporate Debtor has failed to bring to notice of the Operational Creditor, an existence of a dispute or a pendency of a suit or arbitration proceedings in relation to the unpaid operational debt. The copy of the Affidavit is placed at pages 34 and 35 of the typed set filed with the Application. The Operational Creditor has placed on record a certificate issued by the Chartered Accountant along with a statement indicating that the Corporate Debtor has not paid the outstanding debt to the Operational Creditor as per the accounts maintained with the Indian Overseas Bank.

8. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, CP/811/(IB)/CB/2018 is admitted and the

commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

9. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code, 2016. It is ordered to prohibit 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 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.

10. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

11. Mr. Gopala Krishna Raju is hereby appointed as IRP, as has been proposed by the Operational Creditor. There is no disciplinary proceeding pending against the IRP as is evidenced from Form-2, the copy of which is placed at pages 30 and 32 of the typed set filed with the Application. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public

announcement as prescribed under Section 15 of the I&B Code, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

12. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

13. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016.

14. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor. The address details of the IRP are as follows: -

**Mr. Gopala Krishna Raju**
Reg. No: IBBI/IPA-001/IP-P00908/2017-18/11508
E-mail ID: gopalkrishnarajuca@gmail.com

15. Order is dictated and pronounced in open court in the presence of the Counsel for Operational Creditor.

**[CH.MOHD SHARIEF TARIQ]**
MEMBER (Judicial)

P. ATHISTAMANI