

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

C.P.(I.B) No. 388/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 19.08.2020**

Name of the Company: Mewar Hi - Tech Engineering Ltd
V/s
R K Manufacturing Co Ltd

Section: 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

PCS, Mr. Dhiren Dave appeared on behalf of the Respondent.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 19th day of August, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 387/9/NCLT/AHM/2019

In the matter of:

M/s. Mewar Technocast Private Limited
2, Hawa Magri Industrial Area
Sukher
Udaipur 313 001
RAJASTHAN

Petitioner
Operational Creditor

Versus

M/s. R.K. Manufacturing Co. Ltd.
215-A, Manek Center, P.N. Marg
JAMNAGAR 361 008
Gujarat State

Respondent
[Corporate Debtor]

C.P. No. (IB) 388/9/NCLT/AHM/2019

In the matter of:

M/s. Mewar Hi-Tech Engineering Limited
1, Hawa Magri Industrial Area
Sukher
Udaipur 313 001
RAJASTHAN

Petitioner
Operational Creditor

Versus

M/s. R.K. Manufacturing Co. Ltd.
215-A, Manek Center, P.N. Marg
JAMNAGAR 361 008
Gujarat State

Respondent
[Corporate Debtor]

COMMON ORDER

Order delivered on 19th August, 2020

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**





Appearance:

PCS Mr. Divanshu Mittal for petitioner
PCS Mr. Dhiren Dave for respondent

ORDER

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

1. Mr. Divanshu Mittal, Practising Company Secretary, being authorised person, on behalf of M/s. Mewar Technocast 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 in CP (IB) No. 387/NCLT/AHM/2019 is a private limited company having identification U27107RJ2006PTC22147 and having its registered office at Udaipur, Rajasthan State. Nominal capital of the applicant is Rs. 10,00,00,000/- and paid up capital is Rs. 9,58,64,010/-.
3. The applicant/operational creditor in CP (IB) No. 388/NCLT/AHM/2019 is a limited company having identification L29299RJ2006PLC022625 and having its registered office at Udaipur, Rajasthan State. Nominal capital of the applicant is Rs. 10,00,00,000/- and paid up capital is Rs. 9,58,64,010/-.
4. The respondent/corporate debtor is a public limited company incorporated on 26.07.1984 under the provisions of the Companies Act having identification No.





L27209GJ1984PLC098951 and having registered office at Jamnagar, Gujarat State.

5. The applicant in CP (IB) No. 387/NCLT/AHM/2019 – M/s. Mewar Technocast Private Limited had placed order No. P00911 dated 03.10.2016 on the respondent for the purchase and supply of "Vertical Turning Lathe 3 Mtr." and had given 50% advance payment of Rs. 25,00,000/- (Rupees twenty-five lacs only) in three parts towards the total payment to be made of Rs. 50,00,000/- (Rupees fifty lacs only). Purchase order dated 03.10.2016 (Annexure – 4 page 9) stipulates that the machinery has to be delivered within one month from the date of advance payment and the balance payment of 50% shall be made after receiving the machinery at the site of the applicant. The applicant has submitted bank statement (page 10) reflecting the advance payment made by the applicant by way of RTGS in three instalments dated 03.10.2016, 05.10.2016 and 06.10.2016 making total payment of Rs. 25.00 lacs.

6. Similarly, the applicant in CP (IB) 388/NCLT/AHM/2019 – M/s. Mewar Hi-Tech Engineering Limited, a group company of M/s. Mewar Technocast Private Limited had placed order No. P07531 dated 04.10.2016 on the respondent for the purchase and supply of "Vertical Turning Lathe 3 Mtr." and had given advance payment of Rs. 26,00,000/- (Rupees twenty-six lacs only) towards the total payment to be made of Rs. 50,00,000/- (Rupees fifty lacs only). Purchase order dated 04.10.2016 (Annexure – A-5 page 10) stipulates that the machinery has to be delivered within one month from the date of advance payment and the balance payment of 50% shall be made after receiving the machinery at the site of the applicant. The applicant has submitted bank statement (page 11-17) reflecting the advance payment made by the applicant by way of RTGS in three instalments

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dated 04.10.2016, 04.10.2016 and 20.10.2016 making total payment of Rs. 26.00 lacs.

7. In CP (IB) No. 387/NCLT/AHM/2019 - M/s. Mewar Technocast Private Limited, the applicant has further stated that as per purchase order dated 03.10.2016, the machinery was to be supplied within one month from the date of payment of advance. Since the respondent failed to deliver the machinery on completion of delivery period as stipulated in the purchase order, the respondent is indebted to pay back the advance along with interest @ 24% per annum as per the computation given at page No. 6 to the application, from 07.11.2016, the date on which the default has occurred. According to the applicant, total interest @ 24% per annum, payable by the respondent works out to Rs. 16,51,520/- (Rupees sixteen lacs fifty-one thousand five hundred twenty only). Thus, the total amount of debt payable by the respondent to the applicant works out to **Rs. 41,51,520.00 (Rupees forty-one lacs fifty-one thousand five hundred twenty only)**, therefore this petition.
8. In both the above petitions the claim is regarding refund of advance money and considering the identical nature of the claims, other details like claim amount etc. are not discussed and not dealt with in detail in order to avoid repetition.
9. The respondent filed affidavit in reply/objections inter alia stating that the petition(s) lacks basic requirements of law and procedures, hence incomplete and deserves to be dismissed at the threshold. That, invoice is not attached with the notice, there is no proof of delivery of purchase order to the respondent and further no other correspondence with regard to this purchase order.





Findings

10. Heard the counsels appearing for both the parties and perused the application as well as reply/objections filed by the parties.

11. On bare reading of the reply filed by the respondent it is found that the respondent has alleged non-receipt of the purchase order, but at the same time has not denied having received the advance amount paid by the applicant towards supply of machinery. Admittedly, the amount claimed by the applicant is "advance amount paid" against the supply of goods and services which is not an unusual business practice. Now the question is whether the advance amount paid for getting supply of goods or services can be considered as operational debt or not. Before proceeding with the issue of advance amount paid towards supply of goods and services, we must deal with the definition of "operational creditor" as well as "operational debt" as provided in the I & B Code which is reproduced herein below: -

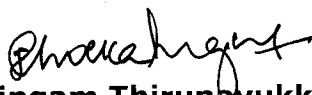
Section 5 (20) "Operational Creditor" means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;


Section 5 (21) "Operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority.

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12. In light of the above definitions, the instant petitions filed towards refund of advance money would not fall within the definition of "Operational Debt" as the creditors neither did render any service to the respondent debtor nor did provide any goods to the respondent.
13. While dealing with a similar matter, in SHRM Biotechnologies Pvt. Ltd. vs. VAB Commercials P. Ltd., NCLT, Kolkata, held in negative, stating that the creditor neither did render any service to the corporate debtor nor did provide any goods to the corporate debtor and thus such prepayment would not constitute an operational debt.
14. In the result, company petition No. CP (IB) 387 of 2019 and company petition No. CP (IB) 388 of 2019 stand dismissed and disposed of without cost. However, this will not stand in the way of the Petitioners invoking the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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