

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

C.P. (I.B) No.563/9/NCLT/AHM/2018

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

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 09.12.2020

Name of the Company: AP Securitas Pvt. Ltd.
V/s.
E-Complex Pvt. Ltd.

Section: 9 of the Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)


(MADAN B. GOSAVI)
MEMBER (JUDICIAL)

Dated this the 9th day of December, 2020.

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

CP (IB) No.563/9/NCLT/AHM/2018

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

In the matter of :

M/s. AP Securitas Private Limited

CIN: U31100DL1986PTC025963

Building No.10, DDA Commercial Complex,

Nangal Raya,

New Delhi-110046

..Operational Creditor

Versus

M/s. E-Complex Pvt. Ltd

CIN: U63000GJ1995PTC026113

Survey No.658, Village: Rampara II,

Taluka Rajula,

Gujarat-365560

..Corporate Debtor

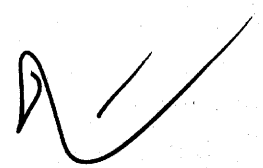
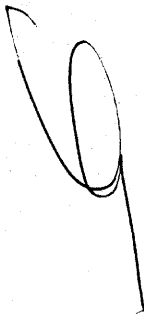
Order reserved on 08.12.2020
Order Pronounced on 9th Day of December, 2020

Coram: MADAN B. GOSAVI, MEMBER(J)
VIRENDRA KUMAR GUPTA, MEMBER (T)

Appearance:

Learned Counsel Mr. Shashwat Shukla for the Operational Creditor.

Learned Counsel Mr. Jaimin Dave for the Corporate Debtor.



ORDER**[Per VIRENDRA KUMAR GUPTA, MEMBER (T)]**

1. This application has been filed by M/s. AP Securitas Pvt. Ltd, Operational Creditor to initiate CIRP against M/s. E-Complex Pvt. Ltd being Corporate Debtor. The outstanding Operational Creditor debt has been stated as Rs.1,09,89,227/- which have fallen in due on different dates based upon the invoices remained pending.

2. The facts, in brief, are that the Corporate Debtor placed a work order on 15.12.2016 on the Operational Creditor for providing security personnel. In pursuance thereof, security personnel were provided and invoices were raised. The supply of labour was made from 01.04.2016 till 21.09.2017 through various work order placed from time to time and contract was valid upto 31.03.2018. During the course of this arrangement, there were issues in regard to quality of personnel as well as number of personnel provided by the Operational Creditor. On a query from the Bench as regard to the issue of existence of a dispute prior to issue of notice under Section 8 of IB Code, 2016, our attention was drawn to various correspondences. Learned Counsel Mr. Shashwat Shukla for Operational Creditor specifically referred to page 295 to 297 of the paper-book wherein issues relating to outstanding payment were raised, wherein response of the Corporate Debtor was also noted. He further drew our attention to page no.299 & 300 to show that correspondences were made from time to time as regard to the release of outstanding amount. A query was raised from the Counsel

of the Corporate Debtor who vehemently argued that in this case, dispute pitot to notice under Section 8 of IB Code, 2016 existed existed hence, petition was liable to be dismissed. The Learned Counsel for Operational Creditor however, show that how much outstanding amount was un-disputed drew our attention to page 316 & 317 whereby the Corporate Debtor had acknowledged that sum of Rs.30 lakhs was to be paid by 15.09.2017. Such communication happened on 07.09.2017. Learned Counsel for Operational Creditor further submitted that in response to such agreement, sum of Rs.12 lakhs was released and Rs. 18 lakhs were still outstanding. In support of this fact, our attention was drawn to the Mail written by the Operational Creditor on 16.09.2017. Learned Counsel for the Corporate Debtor on the other hand, referred that issue relating to quality of service remained and ultimately the Corporate Debtor terminated the services of the Operational Creditor. In this regard, our attention was drawn to page 28 & 30 of affidavit in reply of the Corporate Debtor which indicated that personnel of the Operational Creditor were directed to vacate the premises by 22.09.2017. On the basis of this position, Learned Counsel for the Corporate Debtor contended that there was a genuine dispute between the parties which had been raised before issue of notice under Section 8 of IB Code, 2016, hence, this petition was not maintainable.

3. On the other hand, Learned Counsel of the Operational Creditor in the rejoinder argued that such correspondences by no stretch of

imagination could establish existence of dispute rather from the perusal of the such correspondence it was established that the amount was not paid in time by the Corporate Debtor which resulted into huge challenges for the Operational Creditor. It was also claimed that undisputed amount for the service already rendered was more than Rs. 1 lakh, hence, even if it was assumed that such dispute existed then also the application was liable to be admitted. Learned Counsel also placed reliance on the decision of Hon'ble Supreme Court in the case of Mobilex Innovation Pvt. Ltd. in support of its claim.

4. We have considered the submissions made by both the sides and material placed on record. Admittedly, notice under Section 8 of the IB Code, 2016 has been delivered before filing this petition. Affidavit under Section 9(3)(b) of IB Code, 2016 is also on record. Thus, preliminary requirements are met. Now, the question which we need to address is whether there exists pre-existing dispute so that amount claimed is not payable by the Corporate Debtor. In this regard, it is not in dispute services from Operational Creditor have been taken. It is also not in dispute that amount claimed in this application is due and payable pertain to services already rendered. It is also not in dispute that sum of Rs.30 lakhs was found to be payable for such services even by the Corporate Debtor as per mail dated 07.09.2017 and out of which sum of Rs.12 lakhs has also been paid. Thus, on the basis of the fact that there is undisputed liability of Rs.18 lakhs remains to be disputed by the Corporate Debtor, this petition becomes admissible as this

amount is more than threshold limit of Rs. 1 lakh. Further, in our view, there is no merit in the contention of the Corporate Debtor that the petition was not maintainable as arrangement was terminated because that relates to future and does not absolve the Corporate Debtor to pay an accrued and ascertained liability. Before parting, we may also state in such cases i.e running contract, such situation may happen in reality but that does not mean that correspondences showing some differences / requirements / non-performance are of the nature of dispute automatically. The name of IRP has not been proposed as it is not mandatory, hence, we will appoint the same from the list maintained by the IBBI.

5. Thus, this petition is admitted and we order as under:

ORDER

1. Corporate Debtor M/s. E-Complex Pvt. Private Ltd. is admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.
2. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 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.
3. The order of moratorium shall have effect from the date 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.
4. We hereby appoint Mr. Chandra Prakash Jain having Registration No. IBBI/IPA-001/IP-P00267/2017-18/10511 to act as an IRP under Section 13(1) (c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w Regulation made thereunder:
5. 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

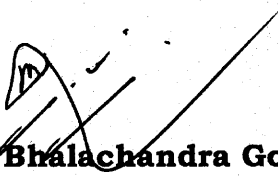
Corporate Debtor are under legal obligation under Section 19 of the Code extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

6. 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.
7. 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.
8. 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. 1,00,000/- (Rupees One Lakh 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. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

9. 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.
10. Accordingly, CP(IB) No. 563/9/NCLT/2018 is allowed.
11. The matter to be listed on 27.01.2021 for further consideration.


**(Virendra Kumar Gupta) Member
(Technical)**


**(Madan Bhalachandra Gosavi)
Member (Judicial)**

Signed on this, the 9th Day of December, 2020.

Prakash