

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

C.P. No.(IB) 578/9/NCLT/AHM/2018

In the matter of:

M/s. Infinova India Private Limited
A1, A2, 2nd Floor
S. No. 14/1/1, Venus Garden
Thite Wasti,
Mudha Bye Pass Road
Kharadi
PUNE 411 014
Maharashtra State

Petitioner
[Operational Creditor]

Versus

M/s. Proeyetech Elektrotekniks Private Limited
131, Heera Panna Complex
Dr. Yagnik Road
Rajkot 360 001
Gujarat State

Respondent
[Corporate Debtor]

Order delivered on 26th August, 2019.

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

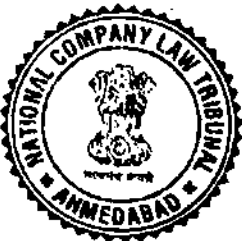
Appearance:

Advocate Mr. Harihar Bhawe & Mr. Sushil Golcha I/b M/s. Bhawe & Company for the applicant
Advocate Mr. Athar Amaan Hava for respondent

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. That, the instant application is filed by Mrs. Rupa Bhawe, Advocate, authorised representative of applicant/ operational creditor M/s. Infinova India Private Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to trigger Insolvency Resolution Process against M/s. Proeyetech Elektrotekniks



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Private Limited (hereinafter called as respondent/corporate debtor).

2. That, the applicant/operational creditor M/s. Infinova India Private Limited, having its registered office at A-1, A2, 2nd Floor, S. No. 14/1/1, Venus Garden, Thite Wasti, Mudha Bye Pass Road, Kharadi, Pune 411 014, Maharashtra State and engaged in the business of manufacturing security products.

3. That, the respondent/corporate debtor M/s. Proeyetech Electrotekniks Private Limited is a company incorporated under the Companies Act, 1956 on 30.09.2003 and having its registered office at 131, Heera Panna Complex, Dr. Yagnik Road, Rajkot 360 001, Gujarat State, having Identification No. U74999GJ2003PTC042989. That, authorised share capital of the corporate debtor is Rs. 21,50,000/- and paid up share capital is Rs. 19,60,600/-. The respondent company is engaged in the business of delivering security systems.

4. It is submitted by the applicant that it is private limited company engaged in manufacturing of security products. That, pursuant to purchase orders dated 16th June, 2017 and 29th June, 2017, the applicant company had supplied goods like Megapixel Camera to the respondent vide invoices dated 9th August, 2017, 31st August, 2017 and 08th September, 2017. That, copies of the purchase orders and

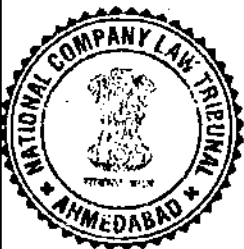


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Invoices thereof are placed at page No. 18 to 25 marked Annexures "A" to "F". That, the applicant had supplied goods worth Rs. 13,07,912/- to the respondent against its order dated 16.06.2017. That, after expiry of the credit period of 30 days, upon receiving a reminder, against the invoice of Rs. 13,07,912/-, the respondent made payment of 50% of the amount i.e. Rs. 6,53,956/-. Subsequently, the respondent issued three cheques dated 16.09.2017, 30.09.2017 and 22.10.2017 worth Rs. 60,15,787/-, 60,15,788/- and Rs. 6,53,956/-. That, all the aforesaid three cheques were dishonoured. That, copy of said cheques and return memos are available at page No. 26 to 34 to the application marked Annexure G to L. That, the total amount of debt is **Rs. 99,85,531.00 (Rupees ninety-nine lacs eighty-five thousand five hundred thirty-one only)**.

5. It is further submitted by the applicant that as the respondent/corporate debtor failed to honour the cheques, the applicant was compelled to issue demand notice dated 29.09.2017 through M/s. Bhave & Company, Advocates & Notary, Mumbai. That, the applicant issued two more demand notices dated 23.10.2017 and 02.11.2017. That, copy of all the three demand notices are placed at page No. 35 to 52 to the application marked Annexure M to O. That, the applicant also sent copy of aforesaid demand notices through e-mail to the respondent. That, copy of such e-



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mails are available at page No. 53 to 67 to the application marked Annexure P to R.

6. It is further submitted by the applicant that despite issuance of demand notices through registered letters and e-mail, the respondent did not make any efforts to clear the outstanding payments. Therefore, the applicant was compelled to issue demand notice in form No. 3 dated 4th April, 2018 through advocate.
7. The applicant has further submitted that the two cheques dated 21st June, 2018 and 06th July, 2018 totally amounting to Rs. 99,85,000/- subsequently issued by the respondent company, were dishonoured. That, despite strenuous efforts the applicant could not recover the long outstanding, hence, made the instant application.
8. The applicant has also submitted copy of e-mails sent to the respondent company informing that the repaired materials have been despatched in different lots and acknowledgements made thereof by the respondent company.
9. Managing Director of the respondent company filed reply inter alia stating that the products were faulty, there are triable issues involved and all such issues can be decided



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only by the trial court. The respondent company has also submitted a copy of the minutes of meeting dated 07.04.2018 stated to have been held between the representatives of the applicant and respondent. That, the respondent company is in running condition and has sales turnover worth Rs. 12.99 crores and net profit of Rs. 5.31 lacs in the financial year 2017-18. That, there are about 13-14 employees working in the company at present whose livelihood are at stake. That, the petition suffers from the vice of delay and laches since the last transaction happened on 08.09.2017 and the instant petition is filed on 05.10.2018 after more than one year. That, entertaining such petition shall not serve the purpose of Section of the IB Code. That, the petitioner has filed cases under Section 138 of the Negotiable Instruments Act, 1881 before the Magistrate, Pune and before the Dy. Commissioner of Police, Pune, hence with a view to avoid multiplicity of proceedings, present petition may be dismissed.

Findings:

10. Heard the learned lawyers appearing for both the sides.

11. On perusal of the records it is found that the respondent company in its reply has alleged that the products supplied by the applicant company were "Faulty". That, the applicant has produced copy of first e-mail dated 25.05.2018 informing the respondent that the first repaired lot of



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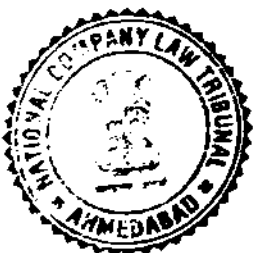
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material has been dispatched and second e-mail dated 29.05.2018 informing the corporate debtor that the first lot of repaired material has been delivered to corporate debtor and asking the corporate debtor to acknowledge the same. That, e-mail dated 29.05.2018 sent by the corporate debtor to the applicant shows acknowledgement of delivery of repaired products by the corporate debtor. Other point raised by the respondent that the petition suffers from delay and laches is not sustainable as the petition filed by the applicant is well within the limitation.

12. On perusal of the material available on record it is also found that, the respondent has not raised any dispute against the claim.

13. While examining an application under Section 9 of the Act, will have to determine the following: -

- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid;
and
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of

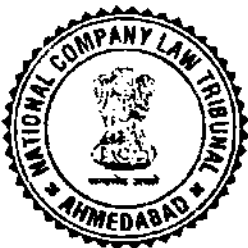


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the demand notice of the unpaid operational debt
in relation to such dispute?

14. In view of the aforesaid discussions and before rejecting and/or admitting the application, we must refer to the legislation guide on Insolvency Law of United Nations Commission on International Trade Law. One of the things the Legislative Guide spoke about was whether the debt is subject to a legitimate dispute or set off, in an amount equal to or greater than the amount of the debt.
15. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default.
16. That, the Application filed by the Applicant is complete in all respects.
17. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this

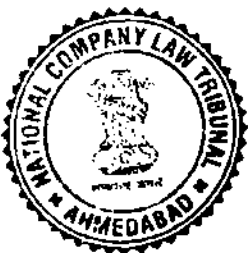


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Adjudicating Authority hereby appoint Shri Bhupendra Singh Narayan Singh Rajput, A-309, ATMA House, Opp. Old Reserve Bank of India, Ashram Road, Ahmedabad 380 009 (cabsrajput309@gmail.com Mobile 9426014155) having registration No. IBBI/IPA-001/IP-P00397/2017-2018/10715 to act as an interim resolution professional under Section 13(1)(c) of the Code.

18. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
19. From the above stated discussion and on the basis of material available on record it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

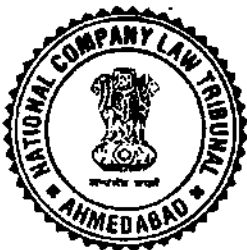


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Adjudicator

20. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of Section 14 of the Code: -
- (i) 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;
 - (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) 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);
 - (iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

21. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

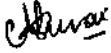


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22. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate Insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
23. This Petition stands disposed of accordingly with no order as to costs.
24. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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