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

C.P. (I.B) No. 345/9/NCLT/AHM/2019 with
IA 125 of 2020

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 29.01.2021

Name of the Company: VVM Chemical Company
V/s
MAPS Enzymes Ltd

Section: 9 of the Insolvency and Bankruptcy Code, 2016/IA for Directions

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 29th day of January, 2021.

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT NO. 1

CP (IB) No.345/9/NCLT/AHM/2019
with
IA No. 125 of 2020

(Application for initiating Corporate Insolvency Resolution Process under Section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of :
Veena Dilip Sharma
Prop. of VVM Chemical Company
B-33 Arbuda Industrial Estate,
Roop Textiles, Narol,
Ahmedabad-382405 **..Operational Creditor**

V/s.

MAPS Enzymes Ltd.
302, Shapath III,
Nr. GNFC Infotower, S G Highway,
Ahmedabad-380054. **.... Corporate Debtor**

Order reserved on 20.01.2021
Order pronounced on 29.01.2021

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

Appearance:

Learned Counsel Ms. Meenu Kumar for the Operational Creditor.
Learned Counsel Mr. Jainish Shah for the Corporate Debtor.

ORDER

[Per : VIRENDRA KUMAR GUPTA, MEMBER(T)]

1. This Application is filed under **Section 9** of the Insolvency & Bankruptcy Code, 2016 by the Operational Creditor **Veena Dilip Sharma Prop. of VVM Chemical Company** to initiate Corporate Insolvency Resolution Process against the Corporate Debtor **MAPS Enzymes Ltd.,** The principal amount of default has been claimed at **Rs. 12,21,942.00** (Rupees Twelve lacs twenty one thousand nine hundred forty two only).

2. The facts, in brief, are that the Operational Creditor is engaged in the business of manufacturing and selling of Textile Auxiliaries. The Operational Creditor supplied the goods/auxiliaries to the Corporate Debtor and raised the Invoices for the same. The details of amount and Invoice are mentioned as under :

Invoice No.	Invoice Date	Amount (Rs.)	Overdue Days
946	09-09-2017	430700.00	476
992	13-09-2017	430700.00	469
1109	05-10-2017	360562.00	447
Total		**12,21,942.00**	

It is submitted that the Corporate Debtor had made adhoc payments and the last payment received on 11.09.2018. The Corporate Debtor had issued three Cheques which were dishonoured due to "in-sufficient fund". The Corporate Debtor again issued three Cheques in favour of the Operational Creditor which were again dishonoured due to same reason " in-sufficient fund" and "Stop Payment" remark. Hence, the Operational Creditor issued Demand Notice to the Corporate Debtor u/s 8 of the Insolvency & Bankruptcy Code, 2016, which was duly received by the Corporate Debtor. However, the Corporate Debtor did not respond to that Notice.

3. It is submitted by the Operational Creditor that No Notice has been served by the Corporate Debtor indicating existence of any dispute with respect to the amount outstanding. Hence, the Operational Creditor has left no option but to file application before this Authority. Affidavit u/s 9(3) (b) of the Insolvency & Bankruptcy Code, 2016 is also filed.

4. The Registry of this Bench had issued Notice to the Corporate Debtor and the Corporate Debtor appeared through its Counsel. Learned Counsel for the Corporate Debtor filed his affidavit in reply

narrating the facts that amount of debt due as stated in Form 5 of the petition is of Rs. 15, 02,137/- is in contradiction with the debt amount as shown in the ledger account produced by the Operational Creditor which shows that outstanding debt is Rs. 12,21,942/- .

5. It was further submitted that goods supplied by the Operational Creditor were not as per the specification/orders given by the Corporate Debtor. This aspect was raised with the Operational Creditor telephonically as well as orally to remain unresolved and goods of that payment was not made. In the rejoinder, the Learned Counsel for the Operational Creditor submitted that technical defect as pointed out by the Corporate Debtor had already been rectified, it was also pleaded that the petition was signed by the Advocate who was competent to do so. Hence, on this ground there could not be raised any question regarding the maintainability of the Form 3 and Form 4. For this proposition Learned Counsel relied on the decision of the Hon'ble NCLAT in ***Uttam, Galva Steels Ltd vs. DF deutsche Forfait AG Company Appeal (AT) (Insolvency) 39 of 2017.*** It was claimed that first three Cheques were dishonoured because of insufficient funds and proceeding under Section 138 of

the Negotiable Instruments Act, 1881 were undertaken. As far as pre-existing dispute was concerned, it was a blatantly instance or "afterthought" as Corporate Debtor neither replied to demand notice as required under Section 8(2) of the Insolvency & Bankruptcy Code, 2016 within 10 days from the receipt of the notice under Section 8(1) of the Insolvency & Bankruptcy Code, 2016. Further, such dispute was based on oral/telephonic conversations whereas other correspondence had happened through RPAD or E-mail. Thus, such claims of the Corporate Debtor were liable to be rejected.

6. We have considered the submissions made by both sides and material available on record. It is admitted position that the amount raised through this invoice is well within limitation. The amount is due and payable. It is also noted that Cheques were issued on two occasions and on first occasion the Cheques have been dishonoured for the reason "insufficient funds" which fact shows that there was prima facie no dispute as regards to the quality or other defect in the supply made by the Operational Creditor. We also find that no evidence for such so called pre-existing dispute has been brought on record in support of the same. It is also noted that even reply to

demand notice delivered under Section 8 has not been given within statutory time of 10 days, which fact is sufficient at standalone basis to dismiss this application.

7. We are further of the view that in case of such commercial legislation the technical defect cannot be given too much importance. Further, Operational Creditor relied upon the decision of the Hon'ble Supreme court of India in the case of ***Macquarie Bank Ltd vs Shilpi Cable Technologies Ltd., Civil Appeal No. 15135 of 2017,*** in support of this claim. The Application is otherwise complete and defect free and also complies with all requirements of the Code and Regulations made thereunder. Accordingly, this application can be admitted as such amount outstanding is more than Rs. 1.00 lacs being threshold limit as prescribed under Section 4 of IBC, 2016.

8. **As far as IA No. 125 of 2020** is concerned the Operational Creditor has claimed that this petition was maintainable as it had been filed on behalf of the Sole Proprietorship Firm. The Learned Counsel for the Corporate Debtor, however, contended that the same was not maintainable. The Learned Counsel for the Operational Creditor placed reliance on the few decisions of co-ordinate Benches of

NCLT. However, it was pointed out that this Bench has also taken view considering those decisions that application filed by or on behalf of the Sole Proprietorship Firm was maintainable. It is also noted that even Hon'ble NCLAT have taken this view recently. Thus, there is no substance and merits in the contention of the Corporate Debtor, accordingly, we allow this application.

9. The name of the IRP has not been proposed for this reason only ultimately the Committee of Creditors consisting of Financial Creditor would appoint or may change the IRP. In this situation, it has been prayed that this Authority may appoint IRP from the list approved by the IBBI. Hence, we shall appoint IRP, whose name appears in the approved list of the IBBI and against whom disciplinary proceedings are not pending.

10. In the result, the application filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 stands allowed and disposed of in terms of following order :

NATIONAL COMPANY LAW TRIBUNAL AHMEDABAD

ORDER

1. The application is admitted and the moratorium 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.

2. 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.

3. The Operational Creditor has proposed the name of the

Interim Resolution Professional(IRP). Therefore, this Adjudicating Authority hereby appoint **Mr. Sushil Vishwakant Tewary, Insolvency Professional, Regn No. IBBI/IPA-001/IP-P01288/2018-2019/12049,** e-mail ID: **sushilt@hotmail.com (M) 9824312705** to act as an IRP under Section 13(1) (c) of the Code.

4. 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.

5. 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.

6. 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.

7. 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. 50,000/- Rupees Fifty Thousand 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.

8. 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.

9. Accordingly, CP (IB) No.345/9/NCLT/AHM/2019 with IA No. 125 of 2020 is allowed. IA No. 125 of 2020 stands disposed of.

The matter to be listed on 10.03.2021 for further consideration.

(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)

(MADAN B GOSAVI)
MEMBER (JUDICIAL)

Signed on this, the 29th January, 2021.

Certified to be True Copy of the Original
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad