

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

C.P. No.(IB) 312/9/NCLT/AHM/2018

In the matter of:

M/s. Narayani Ispat Limited.
30-15-138/20, 2nd Floor
Binayaka Complex
Visakhapatnam 530 020 ...

Petitioner
[Operational Creditor]

Versus

M/s. Aditya Exim Limited
G-1, "A" Wing, Shreeji Astha Avenue
Opp. Chichi Tower
Ellora parl
Vadodara 390 023
GUJARAT STATE ...

Respondent
[Corporate Debtor]

Order delivered on 26th September, 2019.

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

Appearance:

Advocate Mr. Vishal Raval for the applicant.
Advocate Mr. Harmish K. Shah for respondent

ORDER

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

1. The instant application is filed by Mr. Bivor Bagaria, authorised signatory of the applicant/operational creditor M/s. Aditya Exim Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"].
2. That, the applicant/operational creditor M/s. Narayani Ispat Limited is a limited company incorporated under the Companies Act, 1956, having identification No.



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U27109WB1996PTC08080314 and having its office at Binayaka Complex, Visakhapatnam 530 020 is engaged in the business of supply of steel, coal, minerals, import, export, logistics, warehousing, agriculture, brokerage etc.

3. That, the corporate debtor M/s. Aditya Exim Limited is a company incorporated under the Companies Act, 1956 on 16th May, 1995 and having its registered office at Ellorapark, Vadodara 390 023, Gujarat State, having identification No. U51100GJ1995PLC025891. That, authorised share capital of the corporate debtor is Rs. 3,00,000/- and paid up share capital is Rs. 2,03,85,660/-.
4. The applicant has submitted that it has been regularly supplying Prime Blooms to the respondent company and had supplied goods during the period from 02.05.2015 to 10.06.2015 and had raised four invoices copy of which are placed at **page No. 9 to 12** and computation of the invoices are placed at **page No. 13** to the application totally amounting to Rs. 27,02,448/-. That, the total amount of debt due and payable by the respondent company to the applicant is **Rs. 40,16,419/- (Rupees forty lacs sixteen thousand four hundred nineteen only)** which include interest amount of Rs. 13,13,971/-.
5. In support of its claim, the applicant has furnished copy of the following documents along with the petition: -

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Sr. No.	Particulars	Page No.
01	Power of attorney/Board Resolution in favour of Mr. Bivor Bagaria	8
02	Invoices	9-12
03	Detailed working/computation	13
04	Certificate from the bank that no amount has been received from the corporate debtor	14
05	"C" forms	15-16
06	Ledger maintained by operational creditor	17-21
07	Notice dated 15.03.2018 issued under IB Code	22-25
08	Proof of service and proof of delivery of demand notice dated 15.03.2018	26-27
09	Notice dated 13.06.2017	28-31
10	Reply dated 19.07.2017 to notice dated 13.06.2017	32-37
11	Counter notice dated 19.07.2017	38-46
12	Rejoinder notice dated 05.10.2017	47-51
13	Confirmation of accounts dated 28.08.2015 from 01.04.2014 to 27.08.2015	52
14	Affidavit in support of application	53

6. The respondent filed affidavit in reply inter alia stating that the respondent had informed the petitioner that the goods ordered were meant to be used in manufacturing products which were in-turn to be exported by the respondent to its customers situated in various foreign countries and needs to be supplied as per the chemical composition and other specifications required by the respondent. That, the petitioner was to supply the goods within one week from the date of placing of the respective order by the respondent. However, the petitioner had time and again delayed the delivery of material to the respondent which in turn caused huge losses to the respondent.

7. It is further submitted by the respondent that against purchase orders worth Rs. 54,80,267.24, the petitioner had



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supplied materials worth Rs. 1,65,77,309/- on oral understanding that the respondent shall pay amount for goods which are of the quality as has been demanded by the respondent. That, out of the materials worth Rs. 1,65,77,309/- supplied by the petitioner to the respondent, respondent had paid a cumulative amount of Rs. 1,20,07,494/- to the petitioner and the balance amount of Rs. 45,69,815/- is the amount of goods which were found to be defective by the respondent and the petitioner was asked by the respondent to lift them.

Findings:

8. Heard the arguments of the learned counsels appearing for both the sides as also seen application, written objections and the documents annexed therein.
9. On perusal of the records it is found that the first contention raised by the respondent is that the material supplied by the applicant were of inferior quality as a result of which the respondent incurred heavy losses. That, the second contention raised by the respondent is that against the purchase order worth Rs. 54,80,267.24, the petitioner had supplied goods worth Rs. 1,65,77,309/- on oral understanding and against such supply the respondent had paid cumulative amount of Rs. 1,20,07,494/-. The balance amount of Rs. 45,69,815/- is the amount of goods which were found to be defective by the respondent and the



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petitioner was asked by the respondent to lift the defective goods.

10. On perusal of the records all the four invoices raised against which the claim is made by the petitioner are of the period from 02.05.2015 to 10.06.2015, whereas, the bills referred to in the reply filed by the respondent are dated 27.04.2013, 09.05.2013 and 29.04.2015. A bare reading of the reply filed by the respondent goes on to show that the respondent is trying to corroborate with the goods supplied by the applicant in the year 2013. Similarly, the e-mails produced by the respondent at page No. 18 to 40 regarding defective materials said to have been supplied by the applicant are of different dates of the year 2014 which clearly shows that after consuming the goods supplied by the applicant, the respondent has tried corroborate the events of the previous year.
11. On perusal of the records it is found that the applicant had issued demand notice on 15.03.2017 which is replied by the respondent, through advocate, on 19.07.2017, say after four months.
12. A combined reading of the application and the reply filed by the respondent it is evident that the respondent has failed to produce documents in support of rejection of goods and debit note raised against such rejection, if any.



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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 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



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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 on 02nd July, 2018 is complete in all respects.
17. This Adjudicating Authority hereby appoint Shri gordhanbhai Ratnabhai Godhani, 16, Sakarta Society, Kargil Chowk, Punagam, Surat 395 010 [(rgodhani@gmail.com)Mobile 7575061718] having registration No. IBBI/IPA-001/IP-P01201/2018-2019/11921 to act as an interim resolution professional under Section 13(1)(c) of the Code.
18. 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.
19. 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: -



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- (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.

20. 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.

21. 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



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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.

22. This Petition stands disposed of accordingly with no order as to costs.
23. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

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Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Manorama
Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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Certified to be True Copy of the Original
[Signature]
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad
27/10/19