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

CP(IB) 332/NCLT/AHM/2020

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 15.01.2021

Name of the Company: SVM Cera Pvt Ltd
V/s
Gokul Ceramic Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code, 2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER

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

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 15th day of January, 2021

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 332/9/NCLT/AHM/2020

In the matter of:

SVM Cera Private Limited
5188/A, GIDC Estate
Ankleshwar 393 002
Dist. Bharuch
GUJARAT STATE : **Petitioner**
Operational Creditor

Versus

M/s. Gokul Ceramic Private Limited
8-A, National Highway,
Village Dhuva 363 622
Tal. Wankaner
Dist. Rajkot
GUJARAT STATE : **Respondent**
[Corporate Debtor]

Order delivered on 15th January, 2021

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

Appearance:

Petitioner : Mr. Amrish Gandhi, PCS
Respondent :

ORDER

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

1. Mr. Hansraj Prajapat, Director of **M/s. SVM Cera 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, a private limited company, having its registered office at GIDC, Ankleshwar, Dist. Bharuch, Gujarat, has submitted that the respondent is indebted a total sum of **Rs. 1,39,73,028/- (Rupees one crore thirty-nine lacs seventy-three thousand twenty-eight only)** consisting of principal outstanding amount of Rs. 59,64,807/- (Rupees fifty-nine lacs sixty-four thousand eight hundred seven only) and accrued interest of Rs. 80,08,221/- (Rupees eighty lacs eight thousand two hundred twenty-one only) towards supply of goods made during the period from 11.02.2014 to 16.04.2014 which has fallen due on the date of respective invoices as per the table annexed to the application at page 43.

3. In support of its claim, the applicant has annexed to the application copy of the invoices, tabular format showing amount dues from corporate debtor along with interest, demand notice in form 3 and form 4, affidavit in support of application etc.

4. The applicant has stated that despite repeated reminders the respondent has not paid the outstanding operational debt, therefore, the applicant was compelled to issue demand notice under Section 8 of the I & B Code in form 3 on 05.03.2020 calling upon the respondent to clear the operational debt.

5. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956, on 24th November, 2003 and having identification No. U26914GJ2003PTC043228 and having registered office at Tal. Wankaner, Dist. Rajkot, Gujarat State. Authorised share capital of the respondent company is Rs.5,00,00,000/- and paid up share capital is Rs. 5,00,00,000/-.

Findings:

6. Heard learned counsels appearing for the petitioner and perused the application and documents annexed thereto.

7. The instant petition filed on 28.09.2020 was notified for the first time on 15.10.2020. On perusal of the records it is found that despite giving number of opportunities neither the corporate debtor filed any reply nor represented through counsel. Since the service was returned, Adjudicating Authority, vide order dated 25.11.2020, had directed the petitioner to make paper publication which was effected by the petitioner.

8. Record shows that the corporate debtor is having a running account with the operational creditor and has been making payments periodically. The operational creditor has filed copy of bank statement (page 75-244). On perusal of the record it is found that the operational debt involves the period of 2014-15 and the corporate debtor has made payments during the financial year 2018-19 and has acknowledged the operational debt. Moreover, duly sealed and signed confirmation of ledger accounts annexed to the application (page 245-250) establishes the operational debt beyond doubt.

9. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor.

10. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the

application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.

11. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.

12. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ (JP) 2 SC*** that 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?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

13. Thus, under the facts and circumstances and as discussed herein 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 and it fulfilled the requirement of I & B Code. No dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-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 and

the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

14. 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 direct the Interim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

15. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

16. 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.

17. 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.

18. 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.

19. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Darshan Bharatbhai Patel, 31, Vrindavan, Nr. Akshar Flat, Inquilab Society, Gulbai Tekra, Ahmedabad 380 015 having registration No. IBBI/IPA-001/ IP- P01579/ 2018-2019 /12442 (ca.darshanbpatel@gmail.com) to act as an interim resolution professional under

Section 13(1)(c) of the Code. 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 along with first progress report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

20. This Petition is accordingly admitted.

21. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.

22. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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