

BEFORE THE AJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD

C.P. (I.B) No. 188 /9/NCLT/AHM/2019

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 16.09.2019

Name of the Company: Shree Balaji Metal & Alloys
V/s.
Electra Accumulators Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

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

1. ISHAN SHAM ADV. Respondent Is

2.

ORDER

The Respondent is represented through learned counsel.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL


MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 16th day of September, 2019

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

C.P. No. (IB) 188/9/NCLT/AHM/2019

In the matter of:

Shree Balaji Metal & Alloys

19, Shiv Shakti Estate
Opp. Gujarat Bottling
Nagarwell Hanuman Road
Rakhial
AHMEDABAD 380 023

:

Petitioner
Operational Creditor

Versus

Electra Accumulators Ltd.

19, Mahavir Nagar
N.H. No. 8
Vapi 396 195
Dist. Valsad
Gujarat State

:

Respondent
Corporate Debtor

Order delivered on 16th September, 2019.

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Mr. Ishan Shah for respondent
PCS Mr. Amrish Gandhi for operational creditor

ORDER

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

1. Mr. Chattarlal J. Asawa, HUF, on behalf of the operational creditor M/s. Shree Balaji Metal & Alloys 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"].

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2. The applicant/operational creditor is a proprietorship company of Mr. Chhattarlal J. Asawa having PAN AADHA4975P and GST No. 24AADHA4975PIZW and having its office at Nagarwell Hanuman Road, Rakhial, Ahmedabad is engaged in the supply of chemicals like lead selenium, lead oxide etc.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 26.05.2009 having identification No. U29100GJ2009PLC057053 having registered office at 19, Mahavir Nagar, N.H. No. 8, Vapi 396 195, Gujarat State. Authorised share capital of the respondent company is Rs. 15,00,00,000/- and paid up share capital is Rs. 7,64,50,000/-.
4. The applicant/Petitioner has submitted that the applicant had raised invoices towards supply of goods like lead selenium, lead oxide etc. to the respondent during the period from 24th May, 2014 to 29th October, 2018 against which a total sum of **Rs. 5,88,95,336/- (Rupees five crore eighty-eight lacs ninety-five thousand three hundred sixty-six only)** as per the invoices/debit notes placed at page No. 5 to 28 to the application is outstanding which includes interest of Rs. 2,33,76,806/- (Rupees two crores thirty-three lacs seventy-six thousand eight hundred six only).

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5. It is submitted by the petitioner that demand notice dated 15.01.2019 was served upon the respondent on 19.01.2019 at its registered office as per the track report submitted with the application and placed at page No. 38 to the application.
6. The petitioner further submitted that despite service of the demand notice, the corporate debtor has neither given any notice relating to a dispute within the meaning of Section 8 (2) of the IB Code, 2016 in connection with unpaid operational debt nor has provided any notice of any suit or arbitration proceedings. That, in the continuous business transactions between the operational creditor and corporate debtor, during the period from 23rd May 2014 to 15th October, 2018, operational creditor had raised several invoices. That, the demand notice issued on the corporate debtor dated 19th January, 2019 is not time barred by limitation.
7. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Company master data of corporate debtor	1-2
2	Tabular format showing amount due from corporate debtor along with interest	3
3	Bank statement of the operational creditor	4
4	Invoices raised by the operational creditor	5-28
5	Demand notice in form - 3	29-31
6	Form - 4 issued by operational creditor dated 15.01.2019	32-33
7	Written communication by proposed IRP	34-37
8	Delivery report of demand notice	38-40
9	Affidavit in support of application under IB Code	41-43
10	Affidavit verifying facts & documents in support of the petition	44-52

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8. The respondent/corporate debtor filed reply in affidavit stating that its operations have been severely affected due to working capital constraints and lack of financial liquidity which has also resulted in substantial losses in recent years. That, efforts to raise financial resources to meet its financial liabilities have not met with any success so far despite efforts and the corporate debtor is unable to make payment. The respondent further stated in his reply affidavit that due to above situation he is unable to pay the dues of the applicant.

Findings:

9. Heard the learned counsels for both the sides and perused the documents submitted by the parties.
10. On perusal of the records it is found that the respondent has not raised any dispute regarding the operational debt payable to the operational creditor. Moreover, the respondent has accepted and acknowledged the claim amount by way of affidavit.
11. 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)

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(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?

12. 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.

13. 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

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record, petitioner is able to establish that there exists debt as well as occurrence of default.

14. That, the Application filed by the Applicant is complete in all respects.
15. The applicant/operational creditor has proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Ritesh Prakash Adatiya, E-904, Iscon Platinum, Bopal Cross Road, Bopal 380 054, Dist. Ahmedabad having registration No. IBBI/IPA-001/IP-P01334/2018-2019/12013 to act as an interim resolution professional under Section 13(1)(c) of the Code.
16. 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 Insolvency 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.

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17. 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.
18. 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.
19. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be


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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.

20. 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.
21. This Petition stands disposed of accordingly with no order as to costs.
22. 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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