



**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**NEW DELHI**  
**BENCH-IV**

**IB-305/(ND)/2020**

Section: Under Section 9 of the Insolvency and Bankruptcy Code, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

**In the matter of:**

Satish Sahebro Deotale

...Operational Creditor/Applicant

**Versus**

Amerex Private Limited

...Corporate Debtor/Respondent

**Coram:**

**MR. DHARMINDER SINGH, Hon'ble Member (Judicial)**

**MR. L.N GUPTA, Hon'ble Member (Technical)**

**Order Delivered on: 05.08.2022**

**ORDER**

**PER MR. DHARMINDER SINGH, MEMBER- JUDICIAL**

This is an application filed by Satish Sahebro Deotale, the applicant/operational creditor (for brevity Operational Creditor) to initiate CIRP against the Respondent company/Corporate Debtor (For brevity Corporate Debtor) M/s Amerex Pvt. Ltd. under section 9 of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') with a prayer for initiation of Corporate

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Insolvency Resolution Process in respect of the corporate debtor for alleged default having an outstanding balance of Rs. 24,05,062/-.

2. The details of transactions leading to the filing of this petition as averred by the petitioner are as follows:

- a. The Operational creditor is partnership firm and engaged primarily in manufacturing of electrical equipment's.
- b. That the corporate debtor has been purchasing Mixer Grinders from the operational creditor from July 2019 against various invoices. Further, the corporate debtor duly received the goods upon the trust that it will be making the payment for those goods by FIFO method, wherein all the payments made by the corporate debtor are adjusted towards pending bills on that date.
- c. The corporate debtor has supplied material to the operational creditor against the following invoices raised on different dates:-

S.NO.	INVOICE NO.	DATE OF INVOICE	INVOICE AMOUNT	OUTSTANDING AMOUNT (In Rupees)
1.	09	19.07.2019	797497	398748
2.	10	21.07.2019	525849	525849
3.	13	02.08.2019	797497	797497
4.	14	26.08.2019	534445	534445
5.	15	28.08.2019	547272	547272
AMOUNT OUTSTANDING				2803811
PAYMENT RECEIVED AFTER SERVING OF DEMAND NOTICE				398749
TOTAL AMOUNT				2405062

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- d. It is stated that after the continuous follow-up for payment, the corporate debtor had issued Post Dated Cheques (PDC), but the same were dishonoured. The details of the cheques dishonoured along with Bank's remark are as follows:

S.NO	PDC CHEQUE NO.	DATED	AMOUNT	REMARKS
1	329615	07.09.2019	398748	Exceeds Arrangement
2	329647	13.09.2019	525849	Exceeds Arrangement
3	329646	17.09.2019	398748	Stopped by Drawer
4	329645	24.09.2019	398749	Stopped by Drawer
5	397554	12.10.2019	534445	Stopped by Drawer
6	397555	18.10.2019	547272	Stopped by Drawer
		<b>TOTAL</b>	2803811	

- e. Despite numerous telephonic conversations and emails, the corporate debtor neither paid nor disputed the outstanding operational debt.
- f. As per part-IV of the application an amount of Rs.24,05,062/- is still due and outstanding to be paid by the corporate debtor. The debt became due on 31.10.2019, i.e. the last payment made by corporate debtor.
- g. The applicant issued Demand Notice u/s 8 of the Code on 18.11.2019 duly served at the registered office of the corporate debtor. The postal receipts and tracking report has been placed

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on record. The applicant has filed an affidavit under Section 9 (3) (b) stating that no payment or notice of dispute has been received by applicant after service of demand Notice.

- h. It is further submitted that the corporate debtor after the receipt of the demand notice had made the part-payment of Rs. 39,87,749/- leaving the outstanding amount of Rs.24,05,062/- due.

3. The Corporate Debtor in its reply to the application has submitted that:

- i. The Part-I of the present Petition in Form 5 reveals that the same has been filed by one "Mr. Satish Sahebro Deotale' as the Operational Creditor. Whereas, the documents annexed along with the Petition reveals that Mr. Satish Sahebro Deotale is a partner of M/s Aster Appliances. However, there is no authorisation by way of a resolution or authority letter annexed along with the Petition, authorising Mr. Satish Sahebro Deotale to file the present Petition on behalf of M/s Aster Appliances.
- j. It is submitted that the present Petition is liable to be rejected at the very threshold as there is a pre-existing dispute between the parties.
- k. Furthermore, it is submitted that in the regular course of business the Corporate Debtor observed quality issues in respect of the Goods supplied. Due to the said deficiency and sub-standard quality, the goods of the Corporate Debtor received a



lot of complaints from its sellers & end customers and the same was duly informed to the Operational Creditor.

1. It is submitted that the Corporate Debtor is not liable to any amount as claimed in the Petition by the Operational Creditor. The Corporate Debtor has incurred heavy losses for which it reserves its right to take appropriate action available them in law.
4. The applicant has submitted a rejoinder wherein averments made by the corporate debtor in the reply are denied and it is being stated that-
  - a. Corporate Debtor has already admitted its debt vide email 25.11.2019 after severing the demand notice and also made a part payment of Rs.3,98,749/-. Copy of the email and bank statement has been placed on record.
  - b. During the pendency of the present petition, the corporate debtor approached the operational creditor, while admitting his liability towards the Operational Creditor and offered to pay sum of Rs. 24,05,000/- referred to as "Settlement Amount" in full and final settlement of the outstanding dues wherein both the parties entered into a memorandum of understanding on 25.01.2021, as per which the Corporate Debtor agreed to pay the Settlement Amount by giving post-dated cheques. Further, the Operational Creditor filed an application for withdrawal of the main petition and the Adjudicating Authority allowed the withdrawal of the same, with liberty to revive the main petition in the event of

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default by the corporate debtor. Copy of Order dated 26.02.2021 and settlement agreement dated 25.01.2021 has been placed on record.

- c. There is no pre-existing dispute between the parties. It is submitted that the corporate debtor has admitted its debt in various emails and has failed to provide any evidence and proof of any pre-existing dispute.
  - d. It is submitted that the Operational Creditor has supplied goods to the Corporate Debtor from time to time but the corporate debtor was never regular in payments. Further, the Corporate Debtor never raised any objection regarding the quality of goods and only after the initiation of proceeding before the Adjudicating Authority the Corporate Debtor tried to create false dispute with regard to quality of goods.
  - e. It is stated that the corporate debtor has already admitted its debt and inability to pay the same in the various communications.
5. We have heard Ld. Counsel for both the parties and perused the averments made in the application, reply, rejoinder filed by the parties. The corporate debtor has raised dispute over issues regarding material supplied by the operational creditor. However, the corporate debtor itself has admitted its liability to pay by making part-payment and by entering into a settlement agreement 25.01.2021. Therefore, the objection raised by the corporate debtor is not tenable.

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6. Further, the corporate debtor has raised objection on authority of a partner of the partnership firm. It is well settled law that the partnership firm is not a legal entity and it can only be represented through its partner only. Therefore, objection against authority of one of the partners of a partnership firm is not maintainable.
7. In view of the discussion and the fact that since the debt is already admitted by the corporate debtor, the present application is admitted in terms of section 9(5) of the Code.
8. The applicant has not proposed the name of an IRP, therefore, this bench appoints Varun Sethi, as the Insolvency Resolution Professional of the corporate debtor. The registration number of the IRP being IBBI/IPA 002/IP-N01106/2021-2022/13634 and email id [ca.varun.sethi.81@gmail.com](mailto:ca.varun.sethi.81@gmail.com). IRP above named is appointed subject to the condition that no disciplinary proceedings are pending against him. The specific consent is required to be filed in Form 2 of Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rule, 2016 and made disclosures as required under IBBI (insolvency Resolution Process for Corporate Persons) Regulations, 2016.
9. We direct the applicant to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional, namely Varun Sethi to meet out the expense to perform the functions assigned to him in accordance with regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within one week from the date of receipt of this order by the

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Operational Creditor. The amount however be subject to adjustment by the Committee of Creditors, as accounted for by Interim Resolution Professional, and shall be paid back to the Operational Creditor.

10. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016, moratorium as envisaged under the provisions of Section 14(1), shall follow in relation to the corporate debtor, prohibiting as per proviso (a) to (d) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(4) of the Code shall come in force.
11. A copy of the order shall be communicated to the applicant, Corporate Debtor and IRP above named, by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records. Applicant is also directed to provide a copy of the complete paper book to the IRP. A copy of this order is also sent to the ROC for updating the Master Data. ROC shall send compliance report to the Registrar, NCLT.

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**(L.N GUPTA)**  
**MEMBER (T)**

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**(DHARMINDER SINGH)**  
**MEMBER (J)**