BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

C.P.(I.B) No. 473/NCLT/AHM/2018

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 27.01.2020

Name of the Company: SVM Cera Pvt Ltd
V/s
Gangotri Glazed Tiles Pvt Ltd

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Shyam K Shelat	Petitioner's Adv.		
2.				

ORDER

The Petitioner is represented through learned counsel.

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

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 27th day of January, 2020

MANORAMA KUMARI
MEMBER JUDICIAL

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BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 473/9/NCLT/AHM/2018

In the matter of:

SVM Cera Private Limited.
Plot No. 4802/B, GIDC Estate
Ankleshwar 393 002
Gujarat State : **Petitioner**
Operational Creditor

Versus

Gangotri Glazed Tiles Private Limited
Survey No. 130/p
National Highway 8-A
Taluka Wankaner
Dhuva,
GUJARAT STATE 363 622 : **Respondent**
Corporate Debtor

Order delivered on 27th January, 2020

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

Appearance:

Advocate Mr. Mrugesh A. Vyas with advocate Mr. Shyam K. Shelat for the operational creditor

ORDER

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

1. Mr. Kanti Mal Bhandari, Director, being authorised person 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 petitioner/operational creditor is a private limited company having identification No. U01132GJ1986PTC101100 and having registered office at GIDC, Ankleshwar, Dist. Bharuch, Gujarat State.

3. The respondent/corporate debtor is a private limited company registered under the Companies Act, incorporated on 02.08.2007 and having identification No. U26916GJ2007PTC051437 and having registered office at Tal. Wankaner, Dhuva, Gujarat State. Authorised share capital of the respondent company is Rs. 2,00,00,000/- and paid up share capital is Rs. 1,98,55,000/-. The respondent company was incorporated with the objective of carrying out the business of glazed tiles.

4. The applicant/Petitioner has submitted that it had sold various shipments of raw material and ceramic glaze mixture to the respondent company from 2014 to 2015 and the bills raised against such supplies fell due on 25.12.2014, 09.02.2015, 13.02.2015, 13.03.2015, 14.03.2015, 24.03.2015 and 01.04.2015. That, total amount of the aforesaid bills comes to Rs. 13,26,214/- as reflected in the ledger of the operational creditor for the period from 01.04.2014 to 31.10.2017. That, the aforesaid dues has also been acknowledged by the respondent company by way of confirmation of accounts letter dated 01.04.2017.

5. The applicant has further stated that the amount due against the sale of raw materials and ceramic glaze mixture by the applicant has been duly reflected in the Sundry Debtors list for the year 2015-16 and 2016-17 as certified by independent Chartered Accountants. That, despite such clear demonstration of outstanding debt in the confirmation of accounts letter dated 01.04.2017 and the sundry debtors list, the respondent company has failed to repay the outstanding amount.

6. It is further stated by the applicant that despite several phone calls and persons visits to the respondent's office between December 2014 and October 2017, the respondent company has not cleared the operational debt. Therefore, the applicant company was constrained to issue demand notice under Section 8(1) of the I & B Code on 10.11.2017 calling upon the respondent to pay the outstanding amount of **Rs. 13,26,214/- (Rupees thirteen lacs twenty-six thousand two hundred and fourteen only).** That, the corporate debtor has not raised any objection with regard to the default committed in making payment of Rs. 13,26,214/- to the petitioner.

7. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Form 5 under I & B Code	3
2	Affidavit in support of form 5	8
3	Master data of the respondent company	16
4	Ledger account of the applicants reflecting the amount advanced to the respondent company	17
5	Confirmation of accounts letter dated 1.4.2017	20
6	Applicant company's sundry debtors list for the years 2015-16 and 2016-17	21
7	Bills raised by the applicant against materials supplied	24
8	Demand notice dated 10.11.2017	31
9	Applicant's bank statements	37
10	Board Resolution of the applicant company	132

Findings

8. On perusal of the records it is found that despite giving several opportunities the respondent has not appeared either in person or through advocate. Therefore, the matter is heard in absence of the respondent as the service is complete. Heard at length the learned lawyer appearing for the petitioner and perused the documents annexed to the petition.

9. On perusal of the records it is found that as per the order of the adjudicating authority dated 04.12.2019, the operational creditor has effected paper publication and proof thereof has been submitted.

10. On perusal of the records it is also found that even after the paper publication the respondent has not come forward and has submitted nothing in writing.

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11. 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 to the Applicant.

12. In the instant case, 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'.

13. On perusal of the records it is also found that the corporate debtor has never raised any dispute on issuance of notice u/s 8 of the I & B Code nor have ever raised any dispute prior to the issuance of notice.

14. From the above discussions it is evident that the respondent has defaulted the debt and has admitted the operational debt.

15. 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)

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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?

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

16. 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 and it fulfilled the requirement of I & B Code. That, service is complete and 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.

17. 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.

18. 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.

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: -

(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 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. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint CS Mr. Keyur J. Shah, 408, Chitrarath Complex, Off. C.G. Road, Navrangpura, Ahmedabad 380 009, Gujarat (cskeyurshah@gmail.com) (9909702182) having registration No. IBBI/IPA-002/IP-N00244/2017-18/10729 to act as an interim resolution professional under Section 13(1)(c) of the Code.

23. This Petition is accordingly admitted.

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

25. 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)**	27.1.2020 **Ms. Manorama Kumari** **Adjudicating Authority** **Member (Judicial)**

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