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

C.P.(I.B) No.90/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 29.01.2021

Name of the Company: Enviro Fluid Consultants
V/s
Jay Formulations Ltd

Section 9 of the Insolvency and Bankruptcy Code, 2016

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

ORDER

None appeared on behalf of the parties.

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

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 29th day of January, 2021

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BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 90/9/NCLT/AHM/2020

In the matter of:

M/s. Enviro Fluid Consultants
601, Arved Transcube Plaza
Above GSRTC Bus Stand
Ranip
Ahmedabad
GUJARAT STATE : **Petitioner**
Operational Creditor

Versus

Jay Formulations Ltd.
13, 1st Floor, Harikrishna Complex
Behind Deepli Cinema
Ashram Road
Ahmedabad 380 009
GUJARAT STATE : **Respondent**
[Corporate Debtor]

Order delivered on 29th January, 2021

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

Appearance:

Petitioner	:	Mr. Pranav D. Thakkar, Advocate
Respondent	:	Dr. Kamlesh Vaidankar, Advocate

ORDER

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

1. Mr. Nikunj Makwan, partner of **M/s. Enviro Fluid Consultants** 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 partnership firm, having its registered office at Ahmedabad, engaged in supply of effluent treatment plant with piping and electrification, has submitted that the respondent is indebted a total sum of **Rs. 5,02,096/- (Rupees five lacs two thousand ninety-six only)** towards the services provided by the operational creditor. That, the corporate debtor approached the operational creditor for availing supply of effluent treatment plant with piping and electrification and issued purchase order dated 10.10.2018 for total sum of Rs. 8,21,280/- and as per the payment terms mentioned in purchase order full payment was to be made within 90 days of the completion of work. That, in terms of the purchase order, the operational creditor raised bills of various dates for supply of goods as mentioned in purchase order and the said bills were duly received and acknowledged by the corporate debtor. That, the corporate debtor made on account payments on various dates amounting to Rs. 3,66,384/- and the last payment was received on 11.01.2019. That, the corporate debtor never raised any dispute regarding quality and quantity of the goods/services during erection and installation of the project nor even thereafter. That, the operational creditor repeatedly requested the corporate debtor for payment of dues, however, corporate debtor failed to make payment. That, having failed to receive the payment, the operational creditor was compelled to issue demand notice dated 30.08.2019 under section of the I & B Code in form 3. Regardless of that, the corporate debtor failed to release the payment within ten days from the date of the receipt of the notice, therefore, this petition. That, the corporate debtor defaulted the payment from 15.02.2019 & 31.05.2019 which is the due dates of the bills raised after considering 60 days of credit period.

3. In support of its claim, the applicant has annexed to the application copy of the documents like; general affidavit verifying the petition, affidavit u/s 9 (3) of the I & B Code, copy of certificate of registrar of firm and partnership deed of operational creditor, copy of purchase order dated 10.10.2018, copy of various bills raised by the operational creditor, copy of ledger account, various email sent to the corporate debtor to release the payment, demand notice in form No. 3 & 4 etc.

4. The respondent/corporate debtor is a limited company registered under the provisions Companies Act, 1956, on 15th June, 1988, having identification No. U17119GJ1988PLC010855 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs.3,05,00,000/- and paid up share capital is Rs. 1,57,32,690/-.

5. The respondent/corporate debtor filed affidavit in reply inter alia stating that the petition suffers from various technical infirmities like;

- that, the application is defective and even the cause title of petition is defective;
- that, petitioner has no locus to file the instant petition as it has not produced any copy of the Registration Certificate;
- that, the demand notice was served at the plant and not at the registered office of the company;
- that, the petitioner firm was not only liable to supply the material but also to ensure erection and commissioning of the treatment plant;
- that, the corporate debtor had brought to the notice of the petitioner that there are certain issues in the treatment plant on account of which the payments were withheld by the respondent;

Findings:

6. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.

7. On perusal of the records it is found that the petitioner has filed copy of the registered partnership deed (page 25-28). It is also observed that the petitioner has filed copy of purchase order (page 33-39) and copy of various invoices raised (page 40-42) and copy of ledger account where details of bill and payment made are given.

8. On perusal of the records it is found that the objections like the application is defective and even the cause title of petition is defective, the petitioner has no locus to file the instant petition as it has not produced any copy of the Registration Certificate, the demand notice was served at the plant and not at the registered office of the company, the petitioner firm was not only liable to supply the material but also to ensure erection and commissioning of the treatment plant and the corporate debtor had brought to the notice of the petitioner that there are certain issues in the treatment plant on account of which the payments were withheld by the respondent. Since the corporate debtor has not objected the principal debt amount in the reply, all other objections raised by the corporate debtor are devoid of merits. and cannot be a ground to reject an application filed under Section 9 of the I & B Code. Record shows that the respondent has admitted that they have received the demand notice and despite receipt of demand notice, respondent withheld the payment. That apart, all the objections raised by the corporate debtor are baseless and are only made to defeat the petition.

9. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted. In fact, the corporate debtor has admitted the debt by saying that the petitioner kept on making reminders for the payments which were withheld by the corporate debtor on account of bad workmanship on the petitioner firm.

10. 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.

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 due and payable to the Applicant.

12. 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. 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?

Bhattacharya

Ahuja

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.

14. 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.

15. 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.

16. 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.

17. 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.

18. 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.

19. 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.

20. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. This adjudicating Authority hereby appoint Mr. Nandish Sunilbhai Vin, C-53, Shanti Niketan Row House, Anand Mahal Road, Opp. Sagar Complex, Besides Sneh Sankul Wadi, Surat 395 009 having registration No.IBBI/IPA-001/IP-P02117/2020-2021/13270 (ip.nandish.vin@gmail.com) to act as an interim resolution professional under Section 13(1)(c) of the Code.

21. This Petition is accordingly admitted.

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

23. 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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