

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

C.P.(I.B.) No. 8/NCLT/AHM/2018

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 05.12.2019**

Name of the Company: Serena Chemicals
V/s.
Shipra Agrichem Pvt. Ltd.

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

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.

ORDER

None appeared on behalf of the parties.

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

Manorama
**MANORAMA KUMARI
(MEMBER JUDICIAL)**

Dated this the 5th day of December, 2019.

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

C.P. No. (IB) 8/9/NCLT/AHM/2018

In the matter of:

SERENA CHEMICALS

Runwal Pride
Behind R Mall
LBS Marg
Mulund (West)
MUMBAI 400 080

:

Petitioner
Operational Creditor

Versus

Shipra Agrichem Private Limited

364 ECP Canal Road
Village Luna
Taluka Padra
VADodara 391 440
GUJARAT STATE

:

Respondent
Corporate Debtor

Order delivered on 5th December, 2019.

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

Appearance:

Advocate Ms. Chaitanya Joshi for petitioner.
Advocate Mr. H.R. Shah & Advocate Mr. Sunil Parmar for
respondent.

ORDER

1. Mr. Chirag Jitendra Damani, being proprietor OF M/s. **Serena Chemicals** 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.

Manorama

2. The petitioner/operational creditor is a proprietary concern running its business in the name and style of M/s. Serena Chemicals having registered office at Mulund (West), Mumbai Delhi is engaged in the manufacture and supply of chemicals.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 16th June, 2008 having identification No. U24100GJ2008PTC054216 and having registered office at Padra, Dist. Vadodara, State of Gujarat. That, the Authorised share capital of the respondent company is Rs. 11,05,00,000/- and paid up share capital is Rs. 10,55,35,000/-. The corporate debtor is popularly known as Shipra Agrichem Private Limited.
4. The applicant/Petitioner has submitted that the corporate debtor is engaged in the business of production of Sebacic Acid. That, sometime in April, 2015 the operational creditor had placed an order on the corporate debtor for supply of 5000 kgs. of Sebacic Acid and pursuant to the said order the corporate debtor issued an invoice dated 25th April, 2015 for an amount of Rs. 15,60,600/- copy of which is kept at page No. 22 to the application marked as **Annexure A**. That, on 30th April, 2015 the operational creditor, in order to execute the said order, transferred the said invoice amount via RTGS to corporate debtor's bank account with Bank of Maharashtra, Gotri Branch, Vadodara, as per the abstract of the bank account statement of the applicant which is kept



at page **No. 22-23** to the application. That, after payment of the said amount by the applicant to the corporate debtor, the applicant awaited delivery of the goods till July, 2015 but no goods were supplied.

5. It is further submitted by the operational creditor that on several occasions the operational creditor requested the corporate debtor to deliver the said order, but on each occasion the corporate debtor has given unreasonable excuses and always sought time to deliver the said order on one ground or the other. That, copies of the emails sent by the operational creditor to the corporate debtor is annexed to the application marked **Annexure C** kept at page **No. 25-30**. That, having failed to get any response from the corporate debtor, the operational creditor issued legal notice through advocate dated 13.12.2016 to the corporate debtor demanding the outstanding amount along with interest and consequent damage suffered by the applicant. That, the amount claimed towards operational debt is Rs. 15,60,600/- (Rupees fifteen lacs sixty thousand six hundred only) and the said amount has fallen due on **30th April, 2015**, the date on which RTGS is made by the operational creditor. That, from the date of default **i.e. 9th April, 2015 till 30th September, 2017** interested is calculated at the rate of 18% per annum which works out to **Rs. 7,02,270/-** and, therefore, the total amount of claim i.e. principle + interest comes to **Rs. 22,62,870/- (Rupees twenty-two lacs sixty-two thousand eight hundred seventy only)**.



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

Sr. No.	Particulars	Page No.
1	Demand notice dated 04.10.2017	14-40
2	Statements for the last four months from July to October, 2017 from Bank of the operational creditor confirming that no payment of operational debt has been made by the corporate debtor	41-45
3	Affidavit in support of application for initiation of corporate insolvency resolution process by operational creditor	46-47
4	Affidavit to the effect that no notice has been given by the corporate debtor relating to a dispute of unpaid operational debt	48-50

7. The respondent/corporate debtor filed affidavit in reply inter alia stating that....

- (i) National Company Law Tribunal has no jurisdiction to try and entertain the instant petition;
- (ii) the petitioner is not a secured creditor, therefore, the application filed under IB Code is not legal, proper and tenable at law;
- (iii) the petition filed by the sole proprietary firm alone which has no legal and separate entity;
- (iv) it is mandatory for the petitioner to submit the name of the proposed IRP;
- (v) It is denied that a sum of Rs. 15,60,600/- is due and payable by the corporate debtor;
- (vi) due to closer notice issued by GPCB dated 08.06.2015, production activity of the corporate

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debtor company was totally closed and, therefore, the goods were not supplied;

- (vii) the respondent company never received notice dated 13.12.2016;
- (viii) the dues claimed is time barred;
- (ix) after issuance of closer notice by GPCB, the respondent company could not continue production activity and were compelled to close down their activities as a result of which the account of the respondent company was classified as NPA on or about 31.03.2013 by the bank;
- (x) since the debts of the petitioner company is not secured debts and even not entitled to resolution for the said debts since the bank have first and exclusive charge over the said property, the question of appointment of any IRP does not arise.

Findings

- 8. Heard learned lawyer appearing for both the sides, also seen the documents annexed to the application and the reply filed by the corporate debtor.
- 9. On perusal of the records it is found that having failed to get the outstanding payments from the respondent, the applicant was compelled to issue demand notice under section 8 of I & B Code on dated 23.07.2019. Record also



shows that the respondent has not raised any reply/dispute against the demand notice so issued by the applicant.

10. On perusal of the records it is found that the corporate debtor had raised invoice dated 25th April, 2015 for an amount of Rs. 15,60,600/- and the operational creditor made payment of said invoice via RTGS on 30th April, 2015, whereas, closer order was issued by the Gujarat Pollution Control Board (GPCB) on 08.06.2015 i.e. much after receipt of the advance payment by the operational creditor/applicant. Under such circumstances, the plea raised by the corporate debtor that due to closer order of GPCB, the corporate debtor could not supply the ordered goods is not justifiable. Other objections raised by the corporate debtor appears to be imaginary, not convincing and not supported by any document(s). That, the operational debt has fallen due on 30.04.2015 and the petition is filed on 19th December, 2017, the petition is well within limitation.
11. On perusal of the record it is found that the petition is complete in all respect.
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 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. Application is complete in all respect. That, no dispute has been raised by the respondent at any point of time. Since the advance is paid against availing of goods and receivables, the applicant falls under the category of operational creditor. 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 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 the name of Insolvency Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri. Saurabh Jhaveri, 620, Jolly Plaza, 6th Floor, Athwagate, Surat 395 001 (saumeg@gmail.com) (Mobile: 9228427123) having registration No. IBBI/IPA-002/IP-N00068/2017-18/10146 to act as an interim resolution professional under Section 13(1)(c) of the Code.
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.

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22. Registry is directed to inform the office of the 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 liquidation and sale of assets to realise the amount for all the stakeholders.



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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