

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT 1**



C.P. (I.B) No.241/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 19.02.2020**

Name of the Company: Excel Tubes & Cones
V/s.
Sysco Industries Ltd.

Section: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	PANAN. S. GODIAWALA } NAISHAL. I. MODY }	Adv.	petitioner	
2.	KHYATI. PUNJABI. For A.R. Gupta & Associates	Adv.	Respondent	

ORDER

The Parties are represented through their respective Learned Counsel.

The present matter is kept for pronouncement of order today.

The Present Petition is admitted.

Detailed order is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 19th day of February, 2020

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

C.P. (I.B.) No. 241/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Judicial)**

In the matter of:

M/s. Excel Tubes and Cones
A/101, Green Acre,
Movietime Cinema Lane,
Link Road, Malad (W),
Mumbai,
Maharashtra-400064.

.....Petitioner/Operational Creditor

Versus

M/s. Sysco Industries Ltd.
206, Rajhans Complex,
Civil Char Rasta,
Nr. Nirmal Children Hospital,
Ring Road,
Surat,
Gujarat - 395002.

.....Respondent/ Corporate Debtor

Appearance:

Mr. Pavan S. Godiawala along with Mr. Naishal J. Mody, Advocates,
for the Petitioner/Operational Creditor.

Ms Khyati Punjabi along with Mr. Mohit Gupta, Advocates, for the
Respondent/Corporate Debtor.

Order delivered on 19th February, 2020.



ORDER

[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]

1. The present I.B. Petition has been filed by M/s. Excel Tubes and Cones, the Operational-Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (read with Rule 6 of the Insolvency and Bankruptcy Rules, 2016. The Operational Creditor has sought for initiation of the Corporate Insolvency Resolution Process ("CIRP" in Short) for the Corporate-Debtor namely, **M/s. Sysco Industries Ltd.** It is submitted that the Operational Creditor, M/s. Excel Tubes and Cones is engaged in the business of manufacturing of paper sleeves, cores, composite containers and corrugated boxes. The Operational Creditor is having its registered address at: A/101, Green Acre, Movietime Cinema Lane, Link Road, Malad (W), Mumbai, Maharashtra - 400 064.
2. The Petitioner states that the Respondent/Corporate Debtor, M/s. Sysco Industries Ltd. (incorporated on 01.09.2009 with the CIN: L51101GJ2009PLC05954) is expressing to be in the business of - speciality systems and coating. Mr. Anuj Saraf is authorised to file the present petition being a member of the Applicant Company. The registered office of the Corporate Debtor Company is

situated at: 206, Rajhans Complex, Civil Char Rasta, Nr. Nirmal Children Hospital, Ring Road, Surat, Gujarat – 395002.

3. It is further informed that the Corporate-Debtor-Company is having nominal share capital of Rs.8,50,00,000/- (Rupees Eight Crore Fifty Lakh only) and the paid-up share capital of the company is Rs.7,95,37,000/- (Rupees Seven Crore Ninety-Five Lakh Thirty-Seven Thousand only).
4. It is the case of the Petitioner that the Corporate Debtor approached and placed various orders for sale and supply of paper tubes of various sizes. The Petitioner/Operational Creditor, on the basis of placed purchase orders of the Respondent, had supplied the required quantity from time to time. It is stated that the Petitioner generated invoices for each supply and copies of the same are annexed with the present petition as Annexure-1.
5. It is stated that, in spite of the receipt of the invoices (duly acknowledged by the Respondent), the Respondent did not make any payment towards these invoices, which amounts to Rs.27,00,247/- (Rupees Twenty-Seven Lakh Two Hundred Forty-Seven only). The Petitioner has annexed the

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copies comprising the details of total outstanding with the present petition.

6. It is stated that till the filing of the present petition, the Respondent/ Corporate Debtor did not make any payment towards the aforementioned invoices.
7. It is submitted that the Corporate Debtor is liable to pay the aforesaid amount of Rs.27,00,247/- with an interest of 18% per annum from the date of default, which amounts to Rs.1,78,991.58 (Rupees One Lakh Seventy-Eight Thousand Nine Hundred Ninety-One and Fifty-Eight paisa).
8. Thus, it is stated that the total sum of Rs.28,79,238.58 (Rupees Twenty-Eight Lakhs Seventy-Nine Thousand Two Hundred Thirty-Eight and Fifty-Eight paisa) is due from the Respondent/Corporate-Debtor.
9. Therefore, the Petitioner/Operational Creditor was compelled to issue demand notice in the prescribed form No.3 and Form No.4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 along with appropriate annexures as mentioned therein and delivered the same to the registered office of the Respondent/ Corporate Debtor through a speed post on

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12.03.2018. The Petitioner has annexed copy of proof of service of the same as Annexure - 4.

10. It is submitted by the Petitioner that the Respondent sent a notice to him through its company secretary, Mr. Rajeev Ranjan on 13.03.2018 (copy annexed) stating that the Respondent/Corporate Debtor raised an advance complaint through email dated 06.07.2017 and 02.10.2017 for supplying poor quality of goods/materials supplied and thereby the Respondent had to face a big loss in the business.
11. Thus, it is stated by the Petitioner that the Respondent had through the complaint emails had tried to create a dispute for the quality of materials supplied. It is averred that the Respondent did not even take a follow up for making settlement of the said complaint(s). However, it is submitted that the complaints were replied by the Petitioner by a letter to the Respondent/Corporate Debtor on 21.03.2018. (Copy annexed as Annexure -7 to the present petition).
12. It is submitted that the Respondent reverted by its reply and tried to express the existence of dispute relating to the unpaid debts but not given any record of pendency of the suit or arbitration proceedings filed before the receipt of

such notice or invoices in relation to such dispute within 10 days of receipt of the demand notice. However, the Petitioner submits that a period of ten (10) days has already elapsed.

13. The Petitioner has submitted details of its bank account as being maintained in Bank of Baroda, SSI Vapi, Valsad bearing a/c. number: 02380200001168. It is stated that there is no amount received for the due payments from the Respondent/Corporate Debtor towards its dues within ten days of serving of notice by the Petitioner/Operational Creditor. The copies of the said bank statements are annexed as Annexure-7 to the present I.B. Petition.

14. In response to the present petition, the Respondent/Corporate Debtor has also filed its reply on 23.09.2019 in this bench, by stating that there exists a pre-existing dispute in the matter and has relied on the decision of Hon'ble Supreme Court in the matter of Mobilox Innovations Pvt. Ltd. Vs. Kirusha Software and stated that an investigation in the matter is required.

15. The Respondent has averred by explaining technically in its written submission that, it had ordered for paper tubes from the Petitioner which is used as a packaging material

for LDPE (Low Density Poly-Ethylene). The LDPE is rolled around the defective paper tubes and therefore, the core of the paper tube used to get lapsed.

16. The Respondent further quoted its emails describing the complaints for poor quality of papers supplied which caused 1260 Kgs. of LDPE was wasted (Annexure R-3 and R-6).

17. It is averred that these quoted emails were sent prior to sending any demand notice and he has tried to establish a pre-existing dispute between the parties.

18. The Respondent/Corporate Debtor, in Sub – III, Para 10(III) **has stated that it had sent a settlement proposal to the Petitioner on date 05.07.2018** on account of filing of application under Section 9 of the I.B. Code. It made a plea that his company is having more than 100 workers and it may badly affect the entire family of directors. However, it may be noted that the Respondent did not pay the amount due with the Petitioner.

19. In addition to that, the Petitioner has filed Affidavit of Rebuttal Document dated 04.02.2019 before this bench.



20. By such affidavit, the Petitioner has clarified that the material supplied to the Respondent was of the required/ordered **standards, i.e. Strength: CS 450 as stated categorically and were** supplied as per the **industry standard.**
21. It is averred by the Petitioner that Respondent produced certain documents produced at R-2 and R3. Out of which, it is said that the R-2 document is created an email within their own company and R-3 knowledge and it pertains only 4-5 batches of goods supplied. Further, the Petitioner in its Para (2) has clarified the objection of the Respondent/ Corporate Debtor and justified its outstanding debts against the Corporate Debtor Company.
22. We perused the material available on record and heard the counsels for both the parties and we are of the view that the present Respondent made efforts to raise a pre-existing dispute in order to get dismissal of the present I.B. Petition. However, he did not explain the reason as to why he made proposal for settlement by acknowledging its debt liability to the extent of Rs.21.00 Lakhs and above but only sought for repayment schedule from September 2018 to April/March 2019. Thus, the admitted outstanding due is Rs.21.00 Lakh and is requested to be paid till March 2019.

However, no settlement could be materialised. Hence, the debt is well established due to undisputed amount of Rs.21.00 Lakhs and the default of payment has been occurred. Hence, the CIRP can be triggered in respect of the Corporate Debtor Company.

23. By considering the above given facts of the present case, it is found that the present I.B. Petition is filed under Section 9 of the code by an authorised signatory Mr. Anuj Saraf (Partner) found to be filed within limitation and is complete for the purpose of initiation of Corporate Insolvency Resolution Process (C.I.R.P.) in respect of the Corporate Company. Hence, it deserves for admission.

24. Therefore, the present IB petition is admitted with following observations/ Directions.

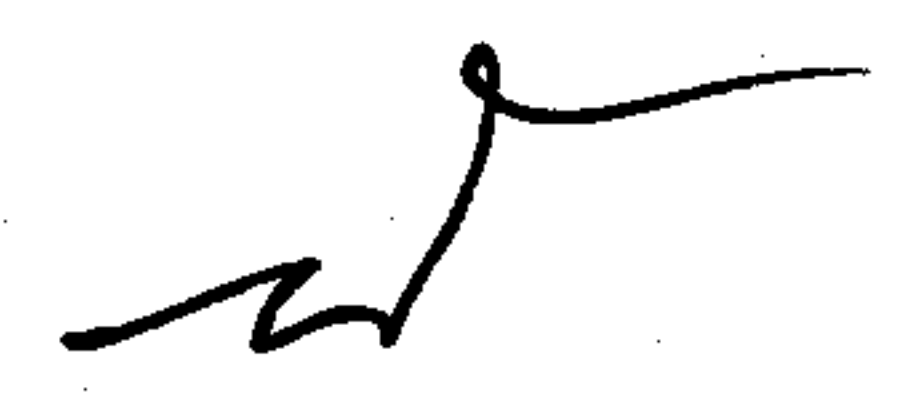
25. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority declares moratorium for prohibiting all of the following, namely:-

I.(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.

- (b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.*
- (c) *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);*
- (d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process.*

26. The Petitioner/Operational Creditor has suggested name of Insolvency Professional, **Mr. Kailash T. Shah** and the proposed Insolvency Professional has also confirmed by his letter (annexure-8) has expressed his willingness to appear in the matter further stating that there are no disqualification(s) or any disciplinary proceedings pending against him.


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27. Hence, this Adjudicating Authority hereby appoints **Mr. Kailash T. Shah**, having Insolvency Professional Registration No. **IBBI/IPA-001/IP-P00267/2016-17/10511**, Email ID **shah_kailash@yahoo.com**, as an **Interim-Resolution-Professional**. The Interim-Resolution-Professional is further directed to make public announcement of moratorium in respect of Corporate-Debtor-Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code.

28. An authentic copy of this order to be communicated by the Petitioner as well as by this Registry to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.

29. The present IB-Petition stands admitted.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (Judicial)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (Judicial)