

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

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23/01/2020

C.P. (I.B) No. 82/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 20.01.2020**

Name of the Company: Lim Fa Pte Ltd.
V/s.
Pioneer Globex 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>
1.				
2.	Lachna Pastore for Natasha Dhruvan Shah		Respondent	

ORDER

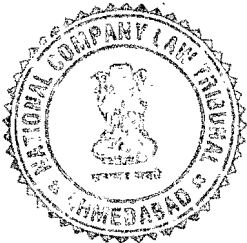
The Respondent is represented through learned counsel.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 20th day of January, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**



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

**IA 676 of 2019
With C.P. No. (IB) 82/9/NCLT/AHM/2018**

In the matter of:

**M/s. Lim Fa Pte Ltd.
284 Jalan Besar
SINGAPORE 208 947**

**Petitioner
Operational Creditor**

Versus

**M/s. Pioneer Globex Private Ltd.
C/o. Mahalaxmi Atta Mill Compound
Opp. Fire Brigade Station
Nirmal Nagar
BHAVNAGAR 364 001
Gujarat State**

**Respondent
Corporate Debtor**

Order delivered on 20th January, 2020.

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

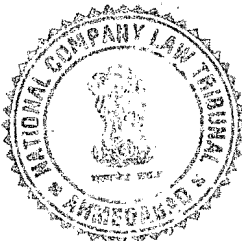
Appearance: [IA/CP(IB)]

Advocate Mr. Minesh Soni for petitioner
Advocate Ms. Natasha Dhruman Shah for respondent.

COMMON ORDER

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

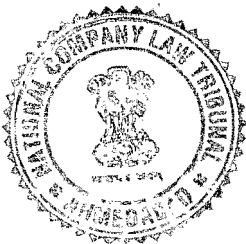
1. Mr. Pratik Deepak Shah, being authorised person on behalf of the operational creditor M/s. Lim Fa Pte Ltd. filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"].



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2. The applicant/operational creditor is a company incorporated under the laws of Singapore, having unique entity number (UEN) 199800226M and having registered office at Jalan Besar, Singapore carrying on the business of trading and supply of ball bearing, metal scrap, palm oil etc.
3. The respondent corporate debtor is a private limited company registered on 25.11.2013 having registration No. U51909GJ2013PTC077606 having its registered office at Bhavnagar, Gujarat state. Authorised share capital of the respondent company is Rs. 8,50,00,000/- and paid up share capital is Rs. 8,50,00,000/-.
4. The applicant/Petitioner has submitted that as per the sale contracted dated 01.03.2016 entered between the applicant and the corporate debtor, the applicant had supplied metal scrap material to the corporate debtor through shipment from Poland to Nhava Sheva Port in India and for the same the applicant had issued invoices. That, the said invoices were duly received by the corporate debtor without raising any dispute/objection.
5. The operational creditor has further stated that in spite of repeated requests and reminders the corporate debtor neglected and avoided to pay the outstanding due amount of **CFR value 2,17,682.10 (US dollars two hundred seventeen thousand six hundred eighty-two and ten cents**



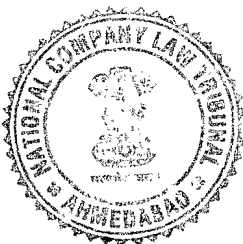
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only). That, the applicant is entitled to interest @ 18% per annum on the said amount of CFR value from the due date of the said Invoices till the date of actual payment.

6. The applicant has further submitted that having failed to receive the operational debt from the corporate debtor, the operational creditor was compelled to issue demand notice dated 11th December, 2017 demanding total sum of **US dollars two lacs eighty-one thousand two hundred thirty-three and thirty-five cents only)** being the CFR value 2,17,682.10 (US dollars two hundred seventeen thousand six hundred eighty-two and ten cents only) plus US dollars 63,551.25 being the interest amount calculated @ 18% per annum from due date of the invoice till 30.11.2017.
7. In support of its claim, the petitioner has submitted the following documents: -

Sl. No.	Particulars	Page No.
01	Application by operational creditor - form 5	1-5
02	Copy of computation of amount and date of default	5
03	Copy of master data of respondent	6
04	Annexure - I copy of demand notice along with annexure annexed therein	7-16
05	Copy of postal receipt and track report obtained from Indian Postal Dept.	17-18
06	Annexure - II - copy of affidavit	19-24
	IA - copy of the sales contract	25
	I-B - copy of bill of lading, packing list, certificate of origin, certificate of weight and declaration	26-31
	IC - copy of letter dated 14.05.2016	32
	ID- copies of letter dated 20.07.2012, 23.08.2016 and 27.06.2016	33-35
	IE - copies of email	36-37
7	Board resolution	39



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8. Director of the corporate debtor company filed affidavit in reply raising the following objections: -
- (i) the present petition is filed without proper authority;
 - (ii) notice dated 11.12.2017 issued by the applicant does not qualify as a demand notice;
 - (iii) copies of relevant accounts from the bank/financial institution maintaining accounts of the applicant confirming that no payment is received from the respondent;
 - (iv) there has been no agreement between the applicant and respondent in relation to the rate of interest to be charged on account of delay;
9. The respondent has also denied having received metal scrap through bill of lading No. AMRUIN863194 or invoice No. PC/LF/101/16 carrying metal scrap. That, the respondent specifically sought information from the Commissioner, NhevaSheva Port in relation to aforesaid bill of lading vide letter dated 16.04.2018 for which reply is still awaited. That, no goods are delivered by the applicant as stated in the application towards which the opponent has defaulted in making payment. That, none of the documents referred to by the applicant evidence delivery of goods. That, email correspondence produced by the applicant are misconceived and intentionally placed with the present petition.

Findings

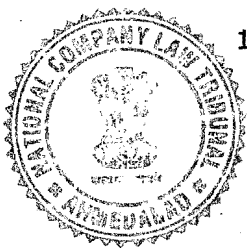
10. Heard at length learned lawyers appearing for both the sides and perused the documents submitted by both the parties.



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11. On perusal of the records it is found that, in the reply, in toto, the respondent has denied the contentions raised by the applicant. Even the respondent has denied having received the consignment of goods against which the invoices are raised by the applicant.
12. On perusal of the records it is found that the first objection raised by the corporate debtor is that the present petition is filed without proper authority.
13. On perusal of the record it is found that the applicant company has duly passed a resolution in meeting of the Board of Directors on 04.12.2017, which has already been produced in the proceedings at page No. 39 whereby Mr. Pratik D. Shah is authorised as authorised representative of the petitioner to file company petition, Insolvency Petition etc. apart from other powers as required to proceed with applications or cases etc. Hence it cannot be said to be bad in law.
14. The second objection raised by the corporate debtor is that notice dated 11.12.2017 issued by the applicant does not qualify as a demand notice.
15. On perusal of the records it is found that the notice issued on **11.12.2017** by the applicant demanding the operational debt is supported by all the required documents like copy of



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sale contract, list of invoice and copy of invoices as contemplated and envisaged under the provisions of the Code. As per the provisions of the code, Section 8 read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 either a demand notice in form 3 or a copy of invoice attached with a notice in form 4, is required to initiate an Insolvency Application and so the demand notice duly qualifies as a demand notice under the Code.

16. The third objection raised by the corporate debtor that copies of relevant accounts from the bank/financial institution maintaining accounts of the applicant confirming that no payment is received from the respondent is not annexed to the application.

17. That, Section 9(3)(c) of the Code that mandates operational creditor to produce a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by corporate debtor, but the *Hon'ble Supreme Court in Macquarie Bank Limited v. Shilpi Cable Technologies Limited (Supreme Court), Civil Appeal No. 151135 of 2017 (reported in 2017 SCC online SC 1493)* made it clear that the expression "confirming" makes it clear that this is only a piece of evidence, which only "confirms" that there is no payment of an unpaid operational debt. There is a requirement of furnishing other information and



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documentary evidence involving particulars of operational debt as well along with the application. This can be gathered from a reading of Section 9(3)(d) of the Code along with the entries mentioned in part V of form 5 under Rule 6. The important condition precedent is an occurrence of a default which can be proved, by means of other documentary evidence such as a letter written by the corporate debtor to the operational creditor confirming that a particular operational debt is due and payable. Also the Hon'ble Supreme Court stated that only a procedural provision which is directory in nature as the Adjudicating Authority Rules read with the Code and not a condition precedent to triggering the insolvency process under the Code.

18. The fourth objection raised by the corporate debtor is that there has been no agreement between the applicant and respondent in relation to the rate of interest to be charged on account of delay.

19. In case if there is no agreement with respect to the interest in case of late payment, the provisions on the Interest Act, 1978 would apply. As per the Interest Act, 1978, interest can be claimed in any process of recovery of any debt or damages. Thus, the applicant is entitled to claim interest on the payment even in absence of any agreement between the applicant and the respondent, more so when there is nothing on record in writing showing that the applicant will not charge any interest for the payments delayed beyond

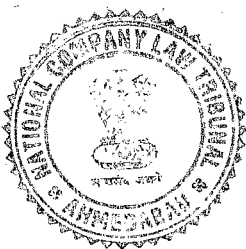


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due dates. Further, such statement itself is an admission on the part of the applicant that amount is due and payable to the petitioner but not the interest.

20. The respondent has denied having received metal scrap through bill of lading No. AMRUIN863194 or invoice No. PC/LF/101/16 carrying metal scrap. The appeal further states that, none of the documents referred to by the applicant evidence delivery of goods and the email correspondence produced by the applicant are misconceived and intentionally placed with the present petition.
21. On perusal of the records it is found that, prior to filing of the instant application, the respondent has never questioned about the delivery of goods in the communication made between the respondent and the applicant. That itself shows that the claim made by the respondent that no goods have been delivered to them is misleading, more so when all the documents like sales contract, tax invoice, bill of lading, packing list, certificate of origin, certificate of weight and declaration annexed to the application at page 10-16 bear stamp and signature of the respondent which shows that the respondent had received delivery of such goods.
22. On perusal of the record it is found that the petition is complete in all respect.



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23. 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: -

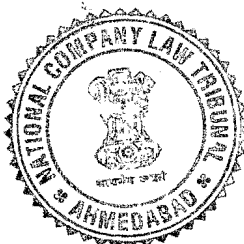
- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
and
- (iii) Whether there is existence of a dispute 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.

24. Thus, we find no reason to reject the instant application as it is complete in all respect. The amount involved is an operational debt and the same is due and payable to the applicant.

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25. During the pendency of the application, the corporate debtor filed the instant interlocutory application. Since the petition



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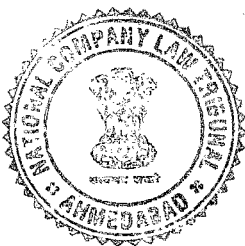
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is complete in all respects, the IA does not merit any consideration and hence stands disposed of.

26. 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 and payable to the Applicant and it fulfilled the requirement of IB Code as enshrined in the Code. 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 there is/are occurrence of default on the part of the corporate debtor 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.

27. 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.

28. 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



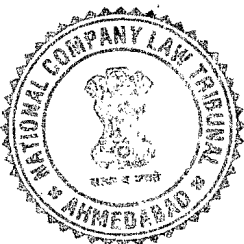
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corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution 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.

29. 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);



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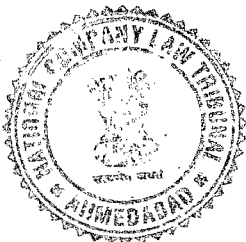
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(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

30. 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.

31. 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.

32. The applicant/operational creditor has not proposed name of IRP. Therefore, this Adjudicating Authority hereby appoint Shri Sunil Kumar Agarwal, Tower 6/603 Devnandan Heights, Near Poddar School, New C.G. Road, Chandkheda, Ahmedabad 382 424 (anil91111@hotmail.com) having registration No. IBBI/IPA-001/IP-P01390/2018-19/12178 to act as an interim resolution professional under Section 13(1)(c) of the Code.



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33. This Petition is accordingly admitted.
34. Communicate a copy of this order to the applicant, Corporate Debtor and to the Interim Resolution Professional.
35. 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.

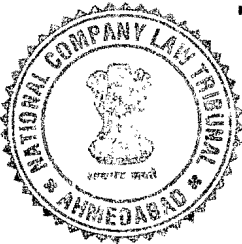
Chockalingam Thirunavukkarasu

Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

na/r



Certified to be True Copy of the Original

[Signature]
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad