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

C.P.(I.B) No. 538/NCLT/AHM/2019

**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 18.02.2021**

Name of the Company: Corvus Entergy Pvt. Ltd. (Operational Creditor)
V/s
Shree Shakti Engineering (Gujarat) Pvt. Ltd.

Section 9 of the Insolvency and Bankruptcy Code,
2016.

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER
(through video conferencing)**

None appeared on behalf of the parties.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 18th day of February, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 538/9/NCLT/AHM/2019

In the matter of:

M/s. Corvus Energy Private Limited

102, Maa Taruhari Flats

Nr. IOC Nagar

Nr. Atoka Statium

Vadodara 390 020

GUJARAT STATE

:

Petitioner

Operational Creditor

Versus

M/s. Shree Shakti Engineering (Gujarat) Private Limited

314/1 Kamal Estate

Zak GIDC

Zak – Vehlal Road

Zak, Taluka Dahegam

Gandhinagar 382 305

GUJARAT STATE

:

Respondent

[Corporate Debtor]

Order delivered on 18th February, 2021

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

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Petitioner : Mr. Arpit R. Singhvi, Advocate

Respondent : Mr. Manish Buchasia, PCS

ORDER

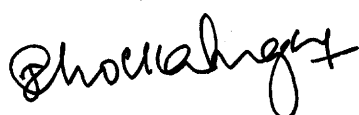
Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Jignesh Derasari, Director of **M/s. Corvus Energy 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 applicant/operational creditor, a private limited company, having identification No. U74999GJ2016PTC092153 and having its registered office at Vadodara, engaged in the business of procurement, stock holding, project management, sales and distribution of pipes, tubes, fittings, flanges etc., has submitted that as on 23rd June, 2020, the respondent is indebted a total sum of **Rs. 19,86,939/- (Rupees nineteen lacs eighty-six thousand nine hundred thirty-nine only) which include interest amount of Rs. 98,32,400/-** towards supply of goods. That, the default occurred on 04.11.2018.
3. The applicant has submitted that it had entered into and executed distributorship agreement dated 01.05.2018 and as per the said agreement, the applicant would sell the goods of the respondent company on commission basis. Accordingly, the applicant acted as a distributor and procured purchase orders from domestic companies as well as purchase orders for exports from various foreign companies. In view of the above distributorship agreement, the applicant raised invoices dated 04.11.2018, 02.08.2018 and 02.07.2018 towards the services provided by the applicant. Out of the above three invoices, the respondent has failed to make payment of invoice dated 04.11.2018, therefore this petition
4. In support of its claim, the applicant has annexed to the application copy of the documents like; resolution dated 25.06.2019 authorising Director of the company to initiate CIRP against the corporate debtor, purchase orders of different dates, invoices of different dates, working computation in tabular form, ledger account etc.
5. The applicant has stated that despite repeated reminders the respondent has not paid the outstanding operational

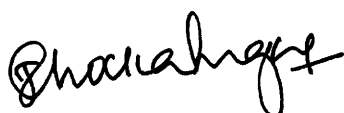


debt, therefore, the applicant was compelled to issue demand notice under Section 8 of the I & B Code in form 3 on 12.04.2019 calling upon the respondent to clear the operational debt.

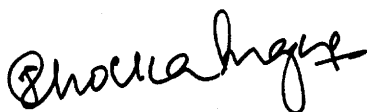
6. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956, on 08.05.2007 and having identification No. U29300GJ2007PTC050764 and having registered office at Gandhinagar, Gujarat State are engaged in the business of manufacturing various engineering products including heavy machinery and pipeline equipment. Authorised share capital of the respondent company is Rs.1,00,000/- and paid up share capital is Rs. 1,00,000/-.
7. The respondent/corporate debtor filed affidavit in reply inter alia stating that
 - that, the applicant has no locus to file the instant application;
 - that, the application is incomplete and defect in the Board Resolution;
 - that, the person who has signed the application is/was an ex-employee of the respondent company;
 - that, existing disputes regarding amount claimed/loss to corporate debtor;
 - that, incurred loss in maximum contract;
 - that, wrong commission calculated and claimed;
 - that, proof of payments made to the petitioner and operating status of corporate debtor;

Findings:

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

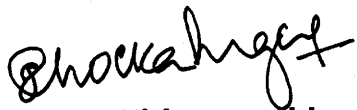



9. On perusal of the records it is found that Demand notice under section 8 of the I & B Code dated **12.04.2019** was issued by Mr. Jignesh Derasari, director of the petitioner company on the basis of authority given vide resolution dated **25.06.2019**. In short, at the time of issuing demand notice dated 12.04.2019, Mr. Jignesh Derasari, director of the petitioner company had no authority to issue such a demand notice which is a pre-requisite for initiation of CIRP. The demand notice dated 12.04.2019 itself is bad in the eye of law, therefore, the petition is not maintainable.
10. On perusal of the records it is found that the "agreement of appointment of distributor" (page 81 to the application), which is a vital document of the instant petition, save and except last page does not bear the signature of the parties who executed the deed. Even in the last page also, only initial is done and no seal, full name and/or designation/position of the signatories are given. Therefore, it cannot be relied upon as a document for the purpose of evidencing proof.
11. On perusal of records it is found that Mr. Anjeev Pandey, Director of the applicant company has filed affidavit (page 9-11 to the reply) inter alia stating that he is director of the applicant company since 22.06.2018 and the instant petition was filed without his knowledge and no meeting was conducted or his consent was taken for filing the instant petition. In the said affidavit it is further stated that Mr. Jignesh Derasari, Director of the applicant company who has signed the demand notice as well as the instant petition, was appointed as Director of the operational creditor company on 22.06.2018, however, he had already filed his resignation to the operational creditor on 26.11.2018, but, due to minimum two directors' requirement, the petitioner company has not filed resignation of Mr. Jignesh Derasaria



and he is still showing as Director on MCA portal. In the affidavit it is further stated that Board Meeting dated 25.06.2019 was held for giving authority to Mr. Jignesh Derasari, however, the said Board Resolution is neither a Board Resolution nor a shareholders' resolution as no such type of meeting is prescribed under the Companies Act, 2013.

12. Under the facts and circumstances and as discussed above the petition is not maintainable and deserves to be dismissed in view of the above grounds. In the result, company petition No. CP (IB) 118 of 2020 stands dismissed and disposed of without cost.
13. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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