

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

C.P.(I.B) No. 586/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 16.06.2020**

Name of the Company: Noble Resources International Pte Ltd
V/s
Sona Alloys Pvt Ltd

Section : Section 9 of the Insolvency and Bankruptcy Code

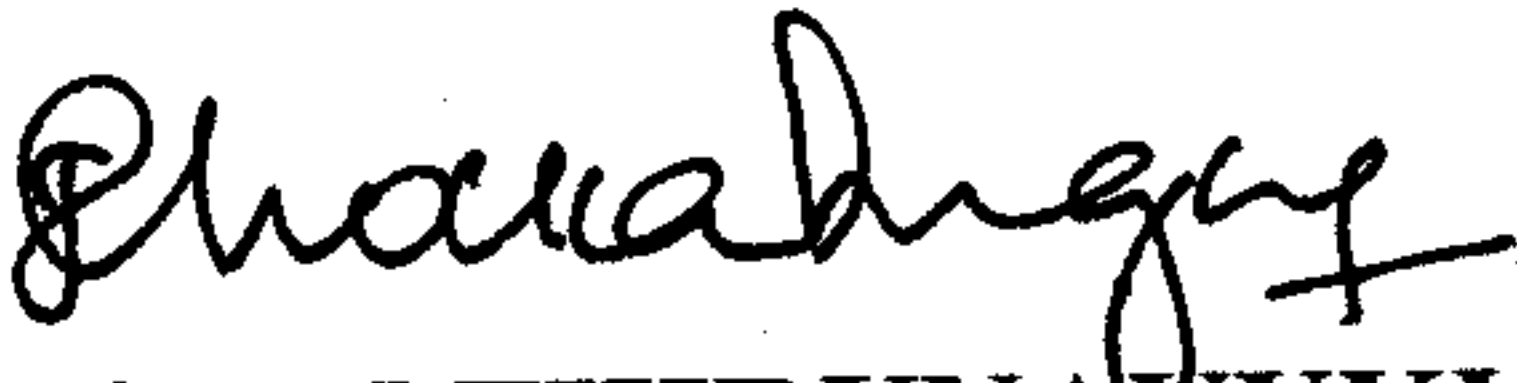
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				


ORDER

(Through Video Conferencing)

Mr. Tarak Damani, Learned Lawyer, appeared on behalf of the Petitioner.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 16th day of June, 2020

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

C.P. No. (IB) 586/9/NCLT/AHM/2019

In the matter of:

Noble Resources International Pte Ltd.

60, Anson Road

19-01 Mapletree

Anson

SINGAPORE 079 914

:

Petitioner

Operational Creditor

Versus

Sona Alloys Private Limited

4th Floor

Medi-Max House,

Opp. Karnavati Hospital

Ellis Bridge

AHMEDABAD 380 006

GUJARAT STATE

:

Respondent

Corporate Debtor

Order delivered on 16th June, 2020

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

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

Appearance:

Learned Sr. Counsel Mr. Navin Pahwa with advocate Mr. Vishal J. Dave for applicant.

ORDER

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

1. M/s. Trilegal, advocates, being authorised signatory, on behalf of M/s. **Noble Resources International 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

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[hereinafter referred to as "the Rules"], as operational creditor/applicant.

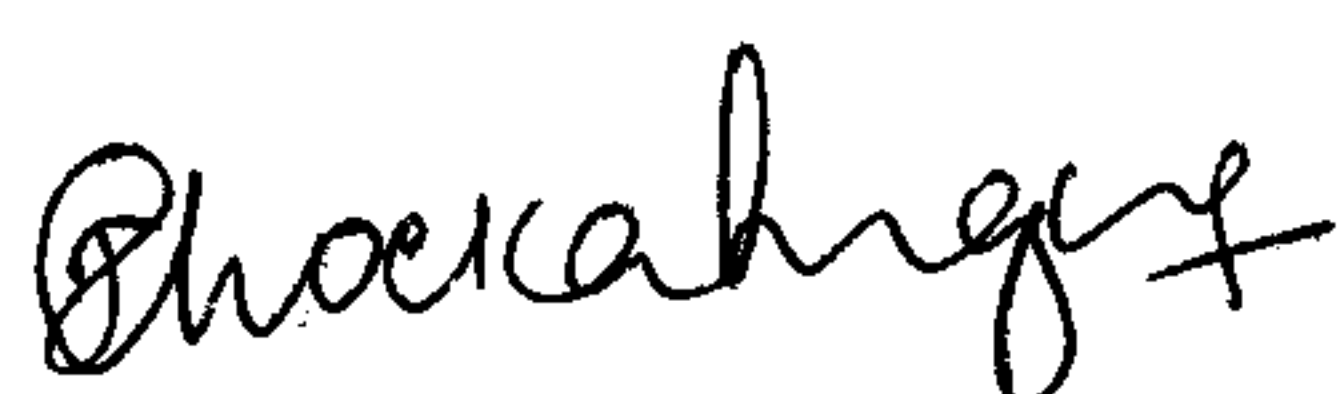
2. The petitioner/operational creditor is a private limited company registered under the Laws of Singapore having its registered office at Singapore and having identification No. 201115304N is in the business of supply of Metallurgical Coke.
3. The respondent/corporate debtor is a private limited company registered under the Companies Act, incorporated on 04.01.2007 having identification No. U27108GJ2007PTC049708 and having registered office at Ellis Bridge, Ahmedabad 380 006, Gujarat State. Authorised share capital of the respondent company is Rs. 3,25,00,00,000/- and paid up share capital is Rs. 3,24,29,89,570/-.
4. The applicant/Petitioner has submitted that based on an already existing business relationship between the applicant and the corporate debtor, the applicant had entered into a sales contract bearing reference number NRIPL 11282 dated 18th March, 2013 and a sales contract bearing reference number NRIPL 11874 dated 28.08.2013 for supply of certain quantities of Metallurgical Coke by the applicant to the corporate debtor as per the sales contract annexed to the application and marked as Annexure 'D' (**Page 41-51**) & Annexure 'E' (**52-61**). That, subsequently addendum – I to

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sales contract was executed as per Annexure 'F' (page 62) to the application. Under the sales contract bearing No. NRIPL 11282, payment of USD 5 Million (United States Dollars five million only) was to be made by the corporate debtor under D/A basis at 180 days from the bill of lading date to the applicant and under sales contract bearing reference number NRIPL 11874, payment of USD 3 Million (United States Dollars Three Million only) was to be made by the corporate debtor under D/A basis at 180 days from the bill of Trade Credit to the applicant.

5. It is further stated by the applicant that in terms of the sales contract bearing No. NRIPL 11282, interest is to be charged at the rate of 6 months LIBOR plus 3.5% per annum and additional interest of 3% per annum on all amounts due but unpaid from the due date to the actual date of payment. In terms of sales contract bearing reference No. NRIPL 11874, interest is to be charged at the rate of 6 months LIBOR plus 3.5% per annum and an additional interest of 3% per annum on all amounts due but unpaid from the due date to the actual date of payment.
6. It is further submitted by the applicant that upon timely supply of material to the corporate debtor as per the quantity agreed, the applicant raised invoice No. 6824 dated 03.05.2013 for an amount of USD 4,999,999.83 (United States Dollars four million nine hundred ninety-nine



thousand nine hundred ninety-nine and eighty three cents only) with interest of USD 98,322.50 (United States Dollars ninety-eight thousand three hundred twenty-two and fifty cents only) and invoice No. 7153 for an amount of USD 2,955,599.04 (United States dollars two million nine hundred fifty-five thousand five hundred ninety-nine and four cents only) along with interest of USD 57,168.67 (United States Dollars fifty-seven thousand one hundred sixty-eight and sixty-seven cents only). Copies of the aforesaid invoices against which the operational debt is due from the corporate debtor is annexed to the application and kept at page No. **69-72**.

7. The applicant has further submitted that against the aforesaid invoices raised under the sales contracts, the corporate debtor has made partial payment equivalent to a total amount of USD 2,450,000 (United States dollars two million four hundred fifty thousand only). After taking into account the amounts received by the applicant, the amount due and payable by the corporate debtor to the applicant is **USD 6,458,345.93 (United States Dollars six million forty-five hundred and ninety-three cents only)** details of which are given in tabular form and kept at page No. **74** to the application.
8. It is further submitted by the applicant that different amounts have fallen due and payable on different dates.

That the applicant reserves its right to claim damages and/or other remedies, interest, service charges and other amounts due and arising out of and/or in connection with the sales contract and/or the operational debt at the appropriate stage or in appropriate proceedings as substantial additional sums have accrued and continue to accrue which have been referred to in the correspondence between the parties including the ones annexed to the application. That the details of the operational debt, unpaid invoices, computation and the date on which the debt fell due and payable is annexed to the application and kept at page No. **73**.

9. It is further submitted by the applicant that due to the defaults in making payments, the applicant and corporate debtor had exchanged several correspondences to address the issue of defaults in payments by the corporate debtor. Accordingly, the applicant received a letter dated 11th January, 2016 from the corporate debtor stating that the respondent is in severe financial difficulties and requested the applicant to provide support. Additionally, the respondent, vide letter dated 11.01.2016 (**page 130**), proposed a payment schedule wherein the corporate debtor would pay the applicant \$ 100k each month for the months January to March 2016 and \$200k each month from April 2016 onwards. Subsequently, the applicant addressed a letter dated 5th April, 2017 to the corporate debtor seeking balance confirmation of debt balance of USD 6,128,554.04

due and payable by the corporate debtor to the applicant as on 31.03.2017 and the corporate debtor confirmed the said debt balance by signing the letter of corporate debtor dated 05.04.2017 (**page 131-132**).

10. It is further submitted by the applicant that as the corporate debtor did not adhere to the said monthly payment schedule as proposed in the letter dated 11.01.2016, the applicant sent email dated 24.08.2017 to the Managing Director of the respondent company requesting to make outstanding payments.

11. It is further stated by the applicant that, despite efforts, having failed to receive the payment of debt from the corporate debtor, the applicant had issued demand notice dated 10.01.2019 in form No. 3 (**page 134-136**). That, the corporate debtor having failed to receive any reply to the demand notice in form No. 3, issued statutory demand notice to the corporate debtor under Section 8 of the Code on 04.02.2019 (**page 137-189**). Corporate debtor replied the statutory demand notice on 27.04.2019 (**page 190-197**) i.e. after 20 days, disputing claim of the applicant.

12. The respondent filed affidavit in reply cum objections inter alia stating that the petition is neither maintainable nor tenable in the eyes of law as it is structured on misconceived facts and legal position. That, the present petition is not

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signed and filed by the applicant or its authorised representative but by a law firm and an advocate could not have filed the petition under section 9 of IBC. That, various parts of the application are not numbered as prescribed under form 5. That, the petitioner has not filed affidavit as required under Section 9(3) (b) of the Code. That, the demand notice dated 04.02.2019 is defective and not in the prescribed format. That, the petitioner has not produced copy of bank statement/certificate from Financial Institution maintaining operational creditor's account. That, there are pre-existing disputes between the parties.

Findings

13. Heard the advocates appearing on behalf of both the parties and perused the documents.

14. On perusal of the application it is found that the applicant has submitted a certified true copy of the resolution passed by the Board of Directors authorising Mr. Girish Koulgi, Director of the applicant company "to sign and file vakalatnama or other authorizations/documents, give affidavits and evidence and such other documents as may be necessary in any Court, Tribunal, authority in India including the National Company Law Tribunal and/or any appellate forums in connection with or incidental to or in furtherance of the proceedings." On the basis of such authorisation, Mr. Girish Koulgi by way of affidavit has

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authorised M/s. Trilegal, Advocates to act, appear and plead on behalf of the applicant in the instant petition. Moreover, the application is signed by Mr. Girish Koulgi as authorised signatory for the applicant. Therefore, the objection/contention raised by the respondent that the application is signed without proper authorisation is not acceptable. Similarly, other contentions raised by the respondent that various parts of the application are not numbered as prescribed under form 5, the petitioner has not filed affidavit as required under Section 9(3) (b) of the Code, the demand notice dated 04.02.2019 is defective and not in the prescribed format, the petitioner has not produced copy of bank statement/certificate from Financial Institution maintaining operational creditor's account and there are pre-existing disputes between the parties are found to be baseless and without any support. On perusal of the records it is found that the applicant has submitted copy of the statement of bank account from February 2014 to October, 2016.

15. On perusal of records it is found that the applicant had issued letter dated 5th April, 2017 (page 131) to the corporate debtor seeking balance confirmation as on 31st March, 2017 for the audit purpose. The said letter bears signature with rubber stamp of the respondent acknowledging the debt. On perusal it is also found that the statement of accounts as on 31st March 2017 (page 132)

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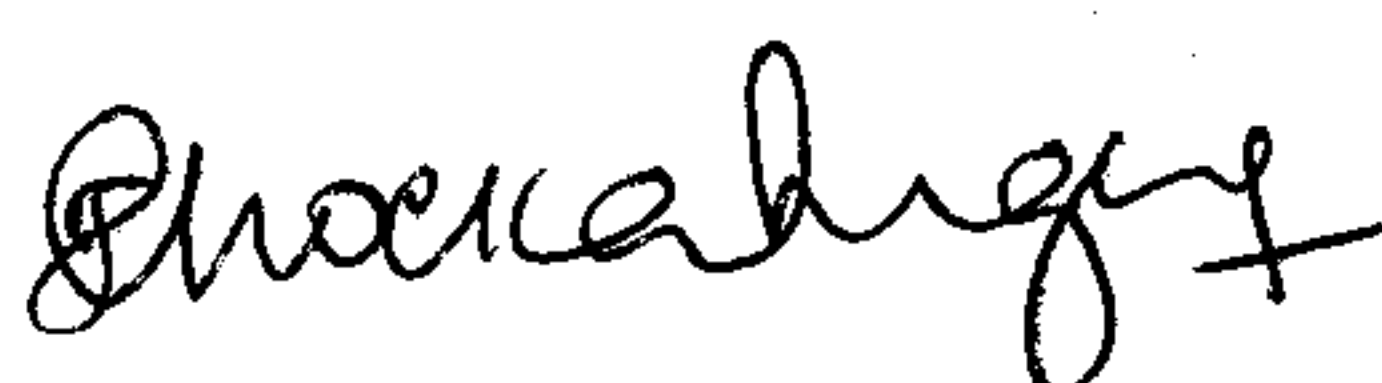
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has also been acknowledged by the respondent with sign and rubber stamp.

16. On perusal of the records it is also found that between the operational creditor and corporate debtor, email communication had taken place during the period from 10th January, 2015 to 10th October, 2018 (page 56-73 to the reply) regarding quality/quantity of the goods supplied and mode of transport. It is also found that during the period from 25.12.2014 to 08.12.2018 the respondent has raised seven debit notes on the applicant towards excess fines in vessels, production loss due to inferior quality of material and short material received.

17. 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.

18. 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. That, service is complete and 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.
19. 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.

20. 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.
21. 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.





22. 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.
23. 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.
24. This Adjudicating Authority hereby appoint Mr. Jagdishchandra B. Mistri, Bungalow No. 2, New day Park Society, Opp. Chandrapuri Apartments, Behind Sarkari Vasahat, Vastrapur, Ahmedabad 380 052 (ibmistri@yahoo.com) (9909431034) having registration No. IBBI/IPA-003/IP-N000126/2017-18/11337 to act as an interim resolution professional under Section 13(1)(c) of the Code.
25. This Petition is accordingly admitted. IAs, if any filed in the instant application stand disposed of.



26. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
27. 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)

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Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)