

IN THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH

TCP 285/I&BP/NCLT/MAH/2017

Under Section 9 of I&B Code, 2016

In the matter of

METAL POWER ANALYTICAL (INDIA) PVT. LTD.

... **Operational Creditor**

v/s.

CRYSTALINE EXPORTS PVT. LTD.

.... **Corporate Debtor**

Order delivered on 14.11.2017

Coram: Hon'ble Mr. B.S.V. Prakash Kumar, Member (Judicial)

Hon'ble Mr. V. Nallasenapathy, Member (Technical)

For the Petitioner: Mr. Anviudh Hariani, Counsel
Mr. Soura Subha Ghosh, Advocate
Mr. Samarth Chowdhary, Advocate
i/b M/s. Hariani & Co. for Operational Creditor

For the Respondent: Mr. Shyam Kapadia, Counsel
Mr. Lalan Gupta, Advocate
i/b M/s. Dhruve Liladhar & Co.

Per B. S. V. Prakash Kumar, Member (Judicial)

ORDER

Oral order dictated in the open court on 08.11.2017

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1. It is a Company Petition filed by the petitioner namely Metal Power Analytical (India) Pvt. Ltd. u/s 9 of Insolvency & Bankruptcy Code, 2016 against the Corporate Person namely Crystal Aline Exports Ltd. (in short herein after called as "Crystal") on the ground that Crystal failed to repay ₹9,88,766 together with interest at the rate of 18% per annum from 1.4.2016 till 11.7.2017, which was payable by Crystal to entities namely Marol Co-operative Industrial Estate, Municipal Corporation of Greater Mumbai towards assessment Bill and water Bill and Tata Power towards Bill dated 5.9.2015, because the petitioner paid these dues payable by Crystal, hence this petition for admission for initiation of corporate insolvency resolution process against Crystal.

2. The case of the Petitioner herein is Crystal assigned leasehold rights to the petitioner of the land bearing Compartment No.87 Plot No.14 at Marol Co-operative Industrial Estate, admeasuring 6600 sq. ft bearing CTS No.443/13 (P) of Village Marol, Andheri BSD and sold the ownership right of the Building standing under Plot, comprising of ground (stilt parking) and four upper floors and an exclusive terrace aggregating to approximately 15068.43 sq.ft. The Counsel further stated in the Deed of Assignment-cum-Sale dated 14.8.2015 executed in favor of the Petitioner by Crystal agreeing to pay all the Municipal Property Taxes and all other outgoings with respect to the property

abovementioned with the apportionment of outgoings with the Petitioner. Crystal further agreed that the transfer fees, subject to the limit of ₹25,000, payable to Marol Co-operative Industrial Estate for transfer of the leasehold rights in the said plot in the name of the petitioner would be borne and paid by both of them equally. It is further clarified in the agreement that any additional fees/donations/maintenance amount/development charges or any amount by whatsoever name called, that has to be paid to Marol Industrial Estate would be exclusively borne and paid by Crystal. Now the case of the Petitioner is, since Crystal did not pay to the entities supra as reflected in the Agreement in between them, for the Petitioner has been enjoying the lease hold rights over said property, the petitioner paid those dues payable by Crystal as mentioned below:

- (a) ₹2,40,200 paid to Marol Co-operative Industrial Estate
- (b) ₹7,22,920 paid to MCGM towards Assessment Bill dated 25.5.2015;
- (c) ₹22,022 paid to MCGM towards Water Bill dated 26.9.2015 and
- (d) ₹3,61,150 paid to Tata Power towards Bill dated 5.9.2015.

3. The Counsel of the petitioner has further clarified it addressed letters to Crystal asking it to make all the payments as agreed by the Corporate Debtor and when Crystal failed to make such payment as agreed by it, to protect its enjoyments rights, the Petitioner herein having

made all those payments to the respective entities, the petitioner on 31.3.2016 demanded Crystal to make payment of aggregated amount of ₹9, 88,716 with interest calculated at the rate of 18% p.a. When Crystal defaulted repaying the petitioner the dues the petitioner paid on behalf of Crystal to the entities even after statutory notice under sec.434(1)(a) of the Companies Act, 1956 was given, this Petitioner has been compelled to file this winding up Petition under sec.433 and 434 of the Companies Act, 1956 before the Honorable High Court of Mumbai. Owing to jurisdictional transfer of the winding up petitions from Hon'ble High Court to NCLT, this Petition has today been taken up for hearing after requisite form has been filed.

4. As to contentions raised by the Petitioner side, Crystal Counsel raised defense saying that it is not an operational debt as defined under I&B Code henceforth this case is liable to be dismissed as misconceived.

5. On hearing the submissions of either side, now the point for consideration is *as to whether the claim made by the petitioner falling within the ambit of operational debt as pleaded by the petitioner or not.*

6. On reading the definition of operational debt defined in section 5 (21) of the Code, it is ascertainable that claim could be, one – for the goods supplied or two – for services rendered or three – for the dues

arising under any law payable to the Central Govt. or any State Govt. or any local authority.

7. It is the case of the petitioner that its claim does not fall under either of the first two categories; the counsel of the petitioner says that since it has paid the dues payable by Crystal to the Governmental Authorities, it will fall under third category, therefore entitled for recovery of the same from Crystal, hence this petition.

8. It goes without saying that to fall under third category, claim shall be made by either Governmental authority or local authority. Admittedly Marol Co-operative Industrial Estate and Tata Power do not fall within the category of Government or local authority, so the dues payable to them will not fall under third category. Yes, the dues payable to Municipal Corporation of Greater Mumbai will fall within third category, but the petitioner having claimed dues mixing two different categories of debts as one debt, the claim made here cannot be construed as claim solely payable to either Government or local authority.

9. Assuming this total debt would fall under third category, the point to be decided is as to whether this petitioner can claim these dues as payable to the petitioner considering it as operational creditor.

10. On reading the definition of operational creditor as envisaged in section 5 (20), it is evident that the operational debt directly owed to a person or the operational debt assigned or transferred to a person alone will become operational creditor, not others.

11. It is not the case of the petitioner that any of the creditors assigned or transferred their claim to the petitioner, therefore it cannot claim to itself that it is an operational creditor entitled to make claim for the dues purportedly payable by Crystal were paid by it. As long as debt has not been assigned or transferred to a person, such person cannot be called itself as Operation Creditor by voluntarily making payment of somebody else. Since the right of payment has not been assigned or transferred to this person (Petitioner), this Bench cannot read payments made by this Petitioner would become claim claimable against Crystal by the petitioner owning the status of operational creditor.

12. On reading the provisions of law of this Code in semblance with facts of this case, it is hereby held that the claim made by the petitioner is not a debt, much less an operational debt owed to the petitioner by corporate debtor for want of existence of jural relationship of corporate debtor and operational creditor between them under this Code,

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henceforth this Petition is hereby dismissed with liberty to the Petitioner
to approach before appropriate Forum.

Sd/-

V. NALLASENAPATHY
Member (Technical)

Sd/-

B.S.V. PRAKASH KUMAR
Member (Judicial)