

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

C.P. No. (IB) 98/9/NCLT/AHM/2020

In the matter of:

M/s. Banga Iron & Steel Private Limited
45, Nandanbaug Farm House
Nr. Sardar Patel Ring Road
Naroda Dehtam Road
Bilassiya
Naroda
AHMEDABAD 380 025

Petitioner
Operational Creditor

Versus

M/s. Vicor Stainless Private Limited
A-201, Mondeal Square,
Opp. Honest Restaurant
Nr. Prahladnagar Garden
Prahladnagar
S.G. Highway
AHMEDABAD
Gujarat State

Respondent
Corporate Debtor

Order delivered on 12th March, 2020.

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

Appearance:

Advocate Mr. Tirth Nayak with Advocate Mr. Ankit Talsania for respondent.
Advocate Mr. Yuvraj Thakore for applicant.

ORDER

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

1. The instant application is filed by Mr. Bhupindersingh Banga, being director of M/s. **Banga Iron & Steel Private Limited** 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 respondent/corporate debtor is a company registered under the Companies Act, incorporated on 04.06.2008 having identification No. U27109GJ2012PTC070100 and having registered office at S.G. Highway, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 50,00,000/- and paid up share capital is Rs. 27,00,000/-.
3. The applicant/operational creditor is private limited company having its registered office at Naroda, Ahmedabad, Gujarat State engaged in the business of supply of rolling mill machinery and equipment.
4. The applicant/operational creditor has stated that the corporate debtor approached the operational creditor in the year 2019 and placed various purchase orders for supply of rolling mill machinery and equipment being manufactured by the operational creditor. Thereafter, the operational creditor supplied the quantities demanded by the corporate debtor and raised various invoices in respect of the same, copy annexed to the application (Page 16-19) amounting to **Rs. 18,52,600/- (Rupees eighteen lacs fifty-two thousand six hundred only)**.
5. It is further stated that petitioner maintained a running account with the corporate debtor and all payments received were adjusted against the pending invoices on first in first out basis. That, towards the aforesaid outstanding operational debt the operational creditor has not received any payment. That, the corporate debtor has admitted the outstanding amount but has deliberately chosen not to pay the said amount even after various reminders and requests

Shakir

Shakir

by e-mail, telephonic conversations the corporate debtor has failed to make the payment. Thus, having failed to recover the operational debt as stated above, the petitioner had issued demand notice under section 8 of the I & B Code in form 3 on 14th December, 2019 through his advocate.

6. In support of its claim, the operational creditor has annexed to the application, copy of all relevant documents like copy of invoices, demand notice, affidavit in support of the application, proof of service, computation showing the details of outstanding, correspondence between the two parties requesting to release payments, e-mail communication, ledger account maintained by the operational creditor etc.
7. The respondent/corporate debtor filed affidavit in reply inter alia stating that the petition is contrary to the object of the I & B Code, the corporate debtor is not an insolvent company and is merely facing a temporary financial crunch. That, the corporate debtor had made offers of repaying the outstanding amount, however, the said offers were summarily rejected by the applicant without appreciating the said proposals. That, there is nothing on record to show that the goods in respect of the invoices mentioned in the petition were actually delivered on the desired time, date and place. The respondent has denied receipt of goods supplied by the applicant.

Findings

8. Heard learned counsels appearing on behalf of both the sides and perused the documents attached to the application/reply.

Shankar Singh

Shankar Singh

9. On perusal of the record it is found that the demand notice issued by the applicant on 14th December, 2019 has been replied by the corporate debtor vide letter dated 18th December, 2019 (page 39 of the application) wherein the corporate debtor has categorically admitted the operational debt and has requested the operational creditor to give more time to settle the outstanding amount. Moreover, the corporate debtor has also confirmed the dues payable to the applicant in '**confirmation of accounts from 1st April 2019 to 30th September, 2019**' annexed to the application (**page 22**) which bears the seal and signature of the respondent. Under such circumstances contentions raised by the respondent that there is nothing on record to show that the goods in respect of the invoices mentioned in the petition were actually delivered on the desired time and claiming that the goods were not delivered to the respondent etc. are illusory and far from truth. More so, on one hand the respondent admits the debt and request for more time to clear the dues and on the other hand say that there is no proof on record to show that the goods were delivered at site.
10. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt and/or any pre-existing dispute regarding the operational debt from the corporate debtor.
11. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt to the Applicant.

Shachin Singh

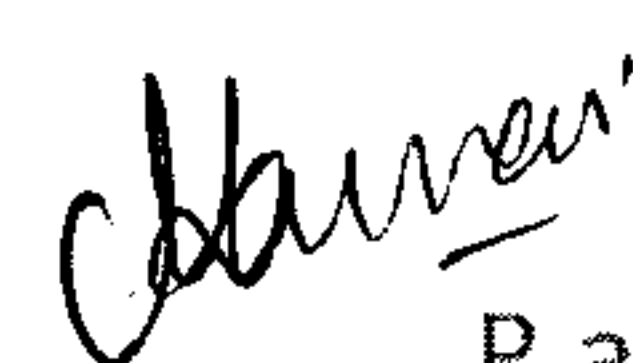
Chhanna

12. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
13. On perusal of the records it is also found that the corporate debtor has never raised any dispute on issuance of notice u/s 8 of the I & B Code nor have ever raised any dispute prior to the issuance of notice.
14. From the above discussions it is evident that the respondent has defaulted the debt and has admitted the operational debt.
15. 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.

16. 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 ever 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.

17. 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.
18. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
19. 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;

Shoekahger

Atman

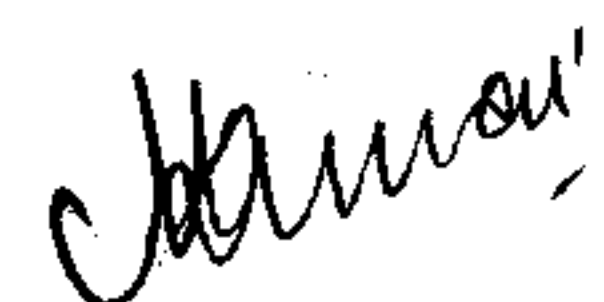
- (ii) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - (iii) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any 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.
20. 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.
21. 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.
22. The applicant/operational creditor has proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Sunit Jagdischandra Shah, 303, 3rd Floor, Abhijit - 1, Opp. Bhuj Mercantile Bank, Mithakhali Six Roads, Navrangpura,

Ahmedabad (sunit78@gmail.com) having registration No. IBBI/IPA-001/IP-P00471/2017-18/10814 to act as an interim resolution professional under Section 13(1)(c) of the Code.

23. This Petition is accordingly admitted.
24. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
25. 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)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

nalr