

**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI K ANANTHA PADMANABHA SWAMY – MEMBER JUDICIAL

PRESENT: HON'BLE SHRI BINOD KUMAR SINHA –MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 18.10.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	CP(IB) NO. 278/9/HDB/2019
NAME OF THE COMPANY	NCC Ltd
NAME OF THE PETITIONER(S)	Expo Gas Containers Ltd
NAME OF THE RESPONDENT(S)	NCC Ltd
UNDER SECTION	9 OF IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Avinash Desai } Pranav M } T P S Harshu }	Adv	9908888234 9493920844	

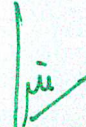
ORDER

Orders pronounced in open court. CP admitted vide separate order.



MEMBER TECHNICAL

AS



MEMBER JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, BENCH

CP (IB) No. 278/09/HDB/2019
Under Section 9 of the IB Code, 2016,
Read with Rule 6 of the Insolvency and Bankruptcy
(Application to Adjudicating Authority) Rules, 2016.

In the matter of
M/s. NCC Limited

Between:
Expo Gas Containers Ltd
Having its Regd. Office at
150, Sheriff Devji Street,
Mumbai.

... Petitioner/
Operational Creditor

And

NCC Limited,
Having its Regd. Office at
NCC House, Madhapur,
Hyderabad – 500 081,
Telangana.

... Respondent/
Corporate Debtor

Date of order: 18.10.2019.

Coram: Shri. K. Anantha Padmanabha Swamy, Member Judicial.
Dr. Binod Kumar Sinha, Member Technical.

Parties/counsels present:

For the Petitioner/Operational Creditor:

Mr. Kairav Anil Trivedi, PCA.

For the Respondent/Corporate Debtor:

Mr. Avinash Desai, Ms. C. Sindhua and Mr. TPS Harsha, Counsels.

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Per. K. Anantha Padmanabha Swamy, Member Judicial.

O R D E R

1. Under consideration is company petition filed by M/s. Expo Gas Containers Limited (in short, "Petitioner/Operational Creditor") against M/s. NCC Limited (in short, "Respondent/Corporate Debtor") under section 9 of the Insolvency and Bankruptcy Code, 2016 (in short, IB Code, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity, IB Rules, 2016).
2. Brief facts of the present Petition are as under:
 - a. That the Operational Creditor has received an Order on merit from Government of Maharashtra Directorate of Industries, MSME Facilitation Centre, under MSME Act, 2006, issued on 21st December, 2017 and received vide letter dated 29th December, 2017.
 - b. The said order is based on the Petition No. 102/2014 dated 22.12.2014 filed by Petitioner herein against the Respondent.
 - c. That a direction is given under an order passed under MSME Act, 2006.
 - d. That para 2 of the Order directs the Respondent "to pay to the Petitioner Rs. 32,50,298/- along with interest as per section 16A of MSME Act, 2006 on each and every due amount of invoice when become payable after deduction of 30 days till the realization of the amount to the Petitioner".
 - e. That a copy of the said order was delivered to NCC Ltd by Expo Gas Containers Ltd vide its letter dated 03.01.2018 on 08.01.2018.


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- f. That no payment has been received till date nor any appeal has been filed against this MSME order as per the Section 19 of MSME Act. That a demand notice under Form 3 and Form 4 has also been E-mailed.
- g. That in response to the said Demand Notice, the Petitioner has received a reply from Respondent dated 25.02.2019, denying the content of the Notice as "totally false and baseless and no liability exist to pay alleged debt of Rs. 1.25.92.306/-.

3. Counsel for the Respondent filed counter inter-alia stating as under:

- i. That the present petition is liable to be dismissed in *limine* in view of the existence of a dispute between the Operational Creditor and the Corporate Debtor.
- ii. That the Operational Creditor as per the Order by the Micro, Small and Medium Enterprises Facilitation Council, Konkan ("MSME Council"), neither supplied the material ordered for nor furnished invoices with the details of excise duty and other taxes paid to enable the Corporate Debtor to pay the same. Operational Creditor failed to file the excise invoices with details of Excise Duty and other taxes paid and despatch document which are an integral part of the MSME Award, which the Operational Creditor heavily relies in the present petition, as the Operational Creditor does have such excise invoices and despatch documents in its possession.
- iii. That the actions of the Operational Creditor in not filing the letters addressed by the Corporate Debtor over the alleged dispute, along with

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non-filing of Excise Invoices and purchase orders amounts to suppression of material facts.

- iv. That the Operational Creditor without complying with the conditions laid down by the MSME Council in its Award is relying on the Award to file the present petition. That the MSME Council categorically directed the Corporate Debtor to accept the work done and raw material purchased against the order placed and pay to the Operational Creditor every due amount of the invoice when become payable.

Extracts of the Award are being extracted for reference:

“Respondent is directed to accept the work done and raw material purchased against the order placed by the Respondent and to pay the Petitioner ₹32,50,298/- (Rupees Thirty Two Lakhs Fifty Thousand Two Hundred and Ninety Eight Only) along with interest as per section 16A of MSMED Act, 2006, on each and every due amount of the invoice when become payable after deduction of 30 days till the realization of the amount due to the Petitioner.”

- v. That the Corporate Debtor has expressed its willingness to comply with the order of the MSME Council, provided that the Operational Creditor complied with the conditions laid down in the Award, i.e., the Operational Creditor allow the Corporate Debtor to accept the work done and provide proof of the raw material purchased by the Operational Creditor.
- vi. That the Corporate Debtor vide its letter dated 07.04.2018 had categorically requested the Operational Creditor to forward Excise

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Invoice/other despatch documents to enable the Corporate Debtor to inspect the raw materials and to accept the work done in compliance with the Award of the MSME Council.

- vii. That the Operational Creditor failed to reply to letter dated 07.04.2018 and did not supply the Excise Invoices/other despatch documents and thereby did not comply with the conditions laid down in the Award. It is submitted that the clause 17.2 of the purchase order categorically provides for receipt of despatch documents to verify the material being sent by the Operational Creditor.
 - viii. That the failure of the Operational Creditor in providing despatch documents meant that Corporate Debtor could not comply with direction of the MSME Council to accept the work done and raw material purchased against the order placed by the Corporate Debtor, and therefore could not consequentially release any payments to the Operational Creditor.
4. Counsel for the Operational Creditor filed summary of Reply to counter inter-alia stating as under:
- a. That the only contention raised in the counter is that the letter dated 07.04.2018, be treated as a pre-existing dispute.
 - b. That the said letter does not dispute the MSME Order which is the basis of present Petition. It only asks for further information in the form of Excise invoices/Dispatch documents in terms of clause 7.2 of their purchase Order.
 - c. That the Respondent have pre-closed their order vide their email dated 07.06.2012. That the Corporate Debtor has asked the Petitioner to provide their details of claim due to pre-closure. The same is documented

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in MSME Order. That the Petitioner has given the details of work done and requested the Respondents to depute their representative to verify the status as per MSME order. The Petitioner has provided the latest drawing approvals approved QAP, raw materials identification and certification and inspection report certified by UIPL to the Respondent. That the MSME order has been decided on merits after giving sufficient opportunities to the Respondent. The principal amount of MSME order has been crystallized based on Petitioner's invoice for claim for expenses raised in 2012. The MSME Order further requires interest to be paid. The liability being crystallized, the same remains unpaid till date.

- d. That after issuance of demand notice under IBC, based on MSME order, in Form 3 and Form 4, two letters have been received from Respondent. Both the said letters do not dispute the MSME order nor has any appeal been filed. This clearly shows that there is no pre-existing dispute under IBC against MSME order, which is the basis of the present claim.
 - e. Reiterating above, the counsel for the respondent prayed to allow the present Petition.
5. Heard both the sides and perused the record.
 6. It is on record that (i) the Operational Creditor is a MSME Enterprise registered under MSMED Act 2006; (ii) that the Corporate Debtor has placed orders to the Operational Creditor on 14.10.2010 and 08.07.2011 for designing, manufacturing, testing and supply of pressure vessels and FLARE KO vessels and (iii) the Corporate Debtor vide its email dated 07.06.2012 informed the Operational Creditor that they are pre-closing the order and enquired about the cost of their raw material. The Operational Creditor vide its email dated 15.06.2012, 29.06.2012 and 16.07.2012

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provided the details of work done as requested by the Corporate Debtor and also requested them to depute their representative to verify the status of the job done. However, the Corporate Debtor has not deputed any of their representative to inspect the work done. It is also on record that since the Corporate Debtor failed to make the payments, the Operational Creditor approached Micro and Small Enterprises Facilitation Council, Konkan (Council) established under Section 20 of the Micro, Small Medium Enterprises Development act, 2006 and filed a petition in 102/2014 and the Council has also given stage wise notice to the Corporate Debtor and the Corporate Debtor was also represented by its representative before the Council. The Council dealt with the merits of the petition filed in 102/2014 and vide its order dated 21.12.2017 directed the Corporate Debtor to accept the work done and raw material purchased against the order placed by the Corporate Debtor and to pay the Operational Creditor an amount of Rs. 32,50,298/- along with interest as per section 16A of MSMED Act, 2006. The copy of the order dated 21.12.2017 was served on the Corporate Debtor on 08.01.2018. Further the Corporate Debtor has neither filed any appeal against the order dated 21.12.2017 passed by the Council nor has made any payments as per the directions in the said order. However, the Corporate Debtor has issued a letter dated 07.04.2018 after 3 months from the date receipt of the order copy which is beyond time period mentioned in the order dated 21.12.2017. Since, the Corporate Debtor failed to file any appeal against the order dated 21.12.2017 made by the Council, it is estopped from making disputes about the work done by the Operational Creditor at this stage. It is also rightly said by the Operational Creditor that the Corporate Debtor has pre-closed the purchase orders and it has


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requested the Operational Creditor to inform the details of expenditure which was duly informed by the Operational Creditor. In the absence of any appeal or stay of order dated 21.12.2017, the order made by the MSME Council has attained finality and it is deemed to be decree and it can be enforced before this Adjudicating Authority. Petitioner has proved beyond doubt that the Corporate Debtor has defaulted in making the payments to the Operational Creditor in terms of the order dated 21.12.2017 made by the Council. Further, the Petitioner has complied with all the requirement as stipulated under the provisions of the IB Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process. In these circumstances, having satisfied with the submissions made by the Petitioner/OC this Adjudicating Authority is inclined to admit the instant Petition.

7. In the written submissions filed by the Respondent, they have mentioned about Arbitration proceeding between the parties on the same subject matter. A perusal of the documents submitted however, shows that the arbitration notice was issued by Petitioner against the Respondent for payment of the debt as crystallised by the MSME council order dated 21.12.2017 only and no dispute has been raised by the Respondent herein so as to fulfil the requirements of Sec.8(2)(a) of the Code. Further, at no point of time during the hearing any submission was made with regard to the same by either party. Therefore, we are not inclined to consider this aspect while deciding the instant Petition.
8. Further, this Adjudicating Authority is satisfied with the submissions put forth by the Petitioner/Operational Creditor regarding existence of 'Operational debt' and occurrence of 'default'. Further, the Operational

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Creditor has fulfilled all the requirements as contemplated under IB Code in the present Company Petition and has also proposed the name of IRP after obtaining his written consent in Form-2. In view of the above, this Adjudicating Authority is inclined to admit the petition.

9. The instant petition is hereby admitted and this Adjudicating Authority Orders the commencement of the Corporate Insolvency Resolution Process which shall ordinarily get completed as per the time line stipulated in section 12 of the IB Code, 2016, reckoning from the day this order is passed.
10. This Adjudicating Authority hereby appoint Mr. Ashish Vyas (IRP) as the name proposed by the Operational Creditor and his name is reflected in IBBI website. He has also filed his written consent in Form - 2. The IRP is directed to take charge of the Respondent/Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016 within three days from the date of this order, and call for submissions of claim in the manner as prescribed.
11. This Adjudicating Authority hereby declares the moratorium which shall have effect from the date of this Order till the completion of corporate insolvency resolution process for the purposes referred to in Section 14 of the I&B Code, 2016. We order to prohibit all of the following, namely:
 - a) *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;*

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- b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- c) *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 Operational Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);*
- d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

12. However, the supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. Further, the provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

13. The IRP shall comply with the provisions of Sections 13(2), 15, 17 & 18 of the Code. The directors, Promoters or any other person associated with the management of Corporate Debtor are directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 and for discharging his functions under Section 20 of the I&B Code, 2016.

14. The Petitioner/Operational Creditor as well as the Registry is directed to send the copy of this Order to IRP so that he could take charge of the Corporate Debtor's assets etc. and make compliance with this Order as per the provisions of I&B Code, 2016.

15. The Registry is also directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

16. The address details of the IRP are as follows:-

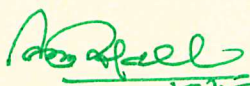
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Mr. Ashish Vyas
Regn No. IBBI/IPA-001/IP/P-01520/2018-19/12267
#B-1A, Viceroy Court CHS,
Thakur Village, Kandivali (West),
Mumbai,, Maharashtra – 400 101.
Email: ashishvyas2006@gmail.com

Off: #103 Arch Gold, Next to MTNL Exchange, SV Road,
Poinisar, Kandivali (West), Mumbai, Maharashtra 400 067.

17. The present Petition is hereby admitted.


18/12/19
Dr. Binod Kumar Sinha
Member Technical

Rathi/alekhya


K. Anantha Padmanabha Swamy
Member Judicial