A-2

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

CP(IB) 112 of 2020

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 19.02.2021

Name of the Company: NATECH Medical Ltd.
V/s
MERIL Life Science Pvt. Ltd.

Section 9 of IBC,2016.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

ORDER
(through video conferencing)

None appeared on behalf of parties.

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

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 19th day of February, 2021

MANORAMA KUMARI
MEMBER JUDICIAL

AB

BEFORE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court-2

CP (IB)No.112/9/NCLT/AHM/2020

In the matter of:

M/s. NATECH Medical Limited
Maeva Centre Building
Silicon Avenue
Ebene Business Park
72201 Reduit
Mauritius

..... Petitioner
(Operational Creditor)

Versus

M/s.MERIL Life Sciences Pvt. Ltd.
Bilakhia House
Survey No.135/139
Muktanand Marg
Chala, Vapi
Gujarat-396 191

..... Respondent
(Corporate Debtor)

Order delivered on 19th February, 2021.

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

And

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

Appearance:
Mr. Vinayak Srivastsva, Advocate, for the Petitioner-Operational Creditor.
Ms. Vaibhavi Parikh, Advocate, for the Respondent-Corporate Debtor.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (T)]

1. The present Company Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ["I&B Code" for short]

read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, ["Rules" for short], by the Operational Creditor, viz., M/s. NATEC Medical Ltd. through its Authorized Signatory, Mr. PALLIPPATT Roy Devassy, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of M/s. MERIL Life Sciences Pvt. Ltd., (hereinafter referred to as Corporate Debtor). The Board Resolution so passed by the Board of Directors of the petitioner company on 7th January 2020 authorizing Mr. PALLIPPATT Roy Devassy to deal on behalf of the petitioner, in relation to any legal proceedings against the corporate debtor M/s. MERIL Life Sciences Pvt. Ltd. also given authorization to appoint advocate to institute and / or legal proceedings before the Authority on behalf of the petitioner company (Exhibit-G of the petition).

2. The Petitioner-Operational Creditor is incorporated as a Private Company, limited by shares, on 2nd day of June, 1998, under Section 19 of the Companies Act, 1984 (Copy of Certificate of Incorporation is annexed as Exhibit-H, at page No.369) and having its registered office at Maeva Centre Building, Silicon Avenue Ebene Business Pari 72201, Reduit Mauritius.

3. The corporate debtor, i.e. MERIL Life Sciences Private Limited, is incorporated under the provisions of the Companies Act,

1956, on 19.06.2007, having identification No. U24239GJ2007PTC051137 and having registered office at Bilakhia House, Survey No.135/139, Muktanand Marg, Chala, Vapi-396 191. The authorized share capital of the corporate debtor is Rs.1000000000/- and paid up share capital is Rs.993600000/-.

4. The petitioner-operational creditor has submitted that

4.1 The corporate debtor had approached the petitioner for supply of medical devices (goods) and, hence, entered into Sales Agreement dated 1st April 2018 with the corporate debtor. That the petitioner had supplied the aforesaid devices / goods to the corporate debtor against which petitioner had raised invoices (copy of the invoices annexed with the application). Further stated that the corporate debtor never raised any valid objection in respect of the quantity and / or the rates of the goods. However, as per the agreement entered between the parties, the corporate debtor failed and neglected to make the payment. That the petitioner had sent its representative to the factory of the corporate debtor to make enquiry of balance outstanding, but no proper response was given by the corporate debtor.

4.2 Therefore, the petitioner had sent a Demand Notice dated 01.11.2019, under Form-3, to the corporate debtor.

4.3 That in spite of receipt of notice, the corporate debtor neither issued any notice relating to dispute of the unpaid operational debt nor complied with the notice.

4.4 It is further stated that the petitioner is maintaining account with the "The Mauritius Commercial Bank" wherein the bank statement from 17.03.2019 till 17.11.2019 clearly shows that no payment has been made against principal outstanding of Rs.4,22,54,296/- (Rupees Four Crore Twenty Two Lac Fifty Four Thousand Two Hundred Ninety Six only). Date of default is 17.03.2019.

5. In support of its claim, the petitioner-operational creditor, has annexed copies of the following documents:-

1) Sales Agreement dated 1st April 2018
2) Purchase Orders along with order acknowledgement
3) Unpaid Invoices
4) Demand Notice under Form 3 of the Insolvency and Bankruptcy Code, 2016, and postal receipt
5) Postal receipts, returned envelopes and track report
6) Bank statement of operational creditor
7) Board Resolution
8) Incorporation Certificate of Operational Creditor
9) Reply to Demand Notice
10) Ministry of Corporate Affairs record of corporate debtor

6. On receipt of the notice, the respondent-corporate debtor appeared through its learned lawyer and filed reply as well as written submission. The corporate debtor in its reply stated that

6.1 That the respondent company is engaged in the business of manufacturing and marketing of Medical Devices used to alleviate the human sufferings and thereby improving healthcare of humans. The Hospitals are one of the most crucial and important clients amongst its other customers who place orders of products like Balloon Catheters, Stent, etc. with the respondent company.

6.2 That two Agreements were entered into between the parties; one is Quality Agreement dated 01.04.2018 and another is Sales Agreement dated 09.05.2018. That the corporate debtor company is providing of the healthcare related products for interventional procedure in the human body, it was made explicitly to the applicant before entering to the said Agreements that the Quality of the products being the most important factor would not be compromised at any cost. (Copy of the Quality Agreement entered into between the parties annexed with the reply as Annexure-R1).

6.3 It is submitted by the respondent that it is a going concern and having yearly turnover of Rs.416 crores, employing 1591 persons and regularly paying taxes and dues and it is a solvent company.

6.4 In reply to Demand Notice, the respondent has replied vide its letter dated 04.12.2019 and 08.01.2020 narrating various defects in the products supplied and the complaint by end users, hospitals and Doctors.

6.5 That there is existence of disputes prior to issuance of demand notice and initiation of present insolvency proceedings. Hence, the instant petition is not maintainable, it is liable to be dismissed with costs.

7. Heard learned counsel for both the parties also seen the records. The present petition is filed on 30th January, 2020.

8. On perusal of the reply filed by the corporate debtor, it is noted that the corporate debtor has informed the defects in the products supplied in his reply to demand notice. The corporate debtor has annexed copy of email addressed by the corporate debtor company disputing the quality of the products / goods supplied by the petitioner and the response of the applicant to the same.

Email dated 13 June, 2018	Corporate Debtor to Petitioner	Annexure-R2 (Colly.) (Page No.24)
Email dated 13 June, 2018	Petitioner to Corporate Debtor	(Page No.25)
Email dated 15 June, 2018	Corporate Debtor to Petitioner	(Page No.26)
Email dated 11 July, 2018	Petitioner to Corporate Debtor	(Page No.27)

Email dated Wednesday July 2018	Corporate Debtor to Petitioner	(Page No.28)
Email dated Wednesday July 2018	Petitioner to Corporate Debtor	(Page No.29)
Email dated 03 October, 2018	Corporate Debtor to Petitioner	(Page No.30)
Email dated 29 December, 2018	Corporate Debtor to Petitioner	(Page No.38)

9. Further, the corporate debtor has also annexed copy of the emails sent to the petitioner regarding various complaints received from the customers of the corporate debtor, along with images of the defective products / goods (Annexure-R4 – Colly) (Page Nos. 32 to 37).

10. The above discussion clearly shows that there is pre-existing dispute raised by the corporate debtor before issuance of demand notice dated 04.11.2019, which relates to the goods and service provided by the petitioner. This clearly shows that there is dispute even before the issuance of demand notice and the said dispute falls within the ambit of Section 5(6)(b) of the IB Code.

11. The Hon'ble Supreme Court in the case of ***Mobilox Innovation Pvt. Ltd. vs. Kirusa Software Project Ltd.***, 2017 held that

> *"Once the operational creditor has filed an application, which is otherwise complete, the adjudicating authority must reject the application under Section 9(5)(2)(d) if notice of dispute has been received by the operational creditor or there is a record of dispute in the information utility. It is clear that such notice must bring to the notice of the operational creditor the "existence" of a dispute or the fact that a suit or arbitration proceeding relating to a dispute is pending between the parties. Therefore, all that the adjudicating authority is to see at this stage is whether there is a plausible contention which requires further investigation and that the*

> *"dispute" is not a patently feeble legal argument or an assertion of fact unsupported by evidence. It is important to separate the grain from the chaff and to reject a spurious defence which is mere bluster. However, in doing so, the Court does not need to be satisfied that the defence is likely to succeed. The Court does not at this stage examine the merits of the dispute except to the extent indicated above. So long as a dispute truly exists in fact and is not spurious, hypothetical or illusory, the adjudicating authority has to reject the application".*

12. The existence of dispute largely depends on the facts and circumstances of each case. In the factual background of this case, there is existence of dispute in respect of defect of the medical devices / goods supplied/ delivered by the petitioner to the corporate debtor.

13. Thus, in case of dispute, this is not the forum to examine and adjudicate as to what extent the claim of the petitioner is admissible as due and recoverable. Neither the Tribunal in the present proceedings will examine the merits of the respective claims. Moreover, even the adequacy of the dispute has not been seen. It is only to be seen whether the dispute raised by the corporate debtor qualified as dispute as defined under sub-section 6 of section 5 of the IB Code. The contention raised by the corporate debtor was neither spurious nor hypothetical nor illusory and in fact there is a dispute as to the services provided by the petitioner, in respect of defective goods / products.

14. The existence of non-disputed operational debt is sine-qua-non for initiating CIRP under Section 9 of the IB Code, the IB

Code is not intended to be a substitute to a recovery forum. In the present case, the dispute was raised before the issuance of notice under Section 8 besides the correspondence (email) placed on record shows that the quality of the goods/products (defect in the goods / products) has been disputed from time to time and there is a plausible dispute pre-exist between the parties.

15. In the factual scenario, the record shows that the dispute was raised prior to issuance of Demand Notice under Section 8 of the IB Code.

16. For the reasons stated above, this Adjudicating Authority is of the view that the application does not qualify for admission under Section 9 of the IB Code.

17. Accordingly, the present IB Petition, i.e. CP (IB) 112/9/NCLT/AHM/2020 is rejected.

18. No order as to costs.

19. However, it is made clear that observation made in this order shall not be construed as an expression of opinion on the merits of the controversy. The rights of the petitioner before any other forum shall not be prejudiced on account of dismissal of the instant application.

20. The Registry is directed to communicate a copy of this order to the petitioner and to the respondent.

Chockalingam Thirunavukkarasu	**Manorama Kumari**
Adjudicating Authority&	**Adjudicating Authority&**
Member (Technical)	**Member (Judicial)**

Sudha