

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

C.P. (I.B) No.492/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 24.11.2020**

Name of the Company: Adroit Structural Engineers Pvt Ltd
V/s
Vee Rubber India Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code,
2016.

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

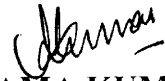
**ORDER
(through video conferencing)**

Learned FCA Mr. Kiran Shah is appeared on behalf of the Petitioner.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 24th day of November, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 492/9/NCLT/AHM/2019

In the matter of:

Adroit Structural Engineers Private Limited

Adroit House, 43 Nutan Bharat Society

Alkapuri

VADODARA 390 007

Gujarat State

:

Petitioner

Operational Creditor

Versus

Vee Rubber India Private Limited

Revenue Block No. 510, 511, 514 and 516

Village Kunpur

Taluka Mandal Kunpur

Ahmedabad 382 130

Gujarat State

:

Respondent

[Corporate Debtor]

Order delivered on 24th November, 2020

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

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

Appearance:

Petitioner : Mr. Kiran Shah, FCA

Respondent : Mr. Ravi B. Shah, Advocate

ORDER

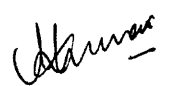
Per se : Ms. Manorama Kumari, Member (Judicial)

1. Jasminder Singh Grewal, Director being authorised signatory, on behalf of **M/s. Adroit Structural Engineers Private Limited**, 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 [hereinafter referred to as "the Rules"], as operational creditor/applicant.





2. The applicant/operational creditor is a private limited company having its registered office at Vadodara, Gujarat State engaged in civil, structural and infrastructure works of plants.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 23.12.2014 and having identification No. 081632 and having registered office at Taluka Mandal Kunpur, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs.48,00,00,000/- and paid up share capital is Rs. 28,80,00,000/-.
4. The applicant/operational creditor has submitted that the corporate debtor had placed work orders dated 18.05.2016 and 02.09.2016 for civil, structural and infrastructure works of its plant at Kunpur, Tal. Mandal, District Ahmedabad. That, both the parties had agreed to for the general conditions of contract, drawings and bills of quantities showing and describing the work to be done, prepared by or under the directions of consultant M/s. VMS Engineering & Design Services P. Ltd. That, as per the terms and conditions, service tax will be paid extra against the contract value by the respondent company as per the prevailing rate of 6% on total value of work.
5. The applicant has further submitted that the applicant had raised 19 Running Account (RA) bills on the corporate debtor for the total work done. That, with effect of the new GST laws in India, the contractor/consultant has charged 9% SGST and 9% CGST from RA Bill No. 10 onwards which have been effectively communicated to the corporate debtor and was also reflected in RA bill No. 10 along with the subsequent RA bills to the respondent company. That, inspite the applicability of new GST laws in India (enforced


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from 01.07.2017 onwards), the respondent company continued to pay the interest amount of work orders @ 6% and did not consider the modification/amendment in the tax structure.

6. The applicant has further submitted that while considering the invoice value of the total work done from RA bill No. 10 onwards with effect to the implementation of the new GST Laws in India, the interest value of Rs. 1,03,65,075.39 being the total value of GST receivable amount due @ 12% levied from RA Bill No. 10 dated 31.07.2017 till RA bill No. 19 dated 27.11.2018 and the interest amount of Rs. 1,00,47,985/- remains outstanding and payable by the respondent company.
7. The applicant has further submitted that despite several reminders the respondent has not paid the operational debt due and payable by the respondent, therefore, this petition.
8. The applicant has further submitted that having failed to receive the operational debt due from the respondent company, the applicant was compelled to issue demand notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 dated 09.04.2019 calling upon the respondent to release the dues aggregating to **Rs. 1,47,84,140.87 (Rupees one crore forty-seven lacs eighty-four thousand one hundred forty and paise eighty-seven only)** inclusive of the retention amount to the tune of Rs. 47,36,155.87 and the GST receivable amount to the tune of Rs. 1,00,47,985/-
9. The applicant in support of its claim has furnished copy of documents like; affidavit in support of the application,





affidavit under Section 9 (3) (b) of the IB Code, bank statement/certificate issued by the bank as required under Section 9 (3)(c) of the IB Code, work order, invoices, demand notice, Board Resolution passed by the Board of Directors dated 02.03.2019, reply to the demand notice dated 09.05.2019, proof of service etc.

10. The respondent filed affidavit in reply inter alia raising various objections. The respondent has submitted copy of the e-mail communication had with the applicant during the period from 31.07.2017 to 12.01.2019 mainly regarding the issue of GST levied by the applicant.
11. The respondent has further alleged that the application is not maintainable on the ground of pre-existing dispute between the parties since the inception of the agreement. It is further stated by the respondent that there are two work orders dated 18.05.2016 and 02.09.2016 and as per the said work orders there is no outstanding due and the amount of retention is required to be set-off and adjusted against the liquidated damages suffered by the respondent company on account of delay in completing work in time.
12. As per the respondent, the work is required to be completed on or before 25.02.2017 and 16.01.2017 respectively, but, the applicant miserably failed to complete the work on time consequent upon which the respondent had to suffer liquidated damages and substantial loss. That, because of such delay, the respondent company could not finish its obligation under onward contracts and was exposed to huge liability of damages from third party which the respondent is entitled to recover from the applicant. It is further stated that the respondent is going to file appropriate claim against the applicant company for recovery of losses and damages. The said fact has been apprised to the applicant on





17.09.2018 by way of e-mail. It is further stated by the respondent that as per the terms and conditions of the work order dated 18.05.2016 and 02.09.2016 all the taxes are included in the bill amount and no separate amount is required to be paid by the respondent company except service tax. It is further stated by the respondent that as per para 5, 11 and 16 of the work order dated 18.05.2016 and 02.09.2016, the applicant company is solely liable to pay all the taxes and all the taxes are included in the bill amount. In view of that the applicant company have no right to claim beyond the terms and conditions of the work order. It is further stated by the respondent that though the applicant has failed to complete the work, the respondent has paid all the bill amount to the applicant without any delay, hence, the application requires to be dismissed.

Findings:

13. Heard the lawyers appearing for both the sides and perused the documents annexed to the application/reply.
14. On perusal of the records it is found that the work orders were issued on 18.05.2016 and on 02.09.2016 with various terms and conditions.
15. On perusal of the records it is found that the main issue is with regard to the payment of GST levied from RA Bill No. 10 dated 31.07.2017 till RA Bill No. 19 dated 27.11.2018. It is a matter of record that GST law is enforced in India from 01.07.2017 onwards which is charged to be valued @ 9% of SGST and 9% CGST of total value of work done. In view of that from RA Bill No. 10 onwards, till RA bill No. 19 remaining 12% of interest amount/value remain

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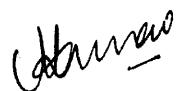
outstanding in the books of the applicant which the applicant is entitled for and in view of that amendment in GST Laws, the applicant has written several letters to the corporate debtor for payment. Copy of said communication have been annexed to the application, however, the corporate debtor has failed to comply. The applicant is entitled for such claim in view of agreement/work order dated 18.05.2016 and 02.09.2016 wherein both the parties have agreed that **any change in the tax structure will be considered at later stage at actual.**

16. On perusal of paragraph No. 5 of both the agreements it is found that both the parties have agreed that **any change in the tax structure will be considered at a later stage at actuals.** For the sake of convenience said paragraph No. 5 of the agreements dated 18.05.2016 and 02.09.2016 is reproduced here below: -

"As per your final offer received via mail dated 16.05.2016 please find attached BOQ as Annexure I and accordingly the final contract sum is Rs. 12,68,93,895/- (Rupees twelve crores sixty-eight lacs ninety-three thousand eight hundred ninety-five only). Rates mentioned in this work order are inclusive of all taxes prevailing like entry tax if any, applicable towards this contract. The rate also includes all taxes State / Central / Local, Excise duty, custom duty, VAT Octroi. Service tax will be paid extra by VEE RUBBER INDIA PRIVATE LIMITED as per prevailing rate at present 5.8% on total value of work by VEE RUBBER INDIA PRIVATE LIMITED. Any change in tax structure will be considered at later stage at actuals."

17. It is important to note that in the aforesaid agreement both the parties covenanted in para No. 16 that all the statutory compliance for labour, workmen compensation, octroi, service tax, VAT, ESI, royalty, labour cess etc. shall be responsibility of the petitioner. In view of that, unless the said amended GST is paid by the corporate debtor, the applicant will not be in a position to make any statutory compliance. Thus, admittedly, the corporate debtor is bound






to pay the difference of the GST in view of the amendment brought by Government of India in 2017 which the corporate debtor has also agreed in the work order (para 5).

18. Under such circumstances, the amount so claimed by the applicant is admittedly due and payable by the corporate debtor along with interest on RA No. 10 till the final bill. However, with regard to any liquidated damages claimed by the corporate debtor due to delay in completion of the work, the corporate debtor may approach competent court of law for realisation of the liquidated damages as the very object of the IBC does not include any damages or compensation for loss of work. Moreover, from own admission of the corporate debtor it is clear that the corporate debtor has not filed any case for recovery of liquidated damages when the cause of action arose sometime in the year 2016. Therefore, it appears that the statement made in the objections is only an afterthought so as to rebut the claim of the petitioner.
19. 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 due and payable to the Applicant.
20. 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'.
21. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBC(JP) 2 SC*** that while examining an application under Section 9 of the





Act, the Adjudicating Authority 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.

22. Thus, under the facts and circumstances and as discussed herein 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.

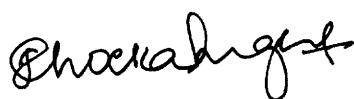
23. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-

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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.

24. 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.
25. 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.





26. 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.
27. 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.
28. The applicant/operational creditor has proposed Mr. Tejas Shah to act as Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Tejas Shah, B-201, Narayan Krupa Avenue, Opp. Prernatirth Derasar, Jodhpur, Satellite, Ahmedabad 380 015 (tejasshah44@yahoo.com) having registration No. IBBI/IPA-001/IP-P00089/2017-18/10185 to act as an interim resolution professional under Section 13(1)(c) of the Code.
29. This Petition is accordingly admitted.
30. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
31. 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 of 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)

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