IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH

C.P. NO. 1112/I&BP/2017

Under section 9 of the IBC, 2016

In the matter of
Omicron Sensing Private Limited
.... Petitioner

v/s.

Centech Engineers Pvt. Ltd.
.... Respondent

Order delivered on: 06.07.2017

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

For the Petitioner: Mr. Amir Arsiwala, Advocate and
Mr. Shambhu Jha, Advocate

For the Respondent: Mr. G.M. Joshi, Advocate,

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

ORDER

It is a Company Petition filed u/s.9 of The Insolvency & Bankruptcy Code, 2016, against the Corporate Debtor on the ground that the Petitioner raised invoices demanding payment for the goods supplied to the corporate debtor on the Purchase Order given by the Corporate Debtor and the corporate debtor having failed to repay dues outstanding against the Corporate Debtor, the Petitioner initially issued notice u/s 8 of

the Code, when there was no reply within ten days thereof, the petitioner filed this Petition for initiation of Insolvency Resolution process against the Corporate Debtor.

2. On perusal of the Company Petition it appears that the Operation Creditor raised six invoices against the Corporate Debtor for the goods supplied to the Corporate Debtor, on such supply, the Corporate Debtor received the said goods agreeing to pay the dues within credit period of 45 days. The total aggregated amount of all the invoices raised by the Petitioner is ₹7,01,525. The Petitioner further submits that the Corporate Debtor also issued postdated cheques against each of the invoices raised by the Petitioner which are as mentioned below:

Sr. No.	Invoice No.	Date	Invoice Amount	Pending amount
1.	541189	30.05.2016	2,54,475.00	2,54,475.00
2.	541257	17.06.2016	7,875.00	7,875.00
3.	541353	11.07.2016	1,90,125.00	1,90,125.00
4.	541376	16.07.2016	92,475.00	92,475.00
5.	541397	19.07.2016	89,550.00	89,550.00
6.	541424	26.07.2016	1,55,025.00	67,025.00
		Total	7,89,525.00	7,01,525.00

3. When the cheques were presented, all have been dishonored. As to one of these cheques bearing number 268902 for an amount of ₹92,475, the petitioner has issued notice dated 2.5.2017 u/s.138 of the Negotiable

Instrument Act to the corporate debtor, though the Corporate Debtor received this notice on 5.5.2017, there was no reply from the Corporate Debtor disputing or admitting this liability. The petitioner has also indicated that this Corporate Debtor being entitled to commission over the purchases, that has been adjusted in the Ledger Account of the debtor company. As to the outstanding dues of ₹7,01,525, having the Corporate Debtor failed to make payment, the Petitioner issued statutory notice on 23.5.2017 u/s 8 of the Code giving details of the amount in default as well as details and copies of unpaid invoices, but no reply came from the debtor within 10 days from the date of receipt of notice i.e, 26.5.2017. Since the debtor neither paid the claim amount to the petitioner, nor replied to the notice given by the petitioner, the Petitioner filed this Company Petition u/s.9 of I&B Code on 16.6.2017, as soon as this case was filed, notice of hearing has been served upon the Corporate Debtor, today Counsel appeared on behalf of the Corporate Debtor.

4. The Petitioner has also filed email from the Corporate Debtor making a request to the petitioner to withhold the cheque bearing No.430835 for ₹1,90,125 and cheque bearing No.430836 for ₹92,475 and another cheque bearing No.430851 for an amount of ₹2,54,475 presenting it and another correspondence dated 22.7.2016 to show that this Corporate Debtor requesting the petitioner to withhold the cheque bearing No.216641 for ₹2,54,475 presenting it, so that the Corporate Debtor would clear the cheques in the following week.

5. The second email correspondence with the Corporate Debtor reflects that the debtor giving another cheque and later dishonoring it. To prove that the payments have not been made despite notice served upon the Corporate Debtor, the Petitioner filed a Certificate issued by the Union Bank of India dated 1.7.2017, reflecting that the account of the Petitioner herein has not been credited with an amount of ₹7,01,525 in between 25.6.2017 and 29.6.2017 by any mode i.e. by cheque/RTG/Cash deposit or otherwise.

6. On perusal of the Affidavit filed by the Corporate Debtor it appears that this Corporate Debtor did not give timely reply to the notice given u/s.8 of Insolvency & Bankruptcy Code 2016; that the promoter of corporate debtor was not available owing his wife delivery, he could not reciprocate to the notice issued u/s 8 of the Code. The Counsel submits that the debtor is liable to pay ₹92,475 only, except the said due outstanding, the debtor owes nothing to the petitioner, but the debtor candidly admitted that the said cheques are bounced, for the actual claim to which the petitioner entitled, but not to the default amount mentioned in this petition, hence this Petition is liable to be dismissed.

7. On perusing the averments and submissions of both sides, it appears that it is not the case of the debtor that purchase orders have not been issued, goods not supplied and invoices not raised, cheques given by the debtor not bounced, and it is also not the case of the debtor in the email making request for not presenting cheques so that the debtor would pay its dues soon, the only defense the debtor taken out is that

when the petitioner is entitled to proceed against all the bounced, why this petitioner filed criminal case under section 138 of Negotiable Instruments Act, not against all the cheques bounced, it appears to us this defence is too fragile because the petitioner is at liberty to proceed in the way it wants, it would not be at the dictate of the debtor, the only point left to it take up is as to whether goods supplied or not, whether they are of quality as agreed in between them and any proceedings pending over it, here nothing of that kind, therefore the argument of filing criminal case against the corporate debtor in relation to only one cheque, has not made any sense for seeking dismissal of this case. Since the cheque bounce case being a criminal case and the debtor having not disputed issuing such cheque, it will not come within the definition of "dispute".

8. To prove the case of the Petitioner, the Petitioner filed Purchase Order which is not disputed by Corporate Debtor, invoices raised by the Petitioner also not disputed by the Corporate Debtor and also postdated cheques issued to the Petitioner against the invoices are also not disputed, therefore, it has to be construed that the Petitioner has proved that goods have been supplied to the Corporate Debtor, consideration has not been paid, as to default is concerned for no payment has been made and the cheques issued by the Corporate Debtor having been dishonored, it is hereby construed that the Corporate Debtor has defaulted in making the repayment after supply of goods by the Petitioner herein.

9. The Corporate Debtor, who is under obligations to reply to the notice u/s.8 of The Insolvency & Bankruptcy Code within 10 days after receipt of the notice, has failed to give any reply within 10 days from the date of receipt of notice, the Petitioner having obtained Certificate from the Union Bank reflecting no payment has been made in response to the notice sent by the Petitioner and also filed an Affidavit as prescribed u/s.9 of the Insolvency & Bankruptcy Code reflecting no reply has been given by the Corporate Debtor within 10 days from the date of receipt of the notice and also reflecting no payment has been made in respect to the notice sent by the Petitioner, we hereby hold that this petition deserves admission.

10. This Petition clearly reveals that there is a debt as defined in Section 3(11) of I&B Code 2016, also there is default in this case within the meaning of Section 3(12) of I&B Code 2016, this Bench hereby admits this petition filed under Section 9 of I & B Code 2016, declaring moratorium with consequential directions as mentioned below:

(a) That this Bench hereby prohibits 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; transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; the recovery of any property by

an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(b) That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period.

(c) That the provisions of sub-section (1) of Section 14 shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

(d) That the order of moratorium shall have effect from 06.07.2017 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.

(e) That the public announcement of the corporate insolvency resolution process shall be made immediately as specified under section 13 of the Code.

11. Accordingly, this Petition is admitted.

12. This Bench, having admitted the petition, makes a reference to the Insolvency Bankruptcy Board of India for recommendation of an Insolvency Professional to act as Interim Resolution Professional.

13. The Registry is directed to communicate a copy of this Order to both parties.

Sd/-
V. NALLASENAPATHY
Member (Technical)

Sd/-
B.S.V. PRAKASH KUMAR
Member (Judicial)