

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, ALLAHABAD**

**In**

**COMPANY APPLICATION NO. 171 OF 2018**

**IN THE MATTER OF:**

SECTION 9 OF THE INSOLVENCY & BANKRUPTCY CODE, 2016 READ WITH  
RULE 6 OF THE INSOLVENCY AND BANKRUPTCY (APPLICATION TO  
ADJUDICATING AUTHORITY) RULES, 2016

**IN THE MATTER OF:**

APL APOLLO TUBES LIMITED  
37, HARGOBIND ENCLAVE  
VIKAS MARG, DELHI-110092

...**OPERATIONAL CREDITOR**  
/ **APPLICANT**

**AND**

**IN THE MATTER OF:**

G.S. EXPRESS PRIVATE LIMITED  
C-879, RAHIM NAGAR, MAHANAGAR,  
LUCKNOW -220006 (UP)

..... **CORPORATE DEBTOR**  
/ **RESPONDENT**



**JUDGMENT/ORDER DELIVERED ON 13.06.2018**

**CORAM : SH. V.P SINGH, MEMBER (J)  
MS. SAROJ RAJWARE, MEMBER (T)**

**For the Applicant/ Operational Creditor:** Sh.Aditya Singh, Advocate  
**For the Respondent/ Corporate Debtor:** Sh.Pritish Kumar, Advocate

**PER SE: SH. V.P. SINGH, MEMBER (J)**

**ORDER/JUDGMENT**

1. Petitioner has filed this insolvency petition under section 9 of the Insolvency and Bankruptcy Code 2016 for initiating Corporate Insolvency Resolution Process (herein after referred as CIRP) against the Corporate Debtor/Respondent Company.
2. Brief facts as stated in the petitioner are that:

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**2.1** The Operational Creditor (herein after referred as Applicant/Petitioner) is a company with identification no- L74899DL1986PLC023443. Shri Mr Virendra Kumar Yadav is authorised signatory of the petitioner company as per Board of Directors resolution dated 21.02.2018.

**2.2** The Corporate Debtor is a company with Nominal Capital: Rs 4,50,00,000/- (Rupees Four Crore Fifty Lacs Only) Paid-up Capital: Rs.4,29,91,250/- (Rupees Four Crore Twenty-Nine Lakhs Ninety-One Thousand Two Hundred Fifty Only) and registered office at C-879, Rahim Nagar, Mahanagar, Lucknow-226006.

**2.3** That APL Apollo Tubes Limited ("Operational Creditor") supplied steel tubes and pipes ("Goods") on different occasions to G.S. Express Private Limited ("Corporate Debtor") and raised invoices with following details:

Invoice Date	Invoice No.	Invoice Amount (in Rs.)
18.01.2018	1702012938	8,32,136
18.01.2018	1702012937	9,08,246
24.12.2017	1795603039	7,89,986
19.12.2017	1795602930	10,38,778
17.12.2017	1795602881	8,11,793
08.12.2017	1795602668	10,59,593

**2.4** That as per agreed terms & conditions, amount became due on expiry of 30 days of date of invoice and, date of default for each invoice is therefore independent as follows.

For Invoice No.	Date of default
1702012938	17.02.2018
1702012937	17.02.2018
1795603039	23.01.2018

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1795602930	18.01.2018
1795602881	16.01.2018
1795602668	07.01.2018

2.5 That the total amount of debt is **Rs. 55,37,542/- (Rupees Fifty-Five Lakhs Thirty-Seven Thousand Five Hundred & Forty-Two Only)** comprising of Principal Amount of Rs. 54,40,532/- (Rupees Fifty-Four Lakhs Forty Thousand Five Hundred Thirty-Two Only) plus delay interest calculated @ 24% amounting to Rs 97,010/- (Rupees Ninety-Seven Thousand & Ten Only). That the copy of unpaid invoices are annexed as **ANNEXURE 6)** to the main company application and Invoice no. 1795602881, dated 17.12.2017 providing interest terms agreed by both the parties is annexed as **ANNEXURE 2** to the Rejoinder filed by Operational Creditor.



2.6 Corporate Debtor had neither replied to the demand notice dated 22.02.2018 issued u/s 8 of the Code nor made the payment, and therefore, Operational Creditor was constrained to apply u/s 9 of the Code.

3. Advocate representing the Corporate Debtor filed its reply, raising some formal objections on the maintainability of the petition which are stated as under:

3.1 The Petitioner has not served any notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 to the Respondent, as notice was issued to the respondent on wrong address. The address of the respondent company is C- 877, Raheem Nagar, Mahanagar, Lucknow UP and the notice was issued at C-879, Rahim Nagar, Mahanagar, Lucknow UP. Despite knowing well that address shown in the purchase order is C- 877, Raheem Nagar, Mahanagar, Lucknow UP.

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3.2 No valid authority was passed in favor of Sri Karan Gandhi, Advocate for issuing the notice under Section 8 of the Insolvency and Bankruptcy Code, 2016

4. Counsel on behalf of Operational Creditor filed its rejoinder to give a reply to various objections made by Corporate Debtor, Averments made by counsel on behalf of Operational Creditor are stated as under :

4.1 That, as per data available at online portal of Ministry of Corporate Affairs about Corporate Debtor, registered office of the Corporate Debtor is at C-879, Rahim Nagar, Mahanagar, Lucknow Uttar Pradesh -220006. Copy of master data showing details of registered office of the Corporate Debtor is annexed as **ANNEXURE 1** to the main Application. That, Advocate of Operational Creditor, served the demand notice dated 22.02.2018 at the registered office of the Corporate Debtor in compliance with Rule 5(2)(a) Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.



4.2 The Finance Committee of Operational Creditor vide Resolution dated 29.12.2017, authorised Mr V.K. Yadav, DGM Taxation, for issuing demand notices, under the provisions of the Insolvency and Bankruptcy Code ("Code") and to do such other acts necessary for its implementation. After that, Mr V.K. Yadav (authorized representative of Operational Creditor) authorised Mr Karan Gandhi, Advocate, Corporate Professionals- Advisors & Advocates vide power of attorney for issuing demand notices u/s 8 of the Code. Copy of the resolution dated 29.12.2017 and power of attorney are annexed as **ANNEXURE 1** to the Rejoinder filed by Operational Creditor. That resolution was again passed by Finance Committee of Operational Creditor at its meeting held on 21.02.2018 among other things authorising Mr V.K. Yadav to sign petition under the provisions of the Code and the copy resolution dated 21.02.2018 is annexed with the main company Application as **ANNEXURE 2**. Reliance in this regard is placed upon the judgment passed in the matter of **Macquarie Bank Limited vs**

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**Shilpi Cable Technologies Ltd (Civil Appeal NO.15135 OF 2017)**

where Hon'ble Supreme Court has held that a lawyer can issue demand notice on behalf of operational creditor for unpaid operational debt. The copy of demand notice served upon the Corporate Debtor along with tracking report is annexed as **ANNEXURE 5** to the main Application.

5. Heard representative of both the parties and perused the material available on record. We find that Applicant meets the requirements of section 5 (20), 5 (21) of IBC 2016 and coming within the definition of Operational Creditor; there is Operational Debt and Corporate Debtor has defaulted in making payment.



As per Form 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority), notice with which invoice demanding payment is to be attached, has to be issued at the registered office of the Operational Creditor. In the present case also notice dated 22.02.2018 of unpaid operational debt, copy of an invoice demanding payment of the amount involved in the default to the corporate debtor has been delivered by the Operational Creditor through its Advocate Mr. Karan Gandhi, as specified under section 8 (1) of the IBC 2016, in form-4 (under rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016) at the Registered Office address which is available on MCA masterdata.

Mr V.K. Yadav (authorized representative of Operational Creditor) authorised Mr Karan Gandhi, Advocate, Corporate Professionals-Advisors & Advocates vide power of attorney for issuing demand notices u/s 8 of the Code. Honourable Supreme Court, in **Macquarie Bank Limited vs Shilpi Cable Technologies Ltd**<sup>1</sup>, has held that a lawyer on behalf of the Operational Creditor can issue a demand notice of an unpaid Operational Debt. Hence, contention of the counsel of the Corporate Debtor that the

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<sup>1</sup> Civil Appeal NO.15135 OF 2017

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No. **IBBI/IPA-002/IP-N00223/2017-18/10904** of the proposed IRP. The Registrar (Designated) is directed to communicate the order to the IRP and obtain his consent and declaration in Form 2 within three days.

- ii. That the public announcement of corporate insolvency resolution process be made immediately as specified under Section 13 of the code and calling for submissions of a claim under Section 15 of the Code.
- iii. The interim Resolution professional shall after collation of all claim received against the corporate debtor and determination of the financial position of the corporate debtor, constitute a committee of creditors.
- iv. The Interim Resolution Professional shall perform all his functions strictly which are contemplated, *interalia*, by Sections 17 18, 20,21 of the Code. It is further made clear that all the personnel connected with Corporate Debtor, its promoter or any other person associated with Management of the Corporate Debtor are under a legal obligation under Section 19 of the Code extend every assistance and cooperation to the Interim Resolution Professional. IRP would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The IRP shall be under a duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the I& B Code, 2016.
- v. That the order of moratorium u/s 14 shall have effect from the date of this order, till the completion of corporate insolvency resolution process or until this Bench approves the resolution plan under subsection (1) of Section 31 or passes an order for liquidation of corporate debtor under section 33 as the case may be.
- vi. That the Bench hereby prohibits the institution of suits or continuation of pending suit or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority; transferring,



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*[Signature]*

Petitioner has not served any notice under Section 8 of the Insolvency and Bankruptcy Code, 2016 and Mr Karan Gandhi, has not got valid authority to issue notice u/s 8 of the code is not tenable. The relevant excerpt from the judgment of the Hon'ble Supreme Court is reproduced herein below:

“Also, we must not forget that Section 30 of the Advocates Act deals with the fundamental right under Article 19(1)(g) of the Constitution to practice one's profession. Therefore, a conjoint reading of Section 30 of the Advocates Act and Sections 8 and 9 of the Code together with the Adjudicatory Authority Rules and Forms there under would yield the result **that a notice sent on behalf of an operational creditor by a lawyer would be in order**”.

Affidavit showing no notice of dispute u/s 9 (3) (b) of the I & B Code, 2016 is received by operational creditor is annexed with Application. A copy of the certificate from the financial institutions, i.e. Union Bank of India maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor is annexed with the Petition. Hence the Applicant has complied with the requirement of Section 9(3)(c) of IBC.

7. Given the above stated factual and legal position of the case, we find that the Operational Creditor has complied with the provision of Section 8 and 9 of the Code; the application is complete; operational debt is not paid, and there is no evidence of existence of dispute. Therefore petition deserves to be admitted.

Therefore, we admit the petition for declaring Moratorium with Consequential Directions given as under:

- i. As, no proposal for IRP is made in the present Application, therefore as per section 16 of the code, we at this moment appoints **Mr Manish Agarwal**, from the Panel of Insolvency Professionals recommended by IBBI vide its letter dated 28 March 2018, as Interim Resolution Professional to carry the functions as mentioned under the Code. The list also contains the Email. Id **manishfcs@gmail.com**, Registration

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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 SARFESI Act, 2002; the recovery of any property by an owner or less or where such property is occupied by or in possession of the corporate debtor.

vii. That the supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the Moratorium period.

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

ix. The Registry is directed to communicate this order to the Operational Creditor and the Corporate Debtor after the completion of necessary formalities.

x. The IRP shall inform the progress of insolvency proceedings and submit the report of the compliance of the directions of this order.

List the matter on 03.07.2018 for filing progress report.

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**SAROJ RAJWARE,**  
MEMBER (T)

Dated: 13.06.2018  
(Typed by: Aparna Trivedi  
Law Research Associate)

FREE OF COST COPY

Ravinder Kumar  
14/06/2018

Ravinder Kumar  
Bench Officer  
National Company Law Tribunal  
Allahabad-U.P.

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**V.P. SINGH,**  
MEMBER (J)

compared by me  
Bharat Mishra  
14/06/2018

