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22/09/2020

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

C.P. (I.B) No.482/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 11.09.2020

Name of the Company: Elcen Machines Pvt Ltd
V/s
MAKTEL Power Ltd

Section : 9 of the Insolvency and Bankruptcy Code, 2016

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

ORDER

Advocate, Mr. Atul Sharma appeared on behalf of the Petitioner.

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

NATIONAL COMPANY LAW TRIBUNAL * AHMEDABAD *

CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 11th day of September, 2020

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 482/9/NCLT/AHM/2019

In the matter of:

M/s. Elcen Machines Private Limited
270 GIDC Estate
Makarpura
Vadodara 390 010
Gujarat State : **Petitioner**
Operational Creditor

Versus

M/s. Maktel Power Limited
Plot No. 659
GIDC Estate
Waghodia
Vadodara 390 760
Gujarat State : **Respondent**
[Corporate Debtor]

Order delivered on 11th September, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

Advocate Mr. Atul Sharma for petitioner
Advocate Mr. Jigar Trivedi for respondent

ORDER

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

1. Mr. Dhankeshkumar Patel, Director, being authorised signatory, on behalf of M/s. Elcen Machines 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.

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2. The applicant/operational creditor is a private limited company registered under the Companies Act, 1956, having registered office at GIDC, Vadodara, Gujarat State is involved in the business of manufacturing electric motors under the brand name "Elcen".

3. The respondent/corporate debtor is a limited company registered under the provisions Companies Act on 7th October, 2009 and having identification No. U31900GJ2009PLC058249 and having registered office at GIDC Estate, Waghodia, Dist. Vadodara, Gujarat State is manufacturer of diversified switchgear products, control/relay panels etc. Authorised share capital of the respondent company is Rs. 2,00,00,000/- and paid up share capital is Rs. 1,48,34,310/-.

4. It is stated by the applicant that the operational creditor has been regularly supplying spare parts like ES 3 PH Inducton Electric Motors 415V, enclosure TEFC etc. and the corporate debtor used to assemble the aforementioned products in order to manufacture the panels and thereafter sell such panels to the wide range of customers. That, the corporate debtor used to place final purchase orders in writing to the applicant and the corporate debtor had placed purchase orders with the applicant and the applicant had supplied the goods as per the specification given by the corporate debtor.

5. The applicant has further stated that despite repeated requests, reminders and follow-ups the corporate debtor did not make the outstanding payments towards supply of goods for the period from September, 2017 to December, 2017, therefore this petition.

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6. The applicant has further stated that having failed to receive payment of the outstanding operational debt, the applicant was constrained to issue demand notice under section 8 of the IB Code in form 3 and form 4 dated 15.02.2019.

7. In support of the claim, the applicant has annexed to the application all the required documents like Board Resolution authorising the signatory to initiate CIRP proceedings against the corporate debtor, copy of purchase order, copy of invoices, leger account of the corporate debtor, computation of operational debt, affidavit in terms of sub-section 3 (b) of Section 9 of the IB Code, written consent from the Interim Resolution Professional etc.

Findings:

8. On perusal of the records it is found that the instant petition filed on 09th July, 2019 was notified for the first time on 16th July, 2019. Thereafter, despite giving number of opportunities, the respondent has not filed any reply nor advanced arguments. As per the records respondent appeared through counsel after lockdown when the matter was fixed on 28.07.2020. Thereafter, the matter was listed on 25.08.2020. Since none appeared on behalf of the respondent, the matter is heard ex-parte.

9. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 17.12.2019 has been served upon the corporate debtor, but, no dispute has been raised. Therefore, the petitioner has also filed affidavit in terms of sub-section 3 (b) of Section 9 of the IB Code.

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10. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor.

11. In the instant application, from the material placed on record, the Adjudicating 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.

12. 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'.

13. In ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC*** it is observed that while examining an application under Section 9 of the Act, the 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.

14. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court

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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.

15. 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-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.

16. 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.

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17. 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.

18. 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.

19. 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

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Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

20. The applicant/operational creditor has proposed the name of Mr. Dharit K. Shah to act as Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Dharit K. Shah, C/o. Bipin & Co., Chartered Accountants, 302, Centre Point, R.C. Dutt Road, Alkapuri, Vadodara 390 007 (bipin.smdt@gmail.com) having registration No. IBBI/IPA-001/IP-P00993/2017-18/11640 to act as an interim resolution professional under Section 13(1)(c) of the Code.

21. This Petition is accordingly admitted.

22. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.

23. 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 off 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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Date of pronouncement of Order: 11/09/2020
Date on which application for Certified Copy was made: 21/09/2020
Date on which Certified Copy was ready: 21/09/2020
Date on which Certified Copy delivered: 22/09/2020

Certified to be True Copy of the Original
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad