

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT 1**

C.P. (I.B) No. 499/9/NCLT/AHM/2019

**Coram: MADAN B. GOSAVI, MEMBER (JUDICIAL)
VIRENDRA KUMAR GUPTA, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING THROUGH VIDEO CONFERENCING BEFORE THE
AHMEDABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.02.2021**

Name of the Company: Urja Shakti Salse & Service
V/s
Maktel Control & Systems Pvt Ltd


Section: 9 of the Insolvency and Bankruptcy Code, 2016

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open court vide separate sheet.


**(VIRENDRA KUMAR GUPTA)
MEMBER (TECHNICAL)**


**(MADAN B GOSAVI)
MEMBER (JUDICIAL)**

Dated this the 2nd day of February, 2021.

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) No.499/9/NCLT/AHM/2019

In the matter of:

M/s. Urja Shakti Sales & Service,
Through its Partner:
Mr. Nimish Purohit
Having its registered office at:
706, Siddharth Complex,
R.C. Dutt Road, Alkapuri,
Vadodara – 390007,
Gujarat.

... Operational Creditor

V/s.

1. M/s. Maktel Control & Systems Pvt. Ltd.
(CIN: U31900GJ2009PTC056575)
Having its registered office at:
Plot No. 1421, GIDC,
Waghodia – 391760
Gujarat.
2. Mr. Jayramrao Chandravadan Marathe
(DIN: 00063195)
B/12, Hariba Park, Diwalipura,
Race Course, Vadodara – 390007.
3. Mr. Narendrakumar Manilal Patel
(DIN: 01734165)
60, Vikas Nagar, Old Padra Road,
Race Course Circle, Vadodara – 390007.
4. Mr. Manoj Narendrakumar Patel
(DIN: 01764520)



302, Harsh Complex,
Old Padra Road, Vadodara – 390015.

5. Mr. Akshat Bhatnagar

(DIN: 05294055)

D-42, 2nd Floor, Above Yadav Namkeen,
Kamla Nagar, Malka Ganj, North Delhi,
Delhi – 110007.

... Respondents/Corporate Debtors

Date of Hearing: 25th January, 2021
Date of Pronouncement: 2nd February, 2021

Coram: Madan B. Gosavi, Member (Judicial)
Virendra Kumar Gupta, Member (Technical)

Appearance:

Learned Counsel Mr. Atul Sharma, for the Operational Creditor.
Learned Counsel Mr. Harmish K. Shah, for the Corporate Debtor.

ORDER

[Per: Madan B. Gosavi, Member (Judicial)]
(Through Video Conferencing)

1. M/s. Urja Shakti Sales and Service, through its partner, Mr. Nimish Purohit has filed this application under Section 9 of the Insolvency and Bankruptcy Code, 2016, to start the Corporate Insolvency Resolution Process ("CIRP") of M/s. Maktel Control & Systems Pvt. Ltd. on the ground that the Corporate Debtor committed default in paying operational debt of Rs.27,20,811/- on 22.07.2016.

2. It is stated that, in between 18.11.2016 to 30.06.2017, the Operational Creditor sold and supplied to the Corporate Debtor various types of electrical goods. At the foot of the account, the Corporate Debtor is liable to pay Rs.22,19,836/- on 20.09.2018. The Operational Creditor served the Corporate Debtor notice of demand under Section 8 of the I.B. Code. In-spite of receipt of notice, the Corporate Debtor did not clear the dues nor replied the notice pointing out any dispute. Hence, this application is filed to start the CIRP of the Corporate Debtor.
3. Notice of this application is duly received by the Corporate Debtor. One of its directors, Mr. Narendrakumar Patel appeared and filed affidavit-in-reply.
4. We have gone through thereto in Para No.5 of the said reply of the Corporate Debtor admitting the debt by following words:

"5. It is submitted that the ledger account of the respondent company presented by the petitioner shows the outstanding principal amount of Rs.21,30,925/-. However, the petitioner in all their demand notice and application to initiate corporate insolvency resolution process against respondent company have stated the principal outstanding amount of Rs.22,20,576/-. The petitioner has failed to explain the difference between both the stated amounts in their application."

5. Above admission of the debt on the part of the Corporate Debtor shows that it has also committed default of paying the said debt. It is more than rupees one lakh as per the threshold triggered under Section 4 of the I.B. Code.
6. The Corporate Debtor raised technical defenses such as that the Operational Creditor did not produce certificate issued by the Bank as contemplated under Section 9(3)(b) of the I.B. Code. However, we find on record that the Operational Creditor submitted relevant extract of entries in his Bank Account maintained with the HDFC Bank. Hence, this objection is not maintainable.
7. The Corporate Debtor contended that this application is filed on behalf of un-registered partnership firm. It is not maintainable under Section 69 of the Partnership Act. However, we hold that Section 2(f) states that the applicability of the I.B. Code to partnership firm (registered as well as unregistered) Section 3(23) defines person include (e) partnership (without differentiating registered or unregistered). Section 5(20) of the I.B. Code defines:

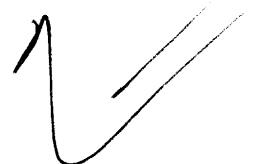
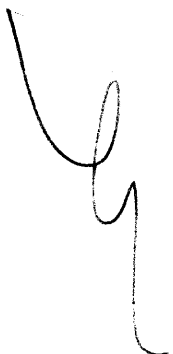
“Operational Creditor” means, a person to whom an operational debt is owned and includes any person to whom such debt has been legally assigned or transferred.”

If all these provisions are read altogether, the inference can be drawn is that, unregistered partnership

firm can file and maintain such application under Section 9 of the I.B. Code. We reject this defense of the Corporate Debtor.

8. The Corporate Debtor raised some technical defense so as that the Operational Creditor did not produced serve issued by the Bank as contemplated under Section 9(b)(c) of the I.B. Code. However, we find on record that the Operational Creditor has produced relevant extract of intrst. In his bank account maintained in HDFC Bank. Hence, this objection is not maintainable. The Corporate Debtor submitted that the application is filed on behalf of the un-registered partnership firm is not maintainable under Section 69 of the Partnership Act. However, we hold that in view of Section 2(f) read with Section 3(23) further read with Section 5(20) of the I.B. Code, an un-registered partnership firm can maintain such application under Section 9 of the I.B. Code. Hence, we reject this defense of the Corporate Debtor.

9. The Operational Creditor has suggested the name of Insolvency Professional, Mr. Dharit K. Shah, Registration No.IBBI/IPA-001/IP-P00993/2017-2018/11640, for the appointment of the Interim Resolution Professional. The proposed RP has also given his consent (Annexure-E, Pg.294-295) and submitted that there are no disciplinary action is pending with IBBI or ICAI.



10. The application is defect free Hence, we admit the Corporate Debtor in the Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016 by following order:

ORDER

1. The Corporate Debtor, **M/s. Maktel Control & Systems Pvt. Ltd.** is hereby admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.
2. The moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is declared for prohibiting all of the following in terms of Section 14(1) of the Code.
 - a. 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;
 - b. transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;
 - c. 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;

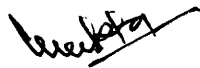
- d. The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.
3. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
4. We hereby appoint **Mr. Dharit K. Shah, Vinod Tarachand Agrawal, having registration no. No.IBBI/ IPA-001/IP-P00993/2017-2018/11640, email: bipin.smdt@gmail.com, Address: Bipin & Co., Chartered Accountant, 302, Centre Point, R.C.Dutt Road, Alkapuri, Vadodara – 390007** to act as an IRP under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder:
5. The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with

Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code extending every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

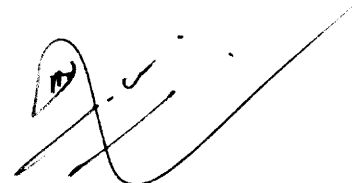
6. This Adjudicating Authority directs the IRP to make a public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
7. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
8. The IRP shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor Company' and manage the operations of the Corporate Debtor Company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay

an advance of **Rs.50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks **from the date of this order** for the purpose of smooth conduct of Corporate Insolvency Resolution Process ("CIRP") and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further demands for Interim funds, which shall be provided as per Rules.

9. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on website immediately after pronouncement of the order.
10. Accordingly, **CP (IB) No.499/9/NCLT/AHM/2019** stands admitted.



(Virendra Kumar Gupta)
Member (Technical)



(Madan B. Gosavi)
Member (Judicial)