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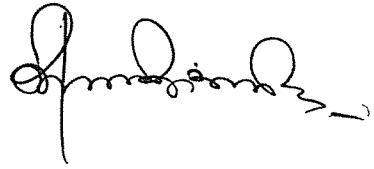
NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD AT 10.30 AM ON

28-09-2018

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ (JUDICIAL MEMBER)

APPLICATION NUMBER :
PETITION NUMBER : CP/250/IB/2018
NAME OF THE PETITIONER : DEWANCHAND RAMSARAN CORPORATION PVT LTD
NAME OF THE RESPONDENT : WIN WIND POWER ENERGY PVT LTD
UNDER SECTION : 9 RULE 6

S.No.	Name (in Capital)	Represented by	Signature
1.	ARUN KARTHIK MOHAN	COUNSEL FOR THE PETITIONER	
2.	R. PALANIANDAVAN	COUNSEL FOR RESPONDENT	

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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
SIGNLE BENCH, CHENNAI**

CP/250/(IB)/CB/2018

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of

M/s. Dewanchand Ramesaran Corporation Private Limited.

... Operational Creditor

Vs.

M/s. Win Wind Power Energy Private Limited.

... Corporate Debtor

Order delivered on 28th of September, 2018

CORAM:

CH. MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

*For Operational Creditor(s) : Mr. Arun Karthik Mohan, Counsel
For Corporate Debtor (s) : Mr. R. Palaniandavan, Counsel*

ORDER

Per: CH. MOHD SHARIEF TARIQ, MEMBER (J):

1. Under Adjudication is CP/250/(IB)/CB/2018 that has been filed by the Operational Creditor under Section

9 of the Insolvency & Bankruptcy Code, 2016 (in short, 'I&B Code, 2016') r/w the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the Insolvency and Bankruptcy Code, 2016 (I&B Code).

2. Heard the Counsel for the Operational Creditor and Corporate Debtor and perused the pleadings including the documents placed on the case file.


3. The Operational Creditor has claimed an outstanding debt to the tune of Rs.4,30,34,092/- along with interest @ 18% p.a. which as per operational creditor ^{was} due and payable as on 20.02.2018.

4. The brief facts of the case are that the Operational Creditor is carrying on the business of supply of Cranes,

Port Equipment on hire/rental basis for various companies. The Corporate Debtor is doing the business of wind energy generation by installing wind mills and generating electricity including generation of power through wind mills. The Corporate Debtor was in need of one crane package comprising of 1 no each 275 MT crawler, 75MT truck mounted telescopic and 11/12MT Hydra to be used for erection of Wind Turbine Generators at its various project sites, and had approached the Operational Creditor for providing the said crane package. After negotiations, the Corporate Debtor placed the Purchase/Work Orders with the Operational Creditor for hiring the cranes package. The Operational Creditor supplied the crane package to the Corporate Debtor and the crane package was deployed at the designated site on agreed date. Thereafter, bills/Invoices were raised from time to time as per the terms and conditions of the Purchase/Work Order. The copies of Invoices are placed

at pages 44 to 83 of the typed set filed with the Application.

5. The Corporate Debtor has made part payments to the tune of Rs.4,09,92,373/- out of total service charges for hiring the cranes of Rs.6,04,19,518/- and the Corporate Debtor has failed to make the rest of the amount. Thereafter, there were a few correspondences which have take placed between the Operational Creditor and the Corporate Debtor. The Operational Creditor has sent a notice through Advocate on 29.01.2014 to the Corporate Debtor and its Directors wherein the details of claim and part payments made by the Corporate Debtor to the Operational Creditor have been mentioned, the copy of notice is placed at page 129 to 135 and calculation sheet is placed at page 136 of the typed set filed with the Application.

6. It has been noted by the Adjudicating Authority that the Corporate Debtor has given reply on 24.02.3014 to 

the Legal Notice of the Operational Creditor dated 29.01.2014, copy of which is placed at pages 137 to 138 of the typed set filed with the Application. It is seen from Para 2 of the said reply, the Corporate Debtor has denied the claim of Rs.1,99,27,145/-. However, the Corporate Debtor has admitted that as per their books of accounts, a sum of Rs.1,75,40,220/- is due and payable to the Operational Creditor against the supply of 3 cranes under various Invoices, and in the same reply, a proposal for payment was also outlined for making payments. But, no payments were made by the Corporate Debtor to the Operational Creditor.

7. In the month of June, 2014, the Operational Creditor moved to the Hon'ble High Court of Madras by filing Company Petition No.258/2014 under Section 433 (e) read with Sections 434(1)(a) & 439(1)(b) of the Companies Act 1956, for winding up of the Corporate Debtor, copy of Petition is placed at pages 141 to 152 of

the typed set filed with the Application. Thereafter, the I&B Code, 2016 came into force and the Petition was got transferred to this Bench and renumbered as TCP/175/2017 whereby this Adjudicating Authority vide Order dated 01.08.2017 has dismissed the Petition giving liberty to the Petitioner to file afresh, if so desired. Pursuant to which, Notice under Section 8 of the I&B Code, 2016 has been issued on 16.12.2017 by the Operational Creditor to the Corporate Debtor, copy of which is placed at pages 160 to 164 of the typed set filed with the Application to which reply has been given by the Corporate Debtor on 11.01.2018, copy of which is placed at pages 165 to 168 of the typed set filed with the Application wherein under Para 2, it has been recorded that even if it is assumed without admitting that there are any dues payable, then the same is hopelessly barred by limitation.

8. The Corporate Debtor has filed Counter Statement wherein the claim of the Operational Creditor has been

denied. It has also been stated that the Demand Notice is improper and defective as the same has not even mentioned the date of default, and the proceedings under the Code ought not to have been permitted to use as money recovery proceedings and especially not in a case of time barred debts as the provisions of Limitation Act are applicable to the provisions of the I&B Code, 2016. It has also been placed on record that the issue pertaining to limitation under the provisions of I&B Code, has been kept open by Hon'ble Supreme Court in ***Neelkanth Township and Construction (P.) Ltd. Vs. Urban Infrastructure Trustees Ltd, MANU/NL/0063/2017.*** It is further submitted by the counsel for the Corporate Debtor that the Hon'ble Supreme Court vide its Order dated 10.01.2018 in ***B. K. Educational Services Pvt. Ltd. Vs. Parag Gupta & Associates,*** has stayed the order of Hon'ble NCLAT remitting matter to the Adjudicating Authority on the issue of limitation. The gist of the reply filed by the Corporate

Debtor is that the claim, if at all any, is hopelessly barred by limitation, excessive delay and laches.

9. It is worthwhile to place on record that the Operational Creditor has filed the Company Petition No. 258/2014 before Hon'ble High Court of Madras under Section 433 (e) with other applicable Sections of the Companies Act 1956, which has been filed within the time limit and the same was transferred to this Authority which dismissed the Application on 01.08.2017. However, liberty has been granted to the Operational Creditor to file the Petition afresh. In pursuance of the liberty granted to the Operational Creditor, CP/250/(IB)/CB/2018 under consideration has been filed. Therefore, the record shows that the Operational Creditor has continuously been prosecuting the Corporate Debtor for non-payment of the Operational Debt.

10. The Counsel for the Operational Creditor has relied upon the decision given in **Speculum Plast Pvt. Ltd. Vs.**

PTC Techno Pvt. Ltd., MANU/NL/0163/2017 wherein the Hon'ble NCLAT has held that *'the Limitation Act, 1963 is not applicable for initiation of 'Corporate Insolvency Resolution Process'*.

The Counsel for the Operational Creditor has further relied upon the decision given in **Neelkanth Township and Construction Pvt. Ltd. Vs. Urban Infrastructure Trustees Ltd.**, MANU/NL/0063/2017 wherein it was held that *'...for initiation of Corporate Insolvency Resolution Process, the right to apply accrues under Section 7 or Section 9 or Section 10 only with effect from 1st December, 2016 when 'I&B Code' has come into force'*.

11. It is on record that instant application has been filed on 26 February 2018 which is within three years reckoning from 1st December, 2016 and the amendment by which the limitation ^{Act,} has been applicable to the I&B

Code, was brought into force on 06.06.2018 which operates prospectively.

12. Therefore, keeping in view the facts and circumstances of the case and the legal position stated above, it is held that the instant application is not barred by limitation, the plea taken by the Counsel for the Corporate Debtor that the Application is suffering from delay and laches is devoid of merits and stands rejected

13. The Operational Creditor has also complied with Section 9 (3) (b) & (c) of the I&B Code, 2016 by filing Affidavit wherein under Para 3, it has been deposed that the Corporate Debtor had sent a reply to the Demand Notice dated 11.01.2018, however, the reply does not refer to or make out the existence of any dispute relating to the unpaid operational debt of the Corporate Debtor. The copy of the Affidavit is placed at pages 171 and 172 of the typed set filed with the Application. The Certificate



issued by the Branch Manager of the Canara Bank has been placed on record at page 173 of the typed set filed with the Application.

14. The Operational Creditor has fulfilled all the requirements of law for admission of the Application. This Bench is satisfied that the Corporate Debtor has committed default in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, CP/250/(IB)/CB/2018 is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

15. The moratorium is declared which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the



purposes referred to in Section 14 of the I&B Code, 2016.

It is ordered to prohibit all of the following, namely: -

- (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 (54 of 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.
16. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or

interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

17. The Operational Creditor has not proposed the name of IRP, therefore, Mr. N. Sivakumar is appointed as IRP, whose name appears in the Panel of Insolvency Professionals recommended by the IBBI. The IRP shall file the declaration disclosure statement in the Registry of NCLT, Chennai Bench, within two working days from the date of the receipt of this Order. The IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement as prescribed under Section 15 of the I&B Code, 2016, within three days from the date the copy of this order is received, and call for submissions of claim in the manner as prescribed.

18. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the I&B Code. The directors of the

Corporate Debtor, its promoters or any person associated with the Management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19, so that he could discharge his functions under Section 20 of the I&B Code, 2016.

19. The Operational Creditor and the Registry are directed to send the copy of this Order to IRP, so that he could take charge of the Corporate Debtor's assets etc., and make compliance with this Order as per the provisions of I&B Code, 2016. The address details of the IRP are as follows: -

Mr. N. Sivakumar

Reg. No: IBBI/IPA-001/IP-P00787/2017-2018/11322

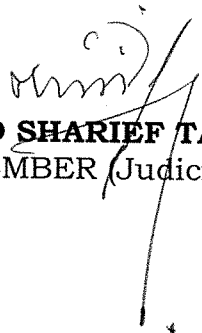
Mobile No.9842780025

E-mail ID: nsivakumar66@yahoo.com

20. The Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor.

21. Order is dictated and pronounced in open court in the presence of the Counsels for Operational Creditor and the Corporate Debtor.

P. ATHISTAMANI


[CH.MOHD SHARIEF TARIQ]
MEMBER (Judicial)