

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
AHMEDABAD**


C.P. (I.B) No. 162/9/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 14.09.2018**

Name of the Company: SMC Industries Pvt. Ltd.
V/s.
Shaifali Rolls Ltd.


Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

| <u>S.NO.</u> | <u>NAME (CAPITAL LETTERS)</u> | <u>DESIGNATION</u> | <u>REPRESENTATION</u> | <u>SIGNATURE</u> |
|--------------|-------------------------------|--------------------|-----------------------|---|
| 1. | KUNAL P VAISHNAV | ADVOCATE | Corporate Debtor |  |
| 2. | | | | |

ORDER

Advocate Mr. Kunal Vaishnav is present for the Corporate Debtor.

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


MANORAMA KUMARI
(MEMBER JUDICIAL)


HARIHAR PRAKASH CHATURVEDI
(MEMBER JUDICIAL)

Dated this the 14th day of September, 2018

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH**

C.P. No. (I.B) 162/9/NCLT/AHM/2018

In the matter of:

M/s. SMC Industries Private Limited
1, Popatkaka Estate
Opp. Aarko Transport
Piplej Pirana Road
Narol
Ahmedabad 382 405
Gujarat State

:

Applicant
[Operational Creditor]

Versus

M/s. Shaifali Rolls Limited
Block No. 1563
Sola Kalol Road
Village Santej
Kalol
Dist. Gandhinagar
Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 14th September, 2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J)**

Appearance:

PCA Mr. Hiten Parikh is present for operational creditor/ petitioner
Advocate Mr. Kunal Vaishnav is present for respondent.

ORDER

(Per: Hon'ble Ms. Manorama Kumari, Member (J))

1. M/s. SMC Industries Limited, through its Authorised Signatory, filed this Application with a prayer for initiation of corporate insolvency resolution process against M/s. Shaifali Rolls Private Ltd., under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"].
2. The applicant is engaged in the job of pulverising of coal and used to carry out job work for the respondent and raised invoices on the

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respondent. It is submitted by the applicant has carried out job work for the respondent company and an amount of Rs. 4,08,000/- is due to the applicant towards different invoices raised from time to time from 12.05.2017 onwards, as per computation attached with the application.

3. Since the respondent did not make payment, applicant issued demand notice dated 15th February, 2018 demanding payment in respect of unpaid operational debt due from the respondent.
4. This Application was filed on 28th March, 2018. This Application was listed before this Authority for the first time on 26.04.2018 wherein applicant filed proof of service of the copy of the petition on respondent. This Authority directed the respondent to file objections, if any, within one week by serving an advance copy to the applicant.
5. Respondent filed objections dated 09th May, 2018 wherein it is admitted that the respondent corporate debtor has to pay an amount of Rs. 4,08,000/- to the applicant operational creditor. It is further submitted that due to fall in steel price and low cost Chinese products available in the Indian market has resulted in temporary financial crunch and has disrupted operation of the corporate debtor temporarily and, propose to make payment of Rs. 25,000/- per month (without interest) from 01.10.2018.
6. Heard the arguments of the learned counsel appearing for the applicant as well as respondent.
7. Applicant also filed copies of Invoices as well as challans, copy of account statement and copy of demand notice dated 15.02.2018.

Attorney

[Signature]

8. The amount due to the Applicant from the Respondent is in respect of supply of goods. The claim made by the Applicant is in respect of provision of goods. Therefore, the amount claimed by the Applicant from the Respondent is operational debt within the meaning of Section 5, sub-section (21) of the Code. The operational debt is due to the Applicant. Therefore, Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code.
9. The amount is due from the Respondent to the Applicant. Respondent is a Company registered under the Companies Act. Therefore, Respondent is a Corporate Debtor within the meaning of sub-section (8) of Section 3 of the Code.
10. The Application filed by the Applicant is complete. In spite of service of notice, Respondent did not choose to clear the debt. No notice of dispute has been given by the Respondent to the Applicant even after receipt of demand notice from the Applicant.
11. From the above discussion and on the basis of the material available on record, it is held that it is a fit case to initiate insolvency resolution process by admitting the Application under Section 9(5)(1) of the Code.
12. In view of the above discussion, this Petition deserves to be admitted and accordingly it is admitted. This Adjudicating Authority is appointing Mr. Parag Sheth, who has shown his address at 404, Sachet 2, Opp. GLS University, Maradia Plaza, C.G. Road, Ahmedabad 380 006, Gujarat having Registration Number as IBBI/IPA-002/IP-N00142/2017-18/10381, as 'Interim Insolvency Resolution Professional under Section 13(1) of the Code, Subject to confirmation from the IBBI. This Adjudicating Authority directs the Applicant to make public

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announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

13. In view of the commencement of the Insolvency Resolution Process with the admission of this Petition and appointment of the Interim Insolvency Resolution Professional, this Adjudicating Authority hereby pass the order declaring moratorium under Section 13(1)(a) prohibiting the following as laid down in 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.
14. However, the supply of goods and essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

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15. The order of moratorium shall not apply to such transactions that might be notified by the Central Government in consultation with any financial sector regulator in view of sub-section (3) of Section 14 of the Code.
16. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.
17. This Petition stands disposed of accordingly with no order as to costs.
18. Communicate a copy of this order to Operational Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Ms. Manorama Kumari
Adjudicating Authority
Member (J)


Harihar Prakash Chaturvedi
Adjudicating Authority
Member (J)

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