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

C.P. (I.B) No. 46/9/NCLT/AHM/2017

Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 04.08.2017**

Name of the Company: Sika Scvhweiz Ag-Aliva Equipment
V/s.
Mekaster Engineering 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>
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1.

2.

ORDER

None present for Operational creditor/ Applicant. None present for Respondent.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 4th day of August, 2017.

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

C.P. No.(I.B) 46/9/NCLT/AHM/2017

In the matter of:

SIKA SCHWEIZ AG-ALIVA EQUIPMENT
Bellikonerstrasse
218 CH-8967
Widen Switzerland

: Applicant.
Operational Creditor.

Versus

Mekaster Engineering Limited
2507/08, GIDC Industrial Estate
Halol, District Panchmahal
Gujarat-389350

: Respondent.
Corporate Debtor.

Order delivered on 4th August, 2017.

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J).

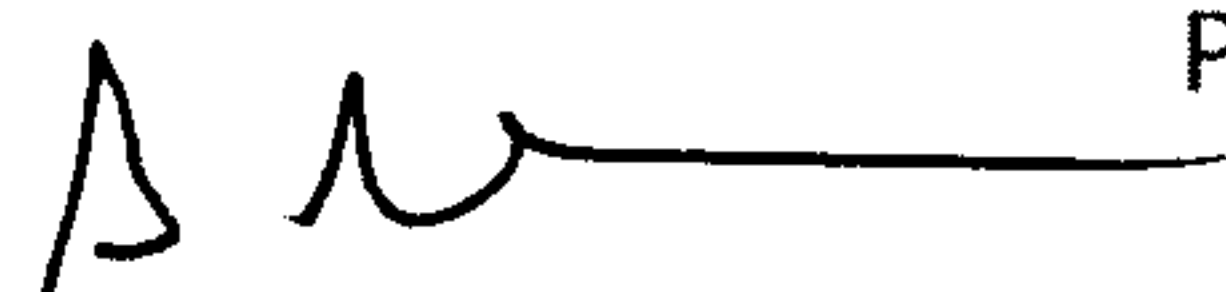
Appearance:

Shri Ameya Gokhale, learned Advocate with Ms. Meghna Rajadhyaksha, Shri Nirag Pathak and Shri Shalin Jani, learned Advocates on behalf of M/s. Shardul Amarchand Mangaldas & Co., for Applicant/Operational Creditor.

Shri Vinay Bairaga, learned Advocate for Respondent/Corporate Debtor.

ORDER

1. Sika Schweiz Ag-Aliva Equipment [hereinafter called as "Operational Creditor"] filed this Application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ["Code" for short] read with Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating



Authority) Rules, 2016 [“Adjudication Rules” for short] to trigger ‘Insolvency Resolution Process’ in respect of Mekaster Engineering Limited [hereinafter called as “Respondent/Corporate Debtor”].

2. Sika Schweiz Ag-Aliva Equipment vide its Board Resolution dated 13th February, 2017 authorised its Indian Subsidiary ‘Sika India Private Limited’ to file this Application on its behalf and sign and affirm all Affidavits as may be necessary as per the provisions of the Code.

3. Sika India Private Limited filed its Board Resolution dated April 19, 2017 authorising Mr. Nilesh Burman, Legal Counsel of Sika India Private Limited to sign and affirm the Application and Affidavits filed on behalf of Sika India Private Limited. The Resolution of the meeting of Board of Directors of Sika Schweiz Ag-Aliva Equipment held on 13th February, 2017 and Resolution of the Meeting of the Board of Directors of Sika India Private Limited held on 19th April, 2017 are annexed to the Application.

4. The facts in brief, that are germane for disposal of this Application are as follows;

4.1. Sika Schweiz Ag-Aliva Equipment, Applicant/Operational Creditor and Respondent/Corporate Debtor entered into Supply and Assembly Agreement on 20th November, 2006 whereby Respondent was granted the exclusive right to buy from the Applicant Company the components set out in the Supply Agreement, assemble the components into products and sell the products after assembly within the territory of India. Respondent started delaying payment of the Invoices raised by the Company in and around the year 2010. On inquiry by the Applicant Company’s representatives, Respondent represented that due to economic recession in Indian markets and

the financial distress Respondent was facing, there was delay in payment of Invoices raised by the Applicant Company. Respondent Company assured the Applicant Company that all the pending invoices would be cleared in due course. However, Respondent Company has not paid the outstanding amount CHF 520,238.40 (Swiss Francs Five Hundred And Twenty Thousand Two Hundred and Thirty Eight Point Forty) plus interest at the rate of Six Percent per annum.

4.2. The Registered Office of the Respondent company is in Halol, State of Gujarat in India. According to the Applicant, as per the terms of the Invoice, payment shall be made within a period of 90 days from the date of Invoice. According to the Applicant, in or around October 2011 Respondent Company made certain part payments towards the outstanding amounts due. By e-Mail dated 4th January, 2012, Respondent Company confirmed the part-payment of CHF 42,365.85 . According to the Applicant, on 14th February, 2012 Respondent Company's representative assured payment of outstanding amount by 30th September, 2012. Again on 7th May, 2012 Respondent Company's representative Mr. Rameshwar assured payment of certain Invoices in the foregoing weeks. Again on 29th November, 2012, Mr. V.M. Trehan, Respondent Company's representative acknowledged the failure of the Company to make payment to the applicant. Again on 23rd April, 2013, 23rd September, 2013, 14th November, 2013, 6th February, 2014, 3rd April, 2014, 28th April, 2015, 1st July, 2015 and 31st August, 2015, acknowledged the outstanding amount and promised to settle by the end of September 2015.

4.3. According to the Applicant, contrary to its commitments to make payment, Respondent Company vide their letter dated 26th September, 2015 addressed to the Applicant sought to terminate the Agreement by invoking Clause 14.1. In view of the said conduct of the Respondent, Applicant by its letter dated 21st October, 2015

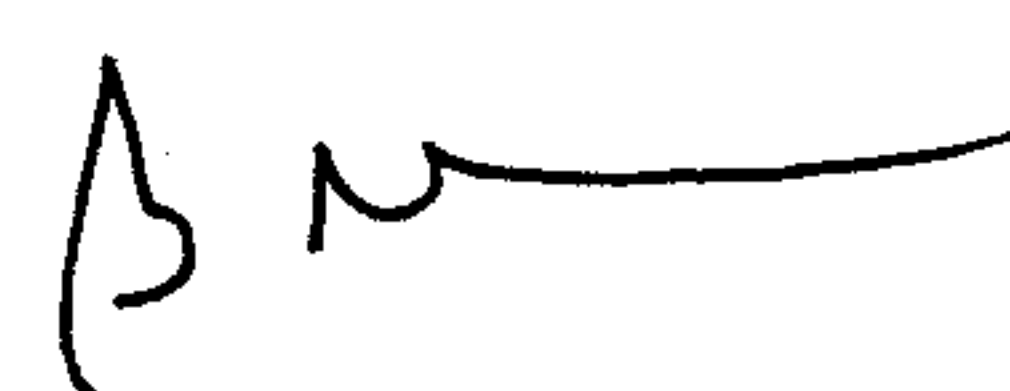
addressed to the Respondent invoked Clause 15 of the contract and terminated both the Agreements on the ground that Respondent committed material breach by continuous default to pay the Invoices.

4.4. Applicant got issued a legal Notice dated 16th September, 2016 to Mr. Virender Mohan Trehan and Mr. Hardesh Parmeshwardas Mehta.

5. Applicant issued Demand Notice to the Respondent in Form-3 on 16.2.2017 by Mail. Applicant filed Affidavit stating that Operational Creditor has not received any notice of dispute from the Corporate Debtor. Applicant also filed Affidavit stating that Operational Creditor has not received the amount of operational debt from the Corporate Debtor after 16th September, 2016 on which date Notice under Section 433 and 434 of the Companies Act, 1956 was issued.

6. Applicant filed Certificate of the Banker stating that no fund received from Respondent Company into the account of the Operational Creditor from 24th January, 2015 till date. Applicant also filed the latest acknowledgment of debt dated 31st August, 2015.

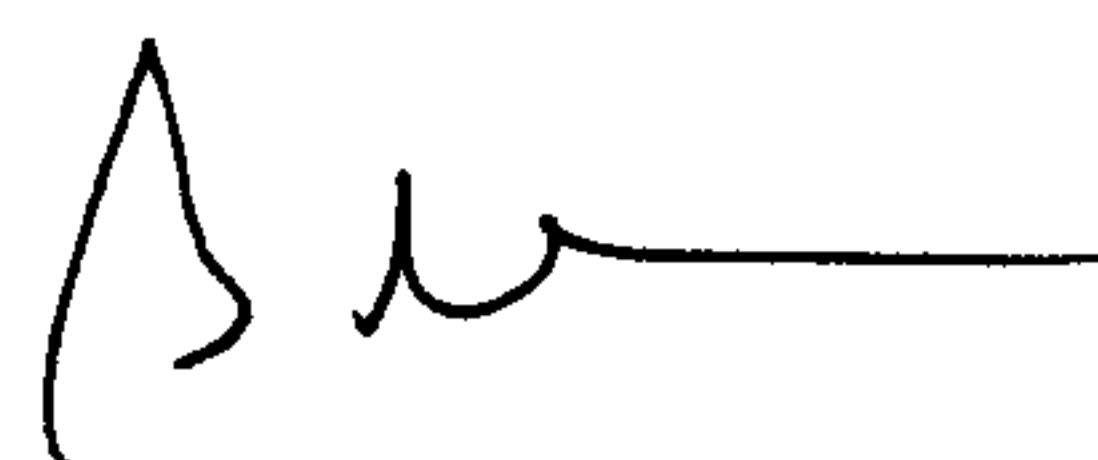
7. Applicant filed proof of despatch of Application on the Respondent in accordance with Rule 4 (3) of the Adjudication Rules. This Application has been filed before the Registry on 20th June, 2017. The Application was listed before this Authority on 12.7.2017. This Authority directed the Applicant to issue Notice of date of hearing. Accordingly, Applicant issued notice of date of hearing to the Respondent and filed proof of service. Applicant also filed Additional Affidavit. Applicant, along with the Additional Affidavit, filed proof of service of e-Mails through which Demand Notice was sent.



8. Operational Creditor also filed copy of the letter dated 26th September, 2015 through which the Corporate Debtor sought to terminate the contractual relationship of the Operational Creditor. Corporate Debtor also stated in the Reply Notice dated 5th November, 2016 that the Corporate Debtor notified that its company had been declared as a 'Sick Unit' under the provisions of Sick Industrial Companies (Special Provisions) Act, 1985. Operational Creditor further stated that the proceedings before BIFR and appeals therefrom abated in view of the coming into force of the Insolvency and Bankruptcy Code.

9. In this matter, Respondent Corporate Debtor appeared through learned Counsel and reported no objection for the initiation of Insolvency Resolution Process. Learned Counsel for the Respondent also did not dispute about the outstanding amount due to the Applicant, Operational Creditor.

10. A perusal of the Application and Additional Affidavit clearly goes to show that operational debt is due to the Operational Creditor from the Corporate Debtor. Operational Creditor issued notice under Section 8 read with Rule 5 of the Adjudication Rules to the Corporate Debtor and the same was served on the Corporate Debtor. Corporate Debtor did not raise any dispute regarding the amount of debt or quality of goods or services or breach of representation or warranty. The Application filed by the Operational Creditor is complete in all aspects. Operational Creditor did not name Insolvency Resolution Professional. Learned Counsel appearing for the Operational Creditor requested this Authority to appoint Interim Resolution Professional under Section 16 sub-section (3) of the Code.



11.(i) In view of the above discussion, the Application is admitted. This Authority hereby order Moratorium under Section 13(1) for the following purposes referred to in Section 14 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 (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.

(ii) However, the supply of goods and essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during the moratorium period.

(iii) The order of moratorium is not applicable to the transactions that may be notified by the Central Government in consultation with any financial sector regulator.



(iv) The order of moratorium comes into force from the date of the order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14.

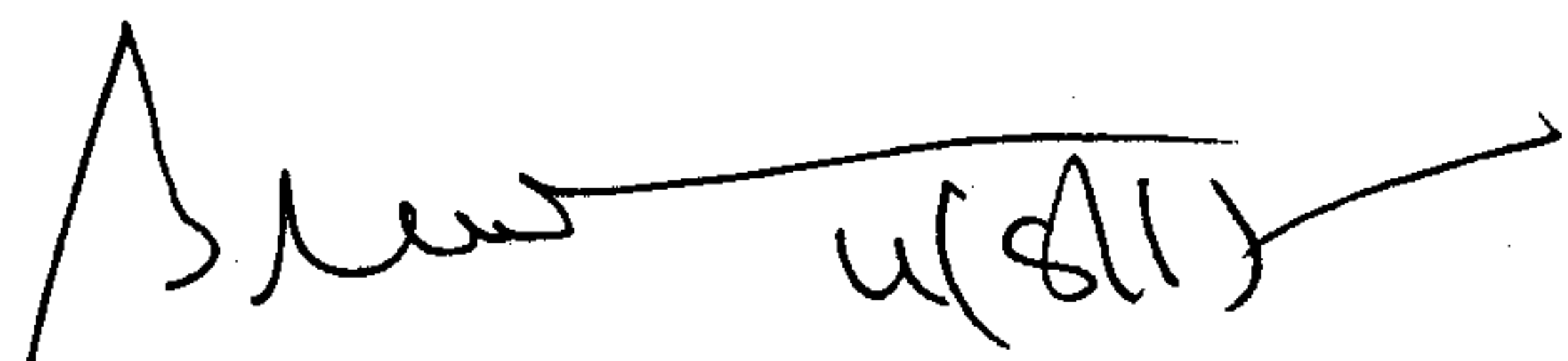
12. This Adjudicating Authority hereby make a reference to the Insolvency and Bankruptcy Board of India, New Delhi, for recommendation of an Insolvency Resolution Professional in order to act as 'Interim Resolution Professional' in respect of Resolution Process of the Corporate Debtor.

13. The Registry is directed to address a letter to the Insolvency and Bankruptcy Board of India, New Delhi, to recommend the name of Insolvency Resolution Professional, in order to act as 'Interim Resolution Professional' against whom no disciplinary proceedings are pending, within 10 days from the date of receipt of the letter.

14. The Application is disposed of accordingly. No order as to costs.

15. List the matter immediately after the Insolvency and Bankruptcy Board of India recommended the name of Insolvency Resolution Professional.

Signature:



**Sri Bikki Raveendra Babu, Member (J).
Adjudicating Authority.**