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

C.P. (I.B) No. 16/9/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 18.05.2017**

Name of the Company: Narmada Construction (Indore) Pvt. Ltd.
V/s.
Agroh Infrastructure Developer (P) Ltd.

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

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

1. KUSHAL KOTHARI ADVOCATE PETITIONER 
- 2.

ORDER

Learned Advocate Mr. Kushal Kothari i/b Learned Advocate Mr. Aditya Mewara
present for Operational Creditor/ Petitioner. None present for Respondent.

Order pronounced in open Court. Vide separate sheet.


BIKKI RAVEENDRA BABU
MEMBER JUDICIAL

Dated this the 18th day of May, 2017.

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

C.P. No. (I.B) 16/9/NCLT/AHM/2017

CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL

Date: 18th day of May, 2017

In the matter of:

M/s. Narmada Construction
(Indore) Pvt.Ltd.,
Registered Office at
BG-165, Scheme No. 74,
'C' Vijay Nagar
Indore-M.P.

: Petitioner.
Operational Creditor.

Versus

M/s. Agroh Infrastructure Developer
Private Ltd., In Liquidation
Registered Office at
Aqua Point, Old A.B. Road,
Umaria, Mhow,
District-Indore.

: Respondent.
Corporate Debtor.

Appearance:

Shri Aditya Mewara, learned Advocate for Operational Creditor.
None present for Corporate Debtor.

FINAL ORDER

Pronounced on 18th day of May, 2017

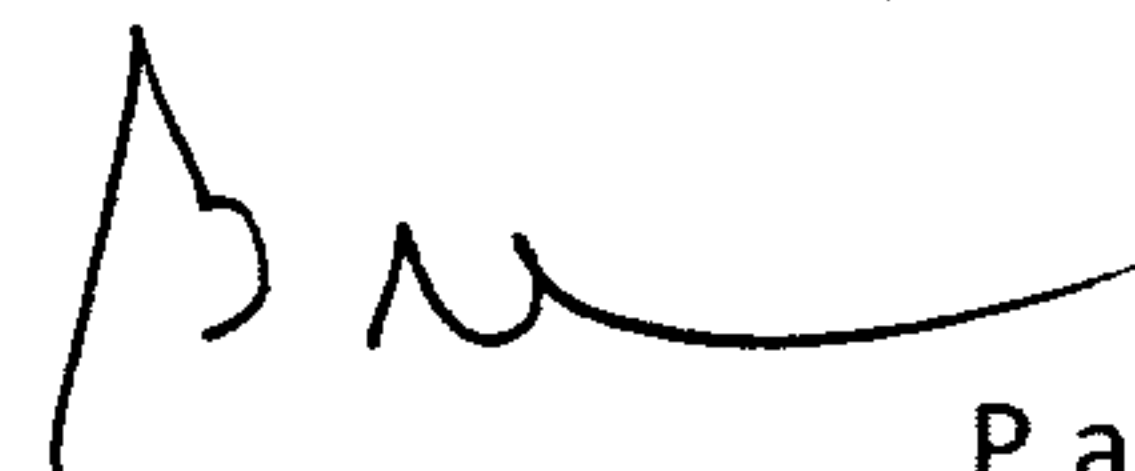
1. M/s. Narmada Construction (Indore) Private Limited, filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to

Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"].

2. The claim of the Operational Creditor is that Corporate Debtor, namely M/s. Agroh Infrastructure Developer Private Ltd., gave road construction work of Bitumen Road of Magarkhedi-Bamandi, District Barwani, and another road construction work of Bitumen Road of Khandwa-Jhedtalai. The Operational Creditor had completed the above mentioned work in the year 2013 as per the specification given by the Corporate Debtor. The concerned Government Department awarded Corporate Debtor the Completion Certificate. Operational Creditor submitted final bill to the Corporate Debtor for the above mentioned work.
3. According to the Work Agreement for the aforesaid work, there is an outstanding amount of 2,22,00,047/- along with security deposit of Rs. 15,00,000/- totalling to Rs. 2,37,00,047/-.
4. Similarly, according to the Work Agreement, Operational Creditor carried out the work of Bitumen road of Magarkhedi-Bamandi, District Barwani. After completion of work, there is an outstanding amount of Rs. 19,52,943/- along with security deposit of Rs. 32,93,202/- totalling to Rs. 52,46,145/-. The total amount due to Operational Creditor from Corporate Debtor is Rs. 2,89,46,192/-.
5. According to the Operational Creditor, the default occurred on 31.8.2014. The Operational Creditor issued Demand Notice dated 4.4.2017 in Form 3 along with copy of Work Order, copy of Account Statements send by Corporate Debtor to Operational Creditor and TDS Certificate as required by Section 8 read with Rule 5 of the Rules.

6. As per the Track Report of the Indian Post Department, the Demand Notice was served on the Corporate Debtor on 8.4.2017. Operational Creditor filed an Affidavit stating that Corporate Debtor M/s. Agroh Infrastructure Developer Private Ltd., had not given any reply to the Demand Notice sent by Operational Creditor on 4.4.2017. Operational Creditor filed this Petition before this Adjudicating Authority on 6th May, 2017. This Petition was listed before this Adjudicating Authority on 11.5.2017. Before filing this Petition, Operational Creditor had given intimation regarding filing of this Petition through Courier and filed Courier's Receipt. On 11.5.2017, this Adjudicating Authority directed the Operational Creditor to file Affidavit as required by clause (b) of sub-section (3) of Section 9; copy of certificate from the financial institution maintaining the accounts of the Operational Creditor; and evidence relating to default. This Adjudicating Authority also directed the Operational Creditor to issue notice of date of hearing to the Corporate Debtor and file proof of service. This Adjudicating Authority has directed to list the matter on 18.5.2017 for hearing before admission. The Operational Creditor filed an Affidavit stating that he tried to service the notice on the Corporate Debtor by hand on 13.5.2017 thrice, but the Manager of the Company refused to accept the notice. Operational Creditor stated in the Affidavit that he sent notice of hearing to the Corporate Debtor by Registered Post with Acknowledgment Due on 14.5.2017. None appeared before this Adjudicating Authority on behalf of the Corporate Debtor. Operational Creditor also filed Statement of Accounts of the Bank of the Operational Creditor along with the Audit Report.

7. In order to pass an order under Section 9(5) of the Code, this Adjudicating Authority shall necessarily give a finding on the following aspects;

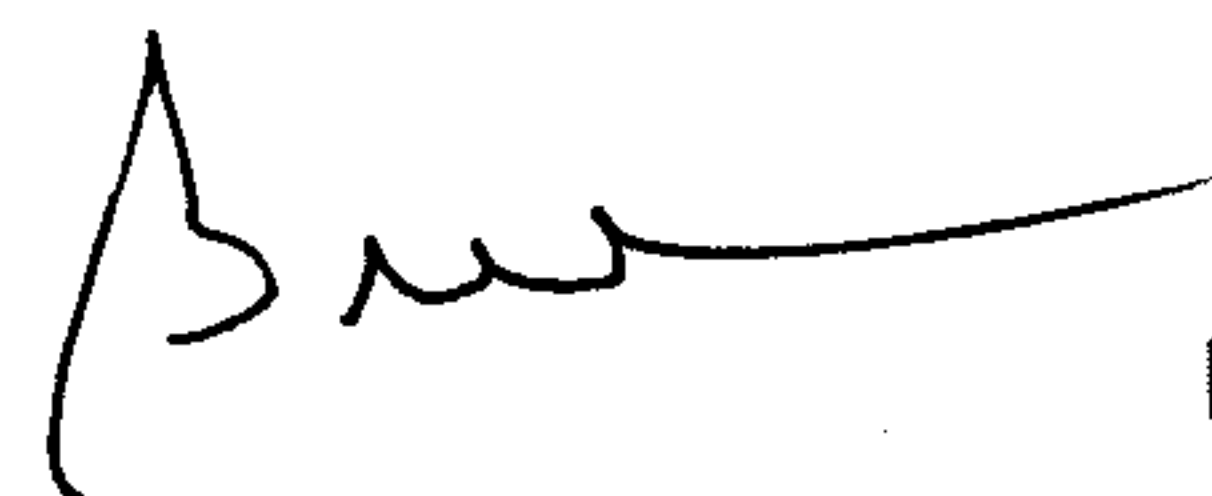


- i. Whether the claim is an operational debt or not;
- ii. Whether there is occurrence of default;
- iii. Whether notice as required by sub-section (2) of Section 8 was served on the Corporate Debtor;
- iv. Whether Corporate Debtor within a period of 10 days of the receipt of Demand Notice brought to the notice of Operational Creditor existence of any dispute and record of pendency of suit or arbitration proceedings filed before the receipt of Demand Notice;
- v. Whether the requirements of sub-sections (1) to (4) of Section 9 of the Code read with Rules 5 and 6 of the Rules have been followed by the Operational Creditor.

8. In the first instance, Operational Creditor must satisfy that the amount due to it is an operational debt as defined in sub-section (21) of Section 5 of the Code. Sub-section (21) of Section 5 of the Code defines 'Operational Debt' as under;

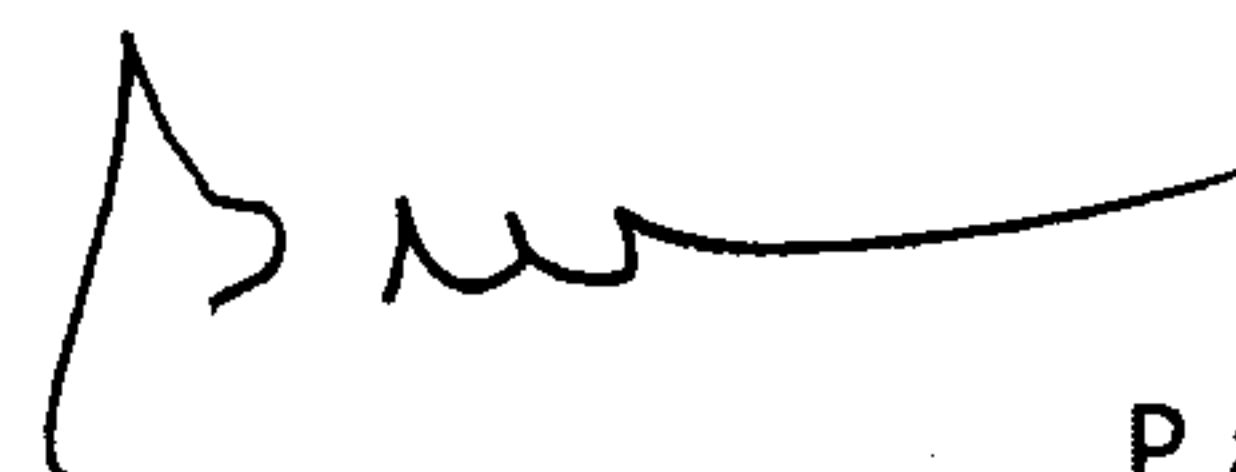
"(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;"

9. In the case on hand, the facts disclose that Operational Creditor was given Work Order for road construction work by the Corporate Debtor. The Operational Creditor completed the road construction work and claimed an amount of Rs. 2,89,46,192. Operational Creditor filed the account copies of the financial institution (Bank) of the Operational Creditor



which disclosed that the said amount has not been paid by the Corporate Debtor.

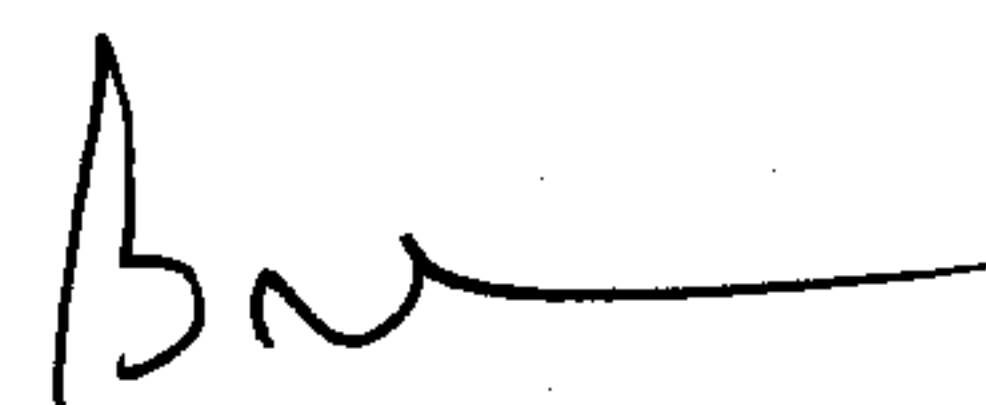
10. In view of the said facts, Petitioner Operational Creditor provided services of construction of road to the Corporate Debtor. Therefore, the amount due or the claim made is in respect of services and therefore it is an 'operational debt' within the meaning of sub-section (21) of Section 5 of the Code.
11. In order to prove the existence of dispute, Petitioner filed copies of account statement sent by Corporate Debtor to the Operational Creditor and as well as copy of the Work Order. Petitioner also placed on record the Bank Statements of its Bank. From the above said documents, it is clear that Corporate Debtor defaulted in making payment of operational debt.
12. Operational Creditor issued notice as required by Section 8(1) read with Rule 5 of the Rules in e-Form No.3 demanding payment of operational debt. As can be seen from the Track Report filed by the Operational Creditor, the demand notice was served on the Corporate Debtor on 8.4.2017.
13. Operational Creditor filed an Affidavit stating that no reply was given by the Corporate Debtor for the demand notice dated 4.4.2017.
14. Therefore, Operational Creditor complied with Section 8(1) of the Code read with Rule 5 of the Rules. The Operational Creditor also complied with Clauses (a), (b) and (c) of sub-section (3) of Section 9. The Application filed by the Operational Creditor is complete. There is no repayment of unpaid operational debt. No notice of dispute has been issued by the Corporate Debtor.



15. In these set of facts, Petitioner Operational Creditor is entitled to file an application for initiation of corporate insolvency resolution process under Section 9 of the Code.
16. In the case on hand, Operational Creditor did not propose a Resolution Professional to act as an Interim Resolution Professional as required by sub-section (4) of Section 9 of the Code. Here, it is pertinent to refer to sub-section (3) of Section 16 of the Code. It says, in an application for corporate insolvency resolution process filed by an operational creditor, if there is no proposal for an interim resolution professional is made, the Adjudicating Authority shall make a reference to the Board, namely Insolvency and Bankruptcy Board of India, for the recommendation of an insolvency professional who may act as an interim resolution professional within ten days from the date of receipt of the reference. Therefore, on the ground that Operational Creditor did not comply with sub-section (4) of Section 9 of the Code, the Petition cannot be rejected. This Adjudicating Authority shall follow the procedure laid down under sub-section (3) of Section 16 of the Code, and the Insolvency and Bankruptcy Board of India shall follow sub-section (4) of Section 16 of the Code. Therefore, this Adjudicating Authority, by this order passed under sub-section (5) of Section 9 of the Code, is admitting this Petition. This Adjudicating Authority is also of the view that it is necessary to make a Reference to the Insolvency and Bankruptcy Board of India established under the Code to recommend the name of an Insolvency Professional, against whom no disciplinary proceedings are pending, to this Adjudicating Authority, within ten (10) days from the date of receipt of the Reference.
17. 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

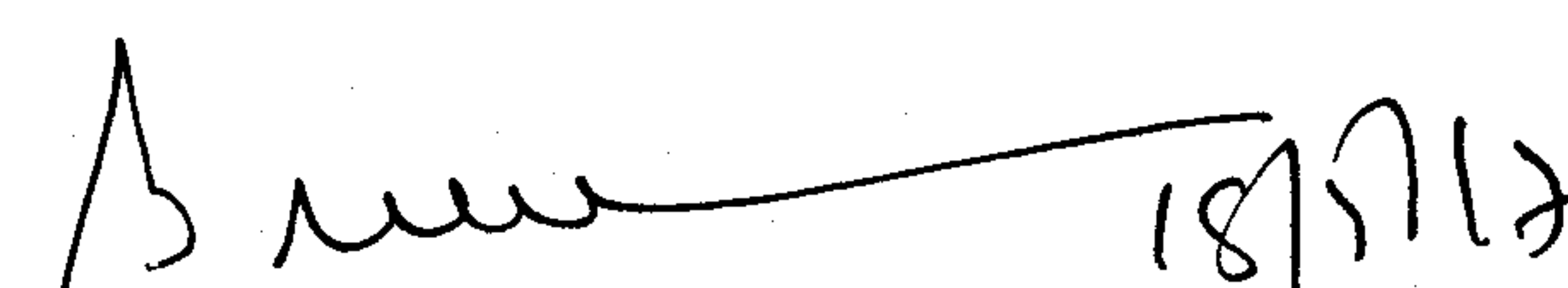
public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Resolution Professional. In the case on hand, simultaneous with the admission order, this Adjudicating Authority is not going to appoint Interim Resolution Professional because the Applicant did not propose the name of Interim Resolution Professional. But, this Adjudicating Authority is going to appoint Interim Resolution Professional after the same is recommended by the Insolvency and Bankruptcy Board of India under Section 16(4) of the Code.

18. (a) In view of the above discussion, the Petition is admitted.
- (b) This Adjudicating Authority hereby order reference to Insolvency and Bankruptcy Board of India to recommend the name of Insolvency Professional against whom no disciplinary proceedings are pending to this Authority within 10 (Ten) days from the date of receipt of reference to function as Interim Resolution Professional
- (c) This Adjudicating Authority hereby declares 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.
- (d) 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.

19. 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.
20. This Petition is ordered accordingly.
21. Communicate a copy of this order to Operational Creditor and Corporate Debtor. List the matter after receipt of proposal from the Insolvency and Bankruptcy Board of India.


BIKKI RAVEENDRA BABU
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

*Pronounced by me in open court on
this the 18th day of May, 2017.*

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