

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL, MUMBAI BENCH, MUMBAI**  
**C.P.NO.82/I&BCP/NCLT/MB/MAH/2017**

(Under Section 9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016).

**M/s. ASMI ENTERPRISES,**

A Partnership Firm, through its Partner,  
Sri Hirenbhai Laljibhai Viradiya, having  
Office at Vishnu Chambers, 1<sup>st</sup> Floor, Opposite  
To Varachha Police Station, Surat, Gujarat.

.... **Petitioner.**

**Versus**

**Yog Industries Limited,**

Having its Registered Office at 10-Shri  
Niketan Colony, Jalana Road, Aurangabad,  
Maharashtra – 431 001.

..... **Respondent.**

CORAM:

**SHRI M.K. SHRAWAT**  
MEMBER (JUDICIAL)

**SHRI BHASKARA PANTULA MOHAN**  
Member (Judicial)

**PRESENT ON BEHALF OF THE PARTIES**

Ms. Lavanya Mudaliar Advocate for the Petitioner present.

**Per : SHRI M.K. SHRAWAT, MEMBER (JUDICIAL)**

**ORDER**

**Pronounced on : 22<sup>nd</sup> August 2017**

1. This Petition was initially filed before the Hon'ble Bombay High Court and due to change in Law, it was transferred to NCLT, Mumbai Bench. Earlier the Petition was filed by the Petitioner/Creditor by invoking the provisions of Section 433(e), 434 and 439 of the Companies Act, 1956.
2. Consequent upon the transfer, the Petitioner has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in the capacity of "Operational Creditor" by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code. In the requisite Form under the Head "Particulars of Operational Debt" the amount is stated to be ₹ 2,70,00,000/-. Further under the Head "Particulars of Corporate Debt" the description of the debtor is M/s. Yog Industries Limited, Aurangabad, Maharashtra.

*Mudaliar*

3. Learned Counsel of the Petitioner has described the "Nature of the Debt" that, the Petitioner a Partnership Firm through one of its partners has entered into a Sale and Purchase Agreement Contract (SPA) for purchase of Refined White Sugar for total quantity of 12,500 metric tonnes from the Respondent Company at the rate of US \$ 470.0 per Metric Tonne. As per one of the condition the Petitioner was required to deposit 10% of the price of the goods as an advance to the Debtor Company. Thereafter the Debtor Company was to deliver the agreed quantity of Sugar within 60 days. The Petitioner had transferred the amount through RTGS which was duly credited in the account of the Debtor in Bank of India, Aurangabad Branch. The Respondent had failed to deliver the goods and also informed that they are unable to fulfil the terms of the Contract.
4. The Respondent had issued Two Cheques which were dishonoured stated to be as under :-

Sr. No.	Cheque No.	Cheque Date	Amount (in Rupees)	Name of the Bank on which drawn
1.	072630	04.10.2010	1,50,00,000/-	Bank of India, Aurangabad Branch
2.	072631	04.10.2010	1,20,00,000/-	Bank of India, Aurangabad Branch
			<b>2,70,00,000/-</b>	

5. Despite repeated Reminders and Notices the Respondent had not refunded the amount. The Leaned Counsel had furnished the details of the Notices issued since inception of the Petition filed before the Hon'ble High Court and thereafter on transfer to NCLT. On 18.11.2011 a Notice under section 433(e) was issued but no response came from the side of the Respondent.
6. The Petitioner has issued a Notice under section 8 on prescribed Form No. 3 on 12.07.2017 by Speed Post but the same was returned with the postal remark "Refused". Again a Notice was issued on 21.07.2017 but the Respondent has not responded. Learned Representative has also informed that under the directions of the Court one more Notice dated 26.07.2017 was issued through Speed Post and as per the Tracking Report of the Consignment it was delivered on 02.08.2017.
7. The continuous non-appearance of the Respondent Debtor has thus established that it has nothing to say in defence in respect of the impugned outstanding amount.

8. **FINDINGS :-** Considering the above facts, it is established by the Operational Creditor that the nature of Debt is an "Operational Debt" as defined under section 5(21) of the Definitions under The Code. It has also been established that admittedly there was a "Default" as defined under section 3(12) of The Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner has established that the advance was given against the goods to be supplied and invoices were raised to claim the amount but there was non-payment of Debt on the part of the Corporate Debtor.
9. We have perused the notice earlier issued under section 433 of the old Act and there was no reply of the Respondents; Prima facie there is no persuasive evidence to demonstrate that there was a 'Dispute' as defined under section 5(6) of The Code. When the Petition is transferred to NCLT number of opportunities have also been provided to the Respondent and if the Respondent wanted to place on record evidence of 'dispute' then he could have raised the objection within 10 days as prescribed under section 8(2) of The Code which had also lapsed now.
10. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Corporate Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner we are of the conscientious view that this Petition deserves 'Admission'.
11. The Petitioner has not proposed the name of the Insolvency Resolution Professional. Due to this reason, in a situation when the Operational Creditor has filed an Application but no name of IRP is proposed, the provisions of Section 16 of The Code shall apply. As a consequence the Registry of the NCLT is hereby directed to refer this Petition to Insolvency and Bankruptcy Board, New Delhi for the recommendation of an Insolvency Professional who shall act as an IRP.
12. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of order shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the "Corporate Debtor" shall not be terminated during Moratorium period. It shall be effective till completion of the Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

13. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment.
14. That the Interim Resolution Professional shall perform the duties as assigned under Section 18 of the Code and inform the progress of the Resolution Plan and the compliance of the directions of this Order within 30 days to this Bench.
15. The IRP so appointed shall act upon as prescribed under section 13 of The Code by making a public announcement and shall also comply the other provisions of The Code including section 15 of The Code. It is also expected from the IRP that he shall perform the duties as assigned under section 18 of The Code. He is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
16. The Petition is hereby "Admitted". The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of appointment of the Insolvency Professional.

Sd/-

**Bhaskara Pantula Mohan**  
**Member (Judicial)**  
**22.08.2017**

Sd/-

**M.K. Shrawat**  
**Member (Judicial)**