

**BEFORE THE NATIONAL COMPANY TRIBUNAL, MUMBAI BENCH,
MUMBAI**

T.C.P. NO.816/I&BP/NCLT/MB/MAH/2017

CORAM:

SHRI M. K. SHRAWAT
MEMBER (JUDICIAL)

IN THE HIGH COURT JUDICATURE AT BOMBAY

ORDINARY CIVIL JURISDICTIONI
IN THE MATTER Sections 433(e) and 434 of THE COMPANIES ACT,
1956.

AND

In the matter of Aksheet Engineering & Constructions Services Pvt. Ltd., a
Company incorporated under the Companies Act, 1956, having its
Registered Office at 204, Indo-Saigon Industrial Estate, Andheri-Kurla
Road, Mumbai-400 059. CIN – U27200MH1998PTC115797.

Steel Scaffoldings & Engineering Private Limited,
A Company incorporated under the Companies Act,
1956, having their Registered Office at E-4, Nanddham
Udyog Premises Co-operative Society Limited, Near
Marol Fire Brigade Opposite New Café Marol,
Andheri (East), Mumbai – 400 059.

... **PETITIONER**

PRESENT ON BEHALF OF THE PARTIES:

FOR THE PETITIONER

Mr. J.A. Udaipuri Advocate for the Petitioner present.

Mr. Hebatullah Cassim Chief Manager of the Petitioner present.

ORDER

Heard on : 12.06.2017
Pronounced on: 12.06.2017

1. The Petitioner is an "Operational Creditor", hence submitted Form
No. 5 on 25th April, 2017 in respect of unpaid debt of Rs. 2,79,444/-

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by the "Corporate Debtor" namely M/s. Aksheet Engineering and Constructions Private Limited. It is worth to mention that this matter is transferred from the Hon'ble High Court. The Petitioner had moved a Petition for recovery of the outstanding debt under the provisions of Section 433(e) of the Companies Act, 1956.

2. The facts of the case in brief are that the Respondent had placed various orders to deliver scaffolding material on hire basis to the Petitioner during the period of August 2012 to December 2012. The Petitioner/Company had supplied the material and in support the delivery challans are on record, annexed with the Petition transferred from the Hon'ble High Court. Thereafter Bills were raised aggregating Rs. 8,81,722/- out of which received Rs. 6,02,278/- and the balance unpaid amount was Rs. 2,79,444/-. Records of the case have further revealed that several notices were issued as well as communicated through emails demanding the outstanding amount from the Debtor.
3. Thereafter the matter stood transferred to NCLT, Mumbai Bench, hence again the requisite Form-5 to initiate Corporate Insolvency Resolution Process is submitted with an Affidavit of Service on the other side. A Notice of Demand is stated to have been served on the other side.
4. Facts of the case have further revealed that the Debtor had never raised any dispute against the outstanding debt rather some of the emails have demonstrated that the Debtor had given undertaking to square up the outstanding balance before the end of August 2015. Even after repeated reminders from the side of the Creditor/Petitioner the amount remained unpaid, hence this Petition. Opportunity was afforded by this Bench as well to the

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- Respondent/Debtor somehow remained unheeded. As a result, no option left but to proceed further as prescribed under I&BP Code, 2016.
5. Since this is a case of "Operational Creditor" therefore the Insolvency Resolution Process shall commence as prescribed under section 8 of the I&BP Code, 2016. The occurrence of default is established. Even on service of Demand Notice the amount in question ^{as} ~~even~~ on date remained unpaid by the "Operational Debtor", moreover, the prescribed period of 10 days have also lapsed. Further the admitted factual position is that the Corporate Debtor had accepted the outstanding amount, hence admittedly there is no dispute in respect of the unpaid debt. MMS
 6. Having considered the totality of the circumstances and the Application/Petition for initiation of Insolvency Resolution Process under the I&BP Code, 2016 and having considered the default of the Corporate Debtor in making the payment as discussed supra it is hereby pronounced that the "Moratorium" as prescribed under section 14 of The Code 2016 shall come into operation. As a result, institution of any suit or parallel Proceedings before any Court of Law are prohibited. The assets of the Debtor must not be liquidated until the Insolvency Process is completed. However, the supply of essential goods or services to the Corporate Debtor shall not be suspended or interrupted during "Moratorium Period". This direction shall have effect from the date of this Order till the completion of Insolvency Resolution Process.
 7. The Petitioner has not proposed the name of Interim Resolution Professional. To resolve this stalemate a provision is made in Section 16(3) of The Code to refer to the Board for the

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recommendation of an Insolvency Professional. It is provided that where the application for Corporate Insolvency Resolution Process is made by an Operational Creditor and no proposal for an Interim Resolution Professional is made, the Adjudicating Authority shall make a reference to the Board for the recommendation of an Insolvency Professional who may act as an "Interim Resolution Professional". The Registry of NCLT shall issue a letter accordingly to the Board. The so appointed Insolvency Professional shall furnish the requisite Certificate that no Disciplinary Proceedings is pending against him. Upon Admission of the Application and Declaration of "Moratorium" the Insolvency Process such as Public Announcement etc. shall be made immediately as prescribed under section 13 read with section 15 of The Code. He shall perform the duties as an Interim Resolution Professional defined under section 18 of The Code. The IRP shall submit the Resolution Plan for approval as prescribed under section 31 of The Code.

8. The commencement of the Corporate Insolvency Resolution Process is hereby declared subject to the above conditions.

Date: 12th June, 2017.

Sd/-
M.K. SHRAWAT
MEMBER (JUDICIAL)