16

NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI NATIONAL COMPANY LAW TRIBUNAL, HELD ON 07/09/2017 AT 10.30 AM

PRESENT: SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL
SHRI S. VIJAYARAGHAVAN, MEMBER - TECHNICAL

APPLICATION NUMBER :

PETITION NUMBER : TCP/431/ (IB)/2017

NAME OF THE PETITIONER(S) : SSA & COMPANY

NAME OF THE RESPONDENT(S) : NAG YANG SHOES PVT LTD

UNDER SECTION : 433 (e)(f)

S.No.	NAME (IN CAPITAL)	DESIGNATION / REPRESENTATION BY WHOM	SIGNATURE
1.	M. SANGEETHA For - T.P. prabakaran	Counsel for respondent	M. Sangeetha 7/9/17
2.	S. chol alagan for. S. parthasarathy	Counsel for petitioner.	S. chola 7/9/17.

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

TCP/431/(IB)/CB/2017

Under Section 9 of the Insolvency and Bankruptcy Code 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

M/s. SSA & Company

Vs.

Nag Yang Shoes Pvt. Ltd.

Order delivered on 7th of September, 2017

CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)
S. VIJAYARAGHAVAN, MEMBER (TECHNICAL)

For Financial Creditor(s) : Counsel Mr. S. Cholarasan
For Corporate Debtor(s) : Counsel Mr. M. Sangeetha

ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (Judicial)

1. Under consideration is the Petition that came to be filed before Hon'ble High Court of Madras on 24.08.2016 under Sections 433 (e) & (f), 434 (i) (a) and 439 (i) (b) of the Companies Act 1956. After the enforcement of the Insolvency and Bankruptcy Code, 2016 (I&B Code, 2016, for short), the same has been

transferred to this Bench and renumbered as TCP/431/(IB)/CB/2017 and treated under Section 9 of the I& B Code, 2016.

Heard the Counsel appearing on behalf of the Operational Creditor and Corporate Debtor and perused the Petition along with the documents placed on record.

2. In the Petition, the Operational Creditor has claimed that an amount of Rs.1,52,51,777.85ps as outstanding debt which the Corporate Debtor failed to make the payment. It is also mentioned under para 4 of the Petition that the Corporate Debtor admitted the liability to the extent of an amount of Rs.1,49,04,939/-. The Counsel for the Operational Creditor referred to page 409 of the typed set filed with the Petition, wherein the confirmation letter given on 01.04.2016 is placed, which is signed by the Managing Partner of the Operational Creditor and seal of the Operational Creditor is also affixed thereon, which reflects that the Corporate Debtor has admitted the liability to the said

extent of the outstanding debt payable to the Operational Creditor.

3. The Operational Creditor has supplied the adhesive tapes and other allied products in relation to which all the invoices are placed on record. The Operational Creditor has also sent statutory notice prior to filing of the Petition before Hon'ble High Court, on 02.06.2016 raising the claim, the copy of which is placed at page 316 of the typed set filed with Petition. The reply of which was given by the Corporate Debtor on 16.06.2016 which is also placed at page 318 of the typed set with the Petition. Under para 6 of its reply, it has been mentioned by the Corporate Debtor that they are ready to pay the actual amount provided the entries in the account books are thoroughly checked and verified with reference to the sale invoices and payments made and also after the quality issues are sorted out. But, it is on record that prior to the issuance of notice, the Corporate Debtor never raised any issue with regard to the quality of the supply.

4. The Corporate Debtor has filed counter stating therein that they never admitted the liability, and the seal and signature was not affixed by any authorised person on behalf of the Operational Creditor, and therefore, the claim is not legally sustainable. However, the Corporate Debtor did not support their counter with any documentary evidence. It is worthwhile to mention that during argument, the Counsel for the Corporate Debtor fairly admitted that the supplies were received by the Corporate Debtor.

5. The Operational Creditor has also filed Affidavit and the Bank statement in order to make compliance with Section 9 (3) (b) and (c) of the Code, 2016 which have been placed on record on 23.06.2017.

6. In the above stated facts and circumstances of the case, it is clearly established that the Corporate Debtor has committed the default in making payment of the outstanding debt claimed by the Operational Creditor and even admitted the liability to the extent of the amount of Rs.1,49,04,939/-. The documents placed

on file and the arguments submitted, this Bench is satisfied that the Corporate Debtor defaulted in making payment of the outstanding debt claimed by the Operational Creditor. Therefore, the defence taken by the Corporate Debtor that they never admitted the liability and the seal and signature was not affixed by any authorised person is devoid of merits, and hence, stands rejected.

7. The Operational Creditor has fulfilled all the requirements of law. We are satisfied that the Corporate Debtor committed default in making payment of the outstanding debt. Therefore, TCP/431/(IB)/CB/2017 is admitted and we order the commencement of the Corporate Insolvency Resolution Process which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

8. We declare the moratorium which shall have effect from the date of this Order till the completion of Corporate Insolvency Resolution Process, for the purposes referred to in Section 14 of the I&B Code,

2016. We order to prohibit all of the following, namely:

(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.

9. The supply of essential goods or services of the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The provisions of Sub-section (1) of Section 14 shall not apply to such transactions, as notified by the Central Government.

10. The Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP). Therefore, we direct the Registry to make a reference to the IBBI to recommend the name of the IRP within 10 days of the receipt of the reference. On receiving the recommendation of the IBBI, the Registry is directed to place the matter before this Bench for appointment of the IRP as may be recommended by the IBBI.

11. Accordingly, the Registry is directed to communicate this Order to the Operational Creditor

and the Corporate Debtor. Order pronounced in open court.

S. VIJAYARAGHAVAN
MEMBER (TECHNICAL)

CH.MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)

PAM