

NATIONAL COMPANY LAW TRIBUNAL
DIVISIONAL BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 06/06/2017 AT 02.30 PM

PRESENT: SHRI K. ANANTHA PADMANABHA SWAMY, MEMBER-JUDICIAL
SHRI Ch. MOHD SHARIEF TARIQ, MEMBER-JUDICIAL

APPLICATION NUMBER :
PETITION NUMBER : IND/1523/(IB)/CB/2017
NAME OF THE PETITIONER(S) : SHAH BROTHERS ISPAT PVT LTD
NAME OF THE RESPONDENT(S) : DIAMOND ENGINEERING (CHENNAI) PVT LTD
UNDER SECTION : 9 RULE 6

S.No.	NAME (IN CAPITAL)	DESIGNATION	SIGNATURE
		REPRESENTATION BY WHOM	

1. MR. P.H. ARVINDH PANDIAN
SR. COUNSEL,
FOR ANANT MEGATHIA

Counsel for
Applicant



2. MR. A.K. MYLSAMY
SR. COUNSEL,
FOR A.K. MYLSAMY ASSOCIATES LLP

Counsel for
Respondent



BEFORE THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, CHENNAI

Arguments heard on 06.06.2017
Order passed on 06.06.2017

CP/507(IB)/CB/2017
(IND/1523/(IB)/CB/2017)
(Under Section 9 of the Insolvency And Bankruptcy Code 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

M/s.Shah Brothers Ispat Private Ltd.
Vs

M/s.Diamond Engineering (Chennai) Private Ltd.

Applicant (Operational Creditor) Represented by :

Senior Counsel Mr.P.H.Arvinth Pandian for Mr.Anant Merathia
Corporate Debtor represented by : Sr. Counsel Mr.A.K.Mylsamy

CORUM :

ANANTHA PADMANABHA SWAMY & CH MOHD SHARIEF TARIQ, MEMBERS (JUDICIAL)

ORDER

CH MOHD SHARIEF TARIQ, MEMBER(JUDICIAL) :- (ORAL)

1. This petition has been filed under section 9 of the I&B Code, 2016. The applicant is the operational creditor. The notice u/s 8 that has been given to the corporate debtor that is placed at Page 11 Vol-I of the type set to the application, wherein total demand to the tune of Rs.24,80,33,430/- has been made. Reply to this notice has been given by the Corporate debtor on 26.03.2017 [available at Page 1058 Vol III] wherein for the first time the corporate debtor has raised certain issues and counter claim, the details of which are contained in the reply to the notice. It is on record that the Corporate debtor sent a communication dated 2nd December 2016,

confirming that as per their books of accounts, an outstanding payable is Rs.17,20,78,503/- which is said to be exclusively of various bills totalling Rs.8,09,71,547/- which is received and stated to have been under process [available a Page 743 - Vol III]. The petitioner has filed an affidavit under section 9 (3)(b)(c) of I&B Code, 2016 [available at Page 1075 - Vol.III] wherein it has been stated that the corporate debtor has not referred to any dispute relating to the unpaid operational debt.

2. At this juncture, the learned counsel Mr.A.K.Mylsamy has caused appearance on behalf of the respondent. He has filed a detailed counter and raised two preliminary objections. The first objection is that the application has not been filed by a duly authorised person and the second objection is that the one of the Directors who issued the demand notice has not been authorised by the Board of Directors by way of a passing a specific resolution.

3. In relation to the first objection, the counsel for respondent submitted that there is no mention about the Board resolution in the application. However, it is appropriate to mention here that the affidavit which has been annexed to the application clearly provides that the person signing the application is well acquainted with the facts of the case and has been authorised to present the application on behalf of the operational creditor. The learned counsel appearing for the applicant has produced a copy of Board resolution dated 15.03.2017 which confirms that due authority has been given to sign the application. In relation to the second objection

that the Director has no authority to give the notice to the corporate debtor without any backing of the Board resolution, the counsel for petitioner has drawn our attention to the decision of the Hon'ble High Court of Mumbai, titled *ALCON ELECTRONICS PVT. LTD. Vs. CELEM S.A.*, reported in 2015(1) Mh.L.J. Under para Nos.27 and 28 of the judgment, it has specifically been mentioned that the Director can file a suit without any specific resolution empowering him. In other words, a Director has the powers to manage the affairs of the company in order to discharge his statutory and fiduciary duties. We know that in some of the decisions, the courts maintained that without a specific resolution passed by the Board of Directors, the Director cannot act on behalf of the company. But those matters are relating to Sections 397 and 398 of the Companies Act, 1956 and the suits as well. But under Section 9 of the I&B Code, 2016, as far as the demand notice is concerned, there is no requirement of passing any specific resolution for issuing of notice to the corporate debtor. Therefore, both of the objections raised by the counsel for respondent are devoid of merits and are rejected.

4. Further, on the merits of the case, the counsel for petitioner has drawn our attention to various documents placed on record which clearly reflect that the outstanding debt has not been settled and there is a clear case of default. The counsel for respondent made submission in relation to the advance claimed to have been deposited by the respondent with the applicant. But as per record of the respondent, there does not appear any

entry regarding the advance money paid to the applicant. Further, the counsel for respondent vehemently opposed the application on the ground that the invoices which are 46 in number, relied upon by the applicant are not genuine and they are different from the previous invoices. However, the counsel for respondent fairly admitted that some of the debts are outstanding which requires single sitting of both the parties to settle the same by amicable means, which appear to be an after-thought idea.

4. Keeping in view the totality of the circumstances and having been satisfied that all the requirements under law have been fulfilled by the operational creditor for pressing section 9 of I&B Code, 2016, we hereby allow the application and 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.

5. We appoint Mr.V.Mahesh, as interim insolvency professional who has been proposed by the operational creditor. He is directed to take charge of the corporate debtor immediately. He is also directed to cause public announcement as prescribed under Sections 13 and 15 of I&B Code, 2016 within three days from the date the copy of this order is received, and call for submissions of claim under section 15 of I&B Code, 2016 in the manner as prescribed. It is stated here that no disciplinary proceeding is pending against the Interim Insolvency Professional and his name is reflected on the website of the Insolvency and Bankruptcy Board of India. 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 less or where such property is occupied by or in the possession of the corporate debtor.

6. The Registry is directed to inform the Insolvency Resolution Professional to take charge of the entity and make compliance with this order as per the provisions of I&B Code, 2016.

7. Accordingly, the application is admitted. The Registry is directed to communicate this order to the operational creditor and the corporate debtor. Pronounced in the open court.


ANANTHA PADMANABHA SWAMY
MEMBER (JUDICIAL)


CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)