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NATIONAL COMPANY LAW TRIBUNAL
SINGLE BENCH
CHENNAI

ATTENDANCE CUM ORDER SHEET OF THE HEARING OF CHENNAI BENCH, CHENNAI
NATIONAL COMPANY LAW TRIBUNAL, HELD ON 24/11/2017 AT 10.30 AM

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

APPLICATION NUMBER :
PETITION NUMBER : CP/637/(IB)/2017
NAME OF THE PETITIONER(S) : RNB ARC DESIGN SYSTEMS
NAME OF THE RESPONDENT(S) : TRIVITRON HEALTHCARE PVT LTD
UNDER SECTION : 9 RULE 6

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

①	K. Gaurav Kumar K. GAURAV KUMAR	PLS for petitioner.	
②	K. Shyam Sunder for P. Srinivasan	Counsel for Respondent	K. Rylands

IN THE NATIONAL COMPANY LAW TRIBUNAL,
SINGLE BENCH, CHENNAI

CP/637/(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. RNB Design Arc Systems

Vs.

M/s. Trivitron Healthcare Private Limited

Order delivered on 24th of November, 2017

CORAM :

CH MOHD SHARIEF TARIQ, MEMBER (JUDICIAL)

For Operational Creditor(s) : Mr. K. Gaurav Kumar, PCS
For Corporate Debtor(s) : Mr. K. Shyam Sunder for P.
Srinivasan, Counsel


ORDER

Per: CH MOHD SHARIEF TARIQ, MEMBER (J)

1. Under adjudication is CP/637/(IB)/CB/2017 that
has been filed by the Operational Creditor under
Section 9 of the Insolvency & Bankruptcy Code, 2016
(in short, 'I&B Code, 2016') r/w the Insolvency &
Bankruptcy (Application to Adjudicating Authority

Rules, 2016). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP) under the I&B Code.

2. Heard the representative for the Operational Creditor and Counsel for the Corporate Debtor and perused the record.


3. It is submitted by the representative for the Operational Creditor that the claim is made on the basis of the services that have been rendered by the Operational Creditor vide Work Order dated 28.03.2014, the copy of which is placed at page 21 of the typed set filed with the Application. The assigned work has been completed but some payments have not been made to the Operational Creditor. It is on record that the Operational Creditor has supplied and installed 90 Nos. of Fire Rated Doors at the factory of the Corporate Debtor which have been accepted by the Corporate Debtor. The notice of demand was issued 

by the Operational Creditor on 18.02.2017 which is placed at page 7 of the typed set filed with the Application, wherein an amount of Rs,8,97,659/- was claimed along with interest @ 18% as reflects from the annexure-1 to the notice, which is placed at page 10 of the Application. The Corporate Debtor has not given any reply to the Notice. The Operational Creditor has also complied with the provisions of Section 9 (3) (b) and (c) of the I & B Code, 2016. The Affidavit is placed at page 36 of the typed set filed with the Application, wherein it is stated that no notice of dispute has been given by the Corporate Debtor for the unpaid operational debt. The Bank Statement is also placed in the additional typed set filed with the Application, which is certified by M/s. Kotak Mahindra Bank.

4. The Counsel for the Corporate Debtor filed the counter and has raised two objections that the work assigned has been completed with a delay of 9 months and he has also disputed the interest part of the outstanding debt stating that there is no agreement for

payment of any interest. It has also been submitted by the Counsel for the Corporate Debtor that vide e-mail dated 12.01.2015, the Operational Creditor has claimed Rs.7,74,313.05p pending since October, 2014.

5. During the course of hearing, this Bench raised query that any notice was given to the Operational Creditor or any order was passed incorporating any condition for extension of the period for completion of work. The Counsel for the Corporate Debtor fairly admitted that there is no record to show that any notice was given or any order was passed incorporating any condition for extending the period for completion of the work assigned to the Operational Creditor.

6. The representative for the Operational Creditor submitted that the Corporate Debtor was under obligation to advance 10% of the total amount, but the same was not given to the Operational Creditor. The Corporate Debtor has advanced some amount i.e. below 10% of the total payment, on 25.04.2014. It has also been submitted by the representative of the 

Operational Creditor that the requirement of measurement/specification for supply and fixation of doors was made available on 02.06.2014. The representative for the Operational Creditor has also explained the difference in relation to the amount mentioned in the e-mail dated 12.01.2015 and in the demand notice given on 18.02.2017, stating that at the time when e-mail was sent, the amount was shown as Rs.7,74,313.05p which did not include retention money, and when the demand notice was given under Section 8 of the I&B Code, 2016, the retention money i.e. 5% of the total amount was included in the demand notice dated 18.02.2017. The explanation that has been given by the representative of the Operational Creditor is plausible. The arguments submitted by the Counsel for the Corporate Debtor are devoid of merits and stand rejected.

7. From 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. The Operational Creditor has fulfilled all the requirements of law. Therefore, CP/637/(IB)/CB/2017 is admitted and the commencement of the Corporate Insolvency Resolution Process is ordered, which ordinarily shall get completed within 180 days, reckoning from the day this order is passed.

8. The moratorium is hereby declared 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. It is hereby ordered 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 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.

11. Accordingly, the Registry is directed to communicate this Order to the Operational Creditor and the Corporate Debtor. Order pronounced in open court.


CH. MOHD SHARIEF TARIQ
MEMBER (JUDICIAL)

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