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**BEFORE THE AJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD**

**C.P. (I.B) No. 44/9/NCLT/AHM/2017**

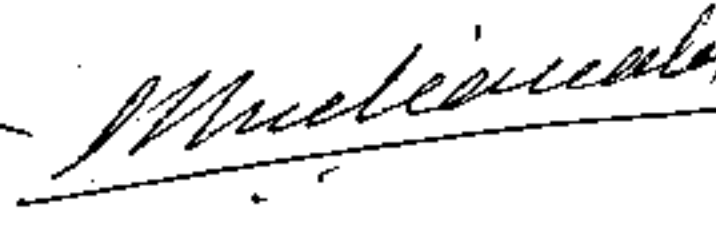
Coram:

**Present: Hon'ble Mr. BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.08.2017**

Name of the Company: Ecoplast Ltd.  
V/s.  
Syso Industries Ltd.

Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy  
Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	PAVAN S. GODIAWALA S.D. ISRANI	ADVOCATE	PETITIONER	
2.				

**ORDER**

Learned Advocate Mr. Pavan Godiawala i/b S D Israni present for Operational Creditor/ Applicant. None present for Respondent.

Order pronounced in open Court. Vide separate sheet.

  
**BIKKI RAVEENDRA BABU  
MEMBER JUDICIAL**

Dated this the 2nd day of August, 2017.

**BEFORE ADJUDICATING AUTHORITY (NCLT)  
AMEDABAD BENCH  
AHMEDABAD**

**CP NO. (IB) 44/9/NCLT/AHM/2017**

**In the matter of:**

1. Ecoplast Ltd.  
National Highway No. 8  
Water Wrok Cross Road  
Abrama,  
Valsad 396 002  
Gujarat

: Applicant  
: Operational Creditor

**VERSUS**

1. Sysco Industries Ltd.  
206, Rajhans Complex  
Civil Char Rasta  
Nr. Nirmal Children Hospital  
Ring Road  
Surat 395 002

: Respondent  
: Corporate Debtor

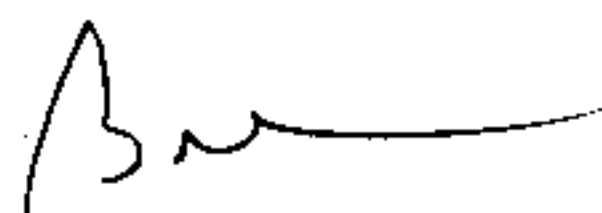
**Order delivered on 2<sup>nd</sup> August, 2017**

**CORAM: SRI BIKKI RAVEENDRA BABU, MEMBER JUDICIAL**

**Appearance:**

For the operational creditor: Learned Advocate Mr. S.D. Israni

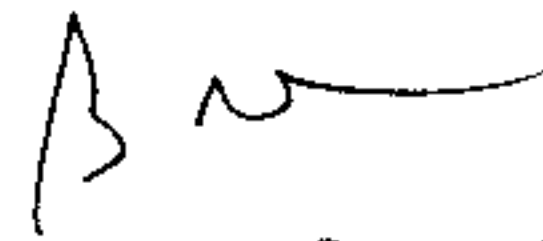
For the financial creditor : Learned PCS Dhiren Dave



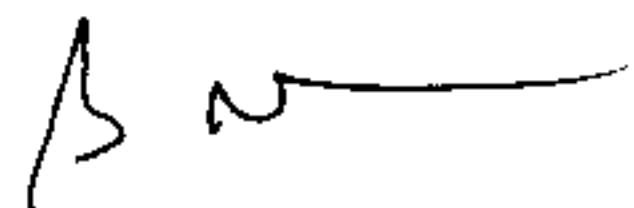
**ORDER**

1. Ecoplast Ltd. (hereinafter referred to as applicant/ operational creditor) filed this application under Section 9 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") with a request to initiate corporate insolvency resolution process in respect of Sysco Industries Ltd. (hereinafter referred as respondent/corporate debtor).
2. This application is filed by authorised signatory of operational creditors.
3. Operational creditors supplied goods to the corporate debtors against invoice. According to the operational creditor, details of outstanding of corporate debtor as on 30.04.2017 is as follows: -

INVOICE NO.	INVOICE DATE	INVOICE AMOUNT	DUE DATE	INTEREST @ 12%				TOTAL OUTSTANDING
				PERIOD FROM	PERIOD TO	PERIOD (NO.OF DAYS)	INTEREST AMOUNT RS.	
218/16	9/05/16	146476	8/6/16	9/6/16	30/4/17	325	15651	162127
236/16	13/5/16	133675	12/6/16	13/6/16	30/4/17	321	14107	147782
303/16	28/5/16	259771	27/6/16	28/6/16	30/4/17	306	26134	285905
320/16	31/5/16	561626	30/6/16	1/7/16	30/4/17	303	55947	617573
351/16	6/6/16	279679	6/7/16	7/7/16	30/4/17	297	27309	306988
367/16	9/6/16	279787	9/7/16	10/7/17	30/4/17	294	27044	306831
379/16	12/6/16	438183	12/7/7/16	13/7/16	30/4/17	291	41922	480105
402/16	16/6/16	605152	16/7/16	17/7/16	30/4/17	287	57100	662252
406/16	17/6/16	504420	17/7/16	18/7/16	30/4/17	286	47429	551849
523/16	8/7/17	309847	7/8/16	8/8/16	30/4/17	265	26995	336842
540/16	11/7/16	1000866	10/8/16	11/8/16	30/4/17	262	86212	1087078
LESS Cr. Note No.72	30/7/16	(248147)						(248147)
<b>TOTAL</b>		<b>4271335</b>					<b>425850</b>	<b>4697185</b>

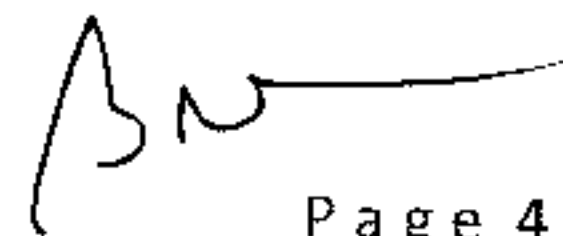


4. Operational creditor on 19.09.2016 issued notice under Section 434 of the Companies Act, 1956 to the corporate debtor demanding the repayment of outstanding amount of Rs. 42,71,336/-.
5. Operational creditor issued demand notice in form No. 3 dated 02.03.2017 to the corporate debtors. According to the operational creditor the said demand notice was served on the corporate debtor on 03.03.2017. Operational creditor also filed affidavit stating that no notice of dispute was issued by the corporate debtor and no payment has been made even after expiry of ten days from the date of delivery of demand notice. Operational creditors along with application filed copies of invoice and delivery challans. Operational creditor also filed bank statements. Operational creditor also filed certificate issued by the banker stating that there are no payment of unpaid operational debts by corporate debtor.
6. Operational creditor also filed copies of orders placing order for material along with mails regarding outstanding payment. Operational creditor has also filed copy of ledger maintained by it in respect of corporate debtor.
7. This application is filed before the registry on 15<sup>th</sup> June, 2017. This application, for the first time, was placed before this Authority in 11.07.2017. Applicant served copy of the



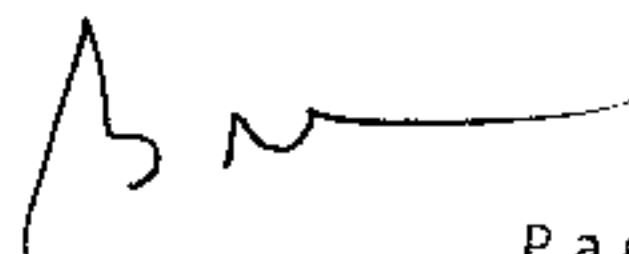
application on the respondent. This authority directed the applicant to issue notice of date of hearing and accordingly the applicant issued notice of date of hearing and filed proof of service on 19.07.2017. In spite of service of copy of petition and copy of notice of date of hearing, respondent did not choose to appear. This adjudicating authority after hearing the learned counsel for applicant, reserved the matter for orders. Thereupon, corporate debtor filed IA 207/17 to reopen the matter and to give an opportunity to hear the learned Company Secretary for the corporate debtor. This adjudicating authority reopened Company Petition (IB) No. 44 of 2017. This adjudicating authority heard arguments of the learned counsel for applicant/ operational creditor and learned PCS for corporate debtor.

8. From the aforesaid facts it is clear that the application filed by the operational creditor is complete in all respects. Operational creditor also recommended the name of interim resolution professional. Operational creditor also filed copy of written communication by the proposed insolvency resolution professional as set out in form 2 of the Insolvency and Bankruptcy Rules, 2016.
  
9. Copies of invoices, copies of delivery challans, ledger accounts of the corporate debtor maintained by the operational creditors, certificate of the Banker clearly show that the amount is due from the corporate debtor to the



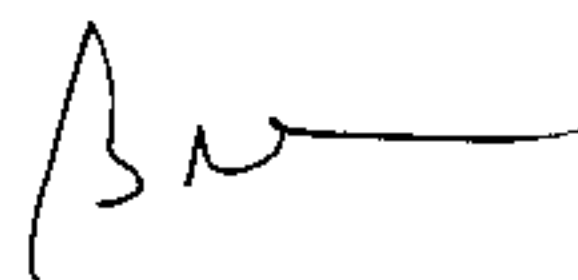
operational creditor in respect of supply of goods by the operational creditor to the corporate debtor. Therefore, the debt due to the applicant from the respondent is operational debt. It is not even the case of the corporate debtor that it has given any reply to the winding up notice dated 19.09.2016. It is not even the case of the respondent corporate debtor that it has not received demand notice under Rule 5 of the Adjudication Rule in form No. 3. It is the case of the operational creditor that no notice of dispute has been issued by the corporate debtor. It is also not the case of the corporate debtor that it has issued any notice of dispute.

10. For the first time in the arguments, the Company Secretary appearing for the corporate debtor raised a dispute stating that the quality of goods supplied are sub-standard. He contended that there is a dispute as laid down in section 8. He also contended that the dispute regarding quality of goods supplied need not be in a suit or proceeding and it can be raised at any stage.
11. On the other hand, learned counsel appearing for the operational creditor contended that, in fact, no dispute has been raised by the corporate debtor in respect of the goods supplied prior to filing of this application. He contended that after filing of this application, as an afterthought corporate debtor raised the defence viz. the goods supplied are not of good quality. He contended that corporate debtor did not even

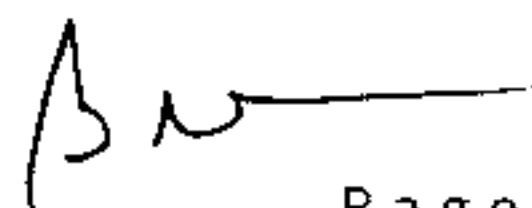


state in what aspect the goods supplied were of inferior quality. He contended that such type of dispute raised for the first time in agreement is not bona fide one and it is malafide dispute and such disputes cannot be taken into consideration. In support of his contention, he relied upon two decisions rendered by National Company Law Appellate Tribunal in Company Appeal (AT) (Insolvency) 6 of 2017 decided on 24.05.2017 in Kirsua Software Private Limited. vs. Mobilox Innovation Pvt. Ltd. and Company Appeal (AT) (Insolvency) 56 of 2017 in P K Ores Pvt Ltd V/s. Tractors India Pvt Ltd.

12. In the first decision the Hon'ble National Company Law Appellate Tribunal held that the dispute as defined in sub-section (6) of Section 5 cannot be limited to a pending proceedings or lis, within the limited ambit of suit or arbitration proceedings.
13. In the said decision, Hon'ble National Company Law Appellate Tribunal clearly held that true meaning of sub-section 2 (a) of Section 8 read with sub-section (6) of section of the I & B code clearly bring out the intent of the Code, namely the Corporate debtor must raise a dispute with sufficient particulars. Hon'ble National Company Law Appellate Tribunal clearly held that the dispute raised must be a bona fide dispute on substantial grounds but not mala fide defence.



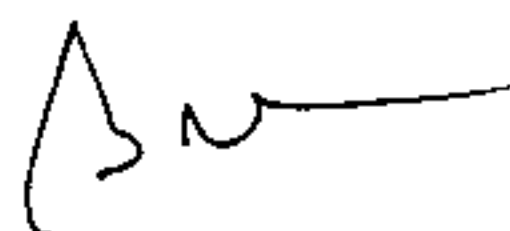
14. In the second decision relied upon by the learned counsel for the applicant Hon'ble National Company Law Appellate Tribunal referred to the decision in Kirsua Software Private Limited. vs. Mobilox Innovation Pvt. Ltd. In that case the corporate debtor raised dispute about the quality of the goods and brought the same to the notice of the operational debtors. In that case corporate debtor also claimed damage for inferior quality of goods and its loss much prior to receipt of notice under sub-section (1) of Section 8 of the IB Code. In those circumstances Hon'ble National Company Law Appellate Tribunal held that there is existence of dispute about the quality of the goods within which comes under one of the clause of sub-section 6 of section 5 of the Code.
15. Now, in the case on hand, no reply was given by the corporate debtors to the notice issued under Section 443 of the Companies Act, 1956. No reply was given by the corporate debtor to the demand notice issued under section 8 of the Insolvency Code.
16. Further, learned Company Secretary appearing for the Corporate debtor referred to certain mail correspondence between the operational creditor and corporate debtor which is available at page 71 to 74. I have carefully gone through the mail correspondence between the operational creditor and corporate debtor. A reading of all the mails goes to show that there is no dispute raised by the corporate debtor regarding





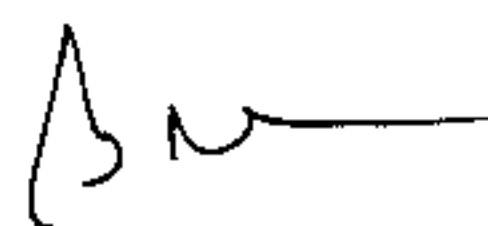
quality of goods supplied. There is only mention of one word in the mail dated 07.07.2016 to the effect that current outstanding stands equal to rejection claims. This cannot be taken as a dispute raised by the corporate debtor regarding the quality of goods supplied. There may be several other reasons for the corporate debtor to reject the claims made by the operational creditor. Moreover, after 07.07.2016, on 15.07.2016, corporate debtor gave a mail to the operational creditor stating that they are trying to make use of the laminate under complaint and it is likely to take some time. Therefore, it is clear that till 15.07.2016 no dispute was raised by the corporate debtor regarding the quality of goods. Even thereafter on 19.09.2016 the operational creditor issued a notice to the corporate debtor under section 434 but no reply was given to it. Therefore, there is no material on record to come to a conclusion that the corporate debtor raised a dispute regarding quality of goods supplied at any point of time. Therefore, the argument of the learned Company Secretary appearing for the respondent that there is a dispute regarding quality of goods supplied do not merit acceptance. In fact, in the above referred decisions, Hon'ble National Company Law Appellate Tribunal clearly held that only bona fide disputes raised before the issuance of demand notice shall be taken into consideration if there are substantial grounds.

17. In the case on hand the applicant has complied with all requirements. Operational debt is due from the corporate



debtor to the operational creditor. Operational creditor filed written communication of interim insolvency professional which shows there are no disciplinary proceedings pending against him. For the above reasons this application is admitted.

18. This authority hereby appoints Mr. Hemanshu Kapadia, Practising Company Secretary, Office No. 12, 14<sup>th</sup> Floor, Building No. 3, Navjivan Commercial Premises Co.op Society, Lamington Road, Mumbai 400 008 as interim resolution professional. This authority directs the applicant to make public announcement of the initiation of corporate insolvency process and call for the submission of claims under Section 15.
19. Adjudicating authority hereby pass order declaring moratorium under section 13 (1)(a) prohibiting the following as laid down in Section 14 of the Code.
  - (i) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, Tribunal, arbitration panel or other authority,
  - (ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;




- (iii) 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);
  - (iv) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor
    - (a) The moratorium order in respect of (i), (ii), (iii) and (iv) shall not apply to the transactions notified by the Central Government.
    - (b) The supply of essential goods and services shall not be terminated or suspended or interrupted during moratorium period.
    - (c) The applicant shall also make public announcement about initiation of Corporate Insolvency Resolution process as required by Section 13 (1) (b) of the Code.
20. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution



Process subject to the proviso under sub-section (4) of Section 14.

21. This application is disposed of accordingly.
22. Communicate a copy of this order to the applicant financial creditor, respondent corporate debtor and to the Interim Insolvency Resolution Professional.

  
**BIKKI RAVEENDRA BABU**  
**ADJUDICATING AUTHORITY**  
**MEMBER JUDICIAL**

*Pronounced by me in open court on the 2<sup>nd</sup> day of August, 2017.*