

**BEFORE THE AJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
AHMEDABAD  
Court 2**

C.P. (LB) No.290/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 17.03.2021**

Name of the Company: Delcredere/ Ducroire  
V/s  
Lancer Laser Tech Ltd

Section 9 of the Insolvency and Bankruptcy  
Code.2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.				

**ORDER**

None appeared on behalf of the parties.

The order is pronounced in the open court, vide separate sheet.

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**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 17th day of March, 2021

*Manorama*  
**MANORAMA KUMARI  
MEMBER JUDICIAL**



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

**C.P. No. (IB) 290/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. DELCREDERE/DUCROIRE**

(formerly known as "National Delcredere Dienst/  
National due Decroire")

Rue Montoyerstraat 3, 1000 Brussels  
Belgium

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Lancer Laser Tech Limited**

Survey No. 1434P/2  
Chhatral-Mehsana National Highway  
Opp. Sandek Laminations  
Vill. Rajpur  
Taluka Kadi  
Rajpur 382 740

**GUJARAT STATE**

**Respondent**  
[Corporate Debtor]

**Order delivered on 17<sup>th</sup> March, 2021**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)  
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

Petitioner : Mr. Raju Kothari, Advocate  
Respondent : Mr. Dhaval Trivedi, Advocate

**ORDER**

**Per se : Ms. Manorama Kumari, Member (Judicial)**

1. Mrs. Romanie Peters, authorised signatory of **M/s. DELCREDERE/DUCROIRE** filed this Petition 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"], as operational creditor/applicant.



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2. The applicant/operational creditor having identification No. 0203.286.759 and having its office at Rue Montoyerstraat 3, 1000 Brussels, Belgium is engaged in the business of trading and supply of machinery.
3. The respondent/corporate debtor is a limited company registered under the provisions Companies Act, 1956 on 20.08.1999 and having identification No. U28930GJ1999PLC036446 and having registered office at Surat, Gujarat State. Authorised share capital of the respondent company is Rs. 5,00,00,000/- and paid up share capital is Rs. 4,99,00,000/-
4. The applicant/operational creditor has stated that the operational debt originates from the purchase of Hydraulic Press Brake PPEB – 8 320/4000-3150 TANDEM & Hydraulic Press Brake PPEB – 8 320/4000 – TANDEM from LVD Company nv (supplier). Corporate debtor issued purchase order dated 15.08.2011 and in terms of the said order entered into a sales contract dated 26.08.2011 for purchase of goods. That, the supplier and corporate debtor also entered into financial conditions dated 26.08.2011 for the said sales contract. That, in terms of the said financial conditions dated 26.08.2011, the corporate debtor was required to make 20% down payment and remaining 80% in deferred 8 equal and consecutive instalments. On 29.01.2012, for the remaining amount, the supplier, in terms of the aforesaid financial conditions for "deferred payment" issued eight bills of exchange of different amount (Euro).
5. On 10.05.2012, as per the sales contract and financial conditions, the supplier raised four invoices, all dated 10.05.2012, for different amounts. That, after several requests and reminders by the supplier, the corporate

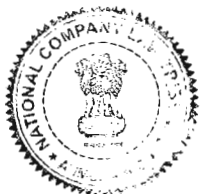


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debtor vide its email dated 07.07.2017 informed that they are willing to make payment of the operational debt in three different instalments with further promise to make payment from the subsequent week. That, on 27.10.2017, during discussions it was verbally informed by the corporate debtor that as the time limit for import payments had expired, resultantly, its bank cannot make payments to the supplier unless approval to make payment is received from Reserve Bank of India (RBI). That, vide email dated 27.10.2017, the corporate debtor informed the supplier that instructions have been received from RBI, Ahmedabad, for approval it is advised to approach Mumbai Office of RBI and the corporate debtor has already deposited outstanding amount with its bank.

6. It is further stated by the operational creditor that when several requests and reminders did not yield any results, operational creditor issued demand notice in form 3 under section 8 of the I & B Code dated 04.07.2018, but, till date has not received any reply from the corporate debtor, therefore, this petition.
7. In support of its claim, the operational creditor has annexed to the application documents like; copy of demand notice (page 21-88), purchase order dated 15.08.2011 (page 89-95), sales contract dated 26.08.2011 (page 96 to 108), financial conditions dated 26.08.2011 (page 109-111), bill of exchanges (page 112-119), invoices (page 120-123) etc./
8. The respondent/corporate debtor filed affidavit in reply inter alla stating that it has filed/lodged online complaints against Dena Bank, Bank of Baroda and Reserve Bank of India with respect to its pending applications. The corporate debtor has further stated that its intentions are not mala fide and ready to open escrow account or willing to enter any sort of



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arrangement to make payment in such a manner as may be directed by this bench.

**Findings:**

9. Heard the learned counsels appearing for both the sides and perused the documents annexed to the petition/reply.
10. On perusal of the records It is found that the corporate debtor has admitted the debt and did not argue the matter during the course of last hearing held on 09.03.2021.
11. From the above it is clear that the petitioner has supplied goods to the respondent and the aforesaid chain of events clearly establish that the petitioner is operational creditor. Therefore, in the instant case, the petitioner very well falls within the definition of operational creditor and the amount outstanding is operational debt.
12. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.
13. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no pre-existing dispute regarding the operational debt from the side of the corporate debtor.
14. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate



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Debtor committed default in paying the operational debt due and payable to the Applicant.

15. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
16. It has been observed in **Moblox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ (JP) 2 SC** that while examining an application under Section 9 of the Act, will have to determine the following: -
  - (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
  - (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?  
**and**
  - (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

17. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. No dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law



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by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

18. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided under Section 15 of the Code. Sub-section (2) of Section 13 says that public announcement shall be made immediately after the appointment of Interim Insolvency Resolution Professional. This Adjudicating Authority direct the Interim Resolution Professional to make public announcement of Initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
  
19. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
  
20. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of sub-section (1) of 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 judgment, 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



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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.

21. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

22. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

23. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Sushil Vishwakant Tewary, 11, Pahelgaon Bungalows, Premchandnagar Road, Bodakdev, Ahmedabad 380 054 (sushilt@hotmail.com) (Mobile: 9898095610) having registration No. IBBI/IPA-001/IP-P01288/2018-19/12049 to act as an interim resolution professional under Section 13(1)(c) of the Code.

24. This Petition is accordingly admitted.



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25. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
26. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation and sale of assets to realise the amount for all the stakeholders.

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**Chockalingam Thirunavukkarasu**  
Adjudicating Authority  
Member (Technical)

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**Ms. Manorama Kumari**  
Adjudicating Authority  
Member (Judicial)



Certified to be True Copy of the Original

*[Signature]*  
Deputy Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad