

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

C.P. (I.B) No.200/NCLT/AHM/2018

**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 13.11.2020**

Name of the Company: Mono Acriglass Industries Ltd

Section 10 of the Insolvency and Bankruptcy Code,

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

ORDER

2.

(Through Video Conferencing)

This matter is taken up *suo moto* for passing necessary order, as it is noticed that the petitioner has filed Form-2, under Rule-9 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, i.e. the consent of the proposed IRP, Ms. Anjali Nirav Choksi, in place of earlier proposed IRP, Mr. Mahendra Prasad Jindal. While passing final order on 05.11.2020, name of Mr. Mahendra Prasad Jindal was given in the order due to inadvertence, as the consent of other IRP, namely Ms. Anjali Nirav Choksi, was placed on record along with the written submission after filing of the original petition.

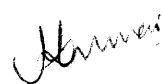
In view of that Ms. Anjali Nirav Choksi, having registration number IBBI/IPA-001/IP-P00820/2017-2018/11382, having address at 2nd Floor, HN House. Opp. Muktvijan Color Ltd. Stadium Cross Roads, Navrangpura, Ahmedabad-390 006, is hereby appointed as IRP in place of Mr. Mahendra Prasad Jindal.

This order be treated as part of order dated 05.11.2020



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**

dated this the 13th day of November, 2020.



**MANORAMA KUMARI
MEMBER (JUDICIAL)**

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

C.P. (I.B) No.200/NCLT/AHM/2018

**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 05.11.2020**

Name of the Company: Mono Acriglass Industries Ltd

Section 10 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

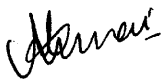
2.

ORDER

(Through Video Conferencing)

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**


**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 5th day of November, 2020.

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

C.P. No. (IB) 200/10/NCLT/AHM/2018

In the matter of:

M/s. Mono Agriglass Industries Limited
243, Umang Prabhadevi Apartments
Flat No. 102/103
Phiroze Shah Mehta Road
Vile Parle (East)
MUMBAI 400 057

Applicant
[Corporate Debtor]

Order delivered on 5th November, 2020

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

Appearance:

Advocate Mr. Rajesh Bohra for petitioner

ORDER

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

1. Mr. Sreedhar Tripathy, Director, being authorised signatory, on behalf of **M/s. Mono Agriglass Industries Limited** filed this Petition under Section 10 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 7 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.
2. The applicant is a limited company registered under the Companies Act, 1956, having identification number U99999GJI997PTC032684, having office at Vile Parle (East),

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Mumbai and registered office at Bhilad, Taluka Umbergaon, Dist. Valsad, Gujarat State.

3. On issuance of notice, the financial creditors viz. Gujarat Industrial Development Corporation and Gujarat State Financial Corporation, Advocate Mr. I.R. Patel appeared on behalf of the financial creditors, however, unsecured creditor did not appear even after paper publication made by the petitioner.

4. **Gujarat Industrial Investment Corporation (GIIC)** filed affidavit in reply inter alia stating that the applicant had been sanctioned term loan of Rs. 416.00 (Term loan of Rs. 326.00 lacs on 24.12.1998, term loan of Rs. 30.00 lacs on 25.02.1999 and term loan of Rs. 60.00 lacs on 09.02.2000) by GIIC from the year 1998 to the year 2000 for setting up a project to manufacture Acrylic and Polystyrene sheets using extrusion and calendaring process and disbursed Rs. 40.308 lacs. That, the term loan of Rs. 326.00 lacs was inter alia secured by way of hypothecation of plant and machinery dated 06.01.1999 and mortgage of the immovable properties of the company by registered deed of legal mortgage dated 12.01.1999 and personal guarantee of the Directors as stipulated in the letter of sanction issued by GIIC other two term loans were also secured by way of hypothecation of plant and machinery and the mortgage of immovable properties, thus, GIIC is one of the secured creditors. Thereafter, working of the company was not satisfactory and corporate debtor used to make losses and default took place in repayment of GIIC term loan. The applicant company incurred losses continuously and ultimately the net worth of the company was eroded and it took possession of factory, land and building and plant and machinery mortgaged/hypothecated to the applicant

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pursuant to Section 29 of the SFCs Act, 1951 on 23.10.2001.

5. The petitioner/financial creditor has further stated in their reply that the applicant company had approached The Board for Industrial and Financial Reconstruction (BIFR) for registering the company as sick company. Therefore, GIIC could not sell the factory, land, building and plant and machinery of the applicant company, though possession was already taken on 23.10.2001. Thereafter, BIFR had passed order on 29.07.2009 dismissing the reference of the corporate debtor as non-maintainable on the ground that the company had not employed minimum 50 workers. The applicant company, thereafter, preferred appeal before AAIFR pursuant to which AAIFR passed order dated 19.05.2010 inter alia holding that the applicant did not have the status of industrial company during the financial year ended on 31.03.2009 in terms of Section 3 (1) (e) of SICA as the applicant had not carried out industrial activity after 23.10.2001 when GIIC took possession of the corporate applicant.
6. The petitioner/financial creditor has further stated that aggrieved by the order passed by BIFR dated 14.05.2010 and AAIFR dated 19.05.2010, the applicant company filed Special Civil Application (SCA) No. 17893/2014 before Hon'ble High Court of Gujarat for quashing and setting aside aforesaid both the orders passed by BIFR and AAIFR and to stay the implementation of order passed by BIFR and AAIFR. That, the said Special Civil Application is pending before the Hon'ble High Court of Gujarat.
7. **Gujarat State Financial Corporation (GSFC)** also filed affidavit in reply inter alia stating that the applicant company had been sanctioned term loan of Rs. 240.00 lacs

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in the year 1997 for setting up a project and the applicant company had hypothecated plant and machinery on 31.12.1998 and mortgaged immovable properties of the company on 12.01.1999 over and above personal guarantee of the Directors as stipulated in the letter of sanction issued by GSFC.

8. **GSFC** has further stated in their reply/representation that working of the company was not satisfactory and used to make losses and default took place in repayment of GSFC term loan. The applicant company incurred losses continuously and ultimately the net worth of the company was eroded and the applicant company approached The Board for Industrial and Financial Reconstruction (BIFR) for registering the company as sick company. Thereafter, BIFR had passed order on 29.07.2009 dismissing the reference of the corporate debtor as non-maintainable on the ground that the company had not employed minimum 50 workers. The applicant company, thereafter, preferred appeal before AAIFR pursuant to which AAIFR passed order dated 19.05.2010 inter alia holding that the applicant did not have the status of industrial company during the financial year ended on 31.03.2009 in terms of Section 3 (1) (e) of SICA as the applicant had not carried out industrial activity after 23.10.2001 when GIIC took possession of the corporate applicant.
9. **GSFC** has further stated in their reply that aggrieved by the order passed by BIFR dated 29.07.2009 and AAIFR dated 19.05.2010, the applicant company filed Special Civil Application (SCA) No. 17893/2014 before Hon'ble High Court of Gujarat for quashing and setting aside aforesaid both the orders passed by BIFR and AAIFR and to stay the implementation of order passed by BIFR and AAIFR. That, the said Special Civil Application is pending before the





Hon'ble High Court of Gujarat. That, last hearing of aforesaid SCA took place on 16.08.2017, wherein, Hon'ble High Court of Gujarat observed that considering SCA No. 17893/2014 is subjudice before High Court of Gujarat, the instant application made under Section 10 of the IBC before Ahmedabad bench of National Company Law Tribunal (NCLT) may not be considered, because the same matter cannot be taken up before Hon'ble High Court of Gujarat and NCLT simultaneously.

10. Notwithstanding above, gone through the application as well as the record and the annexures filed therein and heard the arguments of both the sides. It is found that the applicant has filed an affidavit along with the order of the Hon'ble High Court of Gujarat which reflects that the Special Civil Application No. 17893/2014 filed against the impugned order of the BIFAR has been withdrawn. On perusal of the record it is also found that during the course of hearing on 21.10.2019, learned lawyer appearing on behalf of GIIC and GSFC submitted that he has no objection if the application filed under Section 10 of the IB Code is admitted.
11. On perusal of the record it also found that GIIC has filed further affidavit stating that they have no objection towards the consideration of the application so filed by the applicant. It is a matter of record that notice issued to one of the unsecured creditors viz. Geologging Industries Limited has been returned undelivered with postal remark "insufficient address". It is also found that in compliance of order dated 11.02.2020, the applicant had effected paper publication on 21.02.2020.
12. On perusal of the record it is found that in support of the application the applicant has annexed to the application name and address of the directors and promoters,

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shareholding pattern and list of shareholders, Board Resolution dated 24.04.2018 (page No. 40 – 42) authorising the person submitting the application on behalf of the corporate applicant, offer letter received from IRP, particulars of security held, record of default, audited balance sheet, name and address of the debtors etc.

13. As per section 10 of the Code, the applicant has to be corporate applicant as provided under Section 10 (1) whereas the Corporate Applicant as per section 5 (5) defines as follows:

- (5) "Corporate Applicant" means –
- (a) Corporate debtor; or
 - (b) a member or partner of the corporate debtor who is authorised to make an application for the corporate insolvency resolution process under the constitutional document of the corporate debtor; or
 - (c) an individual who is in charge of managing the operations and resources of the corporate debtor; or
 - (d) a person who has the control and supervision over the financial affairs of the corporate debtor

14. In the instant application, from the material placed on record, the Adjudicating Authority is satisfied that the application is complete in all respect and deserves to be admitted.

- 15 The applicant has proposed the name of Mr. Mahendra Prasad Jindal to act as Interim Resolution Professional. Therefore, the Adjudicating Authority hereby appoint Mr. Mahendra Prasad Jindal, B-810, Fairdeal House, Nr. Swastik Char Rasta, Navrangpura, Ahmedabad 380 009 (mpjindal@rediffmail.com) having IP registration No.

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IBBI/IPA-001/IP-P00616/2017-2018/11073 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code.

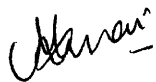
16. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided 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.
17. 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 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.
18. 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.
19. 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.
20. This Petition is accordingly admitted.
21. Communicate a copy of this order to the applicant/corporate debtor, petitioner/financial creditor, Registrar of Companies and to the Interim Resolution Professional.
22. 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.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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