

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

C.P.(I.B) No. 686/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 04.09.2020**

Name of the Company: Mohit Minerals Ltd
V/s
Nidhi Impotrade Pvt Ltd

Section : 9 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.

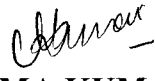
2.

**ORDER
(through video conferencing)**

Mr. Pavan S Godiawala, Advocate is present on behalf of the Corporate Debtor.

Order is pronounced in the open court vide separate sheet.


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 4th day of September, 2020

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

C.P. No. (IB) 686/9/NCLT/AHM/2019

In the matter of:

Mohit Minerals Limited

(earlier known as Mohit Minerals Private Limited)

19-20, 1st Floor

TDI Mall, Fun Cinema

Moti Nagar

NEW DELHI 110 015

:

Petitioner
Financial Creditor

Versus

M/s. Nidhi Impotrade Private Limited

Office No. 2

11th Floor, Icon Business Center

Opp. Central Mall

Piplod

SURAT 395 007

Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 4th September, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

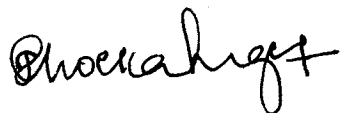
Advocate Mr. Bhash H. Mankad for petitioner.

Advocate Mr. Naishal Modi for respondent


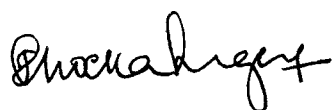
ORDER

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

1. Mr. Kishore Ramchandani, being authorised person, on behalf of M/s. Mohit Minerals Limited 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.



2. The applicant/operational creditor is a limited company registered on 29th July, 2004 under the provisions of Companies Act, 1956 having identification No. U14292DL2004PLC127951 and having its registered office at Moti Nagar, New Delhi and engaged in the business of trading and supply of coal to various countries.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 17th June, 2009 and having identification No. U51900GJ2009PTC057285 and having registered office at Surat, Gujarat State. Authorised share capital of the respondent company is Rs. 10,00,000/- and paid up share capital is Rs. 2,00,000/-
4. The applicant during the course of its business, was contacted by the corporate debtor for long term business relation and specifically for the purchase and import of coal of Indonesian Origin. That, believed upon credence and assurance, the operational creditor entered into a sale-purchase arrangement with the corporate debtor and subsequently, corporate debtor started to place purchase orders for supply of material at its designated site. Accordingly, supply of material had taken place and various invoices were raised against each successful supply of materials and such material were duly accepted by the corporate debtor without any complaint. That, in the initial period of sale agreement, payment of the invoices were made by the corporate debtor by issuing cheque of the same amount as reflected in the invoices.
5. The applicant has further stated that the business between the parties grew, but, the corporate debtor started delaying payments and the difference between the amounts of invoices raised and payments received started to grow.

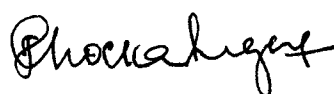
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According to the applicant, an amount of Rs. 77,11,953/- (Rupees seventy-seven lacs eleven thousand nine hundred fifty-three only) is due and payable by the corporate debtor towards principal operational debt. Corporate debtor is also liable to pay the agreed interest thereon @ 18% per annum with effect from 18.01.2018 till the date of payment of the entire outstanding amount to the operational creditor. Thus the total amount due from the corporate debtor is **Rs. 98,68,784/- (Rupees ninety-eight lacs sixty-eight thousand seven hundred eighty-four only).**

6. It is further stated by the applicant that, having failed to recover the overdue payments, the applicant was compelled to issue statutory demand notice dated 02.07.2019 under section 8 of the I & B Code calling upon the respondent to pay the principal outstanding along with interest.
7. The applicant in support of its claim has furnished copy of documents like delivery challan, invoice, ledger/account statement, computation chart, demand notice dated 02.07.2019, copy of reply to the demand notice etc.
8. On issuance of notice, the respondent filed affidavit in reply inter alia stating that the notice under section 8 of the I & B Code, 2016 issued by the applicant is signed by some advocate and there is no authorization for issuance of such notice.

Findings:

9. Heard the learned advocates appearing for both the sides and perused the documents filed by the applicant/respondent.
10. On perusal of the record it is found that the demand notice which is a pre-requisite under section 8 of the Insolvency & Bankruptcy Code, 2016 for filing the petition under section





9, issued by the applicant dated 02.07.2019 (page 114-127) is signed by one Mr. Sumit Kumar, Advocate of Legal Orbit, Advocates & Consultants, New Delhi without any authority. On perusal of the records it is found that no authority is given to the advocate to issue demand notice either by way of Board Resolution or by any letter of authority issued by competent authority of the applicant company. Admittedly, the advocate can issue the notice on behalf of the client but due authorisation is required by passing resolution in duly convened Board Meeting and in the instant case no such authority is given to the advocate.

11. On perusal of the records it is also found that the applicant has not produced an affidavit to the effect that no notice is given by the corporate debtor relating to a dispute of the unpaid operational debt which is mandatory as per Section 9 (2) (b) of the Insolvency and Bankruptcy Code, 2016.
12. Under the facts and circumstances the petition is bad in the eye of law and not maintainable on the very reason that the demand notice is issued without any authority.
13. In the result, company petition No. CP (IB) 686 of 2019 stands dismissed and disposed of without cost. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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