

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

C.P.(I.B) No. 768/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 29.07.2020**

Name of the Company: Accurate Engineering Group
V/s
Jekson Machinery Pvt Ltd

Section : Section 9 of the Insolvency and Bankruptcy Code

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

2.

ORDER
(through video conferencing)

Advocate, Mr. Jeet Bhatt appeared for the Petitioner.

The Order is pronounced in the open court vide separate sheet.

Manoruma Kumari
MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 29th day of July, 2020

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

C.P. No. (IB) 768/9/NCLT/AHM/2019

In the matter of:

Accurate Engineering Group

B 299, 7th Floor
7th Main, Peenya
Industrial Estate
BANGALORE 560 058

:

Petitioner
Financial Creditor

Versus

M/s. Jekson Machinery Private Limited

Plot No. 168,
Road No. 4, GIDC
Kathwada
Taluka Daskroi
GUJARAT 382 430

:

Respondent
[Corporate Debtor]

Order delivered on 29th July, 2020

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

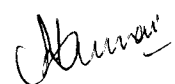
Appearance:

Advocate Mr. Vishal Dave along with advocate Mr. Nipun Singhvi for petitioner.

Advocate Mr. Kamlesh Vaidankar for respondent

ORDER

1. Mr. Nataraja L, authorised signatory, on behalf of the operational creditor – M/s. Accurate Engineering Group 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 partnership firm having PAN No. ABLFA3246L and GST No. 29ABLFA3246L1Z2 having its registered office at Bangaluru, Karnataka State.
3. The respondent/corporate debtor is a private limited company registered under the Companies Act, incorporated on 22.05.2001 having identification No. U29120GJ2001PTC039584 and having registered office at Kathwada, Gujarat State. Authorised share capital of the respondent company is Rs. 1,00,00,000/- and paid up share capital is Rs. 12,00,000/- is engaged in the business of manufacturing CNC Press Brake.
4. The applicant/operational creditor placed purchase order on the respondent dated 12.03.2019 for one kg. CNC Press Brake JCPB-2026 and according to the purchase order the machinery was to be delivered to the applicant by 27.03.2019. In accordance with the terms and conditions of the order, in the month March, 2019, the applicant paid 60% advance of the total amount i.e. Rs. 12,00,000/- (Rupees twelve lacs only) and the said payment was acknowledged by the respondent on 13.03.2019. As the respondent failed to deliver the CNC Press Brake as per the schedule, on 21.05.2019, respondent issued four post-dated cheques each of Rs. 3.00 lacs dated 30.05.2019 and 10.06.2019, which came to be dishonoured due to lack of funds. In the month July, 2019, the applicant sent multiple reminders to the respondent for payment of outstanding dues of Rs. 12,00,000/-, but the respondent failed to pay the outstanding dues.
5. The applicant has further stated that having failed to receive the outstanding payment, demand notice in form 3 (page 31-36) was issued on 04th September, 2019 which was



delivered to the respondent, as per the track report annexed to the application.

6. In support of its claim the operational creditor has furnished relevant documents like copy of authorisation (page 19) dated 28.09.2016, purchase order (page 21-22), proof of payment (page 23-24), bank return memo (page 28-30), copy of demand notice in form 3 (page 31-36) affidavit in support of compliance with Rule 9 (3) (b) of IB Code (page 31-36), copy of certificate/ statement issued by the bank, and copy of ledger account showing entries evidencing the amount due from the corporate debtor (page 60).

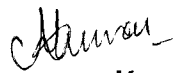
7. The respondent filed affidavit-in-reply/objections inter alia stating the advance amount paid for supply of goods or services is not and cannot be termed as "operational debt", the present petition is defective as it is not filed in the name of the partnership firm through its authorised signatory, the said authorised signatory was authorised during the meeting dated 28.09.2019, however, the said authorisation letter on page No. 19 of the petition shows that the said authorisation letter is dated 28.09.2016 and the same is three years prior to the date of the alleged meeting. Further, on 28.09.2016, even the contract between the parties was not conceived and hence the authority letter is premature. Further, the demand notice dated 4th September, 2019 is issued by one Ms. Jyoti Swarup shown as authorised signatory and she is neither a partner in the applicant firm nor is her power of attorney produced along with either demand notice or with the present petition.

Findings

8. Heard the counsels appearing on behalf of the petitioner/respondent and perused the documents produced with the application/reply.



9. On perusal of the records it is found that the instant petition is signed by one Mr. Nataraja L. on the basis of the authorisation issued at the meeting of the partners of the applicant company held on 28th September, 2019. It is observed that, in the aforesaid authorisation, at the bottom, date is written as 28.09.2016 which appears to be a typographical error. The demand notice dated 04th September, 2019 issued by the applicant in form 3 (page 33) is signed by one Ms. Jyoti Swarup as authorised signatory and the applicant has not put on record any document authorising Ms. Jyoti Swarup to sign the demand notice. Thus, Ms. Jyoti Swarup has signed the demand notice without proper authority.
10. Under the facts and circumstances as discussed herein above, the Adjudicating Authority is of the considered view that the application so filed by the applicant is not maintainable and therefore stands dismissed. No order as to costs.
11. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim as against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration of the provision of IB Code, 2016. The observations made by us on any other aspect would not constitute an expression of opinion on the merit of controversy.


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)