

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

C.P. (I.B) No. 304 /9/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 14.08.2019**

Name of the Company: Agam Printers through its Proprietor Samir N Shah
V/s.
DBS Affordable Home Strategy 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>
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1.	Jaimin R. Dave	Adv.	Applicant.	<i>J.R. Dave</i>
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2.

ORDER

The Petitioner is represented through learned counsel.

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

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CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 14th day of August, 2019

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MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No.(IB) 304/9/NCLT/AHM/2019

In the matter of:

M/s. Agam Printers
309/310 Silver Cross
Lokmanya College Building, 4th Floor
Behind H.P. Petrol Pump
Nr. Shivranjani Cross Road
Satellite
AHMEDABAD

Petitioner
[Operational Creditor]

Versus

M/s. DBS Affordable Home Strategy Limited
Block No. 130,
Adalaj Koba Highway
Dist. Gandhinagar
Gujarat State

Respondent
[Corporate Debtor]

Order delivered on 14th August, 2019.

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

Appearance:

Advocate Mr. Jaimin R. Dave for the applicant
Advocate Mr. Pavan S. Godiawala for respondent

ORDER

[Per: Ms. Manorama Kumari, Member (Judicial)]

1. That, the instant application is filed by Mr. Samir N. Shah, sole proprietor of applicant/ operational creditor M/s. Agam Printers, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to trigger Insolvency Resolution Process against M/s. DBS Affordable Home

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Strategy Limited (hereinafter called as respondent/corporate debtor).

2. That, the applicant/operational creditor M/s. Agam Printers, having its registered office at 309/310, Silver Cross, Lakmanya College Building, 4th Floor, Behind HP Petrol Pump, Near Shivranjani Cross Road, Satellite, Ahmedabad and engaged in the business of advertisement, hoarding, pamphlet, brochures etc.
3. That, the respondent/corporate debtor M/s. DBS Affordable Home Strategy Limited is a company incorporated under the Companies Act, 1956 on 07.07.2009 and having its registered office at Block No. 130, Adalaj Koba Highway, Dist. Gandhinagar 382 421, Gujarat State, having identification No. U70101GJ2009PLC057477. That, authorised share capital of the corporate debtor is Rs. 25,00,000,00/- and paid up share capital is Rs. 18,63,17,540/-. The respondent company is engaged in construction business.
4. It is submitted by the applicant that it is a proprietorship concern engaged in the business of advertising and hoarding and has been rendering services to the respondent since 2012. That, the applicant had rendered services to M/s. Survandan Developers Private Limited, a company which was later on merged with the instant respondent company

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and the dues which were remaining to be paid by such Survandan Developers Private Limited were transferred to the account of the instant respondent company. That, despite repeated requests by the applicant/operational creditor to clear the aggregate operational debt of **Rs. 17,45,794/- (Rupees seventeen lacs forty-five thousand seven hundred ninety-four only)**, the respondent company has not cleared the long outstanding of the applicant. It is submitted by the applicant that the aggregate operational debt of Rs. 17,45,794/- consists of advertising/hoarding charges of housing projects promoted by the respondent company and located at different locations in Ahmedabad District which include the projects promoted by Survandan Developers Private Limited which was merged with the respondent company.

5. It is further submitted by the applicant that despite repeated reminders the respondent failed to clear the debt and, therefore, the applicant was compelled to issue demand notice dated 28.02.2019 calling upon the respondent company to clear the debt.
6. The applicant, along with the application, has submitted copy of the following documents: -

Sr. No.	Particulars	Annexure	Pages
01	Copy of demand notice in form No. 3 with its speed post receipt and tracking report	I	11-18
02	Confirmation of ledger accounts	II	19-41
03	Affidavit in support of the application	III	42-47

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7. Director of the respondent company filed affidavit in reply inter alia stating that the respondent company has not denied its liabilities towards the debt which has become due and payable and in all fairness the corporate debtor has not disputed the said debt. That, the corporate debtor is passing through the worst financial problems and is struggling beneath mountain of financial problems and there are serious recessions in business and considering the financial crunches the petitioner was informed to wait till the business is generated and payments are made. The respondent has further submitted that the petitioner was rendering uninterrupted services to the corporate debtor and one transferor company viz. Survandan Developers P. Ltd. which was merged with the corporate debtor along with all the liabilities.

Findings:

8. Heard the learned lawyers appearing for both the sides and perused the documents placed on record.
9. On perusal of the records it is found that the respondent company in its reply has fairly admitted the debt and no dispute has been raised about the services of the applicant as also amount of debt. During the course of hearing also, learned lawyer appearing on behalf of the respondent admitted the debt. In support of its contention/claim, the operational creditor filed duly sealed and signed confirmation of accounts of the corporate debtor for every

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financial year starting from 5th April, 2012 to 10th January, 2019 which shows that from time to time acknowledgement of debt has been made by the corporate debtor. Therefore, the claim is not time barred.

10. 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?
11. In view of the aforesaid discussions and before rejecting and/or admitting the application, we must refer to the legislation guide on Insolvency Law of United Nations Commission on International Trade Law. One of the things the Legislative Guide spoke about was whether the debt is subject to a legitimate dispute or set off, in an amount equal to or greater than the amount of the debt.
12. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement

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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. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section 20 of Section 5 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default.

13. That, the Application filed by the Applicant is complete in all respects.
14. The applicant/operational creditor has proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Pinakin Shah, A-201 Siddhi Vinayak Towers, Behind DCP Office, Next to Kataria House, Off. S.G. Highway, Makarba, Ahmedabad 380 051 having registration No. IBBI/IPA-002/IP-00106/2017-2018/10248 to act as an interim resolution professional under Section 13(1)(c) of the Code.
15. 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 directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.


16. From the above stated discussion and on the basis of material available on record it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
17. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of subsection (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);

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- (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 stands disposed of accordingly with no order as to costs.
21. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)