

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

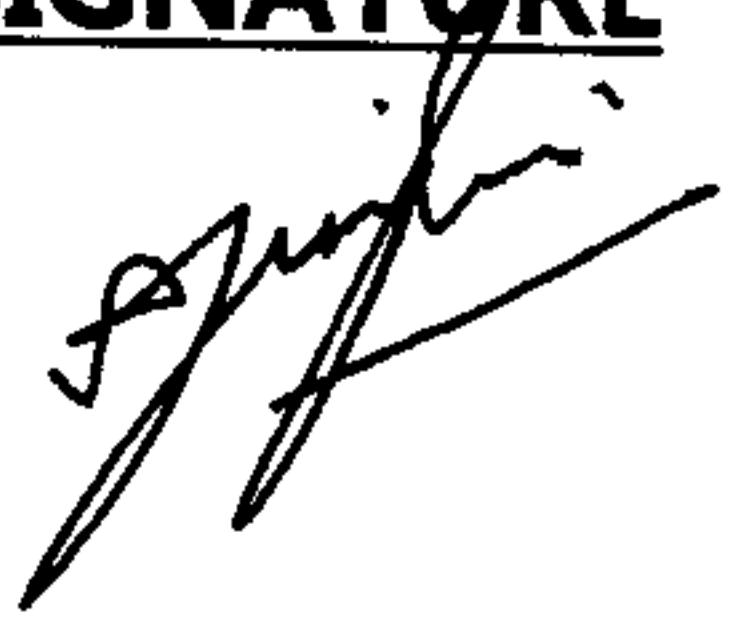
C.P. (I.B) No.138/NCLT/AHM/2019

**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 20.03.2020**

Name of the Company: Shivmangal Industries Pvt Ltd
V/s
Hitkari Packaging Pvt Ltd

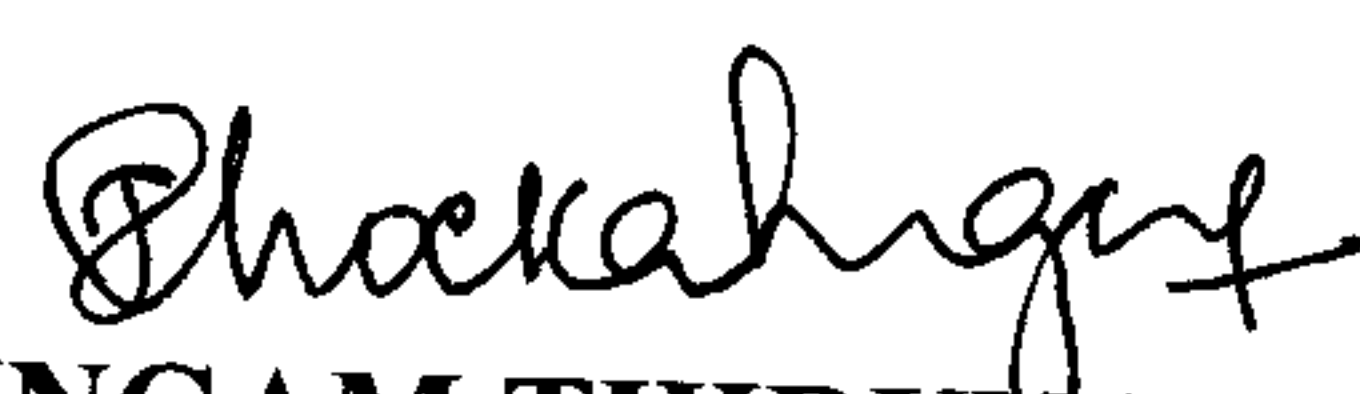
Section : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	ARPIT SINGHVI SHARVIL MAJUMDAR	ADV.	RESPONDENT	
2.	ISHAN SHAH	Adv.	PETITIONER	

ORDER

The parties are represented through learned counsels.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 20th day of March, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. (I.B.) No. 138/NCLT/AHM/2019

In the matter of:

**M/s. Shivmannal Industries
Private Limited**

Having its address at: 512, Arun
Chambers, 5th Floor, Tardeo Road,
Mumbai- 400034

...Petitioner
(Operational Creditor)

Versus

**M/s. Hitkari Packaging Private
Ltd.**

Having its Registered Office at:
339-340, GIDC Estate, Waghodia,
Vadodara, Gujarat – 391760.

...Respondent
(Corporate Debtor)

Order delivered on 20th March, 2020.

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

Appearance:

Advocate Mr. Ishan Shah for the Petitioner.

Advocate Mr. Arpit Singhvi on behalf of Advocate Mr. Sharvil Majmudar
for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member(Technical)]

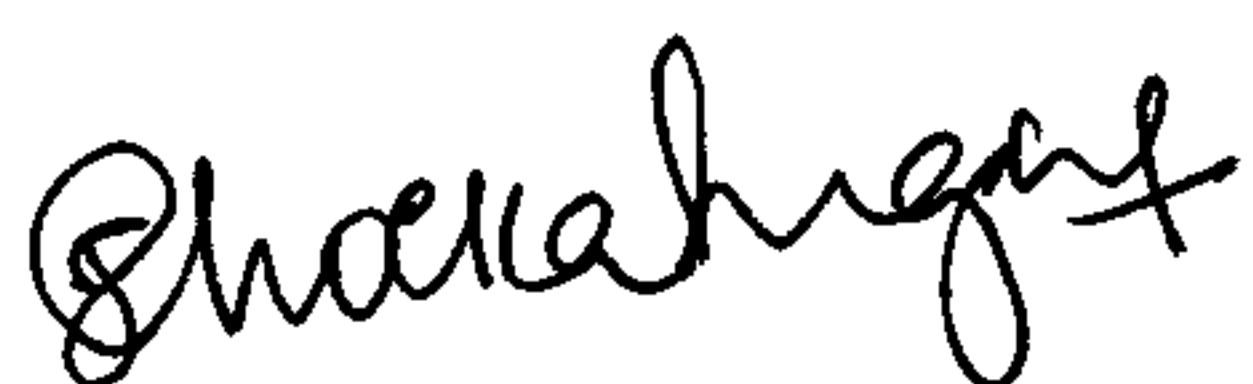
1. The present Petition is filed by M/s. Shivmannal Industries Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IB Code' for short) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating

Chockalingam

Shivmannal

Authority) Rules, 2016 ('IB Rules' for short) for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor, M/s. Hitkari Packaging Private Limited for the recovery of the unpaid Operational Debt due.

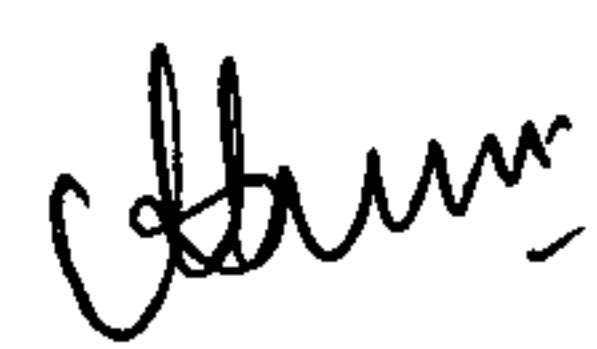
2. The Petitioner, M/s. Shivmannal Industries Private Limited is a company incorporated under the Companies Act, 1956. The Petitioner is having its registered office at 512, Arun Chambers, 5th Floor, Tardeo Road, Mumbai-400034. The present Petition is filed through Shri Rajesh Narottamdas Radia, Director of the Petitioner to initiate Corporate Insolvency Resolution process with respect to the Corporate Debtor.
3. It is submitted by the Petitioner that the Respondent Company, M/s. Hitkari Packaging Private Limited having its registered address at 339-340, GIDC Estate, Waghodia, Vadodara and was incorporated on 12.10.1987 with Corporate DIN No. U74950GJ1987PTC010045, having Authorized Share Capital of Rs. 90,00,000/- and Paid up Share Capital of Rs. 90,00,000/-.
4. The Petitioner was engaged by the Respondent Company to supply of M G Poster Paper. For the supplies made, the Petitioner has raised invoices and amount of Rs.27,58,886/- is due from the Corporate Debtor. The Petitioner has issued Demand Notice dated 17.10.2018 for Rs.27,58,886/-
5. The Respondent submitted that the present insolvency proceedings have been initiated beyond the prescribed period of limitation. The Respondent further submitted that the alleged date of default is 12.10.2014 whereas the captioned proceedings have been filed by the Petitioner on 29.01.2019 which clearly shows that the captioned proceedings are time-barred and filed beyond limitation period.





6. The Respondent submitted that the petition filed by the Petitioner to initiate the CIRP is incomplete and not in the form prescribed under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Respondent further submitted that at paragraph 1 of the Part-IV of the petition, there are two amounts claimed to be in default being Rs.26,28,678/- and Rs.27,58,886/- and Petitioner has failed to explain the reason for mentioning two amounts of alleged default and even mention the exact amount of alleged debt due from the Respondent.
7. Further it is submitted by the Respondent that at para no.2 of Part IV of the captioned application, the Applicant has failed to attach the workings for computation of amount and date of default and has simply referred to Demand Notice at Annexure-I. It is further submitted that the Demand Notice at Annexure-I is an incomplete notice and the said Demand Notice does not have Enclosure at Annexure-II being 'Amount claimed to be in default and the date on which the default occurred'. Hence, it is stated and submitted that as per section 7(5)(b) of the IB Code, 2016 (hereinafter referred to as '**the Code**'), the Adjudicating Authority may reject such application.
8. The Respondent further submitted that the Demand Notice enclosed to the captioned application is addressed to Mr. Harjas Gurusharan Singh Sethi with a copy to (1) M/s. Hitkari Packaging Private Ltd and (ii) Gurusharan Singh Amarsingh Seth. The Respondent submitted that even the Demand Notice is not as per the provisions of Section 8(1) of the IB Code.

It is submitted that form of Demand Notice as provided in Form 3 of the said Rules provide that the Demand Notice has to be



addressed to the name and address of the registered office of the Corporate Debtor. It is submitted that in the captioned application filed by the Applicant, the Demand Notice is not addressed to the Corporate Debtor but is addressed to the Director of the Respondent. It is submitted that the captioned application is violative of Section 8 of the Code read with Rule 5 of the said Rules and is not in prescribed format.

9. The Respondent further submitted that the invoice dated (i) 31.01.2015 bearing L/C Number 00350151cu000007 for Rs.3,87,532/-, (ii) 18.03.2015 bearing L/C Number 00350151cu000027 for Rs.2,60,175/- and (iii) 22.03.2015 bearing L/C Number 00350151cu000007 for Rs.3,09,301/- have already been paid by the Bank against the invocation of Letter of Credit. Therefore, no amount is due and payable against the aforesaid invoices.
10. Further, it is submitted that the Applicant raised a Journal Voucher dated 31.03.2018 for an amount of Rs.1,19,020/- towards pending C Form for the year 2014-15. However, the Applicant has not produced any order of the Competent Authority demanding such payment. Hence, it is submitted that the alleged debt is severally disputed and the captioned application deserves to be dismissed.

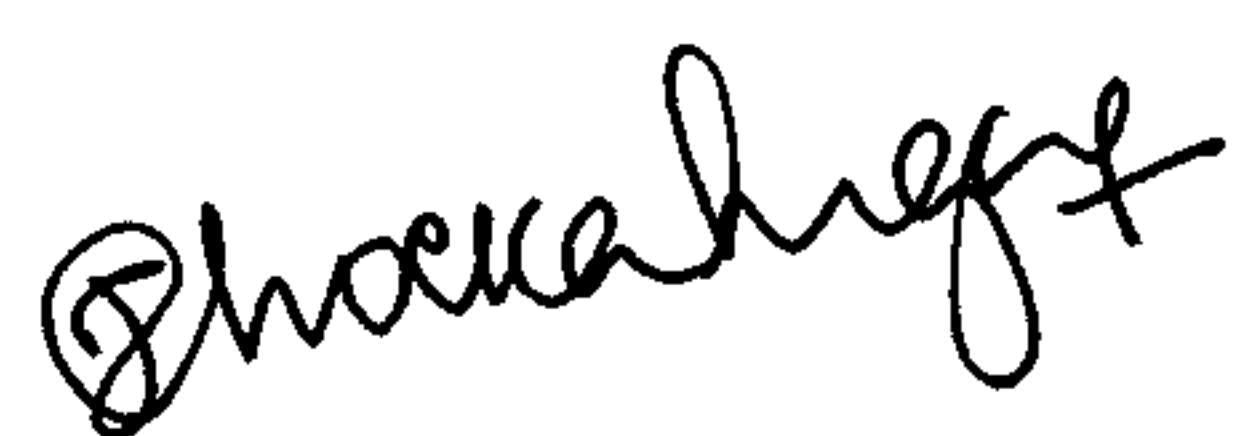
Findings:-

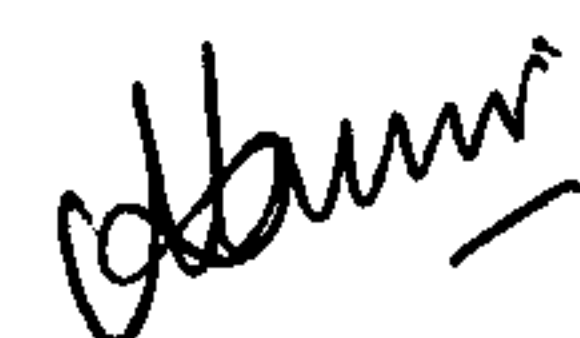
11. Heard the learned counsels for both sides and examined the documents. Sufficient opportunity has been given to the Petitioner to rectify the defects from 12.09.2019.



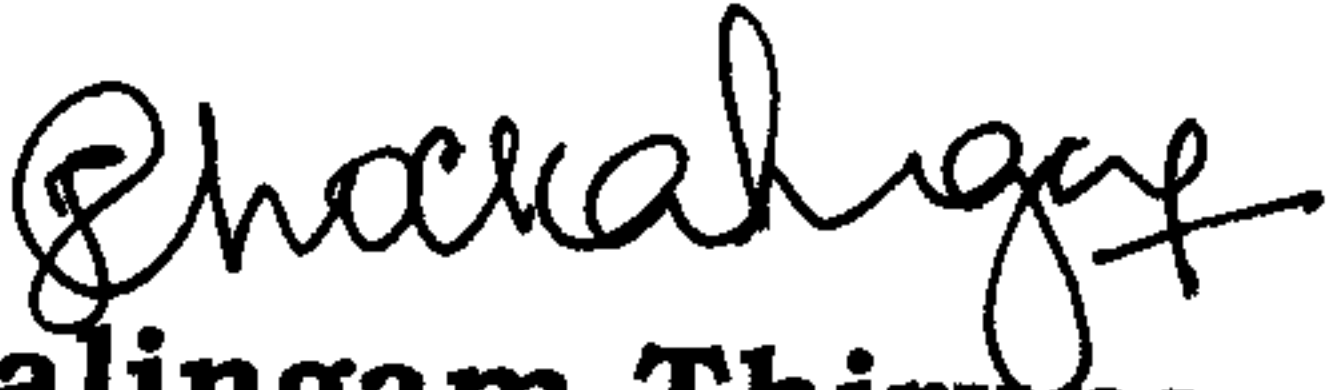


12. The petition is filed by Mr. Rajesh Narottamdas Radia, Director of M/s. Shivmannal Industries Pvt. Ltd. Mr. Rajesh Narottamdas Radia is authorized to initiate Corporate Insolvency Resolution Process by way of Board Resolution on 02.01.2019. The Demand Notice is issued on 17.10.2018. Demand Notice is issued prior to authorization given to Mr. Rajesh Narottamdas Radia by way of Board Resolution.
13. There is no purchase order or agreement between the parties. The last invoice date is 22.03.2015 afterwards debit notes were raised for certain charges by the Petitioner on his own in respect of supplies made on or before 22.03.2015. The petition is filed on 29.01.2019 is clearly after the expiry of three years. Hence, barred by limitation.
14. The Notice is addressed to the Director and not to the company. The Petitioner is unable to provide sufficient documents showing the delivery of Demand Notice at the registered office of the company as per Section 8(1) of the IB Code r.w Rule (5) of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Hence, service of Demand Notice is not complete.





15. For the reasons stated above, this Adjudicating Authority is of the view that the petition is not maintainable and therefore, the same is rejected.
16. Registry is directed to communicate this order to both parties.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Dated this the 20th day of March, 2020
PC