

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

C.P.(LB) No. 542/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 01.10.2019**

Name of the Company: Ivax Paper Chemicals Ltd
V/s
Saiyed Paper Mills 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>
1.	<u>Bhash Mankad</u>	<u>Advocate</u>	<u>operational Creditor</u>	<u>Bhash</u>
2.				

ORDER

The Petitioner is represented through learned counsel.

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

Chockalingam
CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 01st day of October, 2019

Manorama
MANORAMA KUMARI
MEMBER JUDICIAL



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

C.P. No. (IB) 542/9/NCLT/AHM/2019

In the matter of:

Ivax Paper Chemicals Limited
EDIFICE 5 & 6, 6th Cross
2nd Main, Kodihalli BDA Layout
Off. HAL Airport Road
Bengaluru 560 008
KARNATAKA STATE

Petitioner
Operational Creditor

Versus

Saiyed Paper Mills Limited
PHT 162, Phase II
GIDC, Vapi 396 195
Gujarat State

Respondent
Corporate Debtor

Order delivered on 1st October, 2019.

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

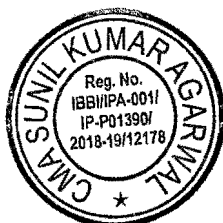
Appearance:

Advocate Mr. Bhash Mankad for petitioner

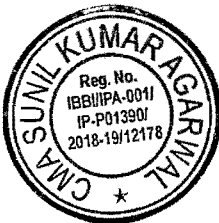
ORDER

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

1. Mr. Pravin Nawalgaria, General Manager (Accounts & Finance), on behalf of the operational creditor M/s. Ivax Paper Chemicals 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"].



2. The applicant/operational creditor is a limited company registered under the Companies Act having identification No. U21012KA1988PLC109213 and having registered office at HAL Airport Road, Bengaluru 560 008, Karnataka State is engaged in the manufacture of paper and paper products.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 13.08.1991 having identification No. U21019GJ1991PLC16114 having registered office at PHT 162, Phase II, GIDC, Vapi 396 195, Gujarat State. Authorised share capital of the respondent company is Rs. 5,00,00,000/- and paid up share capital is Rs. 3,48,51,000/-.
4. The applicant/Petitioner has submitted that the applicant and respondent are in the business of manufacture of paper and paper products, entered into an arrangement where the operational creditor would supply chemicals to the corporate debtor for manufacture of paper and its products. That, the said arrangement has been in place since inception, wherein the applicant duly supplied the product and the corporate debtor would make payments from time to time towards the invoices raised by the operational creditor. That, in view of the above arrangement, the corporate debtor placed purchase order dated 05.01.2018 and the operational creditor duly delivered the product to the corporate debtor and invoice dated 5th June, 2018 for Rs. 4,79,174/- (Rupees



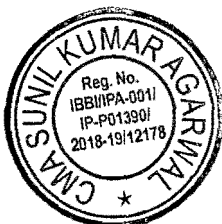
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four lacs seventy-nine thousand one hundred seventy-four only). That, the corporate debtor accepted the product without raising any dispute with regard to the quantity and/or quality. That, the corporate debtor failed to make the payment even after expiry of 30 days' credit period, the operational creditor was constrained to issue demand notice dated 19th December, 2018 under section 8 of the IB Code.

5. It is submitted by the petitioner that as on 26th September, 2019, the total outstanding debt to the operational creditor is **Rs. 4,79,174/- (Rupees four lacs seventy-nine thousand one hundred seventy-four only)**. It is also submitted by the operational creditor that after issuance of notice dated 14th August, 2019, the corporate debtor has made payment of Rs. 50,000/-, however, such payment pertains to prior invoices raised against prior purchase orders.
6. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Purchase order dated 05.01.2018	20
2	Invoice dated 05.01.2018	21
3	Consignment note evidencing the delivery of products	22-23
4	Ledger of the operational creditor	24-51
5	Invoices raised prior to purchase order under reference	52-64
6	Demand notice dated 19.12.2018 along with copy of postal receipt and tracking report	65-69
7	Computation of default	70
8	Account statement issued by HDFC Bank	71
9	Affidavit by operational creditor	72-74
10	Affidavit to the effect that no dispute has been raised by the corporate debtor relating to the unpaid operational debt	75-78
11	Board resolution authorising Mr. Pravin Nawalgaria to file the instant petition	19

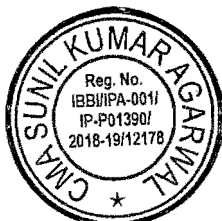


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Findings

7. Heard learned lawyer appearing on behalf of the applicant and also seen the documents annexed to the application.
8. On filing of the instant application, notice for the first time was issued but none appeared on behalf of the respondent. Therefore, again, notice was issued by the registry on 06.08.2019 and 27.08.2019; both are duly served as per track report showing the date of delivery as 31.08.2019, hence service of notice upon the respondent is complete. However, none remained present nor any reply is filed by the respondent. Then, ultimately this Adjudicating Authority had to hear the matter in absence of respondent.
9. On perusal of the records it is found that the respondent has not raised any dispute regarding the operational debt payable to the operational creditor and to that effect the operational creditor has also filed an affidavit showing the corporate debtor did not raise any dispute.
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)



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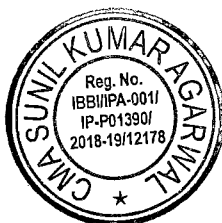
(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid;

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 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 (5) of Section 20 of the Code. From the aforesaid material on

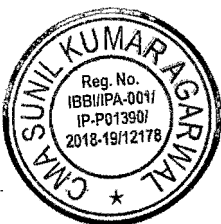


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record, petitioner is able to establish that there exists debt as well as occurrence of default.

13. That, the Application filed by the Applicant is complete in all respects.
14. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Sunil Kumar Agarwal, Tower 6/603 Devnandan Heights, Near Poddar School, New C.G. Road, Chandkheda, Ahmedabad 382 424 (anil91111@hotmail.com) having registration No. IBBI/IPA-001/IP-P01390/2018-19/12178 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 direct the Insolvency 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.



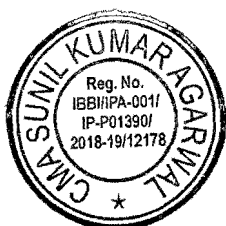
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16. From the above stated discussion and on the basis of material available on record it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

17. The petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of 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.



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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)

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