

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

C.P.(I.B) No. 674/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 02.07.2020**

Name of the Company: Kay Bee Foundry Services Pvt Ltd
V/s
Exclusive Steel & Casting Ltd

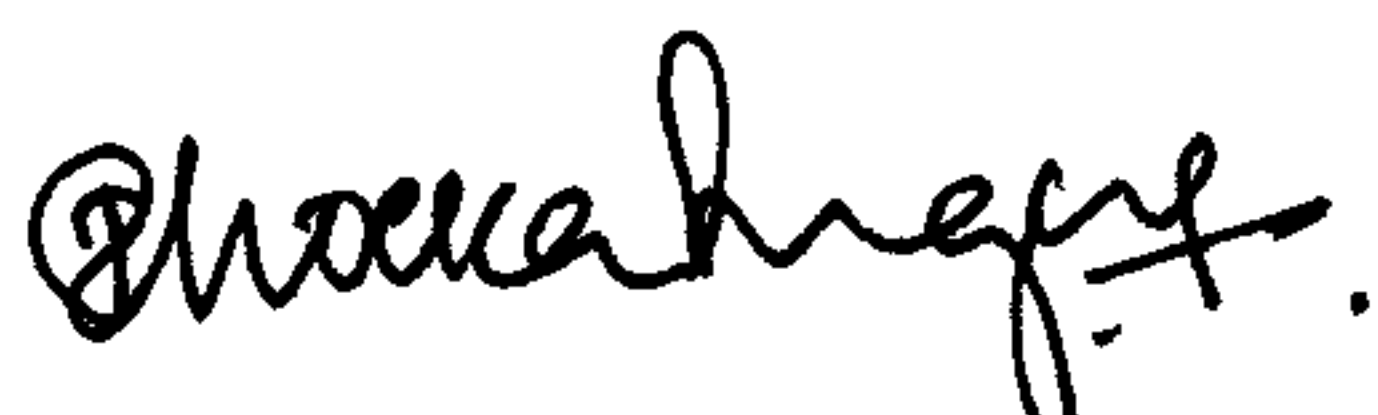
Section : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER
(through video conferencing)**

Learned PCS, Mr. Hitesh Buch is present for the Petitioner.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 2nd day of July, 2020



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 674/9/NCLT/AHM/2019

In the matter of:

Kay Bee Foundry Services Private Ltd.

602, Wing C-2
Skyline Oasis Building No. 3
Millar Compound
Premier Road
Vidyavihar (W)
MUMBAI 400 086

Petitioner
Operational Creditor

Versus

Exclusive Steel and Casting Limited

Plot No. 13
Survey No. 271
Village Mandali
Opp. Bhagyoday Hotel
Mandali
GUJARAT 384 130

Respondent
Corporate Debtor

Order delivered on 2nd July, 2020

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

Appearance:

Learned PCS Mr. Hitesh Buch for applicant.

ORDER

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

1. Mr. Vijay Mahipal, Director, being authorised signatory, on behalf of M/s. **Kay Bee Foundry Services Private Ltd.** 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 petitioner/operational creditor is a private limited company registered under the Companies Act having its registered office at Mumbai and having identification No. U27310MH2011PTC214810.
3. The respondent/corporate debtor is a private limited company registered under the Companies Act, incorporated on 22.01.2008 having identification No. U27300GJ2008PLC052688 and having registered office at Village Mandali, Gujarat State. Authorised share capital of the respondent company is Rs. 1,00,00,000/- and paid up share capital is Rs. 96,82,000/-.
4. The applicant/Petitioner is supplier of metals, ferro alloys and minerals since 2011 and had supplied goods to the corporate debtor. According to the operational creditor, sales invoice dated 19th April, 2019 (page 29) raised in favour of the corporate debtor aggregating to Rs. 3,61,080/- is pending for payment. Having failed to receive the payment from corporate debtor, the applicant had issued demand notice in form 3 (page 31-37) on 10th June, 2019, followed by reminders dated 19.04.2019, 07.06.2019, 14.06.2019 and 19.06.2019.

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Findings

5. Heard the advocates appearing on behalf of the petitioner.
6. On perusal of the records it is found that notice to the respondent was sent through registry on 27.09.2019 which has duly been received by the respondent on 03.10.2019. Since none appeared, order was passed for paper publication and that has also been duly effected on 03.01.2020, but none appeared.
7. On perusal of the records it is found that the petitioner has furnished copy of memorandum of appearance and authority letter, authorisation to accept service, copy of purchase order, copy of sales invoice, transportation receipts and debit notes, copy of demand notice in form 3, acknowledgement of delivery of demand notice, affidavit in support and stating no dispute, amount claimed in tabular format, bank statement, copy of the ledger statement of the operational creditor duly acknowledged by the corporate debtor and form 2 – written communication by the proposed interim resolution professional.
8. On perusal of the records it is found that the application is complete in all respect and service is complete.



9. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBC (JP) 2 SC*** that 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?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

10. 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 and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt





as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force.

11. 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 Interim 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.
12. 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.
13. 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: -

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Shankar Singh

- (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.

14. 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.

15. 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.

16. The petitioner has proposed the name of Mr. Bharat Ramakant Upadhyay to act as Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Bharat Ramakant Upadhyay having address at N L Bhatia & Associates, 507, 5th Floor, C2 Wing, Skyline Wealth Space, Skyline Oasis Complex, Premier Road, Nr. Vidyavihar Station, Ghatkopar West, Mumbai 400 086 (brupadhyay@hotmail.com) having registration No. IBBI/IPA-002/IP-N000120/2017-18/10289 to act as an interim resolution professional under Section 13(1)(c) of the Code.
17. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
18. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of the liquidation



and sale of assets to realise the amount for all the stakeholders.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

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Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)