

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

**C.P. (I.B) No.544/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 31.12.2020**

Name of the Company: Dhara Plastics Through Its Sole  
Proprietor Jayesh J Dasani  
V/s  
Milano Papers Pvt Ltd  
Section 9 of the Insolvency and Bankruptcy Code,  
2016

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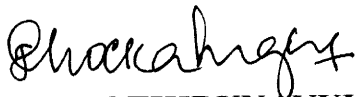
1.

2.

**ORDER**

Advocate, Mr. Arpit Singhvi appeared on behalf of the Respondent.

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**



**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 31st day of December, 2020

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

**C.P. No. (IB) 544/9/NCLT/AHM/2019**

**In the matter of:**

**Mr. Jayesh J. Dasani**

Proprietor of Dhara Plastics  
Dhanseri, Nr. Good Evening Press  
JAMNAGAR 361 001

**GUJARAT STATE**

**:**

**Petitioner**

Operational Creditor

**Versus**

**M/s. Milano Papers Private Limited**

C/o. Kaveri Ceramics  
National Highway 8A  
Kutchh Kandla Road  
MORBI 363 642

**GUJARAT STATE**

**:**

**Respondent**

[Corporate Debtor]

**Order delivered on 31<sup>st</sup> December, 2020**

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

**Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

Petitioner : Ms. Dhvani Lakhani, Advocate  
Respondent : Mr. Arpit R. Singhvi, Advocate

**ORDER**

**Per se : Ms. Manorama Kumari, Member (Judicial)**

1. Mr. Jayesh J. Dasani, proprietor of **M/s. Dhara Plastics** 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 proprietor of the firm having registered office at Morbi engaged in the business of supply of material required for manufacture of paper has submitted that the respondent is indebted a total sum of **Rs. 2,10,59,734.65 (Rupees two crores ten lacs fifty-nine thousand seven hundred thirty-four and paise sixty-five only)** to the applicant towards the goods supplied during the period from 01.11.2017 to 14.08.2018 as per the details annexed at page No. 91-107. That, the invoices became due and payable by the corporate debtor on 01.04.2017. That, the aforesaid amount excludes interest @ 12% per annum from due dates till actual realisation thereof.
3. In support of its claim, the applicant has annexed to the application copy of the documents like; copies of invoices statement under which sums are due and outstanding, demand notice dated 01.06.2019 along with RPAD receipt and track report, computation of default and interest thereon, statement of bank account of the operational creditor, affidavit under section 9 (3) (b) of the I & B Code etc.
4. The applicant has stated that despite repeated reminders the respondent has not paid the outstanding operational debt, therefore, the applicant was compelled to issue demand notice under Section 8 of the I & B Code in form 3 on 01.06.2019 calling upon the respondent to clear the operational debt.
5. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 05<sup>th</sup> May, 2010, having identification No. 060581 and having registered office at Morbi, Gujarat State. Authorised share capital of the respondent company is



Rs.5,50,00,000/- and paid up share capital is Rs. 4,86,76,000/-.

6. The respondent/corporate debtor filed affidavit in reply inter alia denying the debt and raising baseless objections like; the demand notice is incomplete, not as per the format and was not served at the registered office of the respondent company.

**Findings:**

7. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
8. On perusal of the records it is found that the instant petition filed on 12.07.2019 was notified for the first time on 20.08.2019. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 01.06.2019 has been served upon the corporate debtor.
9. On perusal of the reply filed by the corporate debtor it is found that the contentions raised in defence of the operational debt are baseless, flimsy and appears to be mere excuse for not making payment of the operational debt. It is found that from the year 2017 the applicant has been supplying material to the respondent on regular basis and no complaint has been raised by the corporate debtor with regard to quality/quantity of the goods. Other contentions raised in the reply by the corporate debtor appears to be a part of moonshine defence which devoid merits. Record shows that 49 cheques each of Rs. 5.00 lacs issued by the corporate debtor in favour of the operational creditor were dishonoured for want of funds and the

*Shachin*

*Sharma*

operational creditor had lodged criminal complaint against the corporate debtor. On perusal of the records it is also found that, on 29.07.2020, during the course hearing, advocate for the petitioner admitted that an amount of Rs. 1,60,00,000/- has already been received from the respondent and there is every likelihood of settlement. This statement itself shows that the respondent has already admitted the operational debt.

10. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor.
11. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
12. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
13. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ (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?

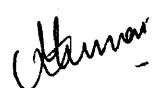
If any of the aforesaid conditions is lacking, the application would have to be rejected.

14. Thus, under the facts and circumstances and as discussed herein 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. 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.
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 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.





16. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, 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.
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



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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. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Nimai Gautam Shah, 605-606-607, Silver Oaks, Nr. Mahalaxmi Char Rasta, Paldi, Ahmedabad 380 007 ([enjabd@gmail.com](mailto:enjabd@gmail.com)) having registration No. IBBI/IPA-001/IP-P00154/2017-18/10323 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code.
21. This Petition is accordingly admitted.
22. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
23. 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)**



**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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