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28/11/2019.

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free of Cost Copy

C.P. (IB) No. 186/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 18.11.2019

Name of the Company: Gujarat Trading Co
V/s
ALF Construction Pvt Ltd

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.				
2.	PAVAN S. SODIAWALA NAISHAL. J. MODY	Adv.	Respondent	N. J. Mody

ORDER

The Respondent is represented through learned counsel.

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

CHOCKALINGAM THIRUNAVUKKARASU **MEMBER TECHNICAL**	**MANORAMA KUMARI** **MEMBER JUDICIAL**

Dated this the 18th day of November, 2019

PC

BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD

C.P. No. (IB) 186/9/NCLT/AHM/2019

In the matter of:

Gujarat Trading Company
(renamed as United Traders)
Plot No. 1, Survey No. 101-108
Opp. Gokuldham
Nr. Shantipura Cross Roads
Sarkhej
AHMEDABAD 380 055
Gujarat State : **Petitioner**
Operational Creditor

Versus

ALF Construction Private Limited
16, Swastik Society
Opp. Zairf Dairy
Sarkhej
Ahmedabad 380 055
Gujarat State : **Respondent**
Corporate Debtor

Order delivered on 18th November, 2019.

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

Appearance:

Advocate Mr. Dev D. Patel for petitioner
Advocate Mr. Pavan S. Godiawala for respondent

ORDER

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

1. Mr. Tofik Vakil, being partner of the operational creditor M/s. Gujarat Trading Co. (renamed as United Traders) filed this Petition on 8th February, 2019 under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and

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Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"].

2. The applicant/operational creditor is a partnership firm having PAN/Identification No. AAIFG7862Q and having office at Plot No. 1, Survey No. 101-108, Opp. Gokuldham, Sarkhej, Ahmedabad 380 055 is a timber merchant

3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 03.12.2011 having identification No. U7010GJ2011PTC068075 having registered office at Sarkhej, Ahmedabad 380 055, Gujarat State. Authorised share capital of the respondent company is Rs. 5,00,000/- and paid up share capital is Rs. 1,00,000/-

4. The applicant/Petitioner has submitted that the applicant had supplied goods to the corporate debtor during the period from 17.09.2015 to 05.05.2016 as per the invoices and delivery challans placed at page No. 38 to 111 to the application. That, as on the date of filing of the instant application, the corporate debtor is liable to pay to the operational creditor a total sum of **Rs. 10,55,258/- (Rupees ten lacs fifty-five thousand two hundred fifty-eight only)** as per the computation placed at page No. 14 to the application and the said debt became due as and when the invoices were issued and continue to be due as last payment was made by the corporate debtor on 07.03.2017.

5. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Application under section 9 of IB Code	1-6
2	Partnership deed	7-13
3	Computation sheet	14
4	Bank statement	15-35
5	Ledger account of the corporate debtor	36-37
6	Invoices and delivery challans	38-111
7	Demand notice (form 3) dated 26th December, 2018 under IB Code along with postal receipt and acknowledgement	112-115
8	Partnership documents	116-118
9	Copy of e-mail	119
10	Affidavit in support of application	120

6. On perusal of the records it is found that despite giving number of opportunities, the respondent has not filed any reply.

Findings

7. Heard learned lawyers appearing for both the sides 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. Despite giving number of opportunities, no reply has been filed by the respondent. On perusal of the record it is also found that when the matter was listed on 03rd October, 2019, seven days' time was further granted to the respondent to file reply. On 22.10.2019, when the matter was listed for final hearing, learned lawyer appearing on behalf of the respondent was reluctant to argue the matter, however, liberty was granted to file written submission within a week.

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9. On perusal of the records it is found that the respondent has not filed any reply nor raised any dispute regarding the operational debt payable to the operational creditor even after receipt of demand notice.

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?

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

11. At this stage it is desirable to refer the judgement in ***Innoventive Industries vs. ICICI Bank [2018] 1 SCC 407*** the Hon'ble Supreme Court after setting out some of the sections of the Code, laid down the scheme of the Code,

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came to financial and operational creditors triggering the Code against a corporate debtor, it held:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and it is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to section 3 (11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3 (6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The Corporate Insolvency Resolution Process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.

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 (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. Further, as per the Bank Statement produced by the applicant, it reveals that the corporate debtor made some payment on 07.03.2017, hence the claim is also not time barred.

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13. That, the Application filed by the Applicant on 8th February, 2019 is complete in all respect.

Bhattacharyya

14. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Bhupendra Singh Narayan Singh Rajput, A-309, ATMA House, Opp. Old Reserve Bank of India, Ashram Road, Ahmedabad 380 009 (cabsrajput309@gmail.com Mobile 9426014155) having registration No. IBBI/IPA-001/IP-P00397/2017-2018/10715 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.

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

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Bhattacharya

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.

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Chockalingam Thiruvukkarasu
Adjudicating Authority
Member (Technical)

Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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Certified to be True Copy of the Original
Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad