

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

C.P. (I.B) No.840/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 15.02.2021**

Name of the Company: Abis Exports India Pvt Ltd
V/s
Oasis Marine 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>
1.				
2.				

**ORDER
(through video conferencing)**

None appeared on behalf of parties.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 15th day of February, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 840/9/NCLT/AHM/2019

In the matter of:

M/s. Abis Exports India Private Limited

IB Group Corporate House
Village – Indamara
Post Pendri
Dist. Rajnandgaon 491 441
Chhattisgarh

Petitioner
Operational Creditor

Versus

M/s. Oasis Marine Private Limited

Office No. 320
Luxuria Business Hub,
Nr. Dumas Resort
Dumas Road
Surat 395 007

GUJARAT STATE

Respondent
[Corporate Debtor]

Order delivered on 15th February, 2021

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

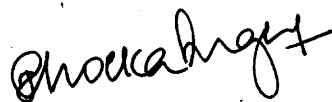
Appearance:

Petitioner : Mr. Hasnain Alvi, Advocate
Respondent :

ORDER

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

1. Mr. Anjum Alvi, Director of **M/s. Abis Exports India Private 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"], as operational creditor/applicant.





2. The applicant/operational creditor, a private limited company, having identification No. U51101CT1998PTC012995 and having its registered office at Chhattisgarh, dealing in Shrimp Feed, has submitted that, the respondent is indebted a total sum of **Rs. 20,89,810/- (Rupees twenty lacs eighty-nine thousand eight hundred ten only)** and of Rs. 6,07,893/- calculated @ 24% per annum from the date of generation of invoices till 18.09.2019.

3. It is stated by the applicant that it is in the business of manufacturing, trading and marketing of Aqua Feed Shrimp Feed and by virtue of dealership agreement dated 11.07.2018, appointed the corporate debtor as dealer of the operational creditor for the state of Gujarat for selling shrimp feed manufactured by the operational creditor. Prior to the execution of dealership agreement there has been a running contract between the parties, where based on the orders placed by the corporate debtor, the goods were supplied by the operational creditor. After supplying the goods for a total value of Rs. 20,89,810/- the petitioner had raised two invoices on 02.06.2018 and 13.07.2018, the corporate debtor was under obligations to clear the aforesaid invoices within 90 days (as per the agreed credit terms) from the date of invoice, however, the same still stands outstanding as on date as no payment have been made by the corporate debtor. The defaults occurred on 02.09.2018 and 13.10.2018 when the credit limit of 90 days expired and the amount under the two invoices became due and payable.

4. The operational creditor has further stated that inspite accepting the goods without demur, failed to make the payment of invoices raised on the respondent (page 22 and



24) along with interest of Rs. 6,07,893/- calculated at the rate of 24% per annum as per interest clause of the invoice.

5. In support of its claim, the applicant has annexed to the application copy of the documents like; general affidavit in support of the petition, Board Resolution dated 11.11.2019, unpaid invoices for sales of shrimp feed, computation of default in tabular form, statement of accounts, demand notice along with track report, dealership agreement dated 11.07.2018, email communications etc.
6. 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 19.09.2019 calling upon the respondent to clear the operational debt.
7. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956, on 04.03.2011 and having identification No. U05003GJ2011PTC064243 and having registered office at Surat, Gujarat State. Authorised share capital of the respondent company is Rs.1,00,000/- and paid up share capital is Rs. 1,00,000/-.

Findings:

8. Heard learned counsels appearing for the applicant and perused the documents annexed to the application.
9. On perusal of the records it is found that notice has been duly served upon the respondent on two occasions through Registry as per track report and the same was served on

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30.01.2020 and 23.07.2020. Thereafter, on 12.10.2020, one advocate Mr. Emik Parmar appeared for the respondent and he was allowed two weeks' time to file reply by fixing the matter on 12.11.2020. However, on 12.11.2020, none appeared from the side of respondent. As such, the matter was fixed on 15.12.2020, but on that day also, respondent did not appear, however, petitioner was also found absent. Since the service is complete and it is in the knowledge of the corporate debtor, the matter is heard in absence of the respondent.

10. It is submitted that the operational creditor is a company engaged in the business of manufacturing, trading and marketing of Aqua feed inter alia shrimp feed and therefore for marketing shrimp feed it appoint dealers throughout India. The corporate debtor had been purchasing shrimp feed from operational creditor since 29.04.2018 to 13.07.2018 on credit basis, for which the corporate debtor released payment in piecemeal to the operational creditor. A copy of unpaid invoices for sales of shrimp feed are hereto annexed and marked as Annexure "D" (Colly.). That as per the credit limit (days) extended by the operational creditor to corporate debtor, the corporate debtor was required to clear the invoice amount within 90 (ninety) days from the date of generation of invoice, failure of which the corporate debtor shall be obliged to pay the invoice amount along with interest calculated at the rate of 24% per annum from the date of generation of invoice.
11. On perusal of the records it is found that though the corporate debtor received the demand notice, neither it replied the notice nor it filed any objection. Therefore, it can be adduced that the corporate debtor has accepted the whole outstanding which is not disputed by the corporate debtor.





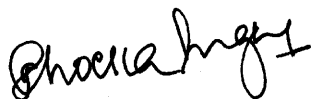
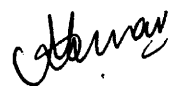
12. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.
13. On perusal of the record 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.
14. 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.
15. 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'.
16. 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.

17. 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.
18. 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.

19. 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.
20. 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.
21. 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.

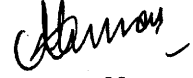
22. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
23. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Saaurabh Jhaveri, 620, Jolly Plaza, 6th Floor, Athwagate, Surat 395 001 (saumeg@gmail.com) (Mobile: 9228427123) having registration No. IBBI/IPA-002/IP-N00068/2017-18/10146 to act as an interim resolution professional under Section 13(1)(c) of the Code.
24. This Petition is accordingly admitted.
25. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
26. 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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