

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

C.P.(I.B) No. 702/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 04.09.2020**

Name of the Company: Inani Metatubes
V/s
Arya Technocast 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
(through video conferencing)

Ms. Natasha Dhruvan Shah is present on behalf of the Petitioner.

Order is pronounced in the open court vide separate sheet.



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 4th day of September, 2020



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 702/9/NCLT/AHM/2019

In the matter of:

M/s. Inani Metatubes
4, Sanjay Nagar,
Nr. Harbholenath Park Society
Odhav
NH No. 8
AHMEDABAD 382 415

Petitioner
Operational Creditor

Versus

M/s. Arya Technocast Private Limited
Plot No. 1306
Nr. Telephone Exchange
GIDC - II
Junagdh Kheda
GUJARAT 362 001

Respondent
Corporate Debtor

Order delivered on 4th September, 2020.

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

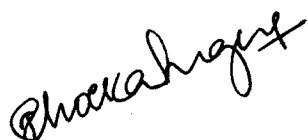
Appearance:

Advocate Ms. Natasha Shah for petitioner

ORDER

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

1. The instant application is filed by M/s. **Inani Metatubes** showing itself as a proprietorship concern 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. It is submitted that the applicant/operational creditor is proprietary concern of Mr. Shankarlal Goverdhanlal Inani carrying out the business of supply of various types of hydraulic system and boiler tubes having permanent account No. ACPPS1310J.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 30.09.2014 having identification No. U29222GJ2014PTC080958 and having registered office at Junagdh Kheda, Gujarat State. Authorised share capital of the respondent company is Rs. 1,00,000/- and paid up share capital is Rs. 1,00,000/-. The respondent company is in the business of manufacturing of special purpose machinery.
4. The applicant/operational creditor has stated that he had supplied SS scrap to the respondent company during the period from 18th December, 2015 to 4th March, 2016 and had raised four invoices of different dates as per the computation annexed to the application (Page 28). Against the supply of goods aggregate amount of **Rs. 20,69,406/- (Rupees twenty lacs sixty-nine thousand four hundred six only)** which include interest @ 18% per annum works out to Rs. 12,87,106.00 (Rupees twelve lacs eighty-seven lacs one hundred six only), is due and payable by the respondent.
5. The petitioner has further stated that having failed to recover the operational debt as stated above, the petitioner had issued demand notice under section 8 of the I & B Code in form 3 on 27th August, 2019.
6. In support of its claim, the applicant has annexed to the application viz. copy of invoices, demand notice, affidavit in support of the application, proof of service, computation



chart of outstanding, correspondence between the two parties requesting to release payments, e-mail communication, ledger account maintained by the operational creditor and bank statement from 27.08.2019 to 16.09.2019 (Page 55-56).

Findings

7. Heard the advocate appearing on behalf of the petitioner and perused the documents annexed to the application.
8. On perusal of the records it is found that the instant petition filed on 19th September, 2019 was notified for the first time on 26.09.2019. Thereafter, despite giving number of opportunities neither the respondent remained present in person nor filed any reply. It is found that service is effected upon the corporate debtor and paper publication has also been made, hence, the service is complete. Therefore, the matter is heard in absence of the respondent.
9. On perusal of the record it is found that the petitioner has kept reliance and placed on record the following four (4) tax invoices (page No. 38 to 41) against which the claim has been made and the instant petition has been filed.

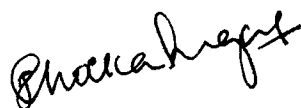
Sr. No.	Book No.	Bill No.	Challan No.	Date
01	01	04	04	18.12.2015
02	01	06	06	05.01.2016
03	01	07	07	02.02.2016
04	01	14	14	04.03.2016

10. On perusal of the records it is found that the petitioner has failed to put on record purchase order, lorry receipt, acknowledgement of receipt of goods etc. which are vital documents required for corroborating its claim.

Shankar Singh

Shankar

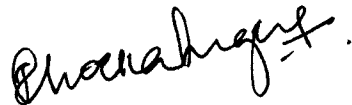
11. On perusal of the record it is found that in part IV of form 5 (page 3), the petitioner has admitted that the debt has fallen due on **17.02.2016**. The petitioner has annexed self-prepared computation (page 37) of the respondent company for the period from **01.04.2015** to **31.07.2019**, wherein entry dated **10.11.2017** shows that the petitioner has received Rs. 50,000/- by way of cash from the respondent, but, no document/proof like receipt/voucher (voucher No. 1) has been placed on record by the petitioner to substantiate such payment. In absence of such document, claim of the applicant having received Rs. 50,000/- in cash on 10.11.2017, cannot be relied upon, especially when tax invoice of the petitioner stipulates that "payment by A/c. payee cheque is requested". In absence of such vital document it has to be believed that the entry of cash payment of Rs. 50,000/- dated 10.11.2017 has been shown by the applicant to cover up the time gap and to bring the claim within the limitation period.
12. On perusal of the records it is found that the petitioner has placed on record (Page 41) the last invoice/challan dated **04.03.2016**, whereas the instant petition is filed on **19.09.2019** i.e. beyond three years from the date of the last invoice. Therefore, the instant application is barred by limitation.
13. On perusal of the record it is found that the petitioner has claimed interest @ 18% per annum. It is found that the petitioner has failed to put on record any document in support of its claim that interest @ 18% will be levied upon the default, more so when the tax invoice is silent on such aspect, claim of the petitioner is bad in the eye of law.
14. On perusal of the records it is found that the petitioner has put on record (page 54-56) certificate/statement from the



bank to the effect no payment is received through RTGS/NEFT during the period from 27.08.2019 to 16.09.2019 which has no relevance with the claim since the transactions had taken place during the period from 18.12.2015 to 04.03.2016.

15. Under the facts and circumstances as discussed in sequel herein above, the application, so filed by the applicant is not maintainable and is bad in law as well as in facts.

16. In the result, Company Petition (IB) No. 702 of 2019 stands dismissed without cost.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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