

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

C.P. (I.B) No.854/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 25.01.2021**

Name of the Company: Shri Shakti Dyeing Works
V/s
Berawala Textiles 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.				

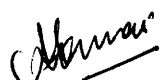
ORDER

(Through Video Conferencing)

Advocate, Mr. Moti Dabhi is present on behalf of the petitioner and Advocate, Shivram CS Ganeshan is present 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 25th day of January 2021

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

C.P. No. (IB) 854/9/NCLT/AHM/2019

In the matter of:

In the matter of:

M/s. Shri Shakti Dyeing Works

D/126 Shree Gantakarna Mahavir Comm. Market

AHMEDABAD 380 002

Gujarat State

:

Petitioner

Operational Creditor

Versus

M/s. Berawala Textiles Private Limited

301, Anand Industrial Estate

Ahmedabad Ginning Mill Compound

Naroda Road

Ahmedabad 380 025

Gujarat State

:

Respondent

Corporate Debtor

Order delivered on 25th January, 2021

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

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

Appearance:

Advocate Mr. Moti Dabhi for petitioner

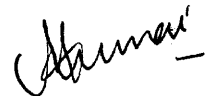
PCS Mr. Shivram Ganeshan for respondent

ORDER

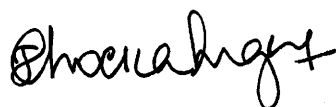
[Per: Ms. Manorama Kumari, Member (Judicial)]

1. The instant application is filed by M/s. **Shri Shakti Dyeing Works** 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 upon **M/s. Berawala Textiles Private Limited**.





2. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 01.06.1998 having identification No. U17110GJ1998PTC034199 and having registered office at Naroda Road, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 65,00,000/- and paid up share capital is Rs. 55,00,732/-. The respondent company is engaged in the business of manufacturing of fabric.
3. The applicant/operational creditor company is engaged in the business of supply of fabrics.
4. The main contention raised by the operational creditor naming himself as "Shree Shakti Dyeing Works" that the corporate debtor ordered the operational creditor to supply goods and, accordingly, goods supplied to the respondent were received by one Mr. Chehera Thakur who has signed the delivery challans on behalf of the corporate debtor. It is further stated by the applicant that during the period from 04.02.2019 to 16.03.2019 the applicant had supplied goods to the respondent under 21 invoices annexed to the application at page No. 41-21. Despite the assurance given, the respondent is indebted to the applicant a sum of **Rs. 37,99,848.26 (Rupees thirty-seven lacs ninety-nine thousand eight hundred forty-eight and paise twenty-six only)**. It is further stated by the applicant that as per the terms and conditions agreed by the corporate debtor, payment of the bills should have been made within 15 days from the receipt of bill, however, the corporate debtor did not pay the amount.
5. It is further stated that, having failed to receive the payment, the operational creditor was compelled to issue demand notice under Section 8 of the I & B Code in form 3



dated 30.09.2019 calling upon the respondent to clear the operational debt.

6. The respondent filed affidavit in reply inter alia raising the following objections: -

- that, the operational creditor has filed the instant petition as a tool of recovery mechanism which is not the objective of the Insolvency and Bankruptcy Code
- The application so filed is undated as required in form 5;
- that, the operational creditor is a sole proprietorship concern and the same is filed in the name of the proprietorship firm and a proprietorship concern does not have any legal status;
- that, Comparative analysis of the discrepancy in delivery challans (s) and invoice (s)
- that, the operational creditor has failed to show how they have reached the due date and the date of default;
- that, the demand notice in form 3 issued by the operational creditor through its advocate is without authority;
- that, form 3 issued by the advocate of the operational creditor has not provided any delivery challan to prove their claim and contentions;
- that, after filing the instant application, the operational creditor has filed insolvency under the Provincial Insolvency Act, 1920 and sought the claim to repay the sister concern of the corporate debtor and the same is pending for adjudication;

7. In support of the contention as stated herein above, both the parties have relied upon the documents annexed to the application/reply.





Findings

8. Heard advocate/PCS appearing on behalf of the applicant/respondent and perused the documents attached to the application/reply.
9. On perusal of the records it is found that in form 5 under the head "**name of the Operational Creditor**" it is written as "**M/s. Shri Shakti Dyeing Works**". It is to be noted here that a proprietorship concern is not a legal person and it cannot authorise any person, moreover the application is filed by a proprietorship concern. Thus, not being a legal concern, the proprietorship concern cannot sue and be sued unless it is represented by a proprietor. On this count alone the application is bad and is not maintainable.
10. In this regard it is pertinent to refer some of the important decisions which are as under:

In *Miraj Advertising Corporation vs. Vishaka Engineering 115 (2004) DLT 471* it is held that

"A proprietorship firm has no legal entity like registered firm. A suit cannot be initiated in the name of an unregistered proprietorship firm and the said suit is to be instituted in the name of proprietor"

11. Thus, a proprietorship firm is not a legal entity – it is only the proprietor of the firm who is a legal entity and as such the petition should have been filed by the sole proprietor in his name on behalf of his sole proprietorship firm.
12. Section 3 of sub-section (23) speaks about the definition of a person which read as under: -

"person" includes;

(a) An individual;

Shri Shakti Dyeing Works

Shri Shakti Dyeing Works

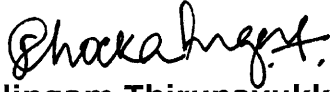
- (b) *A Hindu undivided family;*
- (c) *A company;*
- (d) *A trust;*
- (e) *A partnership;*
- (f) *A limited liability partnership and*
- (g) *Any other entity established under a statute, and includes a person resident outside India*

13. On perusal of the definition it is clear that "person" must fall on the above category(s). In the case on hand, the petition is filed in the name of **M/s. Shree Shakti Dyeing Works**, a proprietary concern as operational creditor, who is not a "person" as per sub-section 23 of section 3 for the purpose of filing the application u/s. 9 of the I & B Code. Hence, on this ground itself the application is not maintainable.
14. Notwithstanding above, in part IV of form 5, under the head particulars of "operational debt" the applicant has given the details of 21 invoices (page 41 to 61) raised on the respondent. On perusal of the records it is also found that the petitioner has filed copy of only 8 (page 33-40) delivery challans. On close scrutiny of the invoices and the delivery challans filed by the applicant, it is found that the quantity shown in the invoices and correlating delivery challans do not match each other. Moreover, none of the bills show the due date of payment and do not bear signature of the authorised signatory.
15. In view of the foregoing observations the Adjudicating Authority is of the considered view that prima facie it appears that the documents filed by the applicant are manufactured, defective, vexatious and frivolous.
16. It is the duty of the Adjudicating Authority to decide in conformity with the pleadings and the proofs i.e. to say "jus decere", and non "jus dare" to administer the justice and not to make the law.

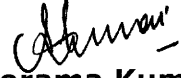
Shree Shakti Dyeing Works

Adjudicator

17. Under the facts and circumstances as discussed herein above, the application, so filed by the applicant is not maintainable and is bad in law as well as in facts.
18. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim as against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provision(s) of IB Code, 2016. The observations made by us on any other aspect would not constitute an expression of opinion on the merit of controversy.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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