

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

C.P.(I.B) No. 386/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 10.10.2019**

Name of the Company: Vishal Kumar Kanada
V/s
Bansal International Pvt Ltd

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

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Xainab Bhaomal	Peti Honors	Advocate	
2.				

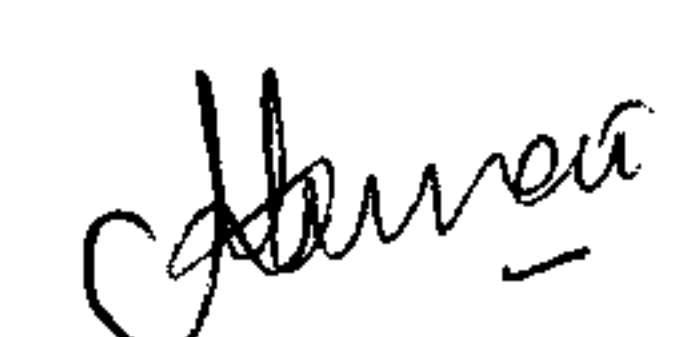
ORDER

The Petitioner is represented through learned counsel.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 10th day of October, 2019


MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No. (IB) 386/9/NCLT/AHM/2019

In the matter of:

Mr. Vishal Kumar Kanada
Plot No. 132/B, Flat No. 401-402
Street No. 4, Dankivalo Chowk
Nirmal Nagar
BHAVNAGAR 364 001
Gujarat State

:

Petitioner
Operational Creditor

Versus

Bansal International Private Limited
Plot No. 2137, Nr. Golden Arc.
Atabhai Circle
Bhavnagar 364 002
Gujarat State

:

Respondent
Corporate Debtor

Order delivered on 10th October, 2019.

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

Appearance:

Advocate Mr. Zainab J. Bharmal for petitioner
Mr. Hardik Bansal, Manager of the respondent company

ORDER

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

1. Mr. Vishal Kumar Kanada, being the operational creditor 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"].

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2. The applicant/operational creditor having identification/PAN No. CPKPK9585F and having office at Nirmal Nagar, Bhavnagar 364 001, Gujarat State is engaged in supply of labour as well as materials required for construction work of building, development of infrastructure etc.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 26.10.2004 having identification No. U35110GJ2004PTC107230, having registered office at Atabhai Circle, Bhavnagar 364 002, Gujarat State. Authorised share capital of the respondent company is Rs. 3,00,00,000/- and paid up share capital is Rs. 1,69,50,000/-.
4. The applicant/Petitioner has submitted that under the terms of oral agreement dated 1st August, 2018, the petitioner made periodic supplies of material as and when called upon by the corporate debtor. That, the corporate debtor did not raise any dispute to the quality and quantity of the supplies made. Therefore, the operational creditor raised five invoices each amounting to Rs. 1,10,000/- towards the supply of material. Thus, an amount of **Rs. 5,50,000/- (Rupees five lacs fifty thousand only)** is pending on account of unpaid invoices and interest on delayed payment at the rate of 18% per annum from due dates till actual realisation thereof. The operational creditor has produced on record



copy of the invoices for the period from 1st August, 2018 to 1st December 2018.

5. The operational creditor has further submitted that despite repeated requests and reminders, the corporate debtor failed and neglected to make payment of outstanding dues and therefore the operational creditor was compelled to issue demand notice dated 28.03.2019 in terms of section 8 of IB Code. That, inspite of receipt of the said notice, the corporate debtor neither paid the outstanding dues nor replied to the notice.

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

Sr. No.	Particulars	Page No.
1	Outstanding invoices	11-15
2	Demand notice in form 3	16-19
3	Computation of default in tabular form	20
4	Delivery report of form 3	26
5	Bank statement	21-25
6	Affidavit under section 9 (3) (B) of the IB Code	27-28
7	Form – 2 – consent form of proposed IRP	29-30

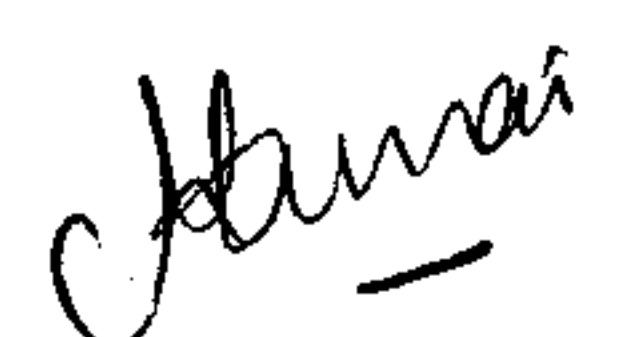
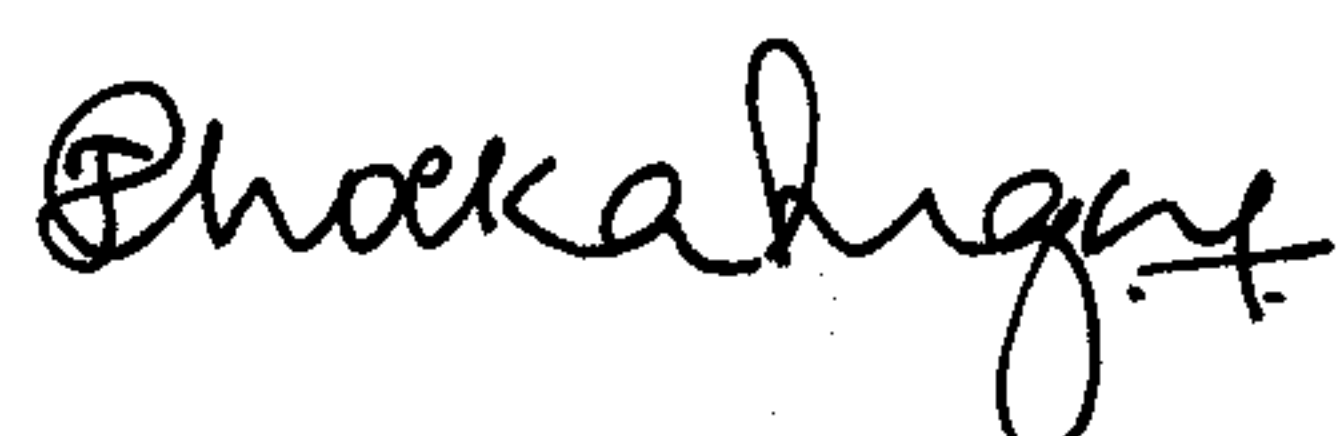
Findings

7. Heard learned lawyer appearing on behalf of the applicant, authorised representative of the corporate debtor and also seen the documents annexed to the application.

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8. On filing of the instant application, notice for the first time was issued but none appeared on behalf of the respondent. That, proof of service filed by the respondent shows receipt of the notice by the respondent on 18.07.2019. The notice sent through registry is also delivered on 04.07.2019. Though the service is complete, on 05.08.2019 the adjudicating authority directed the petitioner to effect paper publication.
9. On perusal of the records it is found that despite giving several opportunities, none appeared on behalf of the respondent. However, during the course of hearing on 16.09.2019, one Mr. Hardik Bansal, Manager of the respondent company remained present in person with authority letter issued by Director of the corporate debtor company. On perusal of record it is also found that Mr. Mithlesh Kumar Singh, Director of the respondent company has admitted the debt of Rs. 5,50,000/- by way of affidavit in reply. Then, ultimately this Adjudicating Authority had to hear the matter in presence of a representative of the respondent company.
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 (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?

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, 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 on perusal of the record it is clear that there is an "operational debt" as defined u/s 4, where the minimum

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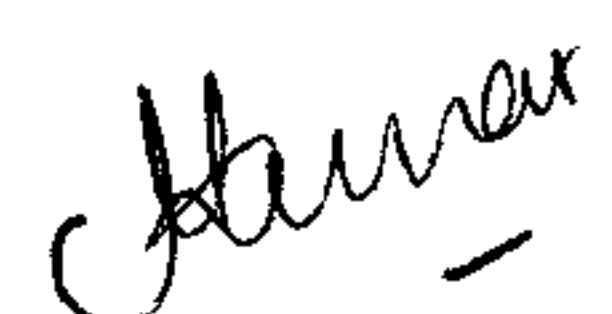
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amount of the default is one lakh rupees. In the instant matter the corporate debtor has admitted a debt of **Rs. 5,50,000/- (Rupees five lacs fifty thousand only)** by way of filing reply affidavit thereby point No. (i) is satisfied. Furthermore, with regard to point No. (ii), there is operational debt, i.e. claim in respect of the provisions of goods and services and/or a debt in respect of the dues arising under any law for the time being in force. In support of the contention and in proof, the operational creditor filed the delivery report and computation of default as annexed at page No. 26 and 20 respectively. Thus point No. (ii) is also satisfied. With regard to point No. (iii) i.e. existence of any dispute between the parties or any proceedings etc. in this respect, when the corporate debtor himself admitted the dues by way of affidavit, there is no question of any dispute.

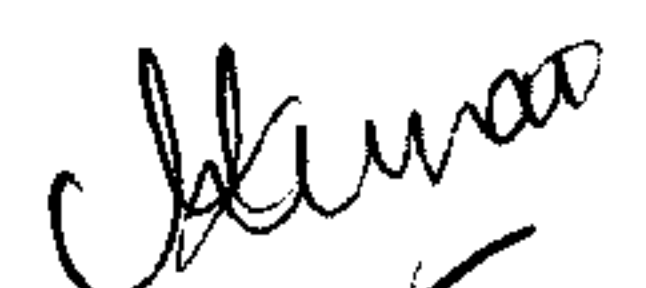
13. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section (5) of 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.




14. That, the Application filed by the Applicant is complete in all respects and as per the provision of IB Code and the Rules made thereunder.
15. The applicant/operational creditor has proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Miss. Bhavi Shreyans Shah, C-201, Embassy Apartment, Dr. V.S. Road, Ambawadi, Ahmedabad 380 015 (ca.bhavishah@gmail.com) having registration No. IBBI/IPA-001/IP-P00915/2017-18/11521 to act as an interim resolution professional under Section 13(1)(c) of the Code.
16. 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.

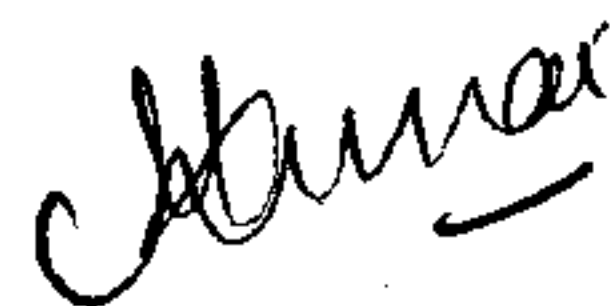


17. From the above stated discussion and on the basis of material available on record it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
18. The petition is, therefore, admitted and the moratorium is declared for prohibiting all 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.



19. 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.
20. 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.
21. This Petition stands disposed of accordingly with no order as to costs.
22. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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