

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

C.P.(I.B) No.154/NCLT/AHM/2020

**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 18.12.2020**

Name of the Company: Bhavesh Rikabchand Mehta Proprietor of
Lakshya International
V/s
Heat Therm Pvt Ltd
Section 9 of the Insolvency and Bankruptcy Code,
2016

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.
2.

ORDER
(Through Video Conferencing)

None present.

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 December, 2020.

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

C.P. No. (IB) 154/9/NCLT/AHM/2020

In the matter of:

Mr. Bhavesh Rikabchand Mehta
Proprietor of Lakshya International
5 B, Ground Floor,
28/30 Dr. Wilson Street,
V.P. Road
MUMBAI 400 004

:

Petitioner
Operational Creditor

Versus

M/s. Heat Therm Private Limited
Plot No. 876,
Road No. 84/4, GIDC Sachin
SURAT 394 520

:

Respondent
[Corporate Debtor]

Order delivered on 18th December, 2020

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

Appearance:

Petitioner : Mr. S.K. Mishra, Advocate

ORDER

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

1. Mr. Bhavesh Rikabchand Mehta, proprietor of **M/s. Lakshya International** 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.

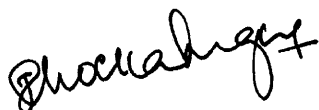
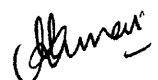




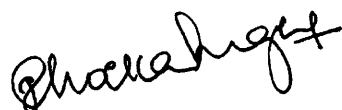
2. The applicant/operational creditor is proprietor of the firm having registered office at Mumbai engaged in the business of supply of SS industrial raw material.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 25th July, 2014 and having identification No. U29220GJ2014PTC080245 and having registered office at GIDC, Sachin, 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/-.
4. It is stated by the applicant that, on 60 days' credit, it had supplied SS Coil sheet and SS seamless pipes to the respondent during the period from 25.09.2018 to 20.02.2019 and had raised ten invoices (Page 19-40). According to the applicant, net amount of **Rs. 29,42,103/- (Rupees twenty-nine lacs forty-two thousand one hundred three only)** is due and payable by the respondent which include interest amount of Rs. 3,75,866/- (Rupees three lacs seventy-five thousand eight hundred sixty-six only).
5. The applicant has further submitted that having failed to receive the operational debt due and payable by the respondent, the petitioner was compelled to issue notice to the respondent under section 8 in form No. 3 dated 21.12.2019 (page 15-18). The applicant filed application supported with affidavit, invoices, purchase orders, ledger accounts, interest calculation, bank statement etc.

Findings:

6. Heard learned counsel appearing for the applicant and perused the documents annexed to the application.

7. On perusal of the records it is found that the instant petition filed on 13.02.2020 was notified for the first time on 21.02.2020. Thereafter, despite giving number of opportunities, the respondent neither filed any reply nor appeared in person. Therefore, the application is heard in absence of the respondent.
8. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 21.12.2019 has been served upon the corporate debtor, but, no dispute has been raised.
9. 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.
10. 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.
11. 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'.
12. 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: -

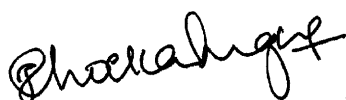


- (i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)
- (ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid?
and
- (iii) Whether there is existence of a dispute 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.

13. 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. That, service is complete and no dispute has ever 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.

14. 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.

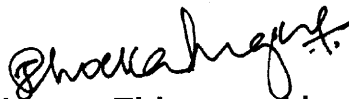
15. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
16. 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.

17. 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.
18. 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.
19. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Nimai Gautam Shah, 605-606-607, Silver Oaks, Nr. Mahalaxmi Char Rasta, Paldi, Ahmedabad 380 007 (enjabd@gmail.com) having registration No. IBBI/IPA-001/IP-P00154/2017-18/10323 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code. The IRP shall be under duty to protect and preserve the value of the property of the corporate debtor company and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The operational creditor is directed to pay an advance of **Rs. 50,000/- (Rupees fifty thousand only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of corporate insolvency resolution process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with first progress report. Subsequently, IRP may raise



further demands for interim funds, which shall be provided as per Rules.

20. This Petition is accordingly admitted.
21. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
22. 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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