

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

C.P. (I.B) No.105/9/NCLT/AHM/2019

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)  
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.01.2020**

Name of the Company: Ratana Creation  
V/s  
H Sharda Texfab Pvt Ltd

Section: 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>
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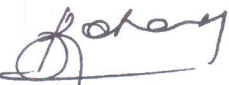
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2.

**ORDER**

The case is fixed for pronouncement of order.

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

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 13th day of January, 2020.



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

C.P. (I.B.) No. 105/9/NCLT/AHM/2019

**In the matter of:**

RATANA CREATION,  
A Proprietor concern through its  
Proprietor, Mr. Bharatbhai Ravjibhai  
Kapadia and having its address at:  
11, Shivdhara Shopping,  
Mansarovar Society, Vighag-IV,  
Yogi Chowk, Puna Gam,  
Surat - 395010 (Gujarat)

..... Petitioner/ Operational Creditor

*Versus*

H. SHARDA TEXFEB PRIVATE LIMITED  
Having its Regd. Office at :  
Block No.170, Plot No.58  
Darshan Ind. Estate, Village- Jolva,  
Taluka - Palsana, Surat -394305  
Gujarat

..... Respondent/ Corporate Debtor

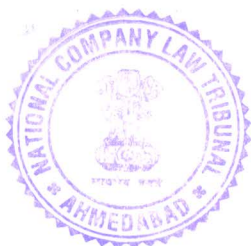
Order delivered on 13<sup>th</sup> January, 2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
And  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**Appearance:**

Mr. Siddhartha Samal & Mr. Harmish K. Shah, Advocates for the  
Petitioner

Dr. Nilesh Shah, Advocate for the Respondent



**[Per: Mr. Prasanta Kumar Mohanty, Member (T)]**

1. The present petition has been preferred by the Operational Creditor, Ratana Creation under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, H. Sharda Texfeb Private Limited.
  
2. The Petitioner/ Operational Creditor is a Proprietary concern carrying on the business through its Proprietor, Mr. Bharatbhai Ravjibhai Kapadiya with Identification Number being Pan Card No. ATXPK9042J. The Petitioner is engaged in the business of **providing services and job work and the Petitioner has provided the usage of the property situated at 60, Darshan Industrial Estate, Jolava, Palsana, Surat along with Twelve Water Jet Machines lying at that premises.** The registered office of the Petitioner is situated at 11, Shivdhara Shopping, Mansarovar Society, Vighag-IV, Yogi Chowk, Puna Gam, Surat - 395010 (Gujarat). The present Petition is filed through Shri Bharatbhai Ravjibhai Kapadiya, Proprietor of the Petitioner/ Operational Creditor to initiate Corporate Insolvency Resolution process with respect to the Corporate Debtor.



3. The Respondent/ Corporate Debtor, namely H. Sharda Texfeb Private Limited was incorporated on 06.01.2012 with CIN: U17120GJ2012PTC068500. The authorised capital of the company is Rs.25,00,000/- and the paid-up capital is Rs.21,04,650/-. The registered office of the Corporate Debtor Company is situated at: Block No.170, Plot No.58, Darshan Ind. Estate, Village- Jolva, Taluka – Palsana, Surat -394305, Gujarat.

4. It is submitted by the Petitioner that a Contract was executed between the Petitioner and Respondent as on 01.04.2014 and as per the terms and conditions of the said Contract, the Petitioner has provided the usage of the property situated at 60, Darshan Industrial Estate, Jolava, Palsana, Surat along with Twelve Water Jet Machines lying at that premises. It is further submitted that the said usage of the premises and machines were given as per the terms of the Contract dated 01.04.2014 to the Respondent. It is also submitted that the said Contract is in force with effect from 01.04.2014.

5. It is submitted that the Respondent was required to pay a minimum of Rs.2,00,000/- per month or Rs.2.35 per meter of the total production made during the month, whichever was higher. It is submitted that the



Respondent continued using the machines of the Petitioner till October' 2016 and then informed that Petitioner about termination of the Contract abruptly w.e.f. 31<sup>st</sup> October, 2016. It is submitted that thereafter negotiations were held between the Petitioner and the Respondent and it was decided that the minimum guaranteed amount of Rs.2,00,000/- per month be reduced to Rs.1,00,000/- from January, 2017. It is also submitted that the Petitioner also agreed to not charge any rent towards the machine and premises for two months i.e. November' 2016 and December' 2016. It is submitted that the Respondent used the premises and machines in January' 2017 and continued using them till March 2017. Thereafter the Respondent informed the Petitioner that it cannot continue with the Contract due to recessed market conditions. Accordingly, the Petitioner accepted the request of the Respondent and informed about the payment of the outstanding dues and Respondent also assured the Petitioner to make the payment of the outstanding amount within a few weeks, but never paid its despite repeated requests from the Petitioner.

6. It is submitted that the Respondent company initially made the payment as per the terms of the agreement. It is submitted that the total outstanding amount as on



31.03.2016 is Rs.24,92,897/-. The amount of Rs.6,25,006/- was due and payable during the period 01.04.2016 to December 2017. The amount deducted towards TDS is of Rs.17,000/-, but since December, 2017 the Respondent company has stopped payment. Therefore the total amount due and payable by the Corporate Debtor is amount to Rs.31,00,903/- as on 01.04.2017 and thereafter 18% interest p.a. payable from 01.04.2017 to 30.10.2018 amounting to Rs.8,83,855/- totalling to Rs.39,84,788/-. It is submitted that the Respondent company did not pay an amount of Rs.31,00,903/-

7. It is submitted that the Petitioner requested the authorised person of the Respondent for the payment of the outstanding amount; however, the Respondent under one or other pretext avoided the payment of the outstanding amount. Hence, the Petitioner was constrained to issue legal notice on 13.10.2018. **Accordingly, on receipt of the notice, Respondent requested for some time for payment of outstanding amount. It is also submitted that the Respondent has never disputed the said amount, which is evident from its reply dtd:18.10.2018.**



8. The Petitioner, to substantiate its claim, has attached following documents: -

- i. Copy of Contract dated: 01.04.2014;
- ii. Copy of TDS Certificate in Form 26AS;
- iii. Copy of Calculation Sheet of the outstanding amount;
- iv. Copy of statement of accounts of the Respondent;
- v. Copy of Bank Statement for last year from Canara Bank showing that no payment has been received by the Petitioner.

9. The Operational Creditor issued notice under the rule 6 in Form 3 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, dated 29.10.2018 for an outstanding of Rs.31,00,903.00 (Rupees Thirty One Lakhs Nine Hundred Three Only).

10. It is submitted by the Operational Creditor that total amount claimed is Rs.39,84,788/- (Rupees Thirty Nine Lakhs Eighty Four Thousand Seven Hundred Eighty Eight Only) i.e. Rs.31,00,903/- being outstanding as on 01.04.2017 and thereafter 18% interest p.a. payable from 01.04.2017 to 30.10.2018 amounting to Rs.8,83,855/- **The debt fell due between the period between April' 2016 to December' 2017 and application has been filed on 08.01.2019.**



11. It is submitted that the Corporate Debtor has failed to make payments in spite of issuance of notice in the said Form-3 in order to clear the dues of the Operational Creditor.
12. In the facts and circumstances of the case, the Respondent company has failed to repay the outstanding amount of Rs.39,84,788/- arising in usual and ordinary course of business and has become commercially insolvent.
13. In view of the above, it is clear that the Corporate Debtor has defaulted in making payment in terms of the agreement to be paid to the Petitioner/ Operational Creditor. **Date of Default is on 01.04.2016.**
14. Now, the Petition is filed on 08.01.2019 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for the unpaid Operational Debt due of Rs.39,84,788.00.
15. The case was taken up by this Adjudicating Authority on 08.02.2019; however, none appeared on behalf of the Corporate Debtor. The matter was adjourned to 19.03.2019 with directions to the Registry to serve the notice of date of hearing on the Respondent along with



the copy of the order under acknowledgement. On 05.07.2019, Learned Lawyer appearing for the Respondent sought time to settle the matter. Thereafter, on 28.08.2019, the Learned Counsel appearing on behalf of the Corporate Debtor filed its reply.

16. In response to the present I.B. Petition filed by the Petitioner, the Respondent has filed its reply through its Director, Mr.Hitesh Devshibhai Sakhiya, who is authorised to represent the Corporate Debtor.

16.1 It is submitted that the present application preferred by the Petitioner is an abuse of the process of law, since the Corporate Debtor had repeatedly assured the Petitioner for payment of the outstanding dues.

16.2 It is submitted that the Corporate Debtor company's business was hit by demonetization and implementation of GST, which affected the job work orders of the Corporate Debtor.

16.3 **It is submitted that as per the ledger, an amount of Rs.39,84,788/- is due and payable to the Petitioner by the Respondent, but there was no prior agreement regarding the payment of interest @18%. It is submitted that the Respondent admit the principal loan liability to the tune of Rs.31,00,903/- to the Petitioner,**



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however, dispute the amount of interest @18% mentioned in the application. Further, the Petitioner has specifically admitted the averments made in para 4 & 5 of the application, except the averments made in para 4.4, 4.9 & 4.13 of the application.

16.4 It is submitted that since the Respondent has not refused to make the payment to the Applicant and has sought some time for the payment, the **CIRP cannot be initiated against the Respondent.**

17. The matter was finally heard on 28.08.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may be admitted and an Interim Resolution Professional appointed in accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the petition may be admitted for initiating Corporate Insolvency Resolution Process as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared. Whereas, the **Learned Lawyer for the Respondent admitted the principal loan liability, but disputed the amount of interest as mentioned in the application.**



18. Further, the Operational-Creditor has not suggested any name of an Interim-Resolution-Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

**OBSERVATIONS**

19. It is observed that –

19.1 The Application has been filed on 08.01.2019 for operational debt defaulted and dues of Rs.39,84,788/- (Rupees Thirty Nine Lakhs Eighty Four Thousand Seven Hundred Eighty Eight Only) as per documents annexed with the application;

19.2 Date of first default is 01.04.2016.

19.3 Application has been filed on 08.01.2019, which is within the limitation period.

19.4 In this matter, Learned Lawyer for the Respondent Corporate Debtor, during arguments, **admitted its debt liability stating interalia that the Respondent has not refused to make the payment to the Applicant, but sought some time for payment to the petitioner.** The Corporate Debtor categorically accepted and admitted the dues for an amount of **Rs.31,00,903/- as reflected in para no.4 of the**



**reply, except averments made in para 4.4, 4.9 and 4.13.**

19.5 A perusal of the Application and reply filed by the Respondent clearly goes to show that operational debt is due to the Operational Creditor from the Corporate Debtor. Operational Creditor issued notice under Section 8 read with Rule 5 of the Adjudication Rules to the Corporate Debtor and the same was served on the Corporate Debtor.

**Corporate Debtor did not raise any dispute regarding the amount of debt or quality of services supplied.**

19.6 There is no interest provision in the contract for delay in payment by the Corporate Debtor.

19.7 No pre-existing dispute before the filing of this application is observed.

**ORDER**

20. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **19, 19.1, 19.2, 19.3, 19.4, 19.5, 19.6 & 19.7**, this Adjudicating Authority **is satisfied that,**

- a) Existence of debt is above Rs. One Lac;
- b) Debt is due;
- c) Default has occurred on 01.04.2016;

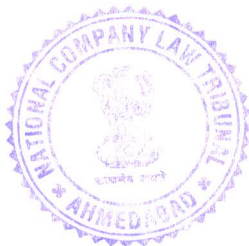


- d) Petition had been filed **within the limitation period;**
- e) The materials placed on record clearly establish that Respondent/Corporate Debtor committed default in repayment of operational debt due to the Applicant Company. Respondent Company also did not raise any dispute regarding the existence of operational debt, quality of goods supplied etc.
- f) The application filed by the **Petitioner under Section 9 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Therefore, the **present IB petition is admitted with the following directions:**

21. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this adjudicating authority declares moratorium for prohibiting all of the following, namely: -

*I.(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*



- (b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.*
- (c) *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);*
- (d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

22. The Petitioner/Operational Creditor has not suggested the name of any Interim Resolution Professional in the present Petition. Though it is not mandatory on the part of the Applicant to propose an Interim Resolution Professional when the application is filed under Section 9 of the IBC, 2016, but in that case, the Adjudicating Authority shall appoint an Insolvency Professional from the panel prepared by the IBBI and meant for this Bench



on admission of the application. But if it is observed that when an Operational Creditor does not suggest the name of any Interim Resolution Professional and the Interim Resolution Professional is appointed by the Adjudicating Authority from the panel of Insolvency and Bankruptcy Board of India available for NCLT, Ahmedabad, the dispute is arising for payment of Interim Resolution Professional fees, paper publication costs etc., in the first month of the Corporate Insolvency Resolution Process. This is more, when Financial Creditor or other Operational Creditor is not there, CoC is not formed and the Operational Creditor is not able to bear the CIRP expenses.

23. Hence, this Adjudicating Authority hereby appoints **Shri Bhavan Trivedi, having Insolvency Professional Registration No. IBBI/IPA-001/IP-P00335/2017-18/10605, Email ID- [bhavant@yahoo.com](mailto:bhavant@yahoo.com), Address : 55, 6th Floor, Shri Krishna Centre, Nr. Mithakhali Six Roads, Navrangpura, Ahmedabad, Gujarat 380009 as an Interim Resolution Professional.**

24. The IRP is directed to file a declaration disclosure statement within two days from the date of this order with this Registry.



25. The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code.

26. The **IRP is hereby advised to adhere the time limit** as stipulated for completion of the Corporate Insolvency Resolution Process ("CIRP" in short) and perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnels connected with the Corporate Debtor, its promoters or any other persons associated with the Management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to



this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

27. It is also observed that the Petitioner Bank has claimed total dues of Rs.39,84,788/- (Rupees Thirty Nine Lakhs Eighty Four Thousand Seven Hundred Eighty Eight Only) i.e. Rs.31,00,903/- being outstanding as on 01.04.2017 and thereafter 18% interest p.a. payable from 01.04.2017 to 30.10.2018 amounting to Rs.8,83,855/- The provision of payment of interest for delay in payment is not in the contract, hence claim of interest is not recognized.

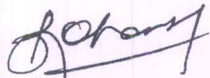
28. One of the prime objectives of the Insolvency and Bankruptcy Code, 2016 is to find out a viable Insolvency Resolution Plan in time for the Corporate Debtor and in order to have a Resolution Plan Viable, feasible and implementation successful, in the era of Minimum Cost of funds based Lending Rate ("MCLR" in short) and Competitive market condition, the Committee Of Creditor(s) (COC) may explore, while finalizing the



Resolution Plan for the Corporate Debtor, the possibility of loading maximum interest at the Applicant's Bank One Year MCLR or One Year MCLR + 1%

29. An authentic copy of this order to be communicated by this Registry to the Operational Creditor/Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this CP(IB) No.105/9/NCLT/AHM/2019 is admitted with the **above observations and directions.**



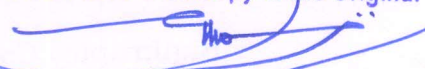
(Prasanta Kumar Mohanty)  
Adjudicating Authority &  
Member(T)



(Harihar Prakash Chaturvedi)  
Adjudicating Authority &  
Member(J)



Certified to be True Copy of the Original

  
Deputy Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad