

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

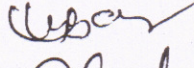
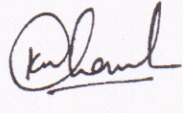
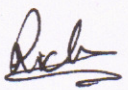
C.P. (I.B) No. 606/NCLT/AHM/2018

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 16.12.2019**

Name of the Company: Radiance Corporation.  
V/s.  
Sankalp Papers Industries Pvt. Ltd

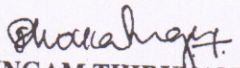
Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Nijay B. Umbaleira	Advocate	petitioner	
2.	Khyati Punjabi For A.R. Gupta & Associates	Adv.	Respondent	
3.	Riddha legal	Adv. GS.	Respondent	

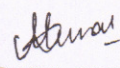
**ORDER**

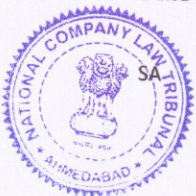
The parties are represented through learned counsels.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
MEMBER TECHNICAL

Dated this the 16th day of December, 2019

  
**MANORAMA KUMARI**  
MEMBER JUDICIAL



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

**C.P. No. (IB) 606/9/NCLT/AHM/2018**

**In the matter of:**

**Radiance Corporation**  
901, Aala-A  
Opp. Jalaram Chikki  
Limda Chowk  
RAJKOT 360001  
GUJARAT STATE

**Petitioner**  
Operational Creditor

**Versus**

**Sankalp Paper Industries Private Limited**  
At & Post Dumkhal  
Tal. Valod  
Dumkhal 394 640  
Dist. Tapi  
GUJARAT STATE

**Respondent**  
Corporate Debtor

**Order delivered on 16<sup>th</sup> December, 2019.**

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

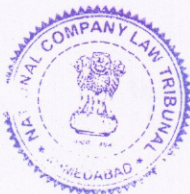
**Appearance:**

Advocate Mr. Pranav Thakkar/Advocate Vijay Limbachiya for petitioner.  
Advocate Mr. Mohit Gupta for A.R. Gupta & Associates and Ms. Khyati Punjabi for respondent.

**ORDER**

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

1. Mr. Manan Parekh, being proprietor of M/s. **Radiance Corporation** 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,



*Chockalingam*

*Manan*

2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The petitioner/operational creditor is a proprietorship firm having PAN - BVPPP2627H, situated at 901, Aalap - A, Limda Chowk, Rajkot provides services of indent agent.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 17.05.1996 having identification No. U21010GJ1996PTC029674 and having registered office at Tapi District, Gujarat State. Authorised share capital of the respondent company is Rs. 20,00,000/- and paid up share capital is Rs. 30,00,000/-
4. The applicant/Petitioner has submitted that it provided services of indent agent for consignments of waste paper which was being imported from Canada (Port of Shipment - USA) to the corporate debtor on various dates. That, despite receipt of goods, the corporate debtor illegally withheld the amount of security deposit of Rs. 15,00,000/- which was to be refunded/reimbursed upon completion of shipment. That, an amount of **Rs. 15,00,000/- (Rupees fifteen lacs only)** is outstanding from last shipment dated 09.06.2018.



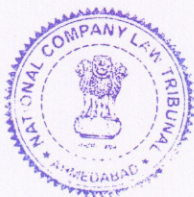
*Shankar Singh*

*Chatterjee*

5. The petitioner has kept reliance on the following documents:

- (i) balance confirmation in books of respondent company in its balance sheet showing petitioner as creditor (page 46 of rebuttal);
- (ii) letter dated 26.03.2018 signed by both the parties agreeing to provide Rs. 15,00,000/- for OGO Fiber Inc Transaction only (page 19 of petition);
- (iii) copy of letter dated 27.04.2018 cancelling the shipment by respondent and the same was sent through by petitioner duly acknowledged by respondent;
- (iv) copy of remittance of deposit by OGO Fiber Inc. upon completion of transaction (page 56 to 58).

6. It is further submitted by the petitioner that the petitioner being indenting agent had given services to the respondent for importing the goods. That, the respondent is a Surat based company and as they did not have any foreign connection for import, the respondent approached the petitioner for import of goods from a Canada based company. That, as the respondent was not happy with the services of some other indenting agent, asked the petitioner for refundable and non-interest bearing deposit of Rs. 15,00,000/- and as the petitioner has good reputation in market to show his bona fide, the petitioner deposited the same amount with the respondent. That, as the said deposit was not refunded by the respondent as agreed between the parties, it took shape of a petition and the petition was filed under Section 9 of IBC, 2016 for refund. According to the



*Shachin*

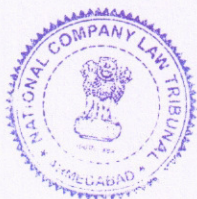
*Attorney*

petitioner, the respondent himself admitted the liability in his audited balance sheet for the period 2018-19.

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

Sr. No.	Particulars	Page No.
1	Affidavit in support of documents	8
2	Affidavit u/s 9(3) b of IB Code, 2016	9
3	Notice in form No. 3 along with all supporting documents	10-13
4	Postal receipt	14
5	Online postal tracking	15
6	Pan card of petitioner	16
7	Letter confirming payment of security deposit against provision of services sent through email dated 26.03.2018	19
8	Proof of RTGS done in bank account of operational debtor	17
9	Ledger account in books of operational creditor	18
10	Letter dated 22.07.2018 seeking balance confirmation from operational creditor	20
11	Letter dated 08.08.2018 seeking balance confirmation from operational creditor	21
12	Reply received from operational creditor	22-29

8. The corporate debtor filed affidavit in reply inter alia stating that the applicant is an indenting agent for import of waste paper and the respondent has taken his services for booking certain import waste paper from M/s. Tabiea Middle East FZC and USA. That the applicant had failed to prepare the documentation properly on time and because of that the respondent had to suffer huge demurrage charges. That, as the exporter was not known to the respondent, the respondent had requested the applicant to check and confirm the quality of goods once it arrives at the customs. That, the applicant had agreed to do so, however, after the delivery was taken and the goods had reached the factory of the respondent, the respondent had discovered that the



*Shakaligat*

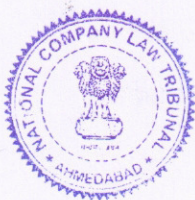
*Shankar*

goods were of sub-standard quality. That, the issue with the goods was that the moisture level was very high and because of that it became unfit for use. That, the respondent suffered huge losses from the consignment imported through the applicant. Therefore, the respondent refused to work further with the applicant and refused to clear the further consignment booked through the applicant. That, it was agreed between the parties that the applicant will refund the demurrage charges incurred by the respondent in the previous consignment and further the applicant will make sure that the losses suffered by the respondent were reimbursed by M/s. Tabiea Middle East FZC.

9. It is further submitted by the respondent that he had suffered huge losses of approximately Rs. 40.00 lacs because of the applicant. That, the applicant had given security deposit of Rs. 15.00 lacs to instil confidence and towards demurrage charges incurred by the respondent. That, as the applicant had again failed to fulfil his promise, the respondent adjusted the security deposit amount towards losses suffered by it.

**Findings**

10. Heard learned lawyers appearing for both the sides, also seen the documents annexed to the application and reply.



*Chaudhary*

*Chaudhary*

11. On perusal of the records it is found that in **para 5** of the affidavit in reply, the respondent has admitted that "the applicant is an indenting agent for import of waste paper and the respondent has taken his services for booking certain import waste paper from **M/s. Tabiea Middle East FZC and USA**". That, in para 8 of the reply the respondent has contended that "It was agreed between the parties that the applicant will refund the demurrage charges incurred by the respondent in the previous consignment and further the applicant will make sure that the losses suffered by the respondent were reimbursed by M/s. Tabiea Middle East FZC.

12. On perusal of the records it is found that the applicant had deposited an amount of Rs. 15,00,000/- lacs (Rupees fifteen lacs only) in the bank account of the respondent on **26.03.2018** by way of RTGS towards security deposit and nowhere the respondent has denied/disputed it. In reply to the demand notice dated **25.09.2018** issued by the applicant, the respondent issued reply through advocate dated **16.10.2018**. In the said letter it is admitted by the respondent that representatives from M/s. Tabie Middle East FZC had visited the factory of the respondent and had agreed to settle the claim of the respondent for **Rs. 25,00,000/-**, but later on denied the same. Para No. XIII of the said letter shows that due to non-settlement of claim by M/s. Tabiea Middle East FZC, the respondent is not liable to return the security deposit till the settlement of the claim



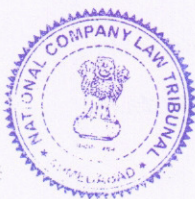
*Shankar Singh*

*Chaturvedi*

and return of demurrage charges. No document is produced on record by the respondent to the effect that the applicant and respondent had entered into an agreement, whereby, the applicant had consented to adjust the security deposit against the loss, if any, incurred by the respondent while executing the foreign consignment. Letter dated **26.03.2018 (para 3, page No. 59 rebuttal affidavit)** written by the applicant clearly shows that "the applicant will pay security deposit of Rs. 15,00,000/- which will be completely refundable after all the five batch of shipments are released". Further it is clearly reflected in the said letter **(para 6, pager No. 59 rebuttal affidavit)** that the applicant does not hold any responsibility of delay filing bill of entry for the forthcoming shipments & do not hold responsible for any kind of fine, as the scan sets of the documents will be provided on time to file the bill of entry". In the above circumstances, in absence of any written agreement, holding the applicant/indenting agent for the entire state of affairs and withholding the security deposit of Rs. 15,00,000/- cannot be justified, more so, when the respondent has cancelled the subsequent orders.

13. 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)



*Phakarabgere*

*Chaman*

(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?

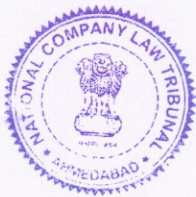
If any of the aforesaid conditions is lacking, the application would have to be rejected.

14. 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 and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has 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.

*Charakigat*

*Attorney*

15. 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.
16. 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.
17. 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;



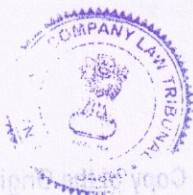
*Chalabige*

*Adhwar*

- (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.

18. 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.

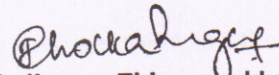
19. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.



*Shankar J.*

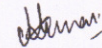
*Chinnaw*

20. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. This Adjudicating Authority hereby appoint Shri Gordhanbhai Ratnabhai Godhani, 16, Sakarta Society, Kargil Chowk, Punagam, Surat 395 010 [([rgodhani@gmail.com](mailto:rgodhani@gmail.com))] Mobile 7575061718] having registration No. IBBI/IPA-001/IP-P01201/2018-2019/11921 to act as an interim resolution professional under Section 13(1)(c) of the Code.
21. This Petition is accordingly admitted.
22. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
23. 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)

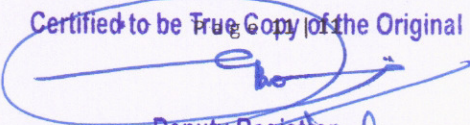
nair



**Ms. Manorama Kumari**  
Adjudicating Authority  
Member (Judicial)



Certified to be True Copy of the Original

  
Deputy Registrar  
NCLT, Ahmedabad Bench  
Ahmedabad