

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

C.P.(I.B) No. 590/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

A

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE NATIONAL COMPANY
LAW TRIBUNAL ON 20.04.2021**

Name of the Company:

Auto Mat Lub Systems
V/s
Anupam Industries Ltd

Section 9 of the Insolvency and Bankruptcy Code.

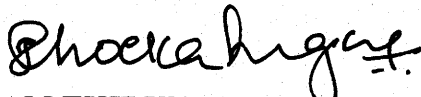
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION REPRESENTATION</u>	<u>SIGNATURE</u>
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ORDER
(through video conferencing)

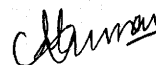
None appeared on behalf of parties.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 20th day of April, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 590/9/NCLT/AHM/2019

In the matter of:

M/s. Auto Mat Lub Systems

New Indra Complex, Street No. 2,
Behind Maharaja Agresen Hospital
Nehar Par

Old Faridabad 121 002

:

Petitioner
Operational Creditor

Versus

Anupam Industries Limited

138, GIDC Estate
Vithal Udyog Nagar 388 121

GUJARAT STATE

:

Respondent
[Corporate Debtor]

Order delivered on 20th April, 2021

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

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

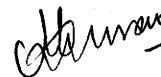
Petitioner : Mr. Ravi Shah, Advocate
Respondent : Dr. Kamlesh Vaidankar

ORDER

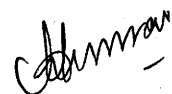
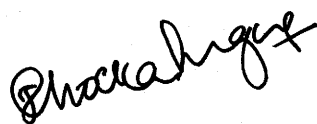
Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Jai Prakash, proprietor of **M/s. Auto Mat Lub Systems** 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 a proprietorship firm of Mr. Jai Prakash, having correspondence address at Old Faridabad engaged in the supply of lubrication pumps.





3. The respondent/corporate debtor is a limited company engaged in the business of manufacturing cranes, registered under the provisions Companies Act, 1956 on 29th October, 1998, having identification No. U29199GJ1998PLC34888 and having registered office at GIDC, Vital Udyognagar, Anand, Gujarat State. Authorised share capital of the respondent company is Rs.54,00,00,000/- and paid up share capital is Rs. 53,79,43,000/-.
4. The applicant/operational creditor has stated that during the course of business it had supplied lubrication pumps from 2005 to the corporate debtor and an amount of Rs. 39,28,727/- towards principal and interest of Rs. 26,30,058/- amounting aggregate **Rs. 65,58,785/- (Rupees sixty-five lacs fifty-eight thousand seven hundred eighty-five only)** is outstanding and payable by the respondent.
5. The applicant/operational creditor has stated that having failed to receive the outstanding payment from the respondent, the applicant was compelled to issue demand notice under section 8 of the IB Code in form 3 and form 4 dated 19.04.2019 calling upon the respondent to pay the outstanding amount within ten days from the date of receipt of the notice. That, no reply is received from the respondent, therefore, this petition.
6. In support of its claim, the operational creditor has annexed to the application documents like; affidavit in support of the petition, affidavit u/s 9 (3) (b), details of outstanding invoices & computation of interest, copy of invoices, ledger of corporate debtor, bank certificate under Section 9 (3) (c), demand notice in form 3 and form 4 etc.



7. The respondent/corporate debtor filed affidavit in reply raising various objections like;
- that, the petition is barred by limitation;
 - that, the application is filed by a proprietary concern in its name, a proprietary concern not being a person cannot file a petition under Section 9 of the IB Code;
 - that, general affidavit verifying the petition and affidavit u/s 9 (3) (b) and power of attorney are not properly notarised;
 - that, stamp duty payable on power of attorney is deficient and hence cannot be taken in evidence;
 - that, advance copy of the petition was notarised post-date;
 - that, the claim is based on multiple contracts, therefore, not maintainable;
 - that, the petition is defective on different aspects;
 - that, all the invoices starting from the year 2012 are issues against separate purchase orders and the instant petition is based on multiple contracts, therefore, the petition is not maintainable;
 - none of the invoices contain any endorsement from the respondent as to the receipt of goods;
 - that, there is pre-existing dispute with regard to quality of the product supplied by the petitioner;

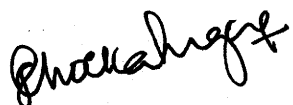
Findings:

8. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
9. On perusal of the record it is found that the claim raised belong to the supply of goods by the applicant to the respondent during the period from 29.11.2012 to 09.09.2015.2015 (page 25-60) and such supplies are made against different purchase orders issued by the corporate debtor.

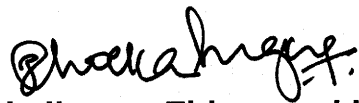
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10. On perusal of the record it is found that the applicant has not filed copy of the delivery challans and lorry receipts/LR number substantiating its claim that the goods were supplied and received by the respondent. Moreover, none of the invoice contain any endorsement from the respondent as to the receipt of goods. The applicant has filed details of 35 outstanding invoices (Annexure "G" – page 23) towards supply of goods made during the period from 29.11.2012 to 09.09.2015. As per the applicant (Form 5, part IV, page 14) first due date of the default is **28.01.2013**.
11. On perusal of the record it is found that the applicant has not disclosed material facts that there exists a dispute regarding quality of the goods supplied to the corporate debtor. It is found that vide letter dated 22.06.2013 (page 12 to the reply) the respondent had raised a dispute regarding quality of the goods supplied by the petitioner on 08.03.2013 with further request to replace the goods. The respondent has filed a copy of reminder dated 29.06.2013 (page 54) raising the quality of goods and calling upon the applicant to replace the rejected goods. Page 32 to the reply is another reminder dated 15.03.2014 issued by the corporate debtor reminding the applicant to replace the goods. Page 54 to the reply is a copy of last reminder sent by the corporate debtor to replace the rejected materials. From the records it is evident that the applicant has failed to resolve the dispute raised by the corporate debtor.
12. In the instant case, the respondent has placed on record enough documents evidencing that there is/are pre-existing dispute with regard to quality of the goods supplied by the applicant during the year 2013-2014 and the applicant has failed to attend complaint of the respondent till 22.06.2015. The said dispute is much prior to issuance of demand notice.



13. In the instant application, from the material placed on record by the Applicant, this Authority is of the considered view that the instant application is barred by limitation, there is a pre-existing dispute with regard to quality of the goods supplied by the applicant, therefore, the application is not maintainable and deserves to be rejected.
14. Under the facts and circumstances and as discussed above the petition is not maintainable and deserves to be dismissed in view of the above grounds. In the result, company petition No. CP (IB) 590 of 2019 stands dismissed and disposed of without cost.
15. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

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Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)