

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

C.P.(I.B) No. 400/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 07.10.2020**

Name of the Company: Manoj Kumar & Company
V/s
Mataji Dyeing Mills Pvt Ltd

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.				
2.				

ORDER

(Through Video Conferencing)

Advocate Mr. Naresh Kumar Sejvani is present for the Petitioner.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER (TECHNICAL)**



**MANORAMA KUMARI
MEMBER (JUDICIAL)**

Dated this the 7th day of October , 2020.

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

C.P. No. (IB) 400/9/NCLT/AHM/2019

In the matter of:

Mr. Manoj Kumar Lakhera

Proprietor of M/s. Manojkumar & Company

F-130, Mandia Road

Pali 306 401

Rajasthan State

:

Petitioner

Operational Creditor

Versus

M/s. Mataji Dyeing Mills Private Limited

13, Shiv Shakti Estate

Nr. Ritco Roadways

Narol Road

Ahmedabad 382 405

Gujarat State

:

Respondent

[Corporate Debtor]

Order delivered on 07th October, 2020

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

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

Appearance:

Petitioner

:

Mr. Naresh Kumar Sejvani, Advocate

ORDER

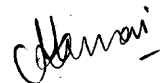
Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Manoj Kumar Lakhera, Proprietor of M/s. Manoj Kumar & Company, 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.

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2. The applicant/operational creditor is a proprietorship firm having its registered office at Ahmedabad engaged in the supply of textile chemicals.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 28th March, 2012 and having identification No. U17120GJ2012PTC069614 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 3,00,00,000/- and paid up share capital is Rs. 5,18,000/-. The respondent is engaged in manufacturing of fabrics and other kind of fibrous materials.
4. The learned lawyer for the applicant stated that since June, 2017 multiple business transactions have been taken place between the applicant and the respondent. That, initially, the respondent used to make payments on time and considering such regularity, the applicant acceded further business transactions as and when requested, supplied goods to the respondent and raised invoices from time to time. That, from the financial year 2018-19 onwards the respondent became irregular and inconsistent in payment of outstanding dues and the last payment of Rs. 1,18,511/- was made on 18.08.2018. That, despite telephonic reminders, having failed to recover the outstanding dues, the applicant was compelled to issue demand notice dated 18.12.2018 demanding the operational debt of Rs. 7,45,978.00 along with interest on the delayed payments due upto 10.12.2018. That, as there was some error in calculation of the interest, operational creditor sent another demand notice in form 4 dated 11.01.2019 demanding outstanding dues of **Rs. 7,46,492.00 (Rupees seven lacs forty-six thousand four hundred ninety-two only)** which includes interest of Rs. 47,625/- die upto 10.12.2018.



5. The applicant/operational creditor has further stated that, in reply to demand notice dated 11.01.2018, the corporate debtor had sent reply through advocate dated 23.01.2019 inter alia denying any business transactions with the operational creditor and such letter of the corporate debtor was replied by the operational creditor along with invoices and ledger accounts.
6. The applicant in support of its claim has furnished copy of documents like affidavit in support of the application, copy of bank statement/certificate issued by the bank as required under Section 9 (3)(c) of the IB Code, demand notice, track report of delivery of consignment containing demand notice, reply made by the corporate debtor dated 23.01.2019 etc.

Findings:

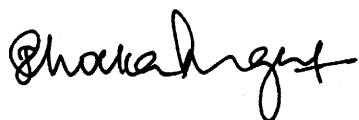
7. On perusal of the records it is found that the instant application was filed on 06th June, 2019 which came to be notified for hearing for the first time on 24.06.2019. That, despite giving number of opportunities and issuance of notice by the Registry, the respondent has not caused presence either in person or through advocate and has not filed any reply. Therefore, the matter is finally heard in absence of the respondent as service upon the corporate debtor is complete.
8. On perusal of the records it is found that the operational creditor has annexed to the application (page 168-178) copies of 11 (eleven) invoices raised upon the corporate debtor during the period from 29.01.2018 to 10.12.2018 towards the supply of goods. On perusal it is also found that some of such invoices bear the signature of the representative of the corporate debtor, whereas, some

Shri. A. K. Singh

Advocate

invoices bear the seal as well as signature of the representative of the respondent company which clearly establishes that the goods as per invoices have been delivered and received by the corporate debtor. The operational creditor has also placed on record (page No. 179) to the application a copy of the bill-wise details/computation of the operational debt.

9. 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 11.01.2019 has been served upon the corporate debtor, but, no dispute has been raised. Therefore, the petitioner has also filed affidavit of no dispute.
10. 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.
11. 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.
12. 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'.
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)
- (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.

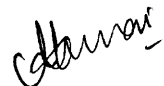
14. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and 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.
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-

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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 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.
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;
 - (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.
20. The applicant/operational creditor has proposed the name of Mr. Satyendra Prasad Khorania to act as Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Satyendra Prasad Khorania, 402, 4th Floor, OK Plus, DP Metro, Opp. Pillar No. 94, New Sanganer Road, Jaipur 302 019 (Rajasthan) (skhorania@live.com) having registration No. IBBI/IPA-002/IP-N00002/2016-17/10002 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)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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