

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


C.P. (I.B) No. 468/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 17.09.2019**

Name of the Company: C Girdharlal Gheewala
V/s.
S.K. Masala & Food Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Ayazan Patel (Cov, A.S. Vda)	Adv	Petitioner	
2.		Adv		

ORDER

The Petitioner is represented through learned counsels.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 17th day of September, 2019


MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No. (IB) 468/9/NCLT/AHM/2018

In the matter of:

C. Girdharlal Gheewala
7/4580 Dehi Gate Dangi Sheri
Station Road
Surat 395 003
Gujarat State

Petitioner
Operational Creditor

Versus

S.K. Masala & Food Ltd.
Atlanta Enterprise, 3rd Floor
Shop No. 243
Moje. Althan
Bhimrad Canal Road
Surat 395 017
Gujarat State

Respondent
Corporate Debtor

Order delivered on 17th September, 2019.

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

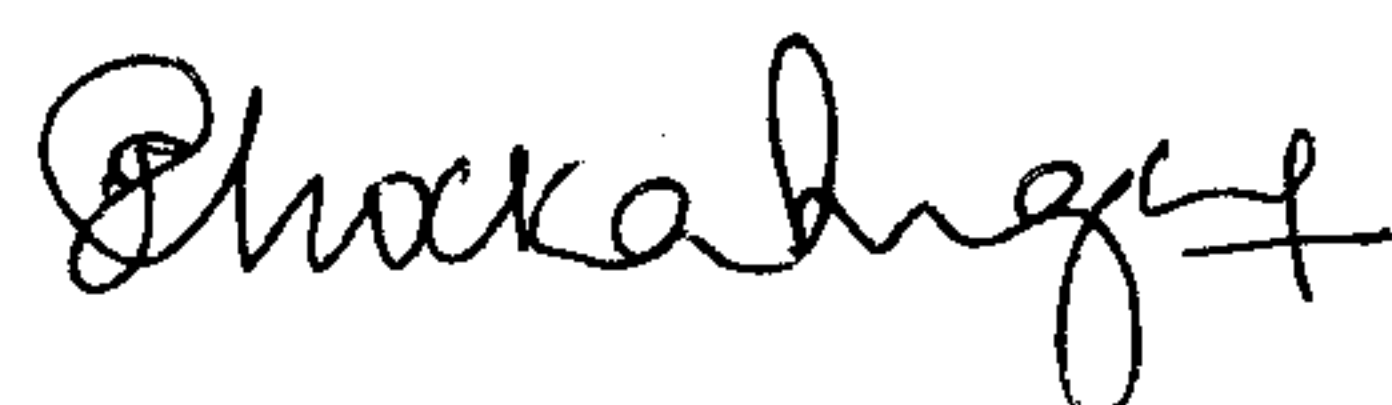
Appearance:

Advocate Mr. Ishan Shah for respondent
PCS Mr. Amrish Gandhi for operational creditor

ORDER

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

1. Mr. Dhimant Gheewala, on behalf of the operational creditor M/s. C. Girdharlal Gheewala 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"].





2. The applicant/operational creditor is a registered partnership firm having PAN AABFC7076K and having registered office at 7/4580 Delhi Gate Dangi Sheri, Station Road, Surat, Gujarat State is engaged in the supply of food items like cashew kernels wholes/spotted/tudka etc.
3. The respondent/corporate debtor is a company registered under the Companies Act, 2013 incorporated on 03.03.2017 having identification No. U15549GJ2017PLC096061 having registered office at Atlanta Enterprise, 3rd Floor, Shop No. 243, Moje. Althan, Bhimrad Canal Rad, Surat 395 017, Gujarat State. Authorised share capital of the respondent company is Rs. 9,50,00,000/- and paid up share capital is Rs. 5,20,00,000/-.
4. The applicant/Petitioner submitted that the applicant had raised invoices towards supply of goods i.e. cashew kernels wholes/spotted/tudka on credit and supplied on 19.09.2017 and issued two invoices both dated 19.09.2017 as per the details given at Annexure II/3 and II/4 to the application respectively amounting to Rs. 11,90,545/- and Rs. 14,19,414/- aggregating to **Rs. 26,09,959/- (Rupees twenty-six thousand nine lacs nine hundred fifty-nine only)**.
5. The applicant has further submitted that the terms of the two invoices are as under: -

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- (i) We reserve the right of recovery before due date at any time;
 - (ii) The sale is understood to have been made after due consideration of quality of goods and prevailing rates;
 - (iii) Report shall have to be presented within 24 hours of delivery, where after no complaints of any change in quality or shortage of quantity shall be considered;
 - (iv) The goods are despatched at buyer's risk;
 - (v) The payment of this shall be made by the due date failing which interest at the rate of 2.5 % per month shall be charged from the due date.
6. The applicant has further submitted that both the invoices dated 19.09.2017 are signed by Managing Director of the respondent company. That in lieu of the two invoices dated 19.09.2017, corporate debtor issued post-dated cheques dated 16.10.2017, 17.10.2017, 18.10.2017, 23.10.2017 and 24.10.2017 totally amounting to Rs. 26,09,959/- and upon presentation of the said cheques by the operational creditor, all the four cheques, except the cheque dated 16.10.2017 for Rs. 5,00,000/-, were dishonoured for want of funds. That, when the operational creditor informed the corporate debtor that the four cheques were dishonoured, corporate debtor deposited a sum of Rs. 25,000/- on 01.12.2017 by way of NEFT in the account of the operational creditor. Thus against the total debt of Rs. 26,09,959/-, the

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corporate debtor has paid a total sum of Rs. 5,25,000/- only as on 01.12.2017. That, thus the outstanding (principal) dues of the corporate debtor is Rs. 20,84,959/- plus interest as per the terms of the invoices.

7. The applicant has further submitted that with a view to clear the outstanding dues amounting to Rs. 20,84,959/-, the corporate debtor issued eight post-dated cheques each of Rs. 2,50,000/- of different dates between the period from 21.11.2017 to 09.01.2018, aggregating to Rs. 20,00,000/- Copy of said cheques are placed at page No. 108 to 115 to the application. Thereafter, the corporate debtor and the operational creditor executed a Memorandum of Understanding (MoU) wherein the corporate debtor admitted its liability to pay a sum of Rs. 20,48,959/- to the operational creditor towards the outstanding dues of the two invoices dated 19.09.2017 and issued eight cheques dated between 21.11.2017 to 09.01.2018. However, upon request of the respondent, aforesaid cheques were not deposited in the bank on the promise by respondent that fresh cheques will be issued in lieu of the cheques issued earlier. As no post-dated cheques came to be issued by the corporate debtor on the basis of the MoU dated 05.02.2018, the operational creditor deposited all the eight cheques issued by the respondent earlier, came to be dishonoured by the bank. Therefore, the operational creditor, through its advocate, issued a notice dated 15.03.2018 under section 138 (B) of the Negotiable Instruments Act, 1881 to

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the Managing Director of the respondent company which was replied by the corporate debtor vide letter dated 27.03.2018 and the said letter was replied by the operational creditor vide letter dated 13.04.2018. Thereafter, operational creditor issued demand notice in form III read with Rule 5 of the Insolvency and bankruptcy (Application to Adjudicating Authority) Rule 2016 on 05.05.2018 which was received by the respondent on 09.05.2018 and replied through advocate vide letter dated 16.05.2018.

8. It is further submitted by the operational creditor that the corporate debtor has taken a stand which is wholly contrary and inconsistent with the MoU dated 05.02.2018.
9. In support of its claim, the petitioner has submitted copy of all the documents referred to in this application.

Findings:

10. Heard the learned counsels for both the sides and perused the documents submitted by the parties.
11. On perusal of the records it is found that the respondent has not filed any reply and has not raised any dispute regarding the operational debt payable to the operational creditor

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except other than the reply given to the demand notice issued by the applicant.

12. During the course of hearing the learned lawyer appearing on behalf of the respondent fairly submitted that the respondent company is not in a position to pay the debt and in view of that he has not filed reply/objection.
13. 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?
14. In view of the aforesaid discussions and before rejecting and/or admitting the application, we must refer to the legislation guide on Insolvency Law of United Nations

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Commission on International Trade Law. One of the things the Legislative Guide spoke about was whether the debt is subject to a legitimate dispute or set off, in an amount equal to or greater than the amount of the debt.

15. 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. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section (5) of 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.
16. That, the Application filed by the Applicant is complete in all respects.
17. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Bhupendra Singh Narayan Singh Rajput, A-309, ATMA House, Opp. Old Reserve Bank of India, Ashram Road, Ahmedabad 380 009 (cabsrajput309@gmail.com Mobile 9426014155) having registration No.IBBI/IPA-001/IP-P00397/2017-2018/10715



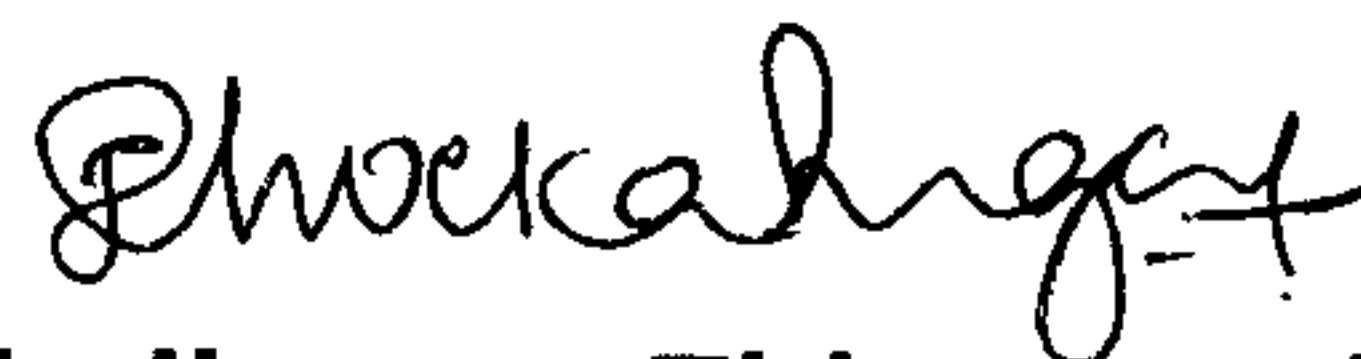
to act as an interim resolution professional under Section 13(1)(c) of the Code.


18. 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.
19. 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.

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20. 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.
21. 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.
22. This Petition stands disposed of accordingly with no order as to costs.
23. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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