

BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free of Cost Copy

C.P. (I.B) No. 360/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 22.11.2019

Name of the Company: Pankaj Steel
V/s.
BTI Tex Pvt. Ltd.

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

S.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.

2.

ORDER

None appeared for the parties.

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



Chockalingam Thirunavukkarasu
CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 22nd day of November, 2019

Manorama Kumari
MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No. (IB) 360/9/NCLT/AHM/2018

In the matter of:

Pankaj Steel
Shed A 2-9
Plot No. 130
A-Road
AJI GIDC
Rajkot

Petitioner
Operational Creditor

Versus

BTI Tex Private Limited
Shrine Co.op. Industrial Estate
Behind Gujarat Bottling
National Highway
Rakhial
Ahmedabad-380 023

Respondent
Corporate Debtor

Order delivered on 22nd November, 2019.

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

Appearance:

Advocate Mr. Jainil Shah for petitioner

ORDER

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

1. Mr. Chirag Pankajbhai Modia, being partner of M/s. Pankaj Steel filed this Petition on 24th July, 2018 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.



Chirag Pankajbhai Modia

Manorama Kumari

2. The applicant/operational creditor is a registered partnership firm under the provisions of the Indian Partnership Act, having registered office at Aji GIDC, Rajkot engaged in supply of di-casted pipe scrap, scrap iron, pig iron SIL, pipe scrap annealed (broken), pig iron pencil and chips.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 01.04.2005 having Identification No. U29260GJ2005PTC045808 and having registered office at Rakhial, Ahmedabad 380 023, Gujarat State. Authorised share capital of the respondent company is Rs. 75,00,000/- and paid up share capital is Rs. 71,99,500/-. The corporate debtor company is engaged in manufacturing and supplying textile machine and spares.
4. The applicant/Petitioner has submitted that few years back the respondent company approached the applicant for the purpose of purchasing various goods such as di-casted pipe scrap, scrap iron, pig iron SIL, pipe scrap annealed (broken), pig iron pencil and chips etc. Pursuant to the demands of the respondent company, the applicant had supplied materials worth Rs. 1,03,05,799/- to the respondent company from 15.10.2015 to 06.04.2016 and the applicant had raised invoices against said sales and supply of goods which were duly accepted by the respondent company without raising any complaint. According to the



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applicant, the respondent company used to make part payments to the applicant company from time to time and the last payment of Rs. 71,31,602/- was made on 30.06.2016. Thereafter, despite repeated requests, the respondent company did not make any payment and, therefore, total outstanding of Rs. 31,74,197/- (**Rupees thirty-one lacs seventy-four lacs one hundred ninety-seven only**) is due from the respondent company as per the details placed at page No. 15-39 of the instant petition. The claim raised by the petitioner is against the supplies made during the period from 15.10.2015 to 06.04.2016

5. In support of its claim, the petitioner has submitted copy of the demand notice dated 31.05.2018 along with copy of invoices and track report of delivery of demand notice, copy of the ledger accounts, copy of bank statement and table showing computation of default by corporate debtor.
6. The applicant has also filed additional affidavit in support of the instant application.
7. The respondent/corporate debtor has filed affidavit in reply enclosing therewith copy of accounts of the respondent company with applicant and financial results of the respondent company for the year 2017-18 showing that it is a going concern and the business relations with the applicant were smooth.

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8. In the reply, the respondent has submitted that the averments and statements made by the applicant are emphatically denied. That, the respondent company is having business relations with the applicant company for more than three generations.
9. It is further submitted by the respondent that the goods supplied by the applicant against which the claim has been made by the applicant, were of inferior/debris quality. That, it is not the case of the respondent company that they are unable to pay the outstanding, but the materials supplied by the applicant were of inferior quality and of no use for which the respondent cannot be made liable to make the payment. That, the respondent requested the applicant to issue credit note for the bills issued by the applicant, but the respondent remaining in good faith did not initiate any legal or arbitration proceedings. That, the applicant has suppressed these material facts and has not come with clean hands. That, when the demand notice came to be served, the respondent was on business tour and therefore the demand notice could not be replied. That, since the claim raised by the applicant is illegal, the Adjudicating Authority may reject this application.

Findings

10. Heard learned lawyer appearing for the petitioner also seen the documents annexed to the application. On the date of

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hearing the respondent was absent. On perusal of the records it is found that the corporate debtor was well aware about the pendency of the instant application as the corporate debtor has already filed reply. Not only that, on number of occasions the respondent sought adjournment. Since the petitioner is objecting for further adjournment, the matter has to be heard in absence of the corporate debtor.

11. On perusal of the records it is found that despite raising allegations against the applicant regarding inferior quality of the goods supplied to the respondent, no document has been produced by the respondent to substantiate its claim that the goods supplied by the applicant during the period from **15.10.2015 to 06.04.2016** against which the claim has been made by the applicant are/were of inferior quality. Records show that the respondent had made last payment on **30.06.2016** i.e. after the last invoice dated 06.04.2016 was raised by the applicant and the said fact is also admitted by the corporate debtor. Moreover, no document like debit note or any complaint in writing regarding inferior quality of the material ever raised and/or produced on record to support the contention. On one hand the respondent claims that the goods supplied were of inferior quality, on the other hand record shows that the respondent had made last payment on **30.06.2016**. Had there been any serious complaint about the quality of goods supplied by the applicant, the respondent should have returned the goods and/or would have retained the payment.



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12. On perusal of the records it is also found that only after filing the instant application by the operational creditor the respondent has raised the dispute regarding the quality of goods. It is also a matter on record that the respondent never raised any dispute on receipt of demand notice issued under Section 8 of the I & B Code and has also admitted in reply that the corporate debtor has not replied to the demand notice by way of raising any dispute.

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.



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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 IB Code as enshrined in the Code. Moreover, the corporate debtor admitted in his reply that he has already made part payment towards the total dues so claimed by the applicant. 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 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 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. That, the Application filed by the Applicant is complete in all respects and is in accordance with the I & B Code and the Rules made thereunder.

16. 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 Insolvency 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.

17. 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.
18. 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);



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(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.

19. 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.
20. 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.
21. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri. Saurabh Jhaveri, 620 Jolly Plaza, 6th Floor, Athwagate, Surat 395 001 (saumeg@gmail.com) (Mobile: 9228427123) having registration No. IBBI/IPA-002/IP-N00068/2017-18/10146 to act as an Interim resolution professional under Section 13(1)(c) of the Code.



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22. This Petition stands disposed of accordingly with no order as to costs.
23. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
24. 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.



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Chockalingam Thirunavukkarasu
 Adjudicating Authority
 Member (Technical)

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Ms. Manorama Kumari
 Adjudicating Authority
 Member (Judicial)



