

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

C.P. (I.B) No.328/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 10.02.2020**

Name of the Company: Piyush Dineshbhai Bhatt
V/s
Bansal Fintrade 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>
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2.

ORDER


None appeared on behalf of the parties.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 10th day of February, 2020



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 328/9/NCLT/AHM/2019

In the matter of:

Piyush Dineshbhai Bhatt
Plot No. C/4777
Ayodhyanagar
Kaliyabid
BHAVNAGAR 364 002

:

Petitioner
Financial Creditor

Versus

M/s. Bansal Fintrade Private Limited
Plot No. 2137
Nr. Golden Arc
Atabhai Road
BHAVNAGAR 364 002
Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 10th February, 2020

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

Appearance:

PCS Mr. Vinid Nagar for petitioner.
Mr. Bharat Parikh, Manager of the respondent company for respondent

ORDER

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

1. Mr. Piyushbhai Dineshbhai Bhatt being operational creditor 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 commission agent having identification (PAN) AKMPB1078M.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 26.02.2009 having identification No. U65999GJ2009PTC107234 and having registered office at Bhavnagar, Gujarat State. Authorised share capital of the respondent company is Rs. 55,00,000/- and paid up share capital is Rs. 51,00,000/-.
4. The applicant/operational creditor has stated that an amount of Rs. 4,20,000/- (Rupees four lacs twenty thousand only) and interest on delayed payment at the rate of 18% per annum from due date till actual realisation is overdue on account of commission charged accrued during the period from 1st April 2018 to 31st March 2019 from the corporate debtor. That, Mr. Piyush Bhatt (operational creditor) provided service of broker/commission agent to the corporate debtor and a total sum of Rs. 4,20,000/- is outstanding against invoice No. 1 dated 28th February, 2019 raised by the operational creditor.
5. The operational creditor has stated that inspite of repeated requests and reminders, the corporate debtor failed and neglected to make payment of outstanding dues and the operational debt became due on 28th February, 2019. Under such circumstances, the operational creditor issued demand

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notice on 17.04.2019 in terms of section 8 of the insolvency and bankruptcy Code in form 3. That, inspite of receipt of the said notice, the corporate debtor within a period of 10 days, neither paid the outstanding dues nor replied to the said notice. That, after receipt of the notice, the corporate debtor has not raised any dispute about the operational debt payable to the operational creditor.

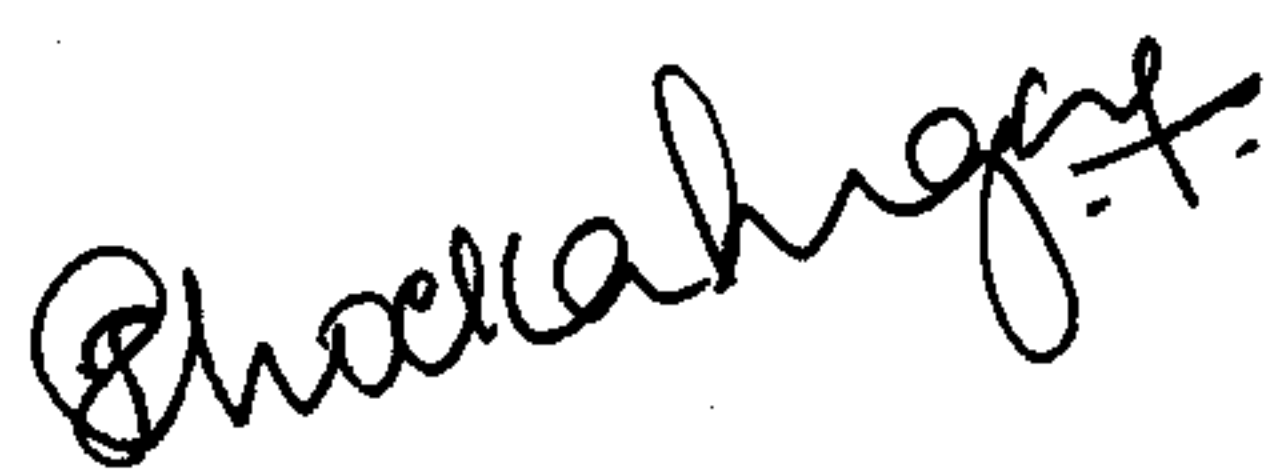
6. In support of its claim the operational creditor has furnished relevant documents like copy of demand notice, affidavit in support of the application, form 2 – consent form of IRP, copy of ledger account, bank statement etc.
7. Mr. Bharatbhai Parekh, authorised representative of the respondent company filed affidavit inter alia stating that the respondent company has availed the facility of broker/commission agent from Mr. Piyushbhai Bhatt and in said regards we have received the invoice amounting to Rs. 4,20,000/-. That, with regard to the said unpaid operational debt, the respondent company has failed to pay the said operational debt considering the reason of financial instability and due to adverse market conditions, therefore, the respondent company is unable to fulfil the said debt. That, considering the reason of non-payment of said operational debt, the respondent company has no objection in admitting the claim and for initiation of corporate insolvency resolution process.

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Findings

8. On perusal of the record it is found that Manager of the respondent company appeared and fairly admitted the debt. Heard the counsel appearing on behalf of the applicant and perused the documents annexed to the application.
9. 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 and/or any pre-existing dispute regarding the operational debt from the corporate debtor.
10. 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 to the Applicant.
11. In the instant case, 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'.
12. On perusal of the records it is also found that the corporate debtor has never raised any dispute on issuance of notice u/s 8 of the I & B Code nor have ever raised any dispute prior to the issuance of notice.



13. From the above discussions it is evident that the respondent has defaulted the debt and has admitted the operational debt.
14. 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.

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

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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.

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-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.

17. 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

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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 subsection (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.

19. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be

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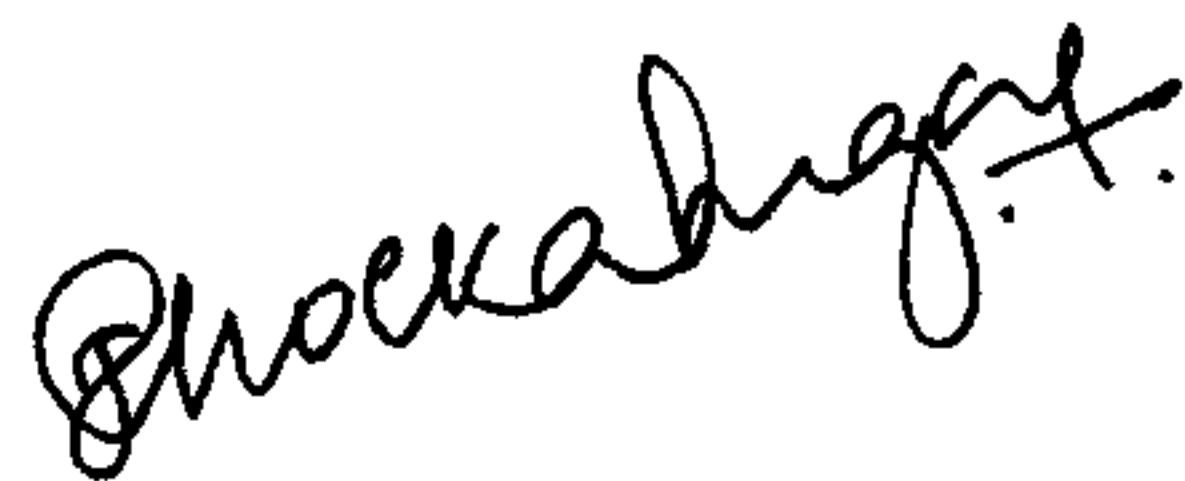
terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

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 proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Tejas Shah, B-201, Narayankrupa Avenue, Opp. Prernatirth Derasar, Jodhpur, Satellite, Ahmedabad 380 015 (tejasshah44@yahoo.com) having registration No. IBBI/IPA-001/IP-P00089/2017-2018/10185 to act as an interim resolution professional under Section 13(1)(c) of the Code.
22. This Petition is accordingly admitted.

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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.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

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Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)