

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


C.P. (I.B) No. 250/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 08.01.2020**

Name of the Company: Aditya Fabricator  
V/s  
Balaji Fiber Reinforce Pvt Ltd

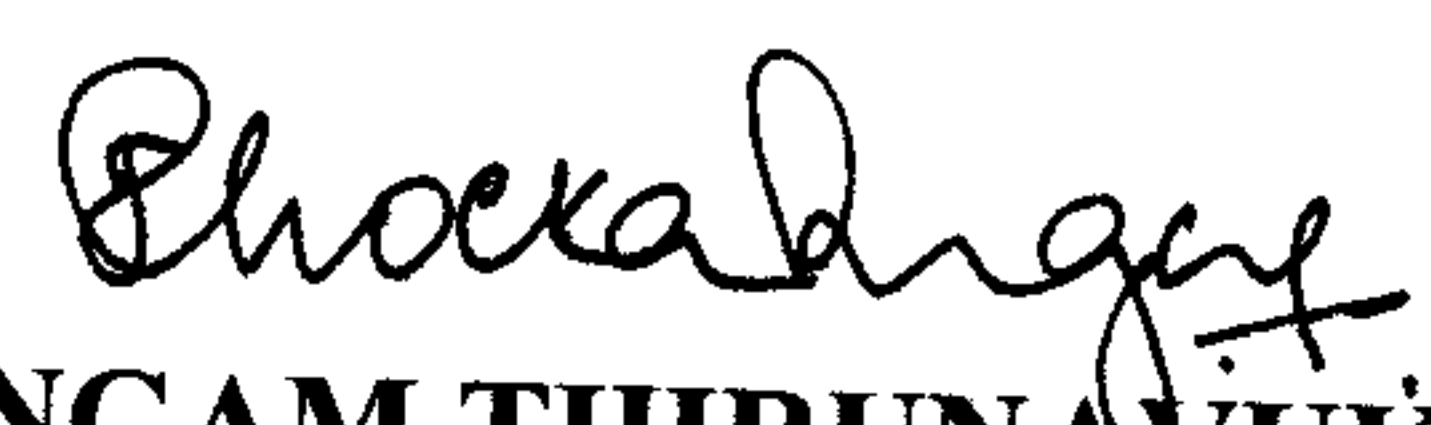
Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	NIDUN SIWGHUJI	ADV	APP	n
2.	VISMAL J DAVE PRAGATI TIWARI			v
3.	AMAN SHANKAR PANKAJ JAIN	Adv.	Respondent	


**ORDER**

The parties are represented through learned counsels.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
MEMBER TECHNICAL

Dated this the 8th day of January, 2020

  
**MANORAMA KUMARI**  
MEMBER JUDICIAL

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

**C.P. No. (IB) 250/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Aditya Fabricators**

House No. 197-198, 1<sup>st</sup> Floor

Pocket G-23, Sector - 7

Rohini

DELHI 110 085

:

**Petitioner**

Operational Creditor

**Versus**

**M/s. Balaji Fiber Reinforce Inforce Ltd.**

Survey No. 293

Sakarda Badrva Road

Nr. S.D. Fine Chem

Vill. Poicha

Tal. Savli

VADODARA 391 780

Gujarat State

:

**Respondent.**

Corporate Debtor

**Order delivered on 8<sup>th</sup> January, 2020.**

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

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

**Appearance:**

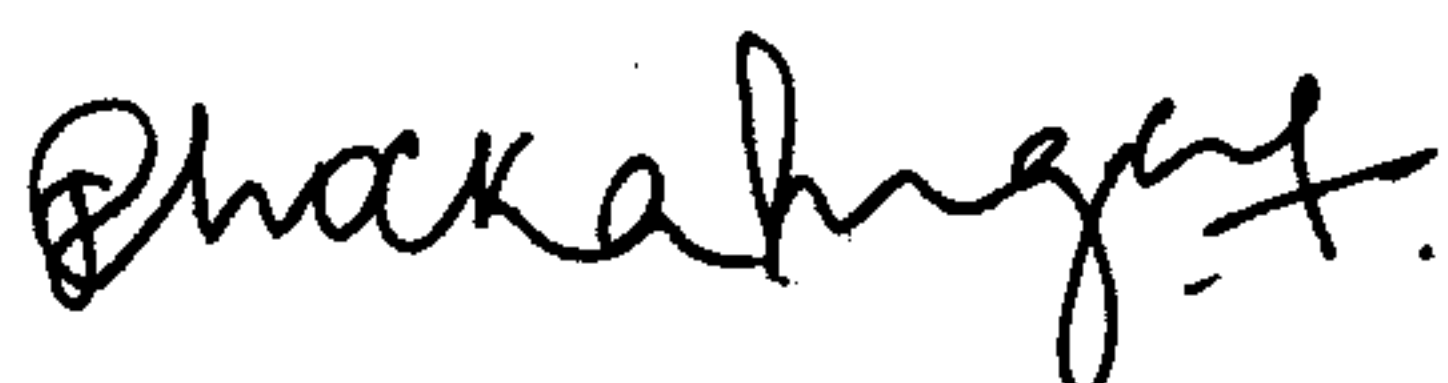
Advocates Mr. Nipun Singhvi along with Advocate Mr. Vishal Dave  
and Advocate Ms. Pragati Tiwari.

Advocates Mr. Aman Shankar for respondent.

**ORDER**

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

1. Mr. Pramod Thati, being authorised person on behalf of the operational creditor M/s. Aditya Fabricators 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 partnership firm established in 2012 having PAN AAUFA8964F and having registered office at Rohini, Delhi is engaged in the business of supply and trading of polyester resin, dmc resin, gp resin etc.
3. The respondent corporate debtor is a private limited company registered on 30.03.2007 having registration No. U25206GJ2007PTC50407 having its registered office at Vadodara, Gujarat state. Authorised share capital of the respondent company is Rs. 1,50,00,000/- and paid up share capital is Rs. 1,33,59,550/-.
4. The applicant/Petitioner has submitted that the respondent company is in total default of **Rs. 85,43,026/- (Rupees eighty-five lacs forty-three thousand twenty-six only)** which includes interest @ 18% per annum. That, the total cost of goods supplied to the respondent till 03.07.2017 is of Rs. 64,31,782/- plus interest of Rs. 21,11,244/- from the date of default to the date of demand notice on outstanding payable to the applicant towards the value of goods sold and delivered by the applicant to the corporate debtor from time to time as evidenced in the ledger.

*Shakir Singh*

*Sharma*

5. The operational creditor has further stated that upon completion of its obligation, it raised invoices towards the goods duly delivered and consumed by the corporate debtor. Despite reminders the corporate debtor failed to pay the outstanding dues and, therefore, the operational creditor was compelled to issue demand notice under Section 8 of the I & B Code on 11.01.2019 seeking payment of the aforesaid outstanding amount.
6. In support of its claim, the petitioner has submitted copy of documents like invoices, demand notice, statement of accounts, bank statement, authority letter, affidavit in support of the application and consent letter of IRP in form No. 2.

### **Findings**

7. On receipt of the notice the corporate debtor appeared through counsel. On perusal of the records it is found that despite giving several opportunities, the respondent has not filed any reply and availed adjournments on the ground of settlement on each and every date from 01.08.2019. On the pretext of settlement, the respondent not only getting the case adjourned from time to time but also avoiding to file reply.
8. During the course of arguments, learned lawyer appearing on behalf of the petitioner filed one pursis showing that the

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*Sharma*

cheque of Rs. 25.00 lacs issued by the respondent towards settlement has been dishonoured.

9. On perusal of the records it is found that having failed to get the outstanding payments from the respondent, the applicant was compelled to issue demand notice under section 8 of I & B Code on 20.01.2019. Record also shows that the respondent has not raised dispute against the demand notice, so issued by the applicant.
  
10. On perusal of the record it is found that the petition is complete in all respect.
  
11. 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?

*Shoekabegum*

*Humai*

If any of the aforesaid conditions is lacking, the application would have to be rejected.

12. 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 and payable to the Applicant and it fulfilled the requirement of IB Code as enshrined in the Code. 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 there is/are occurrence of default on the part of the corporate debtor 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.
- 13 It is also a matter of record that the corporate debtor has issued a cheque in favour of the applicant for Rs. 25.00 lacs and the said cheque has been dishonoured; that itself amount to admission on the part of the corporate debtor.
14. 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.

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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-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. 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.

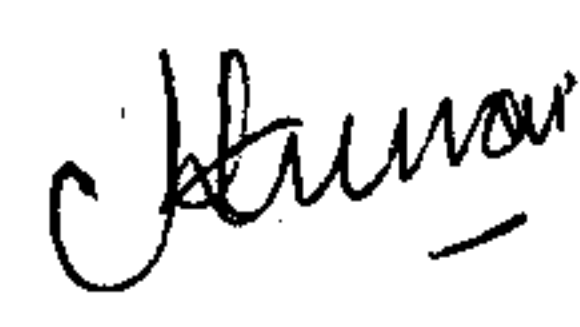
17. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
18. 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.
19. The applicant/operational creditor has proposed name of Mr. Paresh Chandulal Mehta to act as IRP. Therefore, this Adjudicating Authority hereby appoint Mr. Paresh Chandulal Mehta, B-13, Nirmal Society, Pandurang Wadi, Dombivli (East), Thane - 421 201 having registration No. IBBI/IPA-003/IP-N00099/2017-18/11008 to act as an interim resolution professional under Section 13(1)(c) of the Code.

*Shankar Singh*

*Shankar Singh*

20. This Petition is accordingly admitted.
21. Communicate a copy of this order to the applicant, Corporate Debtor and to the Interim Resolution Professional.
21. Registry is directed to inform the office of the 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 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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