

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

**C.P. (I.B) No. 122/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 17.09.2020**

Name of the Company: Parker Hannifin India Pvt Ltd  
V/s  
A-One Parts & Services Ltd

Section : 9 of the Insolvency and Bankruptcy Code, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

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 17th day of September, 2020



**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**C.P. No. (IB) 122/9/NCLT/AHM/2019**

**In the matter of:**

**Parker Hannifin India Private Limited**

115, Free Press House  
Free Press Journal Road  
Nariman Point  
MUMBAI 400 021

:

**Petitioner**  
Operational Creditor

**Versus**

**M/s. A-One Parts & Services Limited**

Survey No. 154, 34 km milestone  
Bhuj – Bhachau Road  
Village Kanaiyabe  
Bhuj 370 020  
Gujarat State

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 17<sup>th</sup> September, 2020**

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

**Appearance:**

Advocate Mr. Harmish Shah for petitioner.  
Advocate Mr. Raheel Patel for respondent

**ORDER**

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

1. Mr. Ashwin Gupta, Director, being authorised person, on behalf of M/s. Parker Hannifin India Private Limited 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.





2. The applicant/operational creditor is a private limited company registered under the provisions of Companies Act, 1956 having identification No. U29119MH1989PTC050377 and having its registered office at Mumbai and engaged in the business of manufacturing and supply of automobile parts.
3. The respondent/corporate debtor is a limited company registered under the provisions Companies Act, 1956 on 19<sup>th</sup> September, 2011 and having identification No. U35923GJ2011PLC067191 and having registered office at Bhuj, Gujarat State. Authorised share capital of the respondent company is Rs. 5,00,000/- and paid up share capital is Rs. 5,00,000/-
4. The applicant has submitted that, during the course of its business, against purchase order dated 14.05.2015, under different invoices/delivery challans, had supplied goods worth Rs. 52,81,605/- to the respondent company during the period from 31.10.2015 to 29.01.2016 (page 19-27). It is further submitted that an amount of Rs. 29,06,013/- has been accrued upon the above outstanding and the applicant is eligible to receive a total sum of **Rs. 81,87,618/- (Rupees eighty-one lacs eighty-seven thousand six hundred eighteen only)**, therefore this petition.
5. The applicant in support of its claim has furnished copy of documents like delivery challan, invoice, ledger/account statement, computation chart, notice dated 20.06.2018 and notice dated 11.12.2018 etc.
6. On issuance of notice, the respondent filed affidavit in reply inter alia raising objections and challenging maintainability of the petition on different aspects.



**Findings:**

7. Heard the learned advocates appearing for both the sides and perused the documents filed by the applicant/respondent.
8. On perusal of the record it is found that the demand notice which is a pre-requisite under section 8 of the Insolvency & Bankruptcy Code, 2016 for filing the petition under section 9, has not been issued. On perusal of the record it is found that the notices issued by the applicant dated 20.06.2018 (page 621) and dated 11.12.2018 (page 633) are not as per Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The IB Code mandates a clear procedure which ought to be followed prior to initiation of proceedings and issuance of demand notice is essential requirement which ought to have been complied by the applicant. For the sake of convenience Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 is reproduced herein below: -

**5. Demand notice by operational Creditor: -**

- (1) *An operational creditor shall deliver to the corporate debtor the following documents, namely*
- (a) *Demand notice in form 3 or*
- (b) *a copy of an invoice attached with a notice in form 4*
- (2) *The demand notice or the copy of the invoice demanding payment referred to in sub-section (20 of section 8 of the Code, may be delivered to the corporate debtor,*
- (a) *at the registered office by hand, registered post or speed post with acknowledgement due; or*
- (b) *by electronic mail service to a whole time director or designated partner or key managerial personnel, if any, of the corporate debtor.*

*Shoekhan*

*Channer*

9. It is also found that the aforesaid notices dated 20.06.2018 and dated 11.12.2018 were signed and issued by one Mr. Pranav Ramparia, said to be Director of the applicant company. However, it is found that Mr. Pranav Ramparia has not been given any authority by the applicant company to issue demand notice and to initiate CIRP proceedings against the respondent, either by way of Board Resolution or by any letter of authority. Admittedly, Director of a company can issue the notice on behalf of the company but due authorisation is required by passing of resolution in duly convened Board Meeting and in the instant case no such authority is given to Mr. Pranav Ramparia, Director.
10. Notwithstanding the above, it is also found that out of the eight invoices against which the claim has been made by the applicant, four invoices are of the year 2015 and are barred by limitation. Moreover, the applicant has not produced an affidavit to the effect that no notice is given by the corporate debtor relating to a dispute of the unpaid operational debt which is mandatory as per Section 9 (2) (b) of the Insolvency and Bankruptcy Code, 2016.
11. Under the facts and circumstances the petition is bad in the eye of law and not maintainable on the very reason that the demand notice is issued without any authority.
12. In the result, company petition No. CP (IB) 122 of 2019 stands dismissed and disposed of. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



13. No order as to cost.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**



**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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