

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

C.P. (I.B) No. 503 /9/NCLT/AHM/2018

Coram: **Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL**
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.07.2019**

Name of the Company: Colorobbia Chemicals India Pvt. Ltd.
V/s.
Swastik Ceracon 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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1.

2.

ORDER

None is present for the parties.

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

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MANORAMA KUMARI
MEMBER JUDICIAL

Dated this the 26th day of July, 2019


HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AHMEDABAD BENCH
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C.P. (I.B.) No. 503/9/NCLT/AHM/2018

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Ms. Manorama Kumari, Member (Judicial)**

In the matter of:

M/s. Colorobbia Chemicals India Pvt. Ltd.
Having its registered office at:
Plot No. SM-21, Gate No.2,
Sanand Engineering Estate,
GIDC, Sanand-II (BOL),
Sanand,
Ahmedabad – 382110.

..... **Petitioner/ Operational Creditor**

Versus

M/s. Swastik Ceracon Ltd.
Survey No. 1071-74,
At – Nandasan-Mehsana Road,
N.H. No.8, Ta. Kadi,
Nandasan, Mehsana,
Gujarat – 380706.

..... **Respondent/ Corporate Debtor**

Appearance:

Ms. Prachi Shah along with Ms. Pooja Singh, Advocates for the
Petitioner/ Operational-Creditor.

Mr. Arjun R. Sheth, Advocate for the Respondent/ Corporate-
Debtor.

Order delivered on 26th July, 2019

Arjun R. Sheth

[Signature]

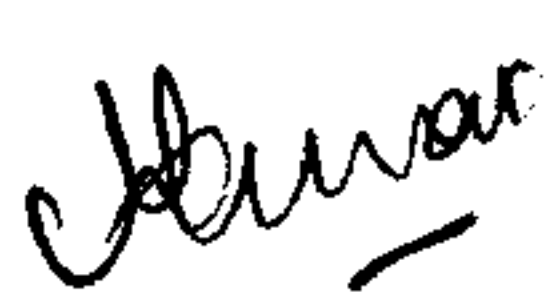
ORDER**[Per: Shri Harihar Prakash Chaturvedi, Member (Judicial)]**

1. M/s. Colorobbia Chemicals India Pvt. Ltd. being an operational creditor through its Authorised Representative and the whole time Director Mr. Roy Francis Basil has 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") with a request to initiate Corporate Insolvency process in respect of M/s. Swastik Ceracon Limited being a corporate debtor.
2. M/s. Colorobbia Chemicals India Pvt. Ltd. is a company registered under the Companies Act, 1956 having CIN: U24121GJ2012PTC070752. The company appears to be engaged in trading of colour ceramic glaze and other related chemicals. The whole time Director of the company is Mr. Roy Francis Basil. The registered office of the company is situated at: Plot No. SM-21, Gate No. 2, Sanand Engineering Estate, GIDC, Sanand-II (BOL), Sanand, Ahmedabad – 382110.
3. The Respondent/Corporate Debtor is M/s. Swastik Ceracon Limited. The company was incorporated on 31.01.2005 with CIN: U26920GJ2005PLC045383. The Managing



Director of the company is Mr. Girishkumar J. Patel and whole-time Directors are Mr. Jigarkumar K. Patel and Mr. Pankaj N. Patel. The company appears to be dealing in ceramic materials. The Authorised Share Capital of the company is Rs.23,50,00,000/- (Rupees Twenty-Three Crores Fifty Lakhs Only) and the paid-up share capital is Rs.22,21,17,070/- (Rupees Twenty-Two Crores Twenty-One Lakhs Seventeen Thousand Seventy Only) divided into 2,22,11,707 equity shares of Rs.10/- (ten) each. The registered office of the Corporate Debtor Company is situated at: Survey No. 1071-74, At Nandasan-Mehsana Road, N.H. No.8, Ta. Kadi, Nandasan, Mehsana – 380706, Gujarat, India.

4. The Applicant/Operational-Creditor submits that the Corporate-Debtor had been in a need of products (“Ceramic Glaze”), which, the Applicant manufactures and hence, the Corporate-Debtor purchased the same from the Applicant from time to time. The Applicant supplied the products as per the requirements of the Corporate Debtor from time to time in accordance with the purchase orders of the Corporate Debtor. The applicant raised invoices accordingly for each purchase order. It is submitted that due to long standing business relationships, the said orders were also placed telephonically.



5. It is submitted that as per the terms and conditions mentioned in the purchase order as also the invoices raised by the Applicant in favour of Corporate Debtor, the Corporate Debtor was obliged to pay to the Applicant the amount against the invoices within ninety (90) days from the date of each invoices so raised.
6. The Corporate-Debtor, towards the discharge of its payment obligations had issued four (04) cheques drawn on State Bank of India & Overseas Branch in favour of the Applicant being issued cheque no. 551648 for **Rs.1,25,000/-**, cheque no. 551651 for **Rs.1,50,000/-**, cheque no. 551652 for **Rs.1,50,000/-** and cheque no.551653 for **Rs.1,50,000/-**.
7. The said cheques were deposited by the Applicant with HDFC Bank, Branch - Ashram Road, Ahmedabad - 380009. The details of which are as under:

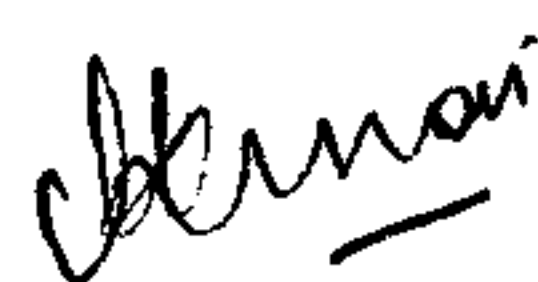
Sr.	Cheque No.	Date of Deposition	Presented for Clearing
1	551648	23.08.2017	23.08.2017
2	551651	23.08.2017	23.08.2017
3	551652	23.08.2017	23.08.2017
4	551653	31.08.2017	31.08.2017

8. However, all of the above mentioned cheques were returned unpaid with remarks "Exceeds arrangement" in the Corporate-Debtor's account. The applicant has annexed the copies of the above cheques in detail along with the present application.





9. It is pertinent to note here that later on, certain payments were made through RTGS to the applicant and last payment was made on 31.12.2017, which received for an amount of Rs.1,00,000/- through the RTGS, but thereafter no further payment is received by the Petitioner from the Corporate-Debtor.
10. The applicant submits that, since the Corporate-Debtor has failed to make the payment of total outstanding amount of Rs.40,72,020.42/- (Rupees Forty Lakh Seventy Two Thousand Twenty and Forty-Two paise only). [being the principal amount of Rs.31,56,808/- and interest of Rs.9,15,212.42/- calculated @ 18% P.A. from date of invoice.
11. The Applicant had issued a statutory notice under the code to the Corporate-Debtor being notice dated 09.07.2018 delivered to the Corporate-Debtor on 17.07.2018 as per the postal track receipt. The Applicant has annexed with a copy of the said demand notice along with outstanding invoices and computation of interest as a proof of service along with the present I.B. Petition. It is also submitted that the applicant has not received any response or reply of the said statutory demand notice issued under the I.B. Code.






12. From the facts and circumstances narrated hereinabove, it emerges that the Corporate-Debtor is not in a position to discharge its liabilities towards its Creditors. It appears that the Corporate-Debtor has lost its financial credibility and is not in a position to make payment of dues, outstanding towards its Operational-Creditors, including the applicant. The applicant has averred that the Corporate-Debtor has lost its financial substratum and in such conditions, the Corporate-Debtor should not be permitted to function. As this will result into a situation whereby other persons/creditors of the Corporate-Debtor will become unpaid Creditors of the Corporate-Debtors.

13. The Applicant further stated that the said Corporate-Debtor is unable to pay its debts and is commercially insolvent. Hence, it would be just and equitable in the circumstances that the C.I.R.P. to be initiated in respect of the company under the provisions of the Insolvency and Bankruptcy Code, 2016 by this Adjudicating Authority.

14. It is also contended by the Petitioner that the amount due to the Applicant from the Respondent is in respect of supply of goods. The claim made by the Applicant is in respect of provision of goods. Therefore, the amount claimed by the Applicant from the Respondent falls within the definition of "Operational Debts" within the meaning of




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Section 5, sub-section (21) of the Code. As the operational debt is due to the present Petitioner by the Corporate-Debtor, hence, the Petitioner can be treated as the Operational-Creditor within the meaning of sub-section (5) of Section 20 of the Code.

15. As the amount of debt is due from the Respondent to the Petitioner and the Respondent is a Company registered under the Companies Act. Therefore, it is a Corporate-Debtor within the meaning of sub-section (8) of Section 3 of the Code.
16. It is also reported that no notice of dispute has been received from the Respondent Company even after receipt of demand notice issued by the present Petitioner. Hence, filing of the present I.B. Petition under Section 9 of the I.B. Code is found to be in order.
17. It may be seen that the Petitioner did not propose the name of any Interim Resolution Professional in the present Petition and made a request to refer the matter to the Insolvency Board under Section 16 of the code for monitoring and/or recommending an Insolvency Resolution Professional. Therefore, there is no need to file written communication of the Interim Resolution Professional ("IRP").



18. In the light of the above stated discussion and on the basis of the material available on record, we find that it is a fit case to initiate the Corporate Insolvency Resolution Process by admitting the present I.B. Petition under Section 9(5)(1) of the Code.
19. In the light of the above discussion, the present I.B. Petition is hereby admitted under Section 9 of the I.B. Code for the initiation of the Corporate Insolvency Resolution Process in respect of the Corporate Debtor Company M/s. Swastik Ceracon Ltd.
20. This Adjudicating Authority hereby appoints Ms.Vineeta Maheshwari (having Insolvency Professional Registration No. IBBI/IPA-001/IP-P00185/2017-18/10364) as an Interim Resolution Professional, subject to confirmation received from the Insolvency and Bankruptcy Board of India. The Mobile No.9376781166 and the email ID is: vavineetak@gmail.com.
21. This Adjudicating Authority hereby declares moratorium under Section 13(1)(a) prohibiting the following as laid down in 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;*

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- (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.*

22. However, the supply of goods and essential services to the corporate debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.


23. This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14. This Adjudicating Authority shall give separate order for public announcement at the time of appointment of an Interim Resolution Professional after the proposal is received from the Insolvency and Bankruptcy Board of India.


24. The Interim-Resolution-Professional is further directed to make public announcement of moratorium in respect of

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Corporate-Debtor-Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating-Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code.

25. An authentic copy of this order be communicated by the Petitioner, to the Corporate-Debtor-Company, as well as to the Interim-Resolution-Professional and the Registrar of Companies at the earliest.
26. The present I.B. Petition stands admitted and is disposed of accordingly.


Manorama Kumari,
Adjudicating Authority
Member (Judicial)


Harihar Prakash Chaturvedi,
Adjudicating Authority
Member (Judicial)

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