

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

C.P.(I.B) No. 858/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 15.10.2020**

Name of the Company: Bhavesh Products Pvt Ltd
V/s
Harley Food Products Pvt Ltd


Section 9 of the Insolvency and Bankruptcy Code,
2016.

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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 15th day of October, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No. (IB) 858/9/NCLT/AHM/2019

In the matter of:

Bhavesh Products Private Limited

J-101, Vidarbha Mahesh Tower,
Coral Heights
Vijay Garden Bus Stop
Ghodbunder Road
Thane 400 615
Maharashtra State

:

Petitioner
Operational Creditor

Versus

M/s. Harley Food Products Private Limited

502, 5th Floor, Sundara Plus
Athunagar Mahallo
Opp. Central Bank of India
Nanpura
SURAT 395 002
Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 15th October, 2020

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

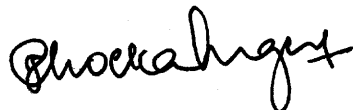
Appearance:

Petitioner : Mr. Aman Shankar, Advocate

ORDER

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

1. Mr. Shyam Agrawal, Director, being the authorised signatory, on behalf of **M/s. Bhavesh Products 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 having its registered office at Mumbai engaged in the manufacture of corrugated boxes and having identification No. U2102MH1998PTC115407.
3. The respondent/corporate debtor is a private limited company registered on 11.07.2013 under the provisions Companies Act and having identification No. U15400GJ2013PTC076005 and having registered office at Surat, 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/operational creditor has stated that, against purchase order dated 21.06.2016 (page 32) the applicant had supplied corrugated boxes to the respondent during the period from 18.08.2016 to 01.09.2016 and had raised five invoices (page 33-43). That, a total sum of **Rs. 5,86,570/- (Rupees five lacs eighty-six thousand five hundred seventy only)** is due and payable by the corporate debtor towards the aforesaid five invoices. That, interest @ 24% per annum for the delayed period amounting to **Rs. 3,54,074/- (Rupees three lacs fifty-four thousand seventy-four only)** is due and payable by the respondent as per the calculation (page 44) annexed to the application. release of advertisements for and on behalf of the corporate debtor in local daily newspapers in ordinary course of business, as per summary of various bills annexed to the application (page 79). That, as per the terms and conditions of the invoice, default occurred after 30 days from the date of every tax invoice. That, despite several reminders and

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follow-up, the corporate debtor has not made payment of the operational debt, therefore this petition.

5. The applicant/operational creditor has further stated that, having failed to receive the outstanding amount, the applicant was compelled to issue demand notice under section 8 of the I & B Code in form 3 dated 25.06.2019 calling upon the respondent to pay the principal outstanding along with interest @ 24% per annum.
6. The applicant in support of its claim has furnished copy of documents like affidavit in support of the application, Board Resolution dated 09.09.2019 authorising Director of the company to sign, execute and file application u/s 9 of the I & B Code, demand notice in form 3, affidavit of no dispute, copy of purchase order, invoices, delivery challan, calculation of interest, bank certificate etc.

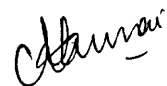
Findings:

7. On perusal of the records it is found that the instant petition filed on 25.10.2019 came to be notified for hearing for the first time on 18.12.2019 on which date Registry as well as the petitioner were directed to issue notice to corporate debtor. Notice issued through registry was delivered on 26.12.2019, but, none appeared from the side of corporate debtor. Petitioner also made paper publication on 21.02.2020. Despite giving number of opportunities the respondent never appeared in person or through representative and the service is complete. Therefore, final hearing of the matter was held on 08.10.2020 in absence of the respondent.



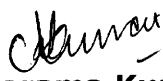


8. Heard the learned advocate appearing on behalf of the applicant and perused the application and the documents attached to the application.
9. On perusal of the records it is found that the claim made by the operational creditor is against five invoices dated between 18.08.2016 and 01.09.2016, whereas, the instant application is filed on 25.10.2019. Therefore, all the five invoices are barred by limitation.
10. Notwithstanding the above, the demand notice which is a pre-requisite under section 8 of the Insolvency & Bankruptcy Code, 2016 for filing the petition under section 9, issued by the applicant on 25.06.2019 (page 25-31) is signed and issued by Mr. Shyam Agrawal, Director of the applicant company without any authority. On perusal of the records it is also found that the authority letter/Board Resolution empowering Mr. Shyam Agrawal (page 54-55) to initiate action under section 9 of the I & B Code, is dated 09.09.2019. That means at the time of issuing the demand notice dated 25.06.2019, Mr. Shyam Agrawal, Director of the company had no authority to issue demand notice.
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/was issued without any authority which is the basis of initiation of CIRP.
12. In the result, company petition No. CP (IB) 858 of 2019 stands dismissed and disposed of without cost. 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.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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