

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

C.P. (I.B) No. 115/9/NCLT/AHM/2019

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 25.07.2019**

Name of the Company: Sakshi Garg

V/s.

Khyati Foods Pvt. Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	<i>Adityashish Parmar Adv</i>	<i>Adv</i>	<i>Petitioner</i>	<i>Adityashish Parmar</i>
2.				

**ORDER**

The petitioner is represented through their respective Learned Counsel.

The case is fixed for pronouncement of order.

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

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**MANORAMA KUMARI  
MEMBER (JUDICIAL)**

Dated this the 25th day of July, 2019.

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

**C.P. No.(IB) 115/9/NCLT/AHM/2019**

**In the matter of:**

**Ms. Sakshi Garg**  
B-64, Pocket 1, Sagar Royal Villas  
Nr. Aashima Mall  
Hoshangabad Road  
BHOPAL 462 026 (M.P) ...

**Petitioner**  
[Operational Creditor]

**Versus**

**M/s. Khyati Foods Private Limited**  
E7/80, Arena Colony  
Bhopal 462 016  
Madhya Pradesh ...

**Respondent**  
[Corporate Debtor]

**Order delivered on 25<sup>th</sup> July, 2019.**

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

**Appearance:**

Advocate Ms. Kristy Baptist for Advocate Mr. Aditya Parmar for the petitioner.  
PCA (Dr.) Hiten Parikh and Advocate Mr. Jatin Sehgal for respondent

**ORDER**

1. That, the instant application is filed by Ms. Sakshi Garg, applicant/operational creditor, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to trigger Insolvency Resolution Process against M/s. Khyati Foods Private Limited (hereinafter called as respondent/corporate debtor).



2. That, the applicant/operational creditor Ms. Sakshi Garg was appointed as financial consultant by the corporate debtor to provide financial services such as bank loan renewal, CMA preparation, credit rating co-ordination etc. for various credit facilities of the corporate debtor vide appointment letter dated 1<sup>st</sup> March, 2016. The total amount to be paid to the operational creditor for providing the above mentioned financial services was Rs. 4.00 lacs which is also clearly mentioned in the appointment letter issued by the corporate debtor.
  
3. The operational creditor has further submitted that she had timely provided the financial services to the corporate debtor and after completion of the scope of work, operational creditor raised invoice to the tune of Rs. 4,00,000/-. That, out of the said amount of Rs. 4,00,000/- the corporate debtor deducted an amount of Rs. 40,000/- towards TDS and made part payment of Rs. 1,50,000/- vide cheque dated 27<sup>th</sup> April, 2016 to the operational creditor. That, thereafter the operational creditor verbally over telephone reminded the corporate debtor several times to pay the remaining amount of **Rs. 2,10,000/- (Rupees two lacs ten thousand only)** and also issued reminder letters dated 25<sup>th</sup> October, 2018 and 10<sup>th</sup> November, 2018 demanding the outstanding amount, however, the corporate debtor has grossly failed to pay the outstanding amount. That, there is no dispute regarding the outstanding amount and the quality of the services provided by the operational

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creditor. That, the outstanding amount is acknowledged and admitted by the corporate debtor, which is also reflected in the books of accounts of the corporate debtor. That, the operational creditor issued demand notice dated 20.11.2018 as per form 3 of the IB Code and no reply has been received by the operational creditor nor any dispute is raised by the corporate debtor. That, the debt has fallen due on 30<sup>th</sup> April, 2016 and the petition is filed well within the limitation.

4. The operational creditor, in support of her claim has submitted all the relevant documents like copy of bank statement, copy of her appointment letter, copy of demand notice, copy of invoices, copy of ledger account of the operational creditor, copy of reminder letters, copy of bank statement confirming that there is no payment of unpaid operational debt by the corporate debtor and copy of consent of the proposed insolvency resolution professional.
5. That, the respondent/corporate debtor Khyati Foods Private Limited is a private limited company having identification number U01549MP2004PTC016729, having its registered office at E7/80, Arera Colony, Bhopal, Madhya Pradesh 462 016. That, authorised share capital of the corporate debtor is Rs. 12,00,00,000/- and paid up share capital is Rs. 3,25,77,040/-

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6. The respondent filed reply inter alia in para 3 of the said reply fairly admitting the debts of the petitioner. That, the account of the respondent is classified as NPA by the bank, the bank has frozen account of the corporate debtor consequent upon which the respondent is unable to pay the debts of operational creditor.

**Findings:**

7. On perusal of the record, it is found that the corporate debtor has acknowledged and has admitted the debt.
8. On perusal of the material available on record it is also found that, the respondent has not raised any dispute against the claim and has admitted claim of the operational creditor by way of affidavit.
9. 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;

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(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?

10. In view of the aforesaid discussions and before rejecting and/or admitting the application, we must refer to the legislation guide on Insolvency Law of United Nations Commission on International Trade Law. One of the things the Legislative Guide spoke about was whether the debt is subject to a legitimate dispute or set off, in an amount equal to or greater than the amount of the debt.

11. 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. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section (5) of 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.

12. That, the Application filed by the Applicant is complete in all respects.

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13. The applicant/operational creditor had proposed the name of Mr. Rajesh Lohia, Company Secretary to act as Interim Resolution Professional. However, at the time of pronouncement of order, the operational creditor submitted purshis inter alia requesting to replace the interim resolution professional with Mr. Parag Sheth along with a letter of consent from Mr. Rajesh Lohia. Therefore, this Adjudicating Authority hereby appoint Mr. Parag Sheth, 4-4, Sachet – 2, Opp. GLS University, Maradia Plaza, C.G. Road, Ahmedabad 380 006 having registration No. IBBI/IPA-002/IP-N00142/2017-18/10381 to act as an interim resolution professional under Section 13(1)(c) of the Code.
14. 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 directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

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15. 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.
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

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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.

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. This Petition stands disposed of accordingly with no order as to costs.
20. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.



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

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