

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

C.P.(I.B) No.102/NCLT/AHM/2020

**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 13.10.2020**

Name of the Company: Harmony Multimedia Pvt Ltd
V/s
Betain Career Institute Pvt 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> |
|--------------|-------------------------------|--------------------|-----------------------|------------------|
| 1. | | | | |
| 2. | | | | |

ORDER

PCS, Mr. Dhiren Dave appeared on behalf of the Petitioner.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 13th day of October, 2020



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 102/9/NCLT/AHM/2020

In the matter of:

Harmony Multimedia Private Limited

905, Vishwakarma Arcade

Majura Gate, Ring Road

Surat 395 003

Gujarat State

:

Petitioner

Operational Creditor

Versus

M/s. Betain Career Institute Private Limited

Shop No. 1-AB, F.F. Soddjo Vinayak Paradise

R.S. No. 221/1

Gageshwar Road

Adajan

SURAT 395 009

Gujarat State

:

Respondent

[Corporate Debtor]

Order delivered on 13th October, 2020

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

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

Appearance:

Petitioner

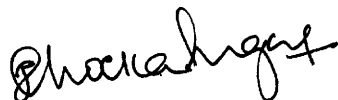
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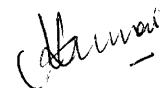
Mr. Dhiren Dave, PCS

ORDER

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

1. Mr. Rajesh Manubhai Desai, Director, being the authorised signatory, on behalf of **M/s. Harmony Multimedia 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.





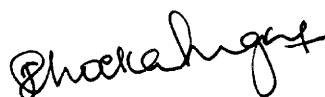
2. The applicant/operational creditor is a private limited company having its registered office at Surat.
3. The respondent/corporate debtor is a private limited company registered on 28.03.2017 under the provisions Companies Act and having identification No. U74999GJ2017PTC096557 and having registered office at Surat, Gujarat State. Authorised share capital of the respondent company is Rs. 12,00,000/- and paid up share capital is Rs. 6,00,000/-.
4. The applicant/operational creditor has stated that, a total sum of **Rs. 41,40,515.32 (Rupees forty-one lacs forty thousand five hundred fifteen and thirty-two paise only)** is due and payable by the corporate debtor towards 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 ten days from the date of every tax invoice. That, despite several reminders and 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 22.11.2019 calling upon the respondent to pay total outstanding of Rs. 41,40,515.32 and the notice is duly delivered to the respondent.
6. The applicant in support of its claim has furnished copy of documents like; affidavit in support of the application, Board



Resolution dated 15.11.2019 authorising the PCS to issue demand notice and 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 invoices, calculation of interest, bank certificate, copy of demand notice etc.

Findings:

7. On perusal of the records it is found that the instant petition filed on 27.01.2020 came to be notified for hearing for the first time on 31.01.2020. Thereafter, despite giving number of opportunities the respondent never appeared in person or through representative. On perusal of the record it is found that, as per track report notice was served on 31.08.2020, as such service is complete. Therefore, the matter is heard in absence of the respondent.
8. Heard the learned PCS 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 respondent is an educational institution imparting short/long term courses. Operational creditor has annexed to the application copy of the invoices raised from time to time. On perusal of the record it is also found that the operational creditor used to release advertisements for publicity on behalf of the respondent; copy of which are also produced along with other documents.
10. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 07.11.2019 has been served upon the corporate debtor.





11. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor, even after receipt of the notice under Section 8 of the I & B Code.
12. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
13. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
14. 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?

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

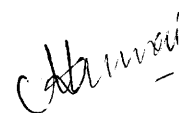
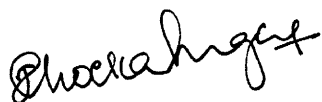
15. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in



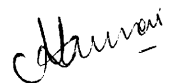



Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has ever been raised by the respondent at any point of time. That, Applicant is an 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 occurrence of default 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.

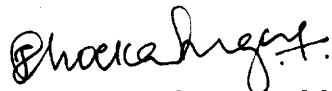
16. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided 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.
17. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.



18. 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.
19. 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.
20. 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.



21. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Sachin Bhattbhatt, A-103, Yogiraj Villa 2, Kunal Char Rasta, Nr. Signat Plaza, Behind Iscon Heights, Gotri Laxmipura Road, Gotri, Vadodara 390 023 having registration No. IBBI/IPA-003/IP-N000138/2017-18/11514 to act as an interim resolution professional under Section 13(1)(c) of the Code.
22. This Petition is accordingly admitted.
23. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
24. Registry is directed to inform the office of 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 the 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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