

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

C.P. (I.B) No.722/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 14.09.2020**

Name of the Company: National Polyplast (India) Pvt Ltd
V/s
Manpasand Beverages 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
(through video conferencing)

Advocate, Ms. Nilu K Vaidankar appeared on behalf of Petitioner.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 14th day of September, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No. (IB) 722/9/NCLT/AHM/2019

In the matter of:

National Polyplast (India) Private Limited

'Thiru Complex', 2nd Floor 44

Pantheon Road

Egmore

MADRAS 600 008

Tamil Nadu

:

Petitioner

Financial Creditor

Versus

M/s. Manpasand Beverages Limited

1768 & 1774 Paiki- I

Vill. Manjusar

Tal. Savli

VADODARA 391 775

Gujarat State

:

Respondent

[Corporate Debtor]

Order delivered on 14th September, 2020

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

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

Appearance:

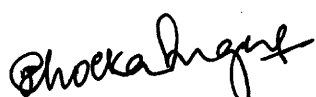
Advocate Mr. Kamlesh Vaidankar for petitioner

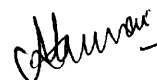
Advocate Mr. Jaimin Dave for respondent

ORDER

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

1. Mr. Alok Parakh, Director, being authorised person, on behalf of M/s. National Polyplast (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 on 16th April, 1992 under the provisions of Companies Act, 1956 having identification No. U25209TN1992PTC022490 and having its registered office at Tamil Nadu engaged in the business of manufacturing PET preforms, bottle crates and display racks.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 17th December, 2010 and having identification No. L15549GJ2010PLC063283 and having registered office at Vadodara, Gujarat State. Authorised share capital of the respondent company is Rs. 115,00,00,000/- and paid up share capital is Rs. 114,46,23,960/-
4. The applicant during the course of its business, had transacted with the respondent and huge outstanding has been created in favour of the corporate debtor. It is alleged that the corporate debtor is liable to pay its total outstanding dues of Rs. 53,78,484/- for goods supplied along with an amount of Rs. 1,59,023/- being interest @ 18% per annum, total amounting to Rs. 55,37,507/- (Rupees fifty-five lacs thirty-seven thousand five hundred seven only) from due date of invoices i.e. from 13th December, 2017 to 25th April, 2019 as per the computation to the application as Exhibit – E (page 46).
5. It is further stated by the applicant that, having failed to recover the overdue payments, the applicant was compelled to issue statutory demand notice in form 3 along with form 4 dated 06.07.2019 under section 8 of the I & B Code calling upon the respondent to pay the principal outstanding along with interest.



6. The applicant in support of its claim has furnished copy of documents like purchase orders, invoices, ledger/account statement, computation chart, demand notice dated 06.07.2019, copy of reply to the demand notice etc.
7. On issuance of notice, the respondent filed affidavit in reply inter alia stating that the instant application is liable to be rejected on the very ground that the demand notice dated 06.07.2019 issued by one Mr. Vaibhav Mohnot without any authority. Moreover, as on the date of issuance of the demand notice dated 06.07.2019, neither Mr. Alok Parakh – who has signed the application, nor Mr. Vaibhav Mohnot – who has signed the demand notice, had any authority to issue the demand notice and/or initiate any proceedings against the respondent company under the relevant provisions of the I & B Code.
8. The respondent has also stated that there exists a prior dispute between the parties regarding delay in supplying the goods against majority of the purchase orders and, according to the respondent, no amount is due and payable to the applicant.

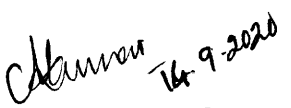
Findings:

9. Heard the learned advocates appearing for both the sides and perused the documents filed by the applicant/respondent.
10. 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, issued by the applicant dated 06.07.2019 (page 51-61)

is signed and issued by one Mr. Vaibhav Mohnot, Legal Counsel of the applicant company without any authority. On perusal of the records it is found that no authority is given to the advocate to issue demand notice either by way of Board Resolution or by any letter of authority issued by competent authority of the applicant company. Admittedly, the advocate can issue the notice on behalf of the client but due authorisation is required by passing resolution in duly convened Board Meeting and in the instant case no such authority is given to the advocate.

11. Notwithstanding above, it is found that the respondent has raised issues like (page 8 of affidavit in reply) raising of bogus invoice in arbitrary manner, non-production of delivery challan/ Lorry receipt and delay in supply of ordered material.
12. 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.
13. In the result, company petition No. CP (IB) 722 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)

nair