

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



**C.P.(I.B) No. 564/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 10.10.2019**

Name of the Company: Unishbhai Valibhai Lingadiya  
V/s  
Shree Santosh Cotton Spin Pvt 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>
1.	SUNIL BHABAR	ADVOCATE	APPLICANT	
2.	JAIMIN R. DAVE	ADVOCATE	RESPONDENT	

**ORDER**

The parties are represented through learned counsels.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 10th day of October, 2019

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

**C.P. No. (IB) 564/9/NCLT/AHM/2019**

**In the matter of:**

**Mr. Unisbhai Valibhai Lingadiya**

Village Bandhiya

Tal. Gondal

Dist. Rajkot

GUJARAT STATE

:

**Petitioner**

Operational Creditor

**Versus**

**Shree Santosh Cotton Spin Private Limited**

Shop No. A 174,

New Sardar Marketing Yard,

8B Gondal Rajkot National Highway

Gondal 360 311

Dist. Rajkot

Gujarat State

:

**Respondent**

Corporate Debtor

**Order delivered on 10<sup>th</sup> October, 2019.**

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

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

**Appearance:**

Advocate Mr. Sunil Bhavsar for petitioner

Advocates Jaimin R. Dave, Hirva R Dave and Priyank S. Dave for respondent

**ORDER**

**[Per: Ms. Manorama Kumari, Member (Judicial)]**

1. Mr. Unisbhai Valibhai Lingadiya, the operational creditor 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"].

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2. The applicant/operational creditor is a farmer and cultivating cotton in his land at Village Bandhiya, Gondal Taluka, Dist. Rajkot, Gujarat State. The applicant being a farmer cultivates cotton in huge quantity and he has been supplying cotton to various companies who are engaged in the field of cotton ginning and pressing business. That the corporate debtor is one of such customers of the applicant.
  
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 22.02.2013 having identification No. U17200GJ2013PTC073689 and having registered office at New Sardar Marketing Yard, Gondal Rajkot National Highway, Gondal, Rajkot, Gujarat State. Authorised share capital of the respondent company is Rs. 3,00,00,000/- and paid up share capital is Rs. 3,00,00,000/-
  
4. The applicant/Petitioner has submitted that the applicant after negotiating the price of cotton, had supplied 10115 kg. of cotton to the respondent vide voucher dated 02.05.2018 and the goods were supplied through Truck No. GJ-3Y-9328. That, consideration towards said consignment @ Rs. 1010/- per 20 kg. comes to Rs. 5,15,865/-. That, the said cotton was received by the corporate debtor at its factory on 02.05.2018 and the corporate debtor company had issued gate pass dated 02.05.2018 stating the name of the

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supplier, truck number, gross weight, net weight and other details along with a computerised receipt dated 02.05.2018.

5. It is further submitted by the applicant that similar supply of goods was made on 03.05.2018 @ Rs. 1018/- per 20 kg. where the consideration comes to Rs. 5,23,252/- Thus, the total debt outstanding from the respondent works out to **Rs. 10,39,117/- (Rupees ten lacs thirty-nine thousand one hundred seventeen only).**
6. It is further submitted by the applicant that despite repeated requests, reminders and personal follow-up, the corporate debtor company has not made the payment. Therefore, the applicant issued demand notice dated 18.06.2019 under section 9 of the IB Code which has been received by the corporate debtor as per the postal receipt submitted by the applicant and placed at page No. 30 to the application.
7. In support of its claim, the petitioner has submitted copy of the vouchers, gate pass, affidavit in support of application for initiation of CIRP, demand notice, and postal receipt.
8. Director of the respondent company filed affidavit in reply inter alia stating that the dues of the operational creditor are admitted and the respondent company do not have any

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objection if this Tribunal appoint any IRP as prayed by the petitioner in the interest of justice.

### **Findings**

9. Heard learned lawyer appearing for both the sides and also seen the documents annexed to the application.
  
10. On perusal of the records it is found that the respondent has not raised any dispute regarding the operational debt payable to the operational creditor and has admitted the operational debt by filing an affidavit. That, the service is complete and the application is complete in all respects.
  
11. 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

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the demand notice of the unpaid operational debt in relation to such dispute?

12. At this stage it is desirable to refer the judgement in *Innoventive Industries vs. ICICI Bank* [2018] 1 SCC 407 the Hon'ble Supreme Court after setting out some of the sections of the Code, laid down the scheme of the Code, came to financial and operational creditors triggering the Code against a corporate debtor, it held:

**"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and it is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to section 3 (11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3 (6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The Corporate Insolvency Resolution Process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.**

13. 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

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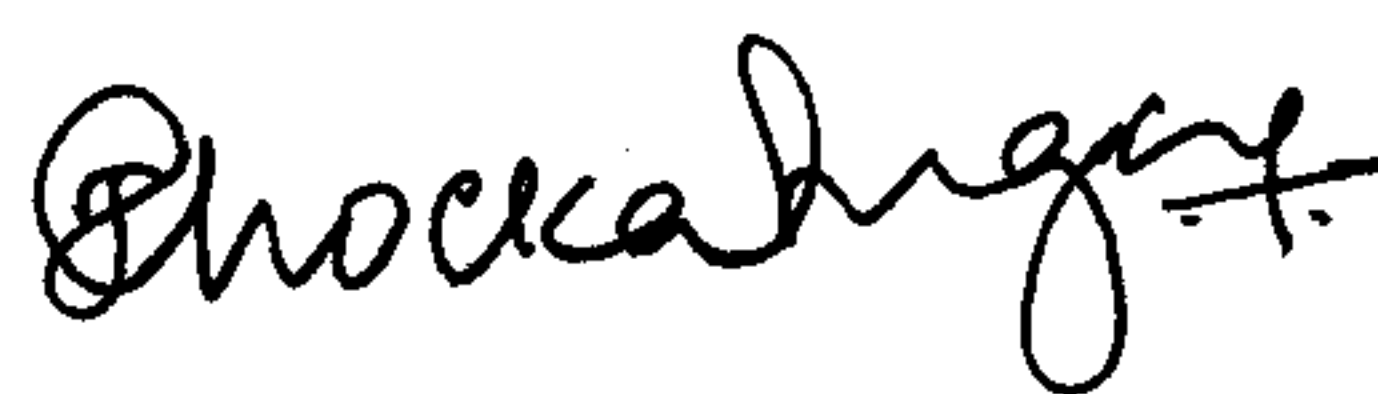
record, petitioner is able to establish that there exists debt as well as occurrence of default.

14. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Bhupendra Singh Narayan Singh Rajput, A-309, ATMA House, Opp. Old Reserve Bank of India, Ashram Road, Ahmedabad 380 009 ([cabsrajput309@gmail.com](mailto:cabsrajput309@gmail.com) Mobile 9426014155) having registration No. IBBI/IPA-001/IP-P00397/2017-2018/10715 to act as an interim resolution professional under Section 13(1)(c) of the Code.
15. 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 Insolvency 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.







16. 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.
17. 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.



18. 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.
19. 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.
20. This Petition stands disposed of accordingly with no order as to costs.
21. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

  
**Chockalingam Thirunavukkarasu**  
Adjudicating Authority  
Member (Technical)

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

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