

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

C.P.(I.B) No.120/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 04.09.2020**

Name of the Company: Durga Processors Pvt Ltd
V/s
Jinaam's Dress 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)

Ms. Mansi Trivedi, Advocate is present on behalf of Mr. Pratik Thakkar, Advocate for the Petitioner.

Order is pronounced in the open court vide separate sheet

~~List the matter on Je.~~



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 4th day of September, 2020



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 120/9/NCLT/AHM/20120

In the matter of:

M/s. Durga Processors Private Limited

604, Pushpanjali
Venkatesh Apartment
Budh Marg
Patna 800 001
BIHAR

Address for communication

Block No. 145
Village Tantithaiya
Taluka Palsana
Dist. Surat 394 305
Gujarat State

:

Petitioner
Financial Creditor

Versus

M/s. Jinaam's Dress Limited

Plot No. 524
Road No. 5
Sachin GIDC
Sachin
SURAT 395 002
Gujarat State

Address for communication

Shop No. 113
Ground Floor
North Extension Market
Next to Krushi Bazar,
Sahara Darwaja
SURAT 395 002
Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 4th September, 2020

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

Appearance:

Advocate Mr. Pratik Thakkar for petitioner.





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

1. Mr. Kunj Bihari Ramautar Sultania, Director, being authorised signatory, on behalf of M/s. Durga Processors 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 under the Companies Act, 1956, having identification number U22219BR1998PTC008416 and having registered office at Taluka Palsana, Dist. Surat, Gujarat State under the Bombay Shops and Establishment Act, 1948 and having its registered office at Udhna, Dist. Surat is involved in the business of job work for dyeing & printing of textile goods/clothes.
3. The respondent/corporate debtor is a limited company registered under the provisions Companies Act, 1956 on 4th March, 2011 and having identification No. U17120GJ2011PTC064247 and having registered office at Sachin, Dist. Surat, Gujarat State. Authorised share capital of the respondent company is Rs. 24,00,00,000/- and paid up share capital is Rs. 10,00,00,000/-.
4. It is stated by the applicant that the operational creditor and corporate debtor were introduced to each other through common business contact transactions and the corporate debtor approached the operational creditor with the intention to do job work on textile fabrics. That, the



operational creditor and the corporate debtor are engaged in transactions for the last decade, however, the corporate debtor started delaying the payments with respect to the transactions from March 2018 and the total outstanding amount in relation to supply of goods is Rs. 9,42,378/- (Rupees nine lacs forty-two thousand three hundred seventy-eight only) and the interest accrued is Rs. 6,57,040/- (Rupees six lacs fifty-seven thousand forty only). Therefore, the total amount due for payment becomes **Rs. 15,99,418/- (Rupees fifteen lacs ninety-nine thousand four hundred eighteen only)** as on 12.12.2019. According to the operational creditor every bill becomes due for payment after 90 (ninety) days of credit period from the date of invoice and interest @ 18% per annum has been calculated from the due date.

5. It is further stated by the operational creditor that even after several reminders through telephone, none of the invoices raised by the operational creditor were cleared by the corporate debtor and two cheques given by the corporate debtor got dishonoured on presentation in the bank. According to the operational creditor, the last payment received from the corporate debtor was 17.10.2019.
6. It is further stated by the applicant that, having failed to receive the overdue payments, the applicant was compelled to issue demand notice in form 3 dated 17th December, 2019 under section 8 of the I & B Code calling upon the respondent to clear the operational debt due and payable as on 12.12.2019.
7. In support of its claim, along with the application, the applicant has submitted copies of unpaid tax invoices/ delivery challans (page), ledger of corporate debtor in the books of the applicant (73-80), bank statement showing

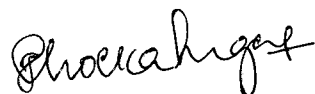
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payments received from respondent (52-72), form 3 & 4 along with proof of service (81-95) etc.

Findings:

8. On perusal of the records it is found that the instant petition filed on 23rd January, 2020 was notified for the first time on 11.02.2020. Thereafter, despite giving number of opportunities, the respondent has not filed any reply. As per the records respondent appeared through counsel after lockdown when the matter was fixed on 05.08.2020 and again prayed for time. Two weeks' time was granted, but, having failed to file reply, the matter is heard on 27.08.2020 ex-parte.
9. 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 17.12.2019 has been served upon the corporate debtor, but, no dispute has been raised. Therefore, the petitioner has also filed affidavit of no dispute dated 18.01.2020.
10. 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.
11. 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.



11. 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'.
12. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBC (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.

13. 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.

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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 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.
15. 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.
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



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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 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. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Saaurabh Jhaveri, 620, Jolly Plaza, 6th Floor, Athwagate, Surat 395 001 (saumeg@gmail.com) (Mobile: 9228427123) having registration No. IBBI/IPA-002/IP-N00068/2017-18/10146 to act as an interim resolution professional under Section 13(1)(c) of the Code.



20. This Petition is accordingly admitted.
21. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
22. 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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