

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

C.P. (I.B) No.203/9/NCLT/AHM/2019

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 20.01.2020**

Name of the Company: Vedant Tradelink Pvt Ltd
V/s
B D Overseas & Fiscal Services Ltd

Section: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
--------------	-------------------------------	--------------------	-----------------------	------------------

1.

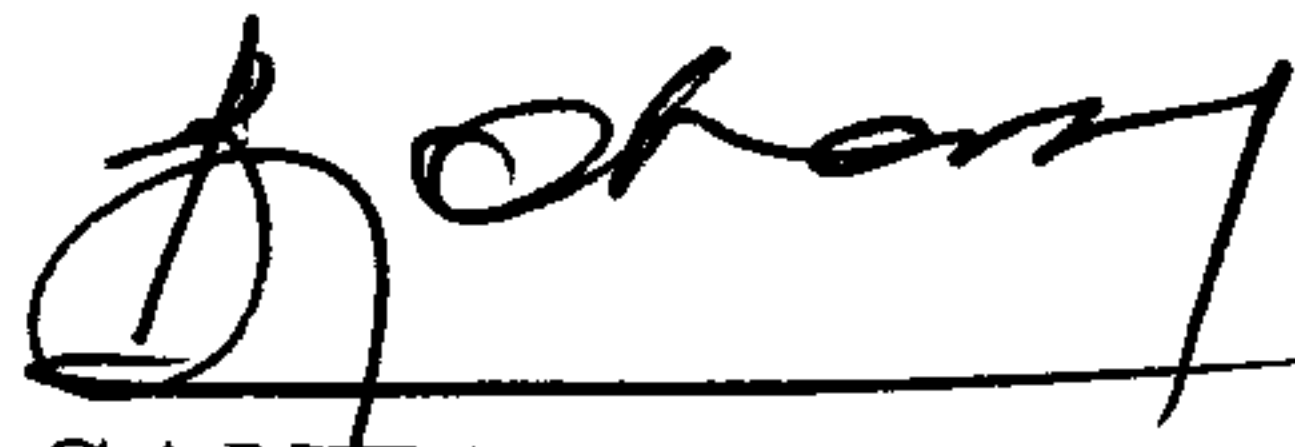
2.


ORDER

The present matter is fixed for pronouncement of order today.

The case, i.e., *CP(IB) No. 203/9/NCLT/AHM/2019*, is admitted.

Detailed order is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 20th day of January, 2020

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

C.P. (I.B.) No. 203/9/NCLT/AHM/2019

In the matter of:

Vedant Tradelink Private Limited
502, Shivalik-V,
Mahalaxmi Cross Road,
Paldi, Ahmedabad-380007,
Gujarat.

..... Petitioner/Operational Creditor(OC)

Versus

B D Overseas and Fiscal Services Limited
A-1113, Siddhivinayak Tower-A,
B/h. DCP Office, Off S.G. Highway,
Survey No.212/2, Nr. Katariya House
Makarba, Ahmedabad-380051,
Gujarat.

..... Respondent/Corporate Debtor(CD)

Order delivered on **20.01.2020**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Ms. Natasha Dhruvan Shah, Advocates for the
Petitioner/Operational Creditor.

None for the Respondent/Corporate Debtor

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor Vedant Tradelink Private Limited under Section 9 of the Insolvency and Bankruptcy Code, 2016 (herein after referred to as a "Code") seeking

✓



for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, B D Overseas & Fiscal Services Limited.

2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) – U51102GJ2003PTC042904. The Petitioner is engaged in business of abrasive products. The registered office of the Petitioner is situated at 502, Shivalik-V, Mahalaxmi Cross Road, Paldi, Ahmedabad-380007, Gujarat.

3. The Respondent/Corporate Debtor, namely B D Overseas and Fiscal Services Limited was incorporated on 24.03.1994 with CIN: U51900GJ1994PLC093306. The authorised share capital of the company is Rs. 7,00,00,000.00 (Rupees Seven Crores only) and the paid-up share capital is Rs.6,69,86,000.00 (Rupees Six Crores Sixty Nine Lakhs Eighty Six Thousand only). The registered office of the Corporate Debtor Company is situated at: A-1113, Siddhivinayak Tower-A, B/h. DCP Office, Off S.G. Highway, Survey No. 212/2, Nr. Katariya House, Makarba, Ahmedabad-380051, Gujarat.

✓



4. The Operational Creditor has submitted an amount claimed to be in default of **Rs.6,11,021.00** (Rupees Six Lakhs Eleven Thousand Twenty One Only) including interest of Rs.2,20,860.00 (Rupees Two Lakhs Twenty Thousand Eight Hundred Sixty Only) at monthly bank rate i.e. 1.69%. Further, as per the terms and conditions mentioned in the Invoice raised by the Operational Creditor, claims of any nature whatsoever will lapse unless raised in writing **within 30 days from the date of invoice.**
5. It is submitted that the Corporate Debtor has failed to make payments in spite of issuance of notice in the said Form-3 and Form-4 in order to clear the dues of the Operational Creditor.
6. In the facts and circumstances of the case it is stated that the Respondent company has failed to repay the outstanding amount of Rs.6,11,021.00 despite the fact that the Petitioner/Operational Creditor has timely completed the scope of work as per the signed Agreement.
7. In view of the above, it is clear that the Corporate-Debtor has defaulted in making payment of the rest of

the principal amount to be paid to the Petitioner/
Operational-Creditor. **Date of Default is 27.05.2016.**

8. It is submitted that the Corporate Debtor herein, in around March 2016, approached the Operational Creditor for purchasing of grinding wheels and the said goods were to be delivered at the premises of the Corporate Debtor.
9. It is further submitted that upon the completion of its obligation, Operational Creditor raised invoices towards the goods duly delivered and consumed by the Corporate Debtor.
10. It is further submitted that the despite raising invoices Corporate Debtor did not make any payments towards the goods purchased and consumed as mentioned in the invoices.
11. It is further submitted that the Operational Creditor requested the Corporate Debtor to clear all the invoices and also made several reminders by calling them.
12. It is further submitted that the Operational Creditor issued a demand notice dated 01.10.2018 under the provisions of the Code, 2016. The said noticed was

↖



dispatched on 05.10.2018 but the same was not delivered on 08.10.2018. The said demand notice was later served through an email dated 15.10.2018.

13. It is further submitted that the despite serving demand notice dated 01.10.2018, neither outstanding **debt was received nor any notice of dispute was communicated.**
14. It is further submitted that as per the order of the Tribunal dated 03.06.2019, the applicant has also **made paper publication in vernacular language, in widely circulated newspaper on 10.07.2019**, where the registered office of the Company is situated. The Operational Creditor has also filed the proof of service on 12.07.2019 before the Hon'ble Tribunal.
15. In view of the aforesaid, it is submitted by the Operational Creditor that the present application is deserved to be admitted by this Tribunal and the order for initiation of corporate Insolvency Resolution Process of B D Overseas & Fiscal Services Ltd. be made and order of moratorium be passed. Further applicant begs to exercise its rights under the provisions of Section 16 of the Insolvency and Bankruptcy Code, 2016 for the appointment of Insolvency Resolution Professional and

↖

↗

the Tribunal may be pleased to refer the same to IBBI for recommendation of Insolvency Resolution Professional for initiation of Corporate Insolvency Resolution Process of B D Overseas & Fiscal Services Ltd.

16. Now, the Petition is filed on 05.03.2019 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for the unpaid Operational **Debt due and defaulted** of Rs.6,11,021.00

17. The case was taken up by this Adjudicating Authority on 28.03.2019; however, none appeared on behalf of the Corporate Debtor. The matter was adjourned to 03.06.2019 with directions to the Registry to serve the notice of date of hearing on the Respondent along with the copy of the order under acknowledgement. Since nobody was present on behalf of the Respondent on the next date of hearing on 03.06.2019, the petitioner was given liberty to publish the **notice in daily newspapers** in the area where the company is situated and subsequently, notice was published in the newspaper and the proof of service was also filed on record. Further on the instruction of this Adjudicating Authority, the Petitioner filed legible copies of the

✓



invoices/vouchers on 04/09/2019. However, the Respondent failed to appear to submit its submission.

18. The matter was finally heard on 04.09.2019. During the arguments, the Learned Counsel for the Operational Creditor has submitted that the Petition may be admitted and an Interim Resolution Professional appointed in accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the petition may be admitted for initiating Corporate Insolvency Resolution Process as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.
19. Further, the Operational Creditor has not suggested any name of an Interim Resolution Professional ("IRP" for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.
20. It is observed that –
- 20.1 The Application has been **filed on 05.03.2019** for **Operational debt due and defaulted of Rs.6,11,021.00** which includes interest of **Rs.2,20,860.00** at monthly bank rate i.e. 1.69%. Though the interest of Rs.2,20,860.00



has been claimed for the delay period **but such clause/provision for payment of interest for the delayed period is not found in the invoices enclosed. Claim of Interest for the delayed period is not recognised.**

20.2 Date of invoice is 27.04.2016, 07.05.2016, 12.05.2016, 23.05.2016, 30.05.2016, 27.06.2016, 06.07.016, 27.07.2016 & 06.08.2016.

20.3 **Date of first default is 27.05.2016;**

20.4 No pre-existing dispute before the filing of this application is observed.

ORDER

21. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **20, 20.1, 20.2, 20.3 & 20.4** this Adjudicating Authority is **satisfied that,**

- a) Existence of debt is above Rs. **One Lac;**
- b) **Debt is due and defaulted;**
- c) Default has occurred on **27.05.2016;**
- d) Petition has been filed **within the limitation period as the date of default is 27.05.2016** and the petition has been filed on **05.03.2019** **i.e. within three years of the default.**

✓



- e) Copy of the Application filed before the Tribunal has been sent to the Corporate Debtor, Paper publication was done and the application filed by the **Petitioner under Section 9 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Therefore, the **present IB petition is admitted on 20.01.2020 with the following Directions:**

22. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this **Adjudicating Authority declares moratorium for prohibiting all of the following, namely: -**

- I.(a) The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*
- (b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.*
- (c) 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);

(d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

II. The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.

III. The provisions of sub-section (1) shall not apply to (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

IV. The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.

23. The Petitioner/Operational Creditor **has not suggested** the name of any Interim Resolution Professional in the present Petition. Though it is **not mandatory** on the part of the Applicant **to propose** and Interim Resolution Professional when the application is filed under Section 9 of the IBC, 2016, but in that case, the adjudicating Authority shall appoint an Insolvency Professional from the panel prepared by the IBBI and meant for this Bench on admission of the application. But if it is observed that when an Operational Creditor does not suggest the name of any Interim Resolution Professional and the Interim Resolution Professional is appointed by the Adjudicating Authority from the panel of Insolvency and Bankruptcy Board of India available

K



for NCLT, Ahmedabad, the dispute is arising for payment of Interim Resolution Professional fees, paper publication costs etc., in the first month of the Corporate Insolvency Resolution Process. This is more, when a Financial Creditor or other Operational Creditor is not there, CoC is not formed and the Operational Creditor filed the application is not able to bear the CIRP expenses.

24. Hence, this **Adjudicating Authority hereby appoints Shri Navin Srichand Kanjwani, having Insolvency Professional Registration No. IBBI/IPA-002/IP-N00347/2017-2018/10997, Email ID - navinskanjwani@yahoo.co.in, Address: 1, New Maharaja Park, Maya Cinema Road, Kubernagar, Ahmedabad, Gujarat-382340, as an Interim Resolution Professional.**

The IRP is advised to file declaration disclosure statement within two days with this Registry.

The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and

✓




Bankruptcy Code. **The Interim Resolution Professional** shall perform all his functions contemplated, inter-alia, in Sections **15, 17, 18, 20 & 21 of the Code** and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all **the personnels connected with the Corporate Debtor, its promoters or any other persons associated with the management** of the Corporate Debtor are under legal obligation under **Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional** as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. **In case there is any violation**, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. **The Interim Resolution Professional shall be under duty to protect and preserve** the value of the property of the 'Corporate Debtor' as a part of its obligation imposed by **Section 20 of the Code and perform all his function strictly in accordance with the provisions of the Code, Rules and Regulations.**

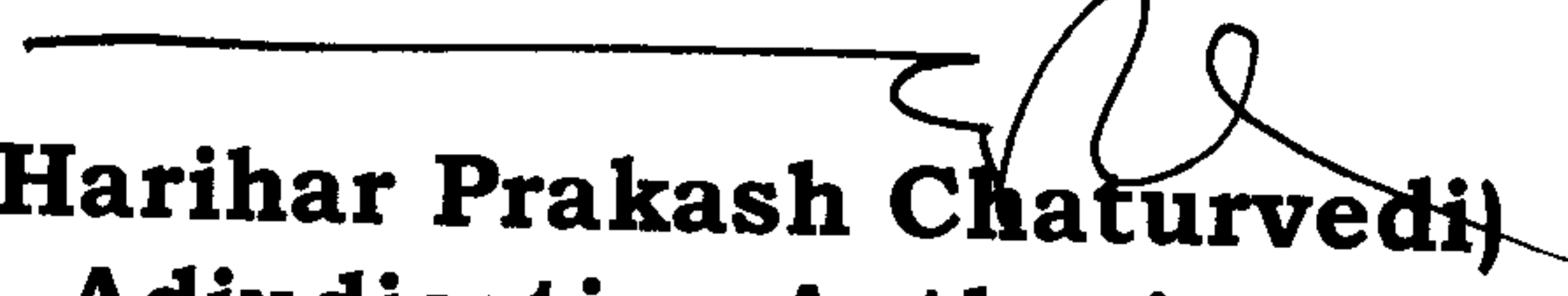
↖



25. An authentic copy of this order to be communicated by this Registry to the Operational Creditor, Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this CP(IB) No. 203/9/NCLT/AHM/2019 is admitted on 20.01.2020 with the above Observations and Directions.


(Prasanta Kumar Mohanty)
Adjudicating Authority &
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority &
Member (J)