

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-1**

**CP (IB) 357 of 2018**

**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 05.06.2020**

Name of the Company: Taranjot Resources Pvt Ltd  
V/s.  
Dhanurdhar Processors Pvt Ltd

Section of the Companies Act : Section 9 of IBC, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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1.

2.


**ORDER**


The case is taken up through video conferencing.

The Parties are represented through their respective counsel(s).

The case is fixed for pronouncement of order today.

The order is pronounced in open Court as order in detail is recorded vide separate sheet.

  
**(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)**

  
**(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)**

Dated this the 5<sup>th</sup> June of 2020

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-1**

**C.P. (I.B.) No. 357/9/NCLT/AHM/2018**

**In the matter of:**

**Taranjot Resources Private Limited**

Having Registered Office at:  
806, SNS ARISTA, Plot No. 94/2,  
T.P. Scheme No. 29, Rindh,  
Surat, Gujarat-395003

..... Petitioner

Versus

**Dhanurdhar Processors Private Limited**

Having its Registered Office at:  
Survey No. 146/3,  
Block No. 165, Plot No. 165/1  
Jolva, Taluka -Palsana, Jolva  
Gujarat-39430

.....Respondent

**Order delivered on 05.06.2020**

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

**Appearance:**

PCS Mr. Rahesh Lohia and Advocate Ms. Natasha Dhruvan Shah,  
Advocate Mr. Arjun Padhyar and Advocate Ms. Rachna Pastore for the  
Petitioner/Operational Creditor/Applicant

Advocate Mr. Nisarg Shah and PCS Mr. Dhiren Dave for the Corporate  
Debtor/Respondent.

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

1. The present petition has been preferred by the Operational Creditor, namely, **M/s. Taranjot Resources 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) against the Corporate Debtor Company, namely, **M/s. Dhanurdhar Processors Private Limited**.



2. The Petitioner - Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) -U74999GJ2017PTC095928. The correspondence address of the Operational Creditor/Petitioner is at 806, SNS ARISTA, Plot No. 94/2, T.P. Scheme No. 29, Rindh, Surat, Gujarat-395003. The present Petition is filed through Authorised Person Mr. Gurmeet Singh, **being Director of Taranjot Resources Private Limited** having addressed at: 806, SNS ARISTA, Plot No. 94/2, T.P. Scheme No. 29, Rindh, Surat, Gujarat-395003.
3. The Respondent Corporate Debtor, namely, **M/s. Dhanurdhar Processors Private Limited** was incorporated on 29.11.2006 with CIN: U17219GJ2006PTC049463. The authorised capital of the company is INR.3,50,00,000.00 (Rupees Three Crore Fifty Lakhs Only) and the paid-up capital is INR.2,18,01,610.00 (Rupees Two Crore Eighteen Lakhs One Thousand Six Hundred Ten Only). The registered office of the Corporate Debtor Company is situated at: Survey No. 146/3, Block No. 165, Plot No. 165/1, Village, Jolva, Taluka-Palsana, Jolva Gujarat-394305.
4. The present petition has been preferred by the Operational Creditor, **Taranjot Resources Private Limited**. It is submitted by the Petitioner that the Respondent Corporate Debtor is indebted to the Petitioner for **INR.90,81,732.60** (Rupees Ninety Lakhs Eighty One Thousand Seven Hundred Thirty Two and sixty Paise Only) i.e. Principal amount of Operational Debt due of INR.87,25,079.00 plus Interest of Rs. 3,56,662.72.
5. It is submitted that total amount of debt (**according to demand notice sent by the Operational Creditor to the Corporate Debtor dated 20.04.2018**) is **INR. 87,25,079.000** as on **(31.03.2018)** plus interest thereon till 19.04.2018 as per attach sheet indicating due dates of payments of total INR. 90,81,732.00.
6. It is submitted that a **Demand Notice dated 20.04.2018** was duly served upon the Corporate Debtor and its two Directors on 07.05.20218 under Section 8 of the Insolvency and Bankruptcy Code, 2016. Within ten days i.e. from the delivery of the Demand Notice, the Corporate Debtor neither brought to the notice of the

Operational Creditor regarding existence of any dispute whatsoever relating to the unpaid operational debt nor repaid the unpaid operational debt as stated in the said demand notice till the date of filing of the petition and thereafter.

7. It is submitted that the Bank Statements of the Operational Creditor (page no. 69-110) **clearly depicts that there is no payment of unpaid operational debt by the Corporate Debtor to the Operational Creditor** in the accounts so maintained where deposits are made or credits received in the usual course of business.
8. It is submitted that the **Operational Creditor had supplied Coal (Steam) to the Corporate Debtor** and raised relevant invoices which are enclosed at page nos. **14-57 in the main petition. The deliver challans were filed on 21.11.2019** by way of Additional Affidavit, which fortify supply of the said goods/material to the Corporate Debtor.
9. It is submitted by the Petitioner that the objection raised by the Corporate Debtor is regarding defective letter of Authority and Board of Directors not being at the same place at the time of board meeting held on 19.04.2018. In order to respond the baseless allegation, the applicant herein by way of Rebuttal Document filed Affidavits stating on oath that the Directors, namely, Mr. Amit Bajaj and Mr. Gurmeet Singh were at the same place when the Board Meeting was convened on 19.04.2018 at the office of Operational Creditor located in Surat, Gujarat. (at page no 1-4 of the rebuttal document.)
10. It is submitted that the Corporate Debtor had raised another objections for the first time in its reply to petition that by way of confirmation letter dated 01.01.2016 the representatives of Operational Creditor, namely, Mr. Moenuddin Kagzi and Mr. Varinder Singh alleged to have acknowledged, verified, admitted and accepted the Corporate Debtor's claim against supply of defective goods, subsequently, the Operational Creditor filed rebuttal document to contradict the said allegation, wherein it is categorically visible that the said representatives never affixed their signatures on the alleged letter, as there is clear mismatch

of the signatures which can be seen from the copy of PAN Card.  
(at page 9-12 of rebuttal document.)

11. It is submitted by the Petitioner that even if it is assumed the objections so raised by the Corporate Debtor is valid, the amount which is alleged to be in dispute is around **Rs. 20 Lakhs only, whereas the Operational Creditor is claiming a Principal Amount of Rs. 87,25,069.90/-**. Therefore, the default is more than One Lakh Rupees and is an admitted liability, which is conclusive ground for admission of the present petition and initiation of Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor.
12. It is submitted by the Petitioner that the debt fell due on the date of default **being 14.12.2017 to 04.01.2018** and more so when the Operational Creditor after expiry **of the period of ten days from the date of delivery of the notice demanding payment did not receive** payment from the Corporate Debtor nor an notice of dispute under sub-section (2) of Section 8 of the Insolvency and Bankruptcy Code, 2016.
13. In response to the instant Petition, the Corporate Debtor, namely, M/s. Dhanurdhar Processors Private Limited, filed its objection/reply on 06.12.2018 by stating that the Operational Creditor is a body corporate registered under the Companies Act and being official person is bound to be authorised by the duly convened meeting of Board of Directors of the company. Meeting is possible when there are two or more directors of the company meet with proper notice and compliance of law. Operational Creditor company has three directors and all three directors are staying at different places and corporate debtor has perfect information and knowledge that on 19.04.2018 the purported date of board meeting on which necessary resolution was passed, all three directors were not in Surat hence the resolution placed at page no. 115 was not adopted at validity conveyed board meeting hence valid, illegal and void **ab initio**. Resultant this petition is also invalid and not supported by proper authorisation hence invalid, illegal and void **ab initio**.

14. It is further submitted that the defective resolution as stated herein above giving certain authority (other than issuing Notice and file Petition) to Mr. Gurmeet Singh one of the Director of the company and as stated above there was no proper board meeting and the same was signed by Mr. Gurmeet Singh himself not by other Director. Thus it further proves that resolution is not adopted at properly convened board meeting even if we presume that it was convened at properly convened board meeting, it is body corporate an artificial person and not an individual that same person can authorise himself to do any acts or deeds.
15. It is submitted that the Resolution gives authority to Mr. Gurmeet Singh to appoint M/s. Perry Mason Para Legal LLP (PMPL) to issue notice and file Petition (if payment is not received in full.) Whereas Demand Notice is signed by Mr. Gurmeet Singh, Director of the Company. (page 61 of the paper book)
16. It is submitted that according to the resolution, Mr. Gurmeet Singh has only authority to settle the account and withdraw the petition. Hence, it is an intention of applicant to create a false pressure for recovery as they are aware about the pre existing dispute of their claim and such claim with the pre existing dispute cannot be filed under the I&B Code.
17. It is submitted that page 116 of the petition, top para authorizes Mr. Gurmeet Singh to sign letter of Authority/Vakalatnama. Whereas Gurmeet Singh has signed power of attorney in individual capacity in the name of letter authority as page no. 113 of the petition(first para last line)
18. It is submitted that the doubt raised by the Corporate Debtor in the Reply/Objection at para 3 page of the reply. This apprehension has come true from the Annual Return for 2018-19 filed by the Operational Creditor with RoC on 31.12.2019 and was available as public document only in the first week of January and it seems to have deliberately filed after ex-parte final arguments made by them. However, as authorized representative of corporate debtor was travelling thereafter could not verify the MCA records on or before 06.01.2020 when with the permission of the Court matter was argued again. This

annual return of operational creditor gives list of board meeting held during the year at page no. 11. This list is not reflecting the date of 19.04.2018 as board meeting date. Hence there was no board meeting on that as submitted by the corporate debtor in their affidavit dated 05.12.2018 about one year before. Hence this petition is entirely based on concocted and fraudulent documents of defective resolution and it is nothing but fraud committed before the NCLT by filing such fraudulent petition.

19. The Corporate Debtor in his written submission stated that the instant petition should be rejected on the following grounds

a) The letter signed by the representative of the petitioner, namely, Mr. Varinder Singh and Mr. Moenuddin Kagzi when they visited corporate debtor and letter was acknowledged by them in person on 01.01.2018. In a lame excuse petitioner produced Pan Card of Mr. Varinder Singh showing different signature and extremely dark copy of Pan Card of Moenuddin Kagzi on which his signature is not readable. This letter is dated 01.01.2018 much prior to the demand notice dated 20.04.2018.

20. The matter first came before this Adjudicating Authority on 30.07.2018 and was heard on 10.09.2018, 29.10.2018, 06.12.2018, 21.01.2019, 06.03.2019, 11.03.2019, 11.04.2019, 18.04.2019, 25.06.2019, 09.08.2019, 18.09.2019, 25.11.2019, 09.12.2019, 17.12.2019 and 06.01.2020. The arguments from both sides were heard and concluded.

### **OBESRVATIONS**

21. The instant Petition was filed on 05.07.2018 for operational debt due and defaulted of **INR. 90,81,732.62 on 19.04.2018**
- 21.1 Invoices are enclosed from **09.10.2017 to 31.12.2017**
- 21.2 Date of first default is **19.04.2018**
- 21.3 Application is filed within the limitation period **as the date of default is 19.04.2018 and the date of filing this petition under Section 9 of IBC is 05.07.2018.**
- 21.4 **It is observed that the Corporate Debtor has tried to take moonshine defence of pre-existing dispute and brought some issues in the written statement which are not relevant.**

**ORDER**

22. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. 21, 21.1, 21.2, 21.3 and 21.4 this Adjudicating Authority is satisfied that,
- a) Existence of operational debt is **above Rs. One Lac;**
  - b) **Debt is due;**
  - c) Default has occurred on **19.04.2018.**
  - d) Petition has been filed within the limitation period as the date of default started **19.04.2018** and the petition has been filed on **05.07.2018.**
  - e) Existence of dispute prior **to the notice** issued by the Operational Creditor is not found.
  - f) **Hence, this Application i.e. CP (IB) 357/9/NCLT/AHM is admitted today i.e. 05.06.2020**

23. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this Adjudicating Authority shall declare 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.*




24. The Petitioner/Operational Creditor has suggested the name of **Mr. Rajeev Saxena** to act as Interim Resolution Professional in this present Petition


25. **Hence, this Adjudicating Authority hereby appoints Mr. Rajeev Saxena, having Insolvency Professional Registration Number IBBI/IPA-001/IP-P00550/2017-2018/10980, having Email-Id: [rsaxenaca@rediffmail.com](mailto:rsaxenaca@rediffmail.com) Address: 102, Manas Bhavan Extn, 11, RNT Marg, Indore 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, 19, 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 personnel 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 functions strictly in accordance with the provisions of the Code, Rules and Regulations.

26. 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.
27. **Hence, with the above Observations and Directions CP (IB) No. 357/9/NCLT/AHM/2018 is admitted on 05.06.2020**

  
**(Prasanta Kumar Mohanty),  
Adjudicating Authority  
Member (T)**

  
**(Harihar Prakash Chaturvedi),  
Adjudicating Authority  
Member (J)**

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