

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

**CP(IB) 574 of 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 01.03.2021**

Name of the Company: Smart Info Solution Through Its  
Proprietor Yashvant Babubhai Thummar  
V/s  
Airlink Teleinfra LLP.  
Section 9 IBC,2016

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

1.

2.

**ORDER**  
**(through video conferencing)**

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**  
Dated this the 1st day of March, 2021



**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**C.P. No. (IB) 574/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Smart Info Solution**  
Through its proprietor  
57, Shivaji Park, Survey No. 8  
Nr. Mahaprabhu Nagar  
Parvat Patiya  
SURAT 395 010  
**GUJARAT STATE**

:

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Airlink Teleinfra LLP**  
21, Sunder Chambers,  
Adajan Patiya, Rander Road  
SURAT 395 009  
**GUJARAT STATE**

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 1<sup>st</sup> March, 2021**

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

**Appearance:**


Petitioner : Mr. Vinit Nagar, Advocate  
Respondent : Mr. Nandish Chudgar, Advocate

**ORDER**

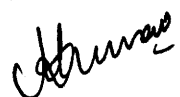
**Per se : Ms. Manorama Kumari, Member (Judicial)**

1. Mr. Yashwant Babubhai Thummar, Proprietor of **M/s. Smart Info Solution** 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, a proprietorship firm, having its registered office at Surat, Gujarat State, engaged in the business of supply of broadband cable, has submitted that, the respondent is indebted a total sum of **Rs. 68,96,317/- (Rupees sixty-eight lacs ninety-six thousand three hundred seventeen only) which include interest amount of Rs. 10,61,342/-** against forty invoices raised by the petitioner towards goods supplied to the respondent during the period from 21.02.2018 to 14.08.2018. As per the terms and conditions of the purchase orders issued by the respondent and invoices raised by the petitioner thereon, all the invoices have fallen due and each are payable after seventy-five days from the date of invoice.
3. In support of its claim, the applicant has annexed to the application copy of the documents like; demand notice in form 3 and form 4 dated 24.05.2019 with delivery reports dated 30.05.2019, bank statements from 01.04.2018 to 20.06.2019, ledger account of corporate debtor in books of the petitioner, invoices, delivery challans and lorry receipts, working computation of the claim amount, general affidavit, affidavit under section (3) (b) of the IB Code etc.
4. It is submitted by the applicant that in the year 2017, the respondent, a limited liability partnership, engaged in the business of broadband service provider approached the petitioner for supply of broadband cable and the petitioner has been regularly supplying cables to the respondent. That, the supply was made to the respondent as per their purchase instructions received from time to time by way of purchase order. That, the applicant had raised the invoices pursuant to the supply made to the corporate debtor in accordance with the purchase order and these invoices have been duly acknowledged by the respondent. As per the



purchase orders, terms of payment set forth by the respondent is 60-75 days.

5. It is further stated by the petitioner that despite repeated reminders the respondent has not paid the outstanding operational debt, therefore, the applicant was compelled to issue demand notice dated 24<sup>th</sup> May, 2019 (page 5-8) under Section 8 of the I & B Code in form 3 calling upon the respondent to clear the operational debt.
6. The respondent/corporate debtor is a limited liability partnership firm engaged in the business of broadband services, registered on 12.02.2017, having registration No. AAI-5389 and having its registered office at Surat, Gujarat State. Nominal share capital and the paid up share capital of the corporate debtor is Rs. 1,00,000/-.
7. Mr. Vipul Suryakant Shah, designated partner of the respondent/corporate debtor filed affidavit in reply inter alia stating as under: -

- that, there is difference in the actual amount and the amount shown under the head "total obligation of contribution of the corporate debtor";
- that, the debt due shown in the demand notice and in form 5 differs;
- that, payment of Rs. 2.00 lacs received by the petitioner in instalments in the month of April, 2019 and May, 2019 has not been reflected in the petition, though the same is reflected in the ledger account;
- that, applicant is not a legal person as per Section 3 of the I & B Code;
- that, the respondent is a going concern and a viable limited liability partnership;

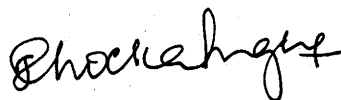
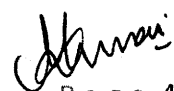
*Phoelahgys*

*Abhinav*

**Findings:**


8. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
  
9. On perusal of the records it is found that the instant petition filed on 15.07.2019 is well within limitation period. Copy of the track report (page 125) clearly reflects that the demand notice is served upon the respondent establishing that the service is complete. The petitioner has filed copy of the purchase orders placed by the respondent and invoices raised on the respondent by the petitioner (page 66-118) which clearly demonstrates that the petitioner had supplied goods to the respondent. Computation of debt produced by the petitioner (page 119) and the ledger account of the corporate debtor (Annexure "D" – page 63-65) maintained by the petitioner show that the corporate debtor made part payments from time to time.
  
10. Duly acknowledged copy of the invoices produced by the petitioner clearly establish that the petitioner had supplied goods and had raised invoices from time to time. The issue with regard to maintainability of the application filed by the sole proprietorship concern under the Insolvency and Bankruptcy Code, 2016 is dealt by several benches of NCLT and also by the Appellate Tribunal. At this juncture it is expedient to refer to the amendment in Section 2 of the Insolvency and Bankruptcy Code, 2016 vide the Insolvency and Bankruptcy Code (Amendment) Act, 2018 notified on 18<sup>th</sup> June, 2018 and clause (e) of the said Section were substituted with the following clause;

**"(e) personal guarantors to corporate debtors;  
 (f) partnership firms and proprietorship firms; and  
 (g) individuals, other than persons referred to in clause (e)"**

The objections raised in the reply filed by the respondent relating to typographical error in the figures and non-acknowledgement of part payment can only be considered as moonshine defence.

11. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.
12. 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 pre-existing dispute regarding the operational debt from the side of the corporate debtor.
13. 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.
14. 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'.
15. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ (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?

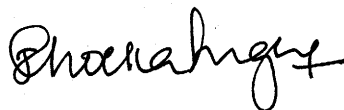
**and**

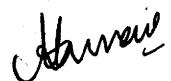
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

16. 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. No dispute has 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.

17. 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

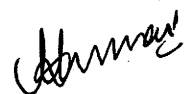





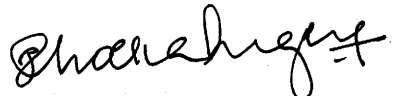
public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

18. 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.
19. 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.

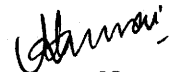
20. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
21. 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.
22. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. This adjudicating Authority hereby appoint Mr. Nandish Sunilbhai Vin, C-53, Shanti Niketan Row House, Anand Mahal Road, Opp. Sagar Complex, Besides Sneh Sankul Wadi, Surat 395 009 having registration No.IBBI/IPA-001/IP-P02117/2020-2021/13270 ([ip.nandish.vin@gmail.com](mailto:ip.nandish.vin@gmail.com)) to act as an interim resolution professional under Section 13(1)(c) of the Code.
23. This Petition is accordingly admitted.
24. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
25. 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)**

*nair*