

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

**C.P.(I.B) No.192/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 15.10.2020**

Name of the Company: Manjula Fashions  
V/s  
Kala Niketan Couture Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code,  
2016.

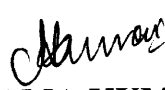
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

**PCS**, Ms. Richa Goyal appeared on behalf of the Petitioner. Advocate, Mr. Rusi Trivedi appeared on behalf of the ~~Petitioner~~.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 15th day of October, 2020

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

**C.P. No. (IB) 192/9/NCLT/AHM/2020**

**In the matter of:**

**Manjula Fashions**

Manjula House  
1<sup>st</sup> Floor, Nr. Golden Point  
Ring Road  
Falsawadi  
SURAT 395 003  
Gujarat State

:

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Kala Niketan Couture Private Limited**

Kalaniketan House  
Ground Floor-3 and 4  
Panorama Complex  
R.C. Dutt Road  
VADODARA 390 005  
Gujarat State

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 15<sup>th</sup> October, 2020**

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

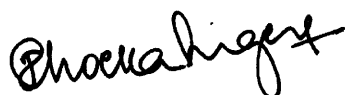
**Appearance:**

Petitioner : Ms. Richa Goyal, PCS

**ORDER**

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

1. Mr. Mayur Premji Chheda, proprietor of **M/s. Manjula Fashions**, 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 proprietorship firm dealing in textile goods having its registered office at Surat.
3. The respondent/corporate debtor is a private limited company registered on 07.05.2012 under the provisions Companies Act and having identification No. U52321GJ2012PTC070194 and having registered office at Vadodara, Gujarat State. Authorised share capital of the respondent company is Rs. 3,50,00,000/- and paid up share capital is Rs. 3,36,00,000/-.
4. The applicant/operational creditor has stated that, during the period between 26.10.2018 and 11.12.2018, towards the goods supplied, the applicant had raised 21 invoices on the respondent for a total sum of Rs. 15,74,857/- (Rupees fifteen lacs seventy-four thousand eight hundred fifty-seven only) as per the details given at page No. 42 to the application. It is further submitted that a sum of Rs. 4,47,882/- (Rupees four lacs forty-seven thousand eight hundred eighty-two only) has accrued on the above referred principal outstanding and a total sum of **Rs. 20,22,739/- (Rupees twenty lacs twenty-two thousand seven hundred thirty-nine only)** is due and payable by the corporate debtor towards supply of textile goods. That, despite several reminders and follow-up, the corporate debtor has not made payment of the operational debt, therefore this petition.
5. The applicant/operational creditor has further stated that, having failed to receive the outstanding amount, the applicant was compelled to issue demand notice under section 8 of the I & B Code in form 3 & form 4 dated 04.01.2020 (page 170-238) calling upon the respondent to pay total outstanding of Rs. 20,22,739/ and the notice is duly delivered to the respondent.

*Shoekahger*

*Chhanna*

6. The applicant in support of its claim has furnished copy of documents like; affidavit in support of the application, affidavit under Section 9 (3) of the Code, demand notice in form 3 and form 4, copy of invoices, calculation of interest, bank statement, copy of reply made by the corporate debtor, copy of ledger account etc.

**Findings:**

7. On perusal of the records it is found that the instant petition filed on 02.03.2020 came to be notified for hearing for the first time on 17.03.2020 on which date the Registry as well as the petitioner were directed to issue notice to corporate debtor. Accordingly, Registry issued notice which was delivered on 26.05.2020, but, none appeared for corporate debtor. The registry again issued notice on 19.06.2020, thus, service is complete. Despite giving number of opportunities the respondent never appeared in person or through representative. On perusal of the record it is found that the respondent has acknowledged and replied the demand notice but not raised any dispute. Therefore, the matter is heard in absence of the respondent.
8. Heard the learned PCS appearing on behalf of the applicant and perused the application and the documents attached to the application.
9. On perusal of the records it is found that, the cheques issued by the respondent towards the operational debt has been dishonoured for want of funds. Moreover, the respondent in its reply to demand notice dated 30.01.2020 has acknowledged the debt.

*Shankar*

*Chakraborty*

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, even after receipt of the notice under Section 8 of the I & B Code.
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.
12. 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'.
13. 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.

14. 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.

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 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.
16. 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.

*Shoora Hussain*

*Abdur*

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. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Sachin Bhattbhatt, A-103, Yogiraj Villa 2, Kunal Char Rasta, Nr. Signat Plaza, Behind Iscon Heights, Gotri Laxmipura Road, Gotri, Vadodara 390 023 having registration No. IBBI/IPA-003/IP-N000138/2017-18/11514 to act as an interim resolution professional under Section 13(1)(c) of the Code.
21. This Petition is accordingly admitted.
22. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
23. 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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