

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

C.P.(I.B) No.248/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 26.04.2021

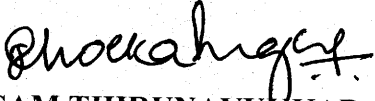
Name of the Company: Patel Traders Partnership Firm Through its  
Indravadan Patel  
V/s  
Nizamiya Construction Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code.

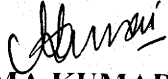
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

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

  
CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL

Dated this the 26th day of April, 2021

  
MANORAMA KUMARI  
MEMBER JUDICIAL

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

**C.P. No. (IB) 248/9/NCLT/AHM/2020**

**In the matter of:**

**M/s. Patel Traders**

Baranpura Naka  
Opp. GEB Office  
Vadodara 390 001  
GUJARAT STATE :

**Petitioner**  
[Operational Creditor]

**Versus**

**Nizamiya Construction Private Limited**  
C-802, Mangalkirti Complex Cross Road  
Fatehgunj  
Vadodara 390 002  
GUJARAT STATE :

**Respondent**  
[Corporate Debtor]

**Order delivered on 26<sup>th</sup> April, 2021**

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

Petitioner : Mr. Arpit Singhvi, Advocate  
Respondent : Mr. Shashvata Shukla, Advocate

**ORDER**

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

1. Mr. Indravadan Patel, partner, being authorised signatory, on behalf of **M/s. Patel Traders** filed this Petition under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of

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The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

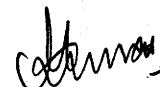
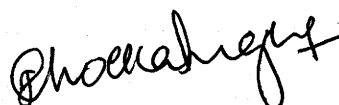
2. The applicant/operational creditor is a partnership firm having registration No. UAM No. GJ24E0039047 having registered office at Vadodara dealing in supply of welding consumables.
3. The respondent/corporate debtor is a private limited company registered on 31.07.1998 under the provisions of Companies Act, 1956, having identification No. U45201GJ1998PTC034481 and having registered office at Vadodara, Gujarat State. Authorised share capital of the respondent company is Rs. 2,00,000/- and paid up share capital is Rs. 2,00,000/-.
4. The applicant/operational creditor has stated that during the course of business it had supplied welding consumables such as welding electrodes, cables, welding holders, leather hand-gloves, welding helmet etc. That, as per the established practice in the business, the corporate debtor regularly signed balance confirmations sent across by the applicant and has admitted and acknowledged the outstanding unpaid operational debt. The corporate debtor is indebted to the applicant a total amount of **Rs. 12,76,522/- (Rupees twelve lacs seventy-**

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**six thousand five hundred twenty-two only)** towards supply of goods as per the invoices annexed to the application at page No. 54-61.

5. The applicant/operational creditor has stated that despite efforts the corporate debtor has failed to make payment of the outstanding operational debt, therefore, this petition.
6. It is further stated by the applicant that having failed to receive the outstanding debt, the applicant was compelled to issue demand notice in form 3 under section 8 of the Code dated 23.12.2019 demanding operational debt due and payable by the respondent.
7. In support of its claim, the operational creditor has annexed to the application documents like; copy of invoices (page 38-53), authority letter in favour of Mr. Indravadan Patel authorising him to initiate CIRP against the corporate debtor, copy of balance confirmation and acknowledgement of debt (Page 54-61) affidavit of operational creditor in terms of sub-section 3 (b) of Section 9 of the Code, general affidavit etc.
8. The respondent/corporate debtor filed affidavit in reply inter alia stating that the corporate debtor has huge



amounts of money outstanding and recoverable from various third parties, however, considering the present cash-flow and liquidity position, the corporate debtor might be in a position to begin repaying the operational debt after few years, therefore, appropriate orders in accordance with law may be passed.

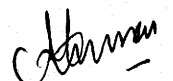
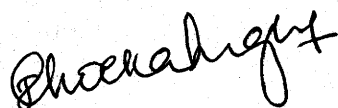
**Findings:**

9. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
  
10. On perusal of the records it is found that the petitioner has filed all the documents and the petition is complete in all respect. Service is complete. It is also found that the operational debt claimed in the instant petition is as old as nine years, however, the corporate debtor has admitted the operational debt signing the ledger account of the applicant every year. Moreover, during the course of hearing, respondent submitted that they are unable to make payment.
  
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.

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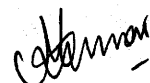
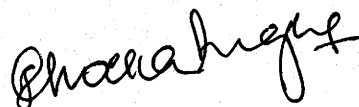
12. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no pre-existing dispute regarding the operational debt from the side of the corporate debtor.
13. In the instant application, from the material placed on record by the 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

  
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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.

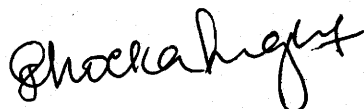
22. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint CS Mr. Keyur J. Shah, Keyur Shah & Associates, 10<sup>th</sup> Floor, 1007, Sun Avenue One, Near Shreyas Foundation, Manekbaug Society, Ahmedabad 380 015, Gujarat (cs

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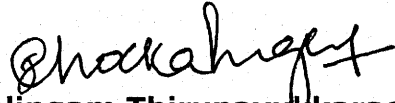
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keyurshah@gmail.com) (9909702182) having registration No. IBBI/IPA-002/IP-N00244/2017-18/10729 to act as an interim resolution professional under Section 13(1)(c) of the Code. The IRP shall be under duty to protect and preserve the value of the property of the corporate debtor company and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016. The operational creditor is directed to pay an advance of **Rs. 1,00,000/- (Rupees one lac only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of corporate insolvency resolution process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with first progress report. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

23. This Petition is accordingly admitted. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
24. 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 of name of the respondent company be initiated arising out of non-compliance of Sections 159 to 162 & 220 etc. of the Companies Act, 2013



as it would be detrimental to the process of liquidation and sale of assets to realise the amount of all the stakeholders.



**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**



**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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