

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

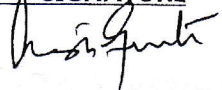
(H) **C.P. (I.B) No. 463/9/NCLT/AHM/2018**

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Dated this the 26th day of November, 2019.

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 25.11.2019**

Name of the Company: Prabhakar Processors Pvt. Ltd.
V/s.
Sachidanand Industries Pvt. Ltd.

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	VIVEK B. GUPTA	LAWYER	Petitioner	
2.				

ORDER

The Petitioner is represented through his respective Counsel.

None for the Respondent.

The arguments from the side of the Petitioner are heard.

The detailed order is recorded vide separate sheet.

The CP(IB) 463/9/NCLT/AHM/2018 is admitted and stands disposed of accordingly.



Dated this the 25th day of November, 2019.


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

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

CP (IB) No.463/9/NCLT/AHM/2018

In the matter of:

Prabhakar Processors Pvt. Ltd.
Through Mr. Vikas Purushottam Poddar,
Plot No. 13, 14 Block No. 296 & 313,
Village Tantithaiya,
Tal: Palsana-Surat.

.....Operational
Creditor/Petitioner

Versus

Shree Sachidanand Industries Pvt. Ltd.
432, golden Point, Nr. BSNL Office,
Ring Road, Surat- 395002

.....Corporate
Debtor/Respondent

ORDER DICTATED AND DELIVERED IN OPEN COURT

DTD. 25th November, 2019.

Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)

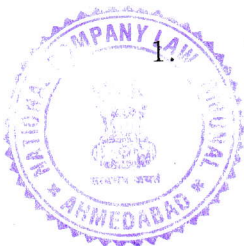
Appearance:

Learned Counsel Mr. Vivek Gupta is present for the Operational
Creditor/Petitioner

None for the Respondent

ORDER

[Per: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)]

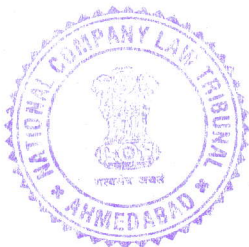


1. The present IB Petition is filed by the Petitioner as
Operational Creditor/Petitioner under Section 9 of the
Insolvency & Bankruptcy Code, 2016 seeking for

commencement of the Corporate Insolvency Resolution Process [hereinafter referred to as "CIRP"] in respect of the Corporate Debtor Company viz. **Shree Sachidanand Industries Pvt. Ltd.**

2. It is the case of the Operational Creditor/Petitioner that it did the "job work" on behalf of the Corporate Debtor Company for processing of the Grey Cloth & dying work thus it raised invoice for total amount of Rs. 26,76,211/- for payment. However, such payment is not made till date and has been declined.

3. It is also pointed out that the Corporate Debtor itself has admitted its debt liability towards the Petitioner Counsel, as it has deducted TDS amount towards Income Tax payable by the Operational Creditor/Petitioner from the amount payable to the Petitioner, but such payment is not received by the Petitioner. In support of its case, the Petitioner invited our attention to the **Form No. 26-AS** of the petitioner of the Income Tax Department, wherein at Sr. No. 63 has been stated that total tax deducted is around Rs. 46,349/- through TDS by the Corporate Debtor i.e. Shree Sachidanand Industries Pvt. Ltd. from the amount due and payable to the present Operational Creditor/Petitioner. It is also stated that such amount of Rs. 23,17,439/- has been admitted as payable to the Operational Creditor/Petitioner.



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However, the Petitioner contends that although the Respondents has deducted the Taxes from the source of payment due to it, yet failed to pay the same.

4. Today, there is no representation from the side of the Corporate Debtor, in fact on previous hearing the Counsel for the Respondent filed a withdrawal pursis and retired from the case. In view of the above, we perused the objection/raised/defence taken by the Corporate Debtor Company to oppose the present IB petition. The main plea of the Corporate Debtor Company took in the present matter stating that the IB petition is filed beyond intimation and there is some dispute regarding payment of the Invoices. However, no explanation in this respect is given in its Affidavit-in-Reply, but it has quantified the amount of Rs. 46,349/- (at Sr. No. 63) as T.D.S as payable to the Income Tax Department from the amount due to the Petitioner, since such deduction of the Income Tax was made on different date from 31.08.2015 to 19.01.2016 and thus total T.D.S of Rs. 46349/- was deducted on behalf of the Operational Creditor/Petitioner and paid by the Corporate Debtor to the Income Tax Department is duly reflected in Form 26-AS Statement.



5. That apart the Petitioner has filed rebuttal document as Annexure-H (Colly.) showing photographs of the work done

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at the premises of "Sunita Creations" and a copy of the bill/invoice raised in this respect and further a copy of Cheque issued bearing No. 935663 dated 15.10.2015 of Oriental Bank of Commerce, Jash Textiles Yarn Market Ring Road, Surat, which is reported to have been dishonoured.

6. We heard the Learned Counsel for the Petitioner and examined the merit of the present case in the light of the above given facts and circumstances of the case under the discipline of the Insolvency & Bankruptcy Code, 2016. It is found that the Demand Notice under Section 8 was properly issued and despite proper service no reply/objection to the Demand Notice was sent to the Petitioner.

7. The Corporate Debtor appeared in this Court and filed a reply. However, it is not convincing not supported by any cogent evidence and explanation that if no dues were payable to the Petitioner then why it made deduction of the TDS on such amount of Rs. 26,76,211/- which is shown due and payable to the present Operational Creditor/Petitioner, which evident that the liability of debts has been admitted and debt is well established.

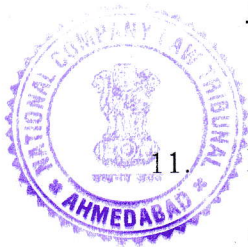


8.

The Hon'ble Supreme Court of India in the matter of ***Innoventive Industries V/s. ICICI Bank [2018] SCC 407***

has categorically held that "***the Adjudicating Authority, if finds that present IB petition is complete. The debt is well established and the default of payment has been committed then the Adjudicating Authority must admit the petition seeking for the Corporate Insolvency Resolution Process of the Corporate Debtor Company***".

9. There is no categorical and sufficient reason given by the Corporate Debtor in Reply which show that there was any pre-existing dispute, if had been so, then there was no occasion for the Corporate Debtor to make deduction of TDS amount payable to the Petitioner and credited the Income Tax Department, but not to pay remaining amount to the Petitioner.
10. Therefore, the defence raised by the Corporate Debtor in reply may be treated as ***feebal and moonshine*** and would not attract provision of the Insolvency & Bankruptcy Code 2016, for rejecting the Petition is laid down by the Hon'ble Supreme Court of India in view of the ***Mobilox Innovations Private Limited Vs. Kirusa Software Private Limited*** and in ***K. Kishan Vs. M/s. Vijay Nirman Company Pvt. Ltd.***



11. In the light of the discussion and having heard the submission of Learned Counsel for the Petitioner at length.

We are found that the present IB Petition is filed on 17th September, 2018 which found complete and well within limitation and deserves for admission.

12. The Operational Creditor/Petitioner has not proposed the name of the Interim Resolution Professional(IRP). Hence, this Adjudicating Authority hereby appoint **Shri Sunit Shah, having IP registration No. IBBI/IPA-001/IP-P00471/2017-18/10814, e-mail id: (sunit78@gmail.com), (M) 9835562442** to act as an IRP under Section 13(1) (c) of the Code.
13. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purpose referred to in Section 14, to cause a public announcement of the initiation of Corporate Insolvency Resolution Process 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 IRP. This Adjudicating Authority direct the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.



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14. Looking to the above stated discussion and on perusal of the record it is found fit case to initiate Corporate Insolvency Resolution Process by admitting the application under Section 9(5) (1) of the Code.

15. The Petition is, therefore, admitted and the moratorium is declared for prohibiting all of the following in terms of Section 14(1) of the Code.

- (a) *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;*
- (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;*
- (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.*

16. It is further directed that the supply of goods/service to the Corporate Debtor Company, 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 Govt. in consultation with any Financial Creditor Regulator.



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17. Further, the IRP appointed shall conduct Corporate Insolvency Resolution Process as per the provisions of the IB Code to complete the same within stipulated period.

Further, he shall exercise his powers and dues confined to him under Section 18 of the IB Code, equally, the personnel of the Corporate Debtor including suspended management are required under Section 19 of the IB Code to extend necessary co-operation to IRP as may be required by him in managing the affairs of the Corporate Debtor.

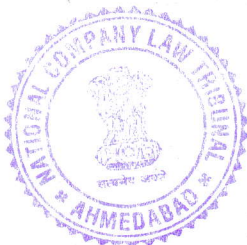
18. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of the Section 31 or passes an order for liquidation of Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016 as the case may be.

19. As per Section 18 of the IBC, 2016 the Interim Resolution Professional shall perform the following duties :

(a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to—

(i) business operations for the previous two years;

(ii) financial and operational payments for the previous two



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years;

(iii) list of assets and liabilities as on the initiation date; and

(iv) such other matters as may be specified;

(b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement made under sections 13 and 15;

(c) constitute a committee of creditors;

(d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;

(e) file information collected with the information utility, if necessary; and

(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—

(i) assets over which the corporate debtor has ownership rights which may be located in a foreign country;

(ii) assets that may or may not be in possession of the corporate debtor;

(iii) tangible assets, whether movable or immovable;

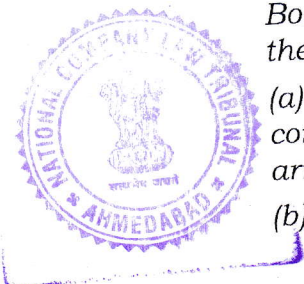
(iv) intangible assets including intellectual property;

(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies; Duties of interim resolution professional. SEC. 1] THE GAZETTE OF INDIA EXTRAORDINARY 15 (vi) assets subject to the determination of ownership by a court or authority;

(g) to perform such other duties as may be specified by the Board. Explanation.—For the purposes of this sub-section, the term "assets" shall not include the following, namely:—

(a) assets owned by a third party in possession of the corporate debtor held under trust or under contractual arrangements including bailment;

(b) assets of any Indian or foreign subsidiary of the

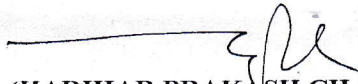


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corporate debtor; and

(c) such other assets as may be notified by the Central Government in consultation with any financial sector regulator.

20. Accordingly, the present IB petition is admitted and stands disposed of. No order as to costs.
21. A copy of this order be communicated to the Petitioner, Corporate Debtor and to the IRP.

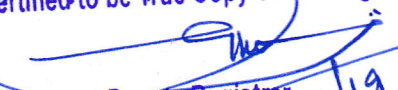

(HARIHAR PRAKASH CHATURVEDI)
ADJUDICATING AUTHORITY
MEMBER (JUDICIAL)



Dated this the 25th day of November, 2019.

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Certified to be True Copy of the Original


Deputy Registrar
NCLT, Ahmedabad Bench
Ahmedabad