



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

**C.P. No. (IB) 512/9/NCLT/AHM/2018**

**In the matter of:**

**Ontic Finserve Limited**

Care Thakkar and Pahwa Advocates  
71, New Yor Tower-A  
Thaltej Cross Roads  
Thaltej  
Ahmedabad 380 054

**Petitioner**  
Operational Creditor

**Versus**

**Safal Securities Limited**

9, Ankur Complex  
Behind Town Hall  
Ellisbridge  
AHMEDABAD 380 006

**Respondent**  
Corporate Debtor

**Order delivered on 29<sup>th</sup> November, 2019.**

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

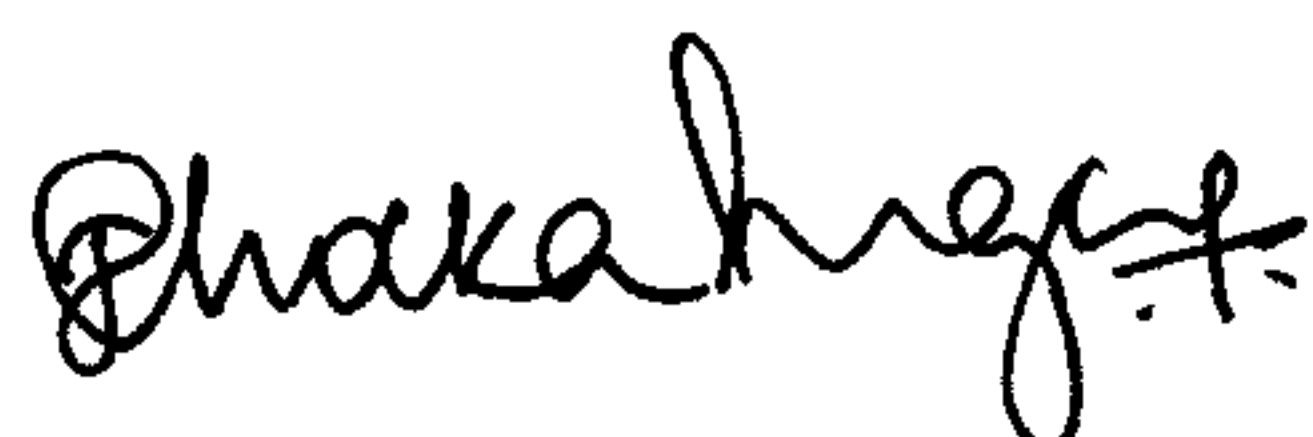
**Appearance:**

Advocate Ms. Himani Chhabra on behalf of Thakkar & Pahwa for petitioner

**ORDER**

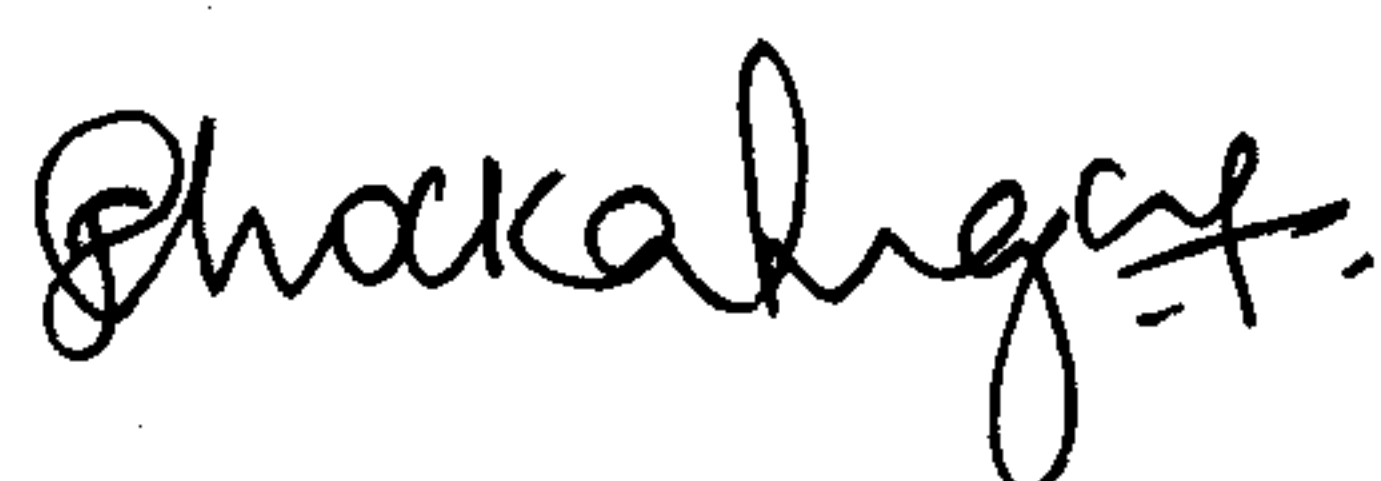
**[Per: Ms. Manorama Kumari, Member (Judicial)]**

1. Mr. Lalitkumar Shah, Director, being authorised signatory, on behalf of the operational creditor M/s. Ontic Finserve Limited filed this Petition on 25<sup>th</sup> September, 2018 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 registered private limited company having identification No. L65910GJ1995PLC025904 and having registered office at Madhavpura Commercial Center, Ahmedabad.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 17.04.1995 having identification No. L67120GJ1995PLC025470 and having registered office at Ellisbridge, Ahmedabad 380 006, Gujarat State. Authorised share capital of the respondent company is Rs. 6,00,000/- and paid up share capital is Rs. 5,00,01,000/-.
4. The applicant/Petitioner has submitted that an amount of **Rs. 19,26,984.67 (Rupees nineteen lacs twenty-six thousand nine hundred eighty-four and paise sixty-seven only)** is due from the corporate debtor on account of non-payment towards purchase of shares and other securities by the corporate debtor. The debt has fallen due with effect from 5<sup>th</sup> January, 2017 and 25<sup>th</sup> August, 2016. That, the working computation of amount and days of default in Tabular Form is given at Annexure – A to the application.
5. In support of its claim, the petitioner has submitted copy of the following documents: -



Sr. No.	Particulars	Page No.
1	Working for computation of amount in tabular form	1-5
2	Receipt issued by corporate debtor in favour of operational creditor towards receipt of payment for purchase of shares	8-9
3	Letters dated 6.2.2017, 01.08.2017 and 01.01.2018 sent by operational creditor to corporate debtor demanding the claim amount	10-12
4	Letters dated 09.02.2017, 10.08.2017 and 04.01.2018 sent by corporate debtor to financial creditor acknowledging the debt.	13-15
5	Ledger account of the corporate debtor from 01.04.2016 to 31.06.2018 showing the debt due	17
6	Demand notice dated 27.06.2018 along with proof of service.	18-29

6. The applicant has also filed additional affidavit in support of the instant application.

### **Findings**

7. Heard learned lawyer appearing for the petitioner also seen the documents annexed to the application. On the date of hearing the respondent was absent. On perusal of the records it is found that despite giving number of opportunities, the respondent preferred to remain absent. Therefore, the matter is heard in absence of representative of the respondent's side.
8. On perusal of the records it is found that the applicant had issued three reminders calling upon the respondent to make payment of the outstanding. It appears that having failed to get any reply from the respondent, the applicant was compelled to issue demand notice under section 8 of I & B Code on dated 27.06.2018. Record also shows that the

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respondent has not raised any reply/dispute against the demand notice so issued by the applicant.

9. On perusal of the records it is also found that as per directives of the Adjudicating Authority, the petitioner had issued paper publication and even after the paper publication the respondent has neither filed any reply nor appeared before the bench.
10. On perusal of the record it is found that the service is complete and the petition is complete in all respect.
11. 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.

12. Thus, under the facts and circumstances and as discussed 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 IB Code as enshrined in the Code. Application is complete in all respect. That, service is complete and 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.

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 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



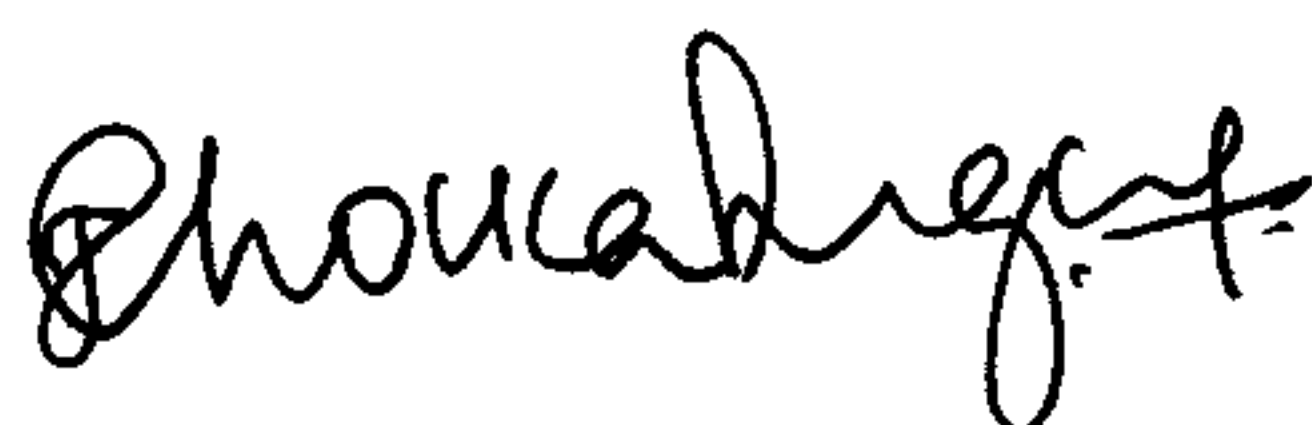
Insolvency Resolution Professional. This Adjudicating Authority direct the Intyerim Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

14. From the above stated discussion and on the basis of material available on record it is a fit case to initiate 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 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.


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16. 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.
17. 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.
18. The applicant/operational creditor has submitted Form 2 proposing the name of Mr. Suhas Bhattbhatt to act as Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Suhas Bhattbhatt, 212 Atlantis K 10 B Tower, Opp. Honest Restaurant, Near Genda Circle, Sarabhai Road, Vadodara 390 007, Gujarat having registration No. IBBI/IPA-002/IP-N00571/2017-18/11738 to act as an interim resolution professional under Section 13(1)(c) of the Code.
22. This Petition is accordingly admitted.



23. 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 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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