

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

C.P.(I.B) No.142/NCLT/AHM/2020

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 08.03.2021**

Name of the Company: New King Abrasive
V/s
Prince Vitrified 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

(through video conferencing/physical)

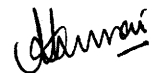
None appeared on behalf of parties.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 08th day of March, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 142/9/NCLT/AHM/2020

In the matter of:

M/s. New King Abrasive
Parshwanath Complex
Shop No. B-21/22, First Floor
8-A, National Highway
MORBI 363 642
GUJARAT STATE

:

Petitioner
Operational Creditor

Versus

M/s. Prince Vitrified Private Limited
Survey No. 141
Matel Road
Vill. Dhuva
Tal. Wankaner
MORBI 363 622
GUJARAT STATE

:

Respondent
[Corporate Debtor]

Order delivered on 8th March, 2021

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

Appearance:

Petitioner : Mr. Pratik Acharya, Advocate
Respondent :

ORDER

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

1. Mr. Dharmendrabhai Dayalal Kalariya, Partner of **M/s. New King Abrasive** 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.

Chockalingam

Manama

2. The applicant/operational creditor, a partnership firm, having GST Registration No. GSTIN -24AAFCP3673E1ZJ and having its registered office at Morbi, Gujarat State, engaged in trading activities, has submitted that, the respondent is indebted to the petitioner a total sum of **Rs. 41,28,358/- (Rupees forty-one lacs twenty-eight thousand three hundred fifty-eight only) which include interest amount of Rs. 6,29,749/- against six invoices** raised by the petitioner towards goods supplied to the respondent during the period from 12.12.2016 to 08.10.2017. As per the terms and conditions of the invoices raised by the petitioner, all the invoices have fallen due and each are payable after seven days from the date of invoice.
3. In support of its claim, the applicant has annexed to the application copy of the documents like; tax invoices, ledger account issued by the respondent, statement of accounts of the petitioner, demand notice along with track report, authority letter etc.
4. The petitioner/operational creditor has submitted that the corporate debtor had been purchasing abrasive materials used for grinding of ceramics from the applicant during 2016 to 2018 for which the corporate debtor released payment in piecemeal to the operational creditor. That, due to huge outstanding, the operational creditor stopped supplying goods after October, 2017 and the last payment made by the corporate debtor was on 16.06.2017.
5. The petitioner has further stated that having failed to receive the outstanding payments, the petitioner was compelled to issue demand notice under section 8 of the I & B Code dated 09.11.2019 in form 3 and form 4 calling upon the respondent to clear the operational debt.

Shoebahngar

Chamrai

6. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956, on 27.02.2010 and having identification No. U26933GJ2010PTC059723 and having registered office at Morbi, Gujarat State. Authorised share capital of the respondent company is Rs.90,00,000/- and paid up share capital is Rs. 67,46,560/-.

Findings:

7. The instant petition filed on 24th January, 2020 was notified for the first time on 19.02.2020. On perusal of the records it is found that, last time, on 09.09.2020, one Mr. Vijay Patel appeared on behalf of the corporate debtor and two weeks' time was granted for filing the reply. Till date neither reply is filed nor anyone appeared on behalf of the corporate debtor. Therefore, Registry again issued fresh notice to the respondent on 13.01.2021 which was delivered on 25.01.2021, but, none appeared on behalf of respondent. Since the service is complete, the matter is heard in absence of respondent.
8. Heard learned counsel appearing for the petitioner and perused the documents annexed to the application.
9. On perusal of the records it is found that the instant petition filed on 24.01.2020 is well within limitation period. Copy of the track report (page 74) clearly reflects that the demand notice dated 09.11.2020 was delivered to the respondent. Moreover, notice dated 13.01.2021 issued by the registry has been delivered on 25.01.2021 establishing that the service is complete. The petitioner has filed copy of invoices raised on the respondent during the period between 2016 and 2018 which demonstrates that the petitioner had supplied material to the respondent. Ledger account for the

Shoucahge

Chhmani

period from 1st April, 2018 to 31st March, 2019 (Annexure "B" – page 56) maintained by the corporate debtor and the ledger account (Annexure "C" – page 57-62) maintained by the petitioner show that the corporate debtor is indebted to the petitioner Rs. 34,98,613.20, the corporate debtor made part payments from time to time and the last payment made was on 16.06.2017.

10. From the above it is clear that the petitioner has supplied goods to the respondent and the aforesaid chain of events clearly establish that the petitioner is operational creditor. Therefore, in the instant case, the petitioner very well falls within the definition of operational creditor and the amount outstanding is operational debt.
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?

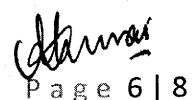
If any of the aforesaid conditions is lacking, the application would have to be rejected.

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



Page 6 | 8

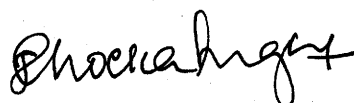
respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(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.

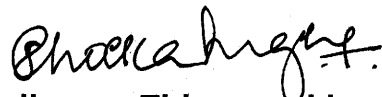
20. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central 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.

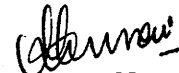
22. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. This Adjudicating Authority hereby appoint Shri Akhilkumar Amrutlal Thakkar, Akhil A. Thakkar & Co., B-2, Sanskar Residency, Sattar Taluka Society, Navjeevan Post, Income Tax, Ashram Road, Ahmedabad 380 014 having registration No. IBBI/ IPA-001/ IP-P01392/ 2018-19/ 12159 (akhilthakkar@gmail.com.) Mobile 09825207701) 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