

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

C.P.(I.B) No.180/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 08.01.2021**

Name of the Company: Ansh Mukesh Chordiya Proprietor Karma
Polytex
V/s
Shree Ambica Geotex 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>
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1.
2.

ORDER

(Through Video Conferencing)

Advocate, Ms. Nilu K. Vaidankar is present 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 8th day of January 2021

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

C.P. No. (IB) 180/9/NCLT/AHM/2020

In the matter of:

Mr. Ansh Mukesh Chordiya
Proprietor of Karma Polytex
1st Floor, Shop No. 10
Cloth Commercial Centre
Outside Kalupur Gate
Kalupur
AHMEDABAD 390 001
GUJARAT STATE

:

Petitioner
Operational Creditor

Versus

M/s. Shree Ambica Geotex Private Limited
15, Shahwadi Saijpur Road
Saijpur Gopalpur
Narol
AHMEDABAD 382 405
GUJARAT STATE

:

Respondent
[Corporate Debtor]

Order delivered on 08th January, 2021

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

Appearance:

Petitioner : Dr. Kamlesh Vaidankar, Advocate
Respondent : Ms. Natasha Dhruman Shah, Advocate

ORDER

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

1. Mr. Ansh Mukesh Choradiya, Proprietor of **M/s. Karma Polytex** 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

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[hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The applicant/operational creditor, a proprietorship firm of Mr. Ansh Mukesh Chordiya having identification No. GSTIN24BUUPC1858D1ZN, having its registered office at Ahmedabad, engaged in manufacture of variety of fabrics, has submitted that the respondent is indebted a total sum of **Rs. 10,05,832/- (Rupees ten lacs kfive thousand eight hundred thirty-two only)** and interest @ 18% per annum amounting to Rs. 55,212/- to the applicant towards the supply of HDPE Woven fabrics made by two invoices dated 20th July, 2019 and 08th August, 2019 as per the details annexed at page No. 22-25 to the application.

3. In support of its claim, the applicant has annexed to the application copy of the documents like; affidavit under section 9 (3) (b) of the I & B Code invoices (page 57-59), GST registration certificate (18-19), invoices (22-25) ledger of corporate debtor (26), computation of outstanding and due date of default along with interest calculation (27) demand notice in form 3 and form 4 and letter of authority (28-36), speed post receipt evidencing the service of demand notice (37-41), reply of corporate debtor (42-47), bank statement of the operational creditor (48-56), etc.

4. The applicant has stated that despite repeated reminders the respondent has not paid the outstanding operational debt, therefore, the applicant was compelled to issue demand notice under Section 8 of the I & B Code in form 3 on 18.12.2019 calling upon the respondent to clear the operational debt.

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5. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956, on 1st February, 2008 and having identification No. U01403GJ2008PTC052795 and having registered office at Narol, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs.1,00,00,000/- and paid up share capital is Rs. 98,98,050/-.
6. The respondent/corporate debtor filed affidavit in reply inter alia denying the debt and raising baseless objections.

Findings:

7. Heard learned counsels appearing for both the sides and perused the documents annexed to the application/reply.
8. On perusal of the records it is found that the instant petition filed on 24.02.2020 was notified for the first time on 12.03.2020. On perusal of the record it is also found that the demand notice issued by the applicant under section 8 of the I & B Code on 18.12.2019 has been served upon the corporate debtor.
9. On perusal of the reply filed by the corporate debtor it is found that the contentions raised in defence of the operational debt are vague, ambiguous and up-through merely to raise unnecessary and false dispute to escape the provisions of Insolvency and Bankruptcy Code, 2016. Moreover, no documentary proof is provided by the corporate debtor in support to the averments which thus makes it evident that the dispute is an after-thought post the issuance of the demand notice. Other contentions raised in the reply by the corporate debtor appears to be a part of moonshine defence which devoid of merits.

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10. In support of its claim, the petitioner has annexed to the application, copies of invoices to which the corporate debtor has not raised any objection. Rather, while filing the objection, the corporate debtor has admitted the dues inter alia stating that the petitioner is indebted some amount to some other company wherein the corporate debtor has dues and the same is adjusted towards the bill of petitioner. However, in support of such contention, no document is filed by the respondent. Under such circumstances when the corporate debtor itself has admitted that the operational debt is due, in that event, it is a fit case for admission.
11. 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.
12. 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.
13. 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'.
14. It has been observed in **Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBC (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.

15. 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.
16. 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

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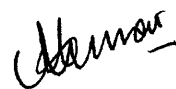
public announcement of initiation of Corporate Insolvency Process and call for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.

17. 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.
18. 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.

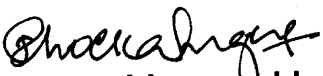
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19. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
20. 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.
21. The applicant/operational creditor has not proposed name of the 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.
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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