

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

**C.P.(I.B) No.92/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 02.11.2020**

Name of the Company: Parag Charia Proprietor of Ami  
Enterprise  
V/s  
Alpha Nippon Innovatives 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**

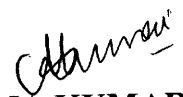
None appeared on behalf of the parties.

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 2nd day of November, 2020



**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**C.P. No. (IB) 92/9/NCLT/AHM/2020**

**In the matter of:**

**Mr. Parag Charia**  
Proprietor of Ami Enterprise  
Mukhi Ni Khadki  
Nr. Amit Stores  
B/s. Ambica Mandir  
Paldi  
AHMEDABAD 380 006  
Gujarat State

**Petitioner**  
Operational Creditor

**Versus**

**Alpha Nippon Innovatives Limited**  
Survey No. 310  
Bhamsara  
Bavla Bagodara Road  
Dholka  
AHMEDABAD 382 230  
Gujarat State

**Respondent**  
[Corporate Debtor]

**Order delivered on 2<sup>nd</sup> November, 2020**

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

**Appearance:**

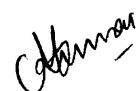
Petitioner : Mr. Kamlesh Vaidankar, Advocate  
Respondent : Mr. Jigar J. Patel, Advocate

**ORDER**

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

1. Mr. Parag Charia, Proprietor of **M/s. Ami Enterprise**, 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.

2. The applicant/operational creditor is a proprietorship firm having its registered office at Ahmedabad engaged in the supply of power tools and accessories.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 07.03.2006 and having identification No. U28930GJ2006PLC047896 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 7,00,00,000/- and paid up share capital is Rs. 5,63,81,590/-.
4. The applicant/operational creditor has submitted that the corporate debtor had placed various purchased orders for the supply of power tools and accessories and the operational creditor had supplied the goods vide invoices raised by it during the period from 11.05.2016 to 01.12.2016. That, the goods were delivered to the corporate debtor vide various delivery challans during the period from 11.05.2016 to 01.12.2016 and the said delivery challans are duly signed by the corporate debtor.
5. The applicant has further submitted that last payment of Rs. 50,000/- was received from the respondent on 17.10.2017. That, the respondent has never disputed the quality/ quantity of the goods supplied by the petitioner.
6. The applicant has further submitted that total amount of **Rs. 4,10,899/- (Rupees four lacs ten thousand eight hundred ninety-nine only)** is due and payable by the corporate debtor which include interest @ 24% per annum

*Shreehari*

*Shreehari*

amounting to Rs. 1,74,031/- (Rupees one lac seventy-four thousand thirty-one only). That, despite several reminders the respondent has not paid the operational debt due and payable by the respondent, therefore, this petition.

7. The applicant in support of its claim has furnished copy of documents like; affidavit in support of the application, affidavit under Section 9 (3) (b) of the IB Code, bank statement/certificate issued by the bank as required under Section 9 (3)(c) of the IB Code, purchase order, invoices and delivery challan, demand notice, postal receipt etc.
8. The respondent filed affidavit in reply inter alia raising objection that the operational creditor has failed to press its claim within the period of limitation, therefore, the present petition is ex facie barred by limitation.

**Findings:**

9. Heard the lawyers 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 operational creditor has annexed to the application (page 22 to 69) copy of purchase orders, invoices and delivery challans establishing the transactions between the applicant and respondent. It is also found that Demand Notice dated 28.09.2019 was served upon the respondent on 05.10.2019. It is also found that the respondent has not replied to the demand notice and thus has not raised any dispute.

*Shachin Gupta*

*Chaturvedi*

11. On perusal of the records it is found that the operational creditor has produced on record ledger of the corporate debtor maintained in the books of accounts of the petitioner (page 91-94) wherein, it is reflecting that the corporate debtor had made last payment to the petitioner on 17.10.2017. The applicant has also produced on record the bank statement issued by IDBI bank for the period from 01.10.2017 to 31.10.2017 which reflects the entry dated 17.10.2017 whereby the respondent has made part payment of Rs. 50,000/- to the petitioner. Therefore, contention of the respondent that the instant application is time barred is misconceived as the respondent has made part payment within limitation period and hence the limitation period as envisaged under Section 18 & 19 of the Limitation Act is extended and, therefore, the petition is within the limitation.
12. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 28.09.2019 has been served upon the corporate debtor, but, no dispute has been raised. Therefore, the petitioner has also filed affidavit of no dispute.
13. 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.
14. 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.

*Shachin Singh*

*Chandra*

15. 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'.
16. 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.

17. 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. That, service is complete and no dispute has ever 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.

*Shankar Singh*

*Chakraborty*

18. 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.
19. 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.
20. 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

  
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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.

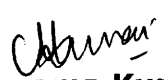
21. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
22. 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.
23. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Nimai Gautam Shah, 605-606-607, Silver Oaks, Nr. Mahalaxmi Char Rasta, Paldi, Ahmedabad 380 007 ([enjabd@gmail.com](mailto:enjabd@gmail.com)) having registration No. IBBI/IPA-001/IP-P00154/2017-18/10323 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code.
24. This Petition is accordingly admitted.

*Shankar Singh*

*Chatur*

25. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
  
26. 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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