

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

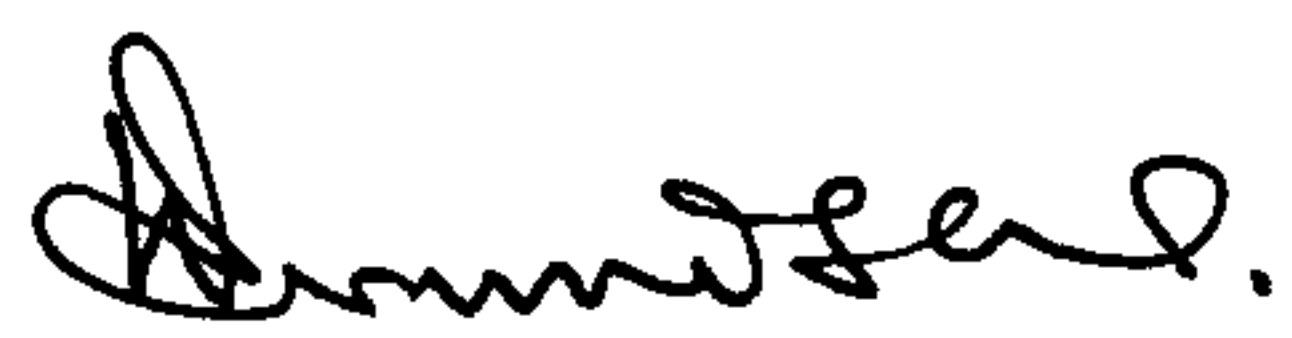
C.P (I.B) No.42/NCLT/AHM/2020

**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 18.03.2020**

Name of the Company: Modern Metals Pvt Ltd
V/s
Gajanand Creation Pvt Ltd


Section : 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.	Vinodkumar S. Shah	PCS	Applicant	
2.				

ORDER

The Petitioner is represented through learned PCS.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL
Dated this the 18th day of March, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)
AMBADABAD BENCH**

CP (IB) NO. 42/NCLT/AHM/ 2020

IN THE MATTER OF: -

Modren Metaalics Private limited

Plot No. 346, 347, 348A,
Unity Industrial Estate,
Baltiboi, Pandesara, Bhenstan Road,
Surat -394221

..... **Applicant
Operational Creditor**

Versus

Gajanand Creation Private Limited

Plot No. C-11/6, Rd. No 5,
Hojiwala Industrial Es. Gate No. 1
Sachin Palsana Highway, Vanz,
Surat 394230

..... **Respondent
Corporate Debtor**

Order Delivered on 17th March, 2020

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

Appearance:

Advocate: PCS Mr. Vinod Kumar S. Shah for the applicant
PCS Mr. Dheeraj Garg for Respondent

ORDER

Per: Ms. Manorama Kumari, Member (J)

1. The instant application is filed by Mr. Nitin Kotecha authorized representative and director of **M/s. Modren Metaalics Private Limited** under section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**Code**") read with Rule 6 of IB Code (application to the Adjudicating) Authority Rules 2016 (hereinafter referred to as "**Rules**") as operational Creditor/ Applicant.
2. That, the Operational Creditor is a private limited company having registration No. CIN-U17291GJ2011PTC065984 and

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having its registered office at Surat, Gujarat State is engaged in the business of supplying of Jari.

3. The Corporate Debtor is Private Limited Company incorporated on 28.04.2009 and having registered office at Surat, Gujarat State having identification No. U17120GJ2009PTC056758.
4. The operational creditor has stated that pursuant to the oral orders, the operational creditor had supplied jari to the corporate debtor during the period from 15.10.2016 to 11.10.2017 and raised the invoices. That, the operational creditor was maintaining a running account with the corporate debtor and accordingly, the operational creditor raised invoices for the period from 15.10.2016 to 11.10.2017. That, the corporate debtor used to make ad hoc payment against the invoices raised by the operational creditor from time to time and last such payment was made on 16.11.2019.
5. It is further claimed by the operational creditor that as per the prevailing practice, payments of the tax invoices are required to be made within 90 days from the date of invoice failing which interest @ 24% is chargeable as per the terms of the tax invoices. However, the corporate debtor failed to pay the due amount of **Rs. 8,43,077/- (Rupees eight lacs forty-three thousand seventy-seven only)** which includes interest at the rate of 24% per annum, as per the working computation annexed to the application.
6. It is further stated by the applicant that the corporate debtor received goods to the satisfaction and has not raised any dispute with respect to the quality or quantity of the goods supplied to it till 11.07.2019. Since the

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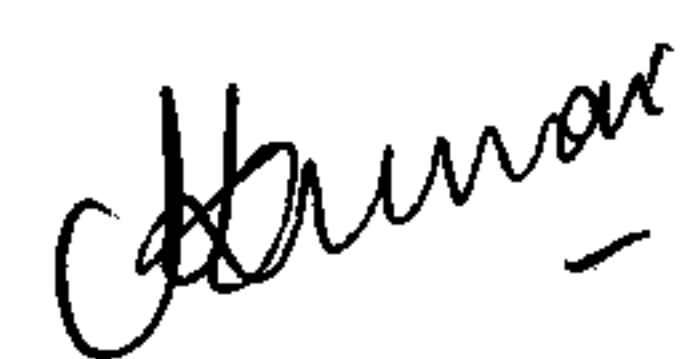
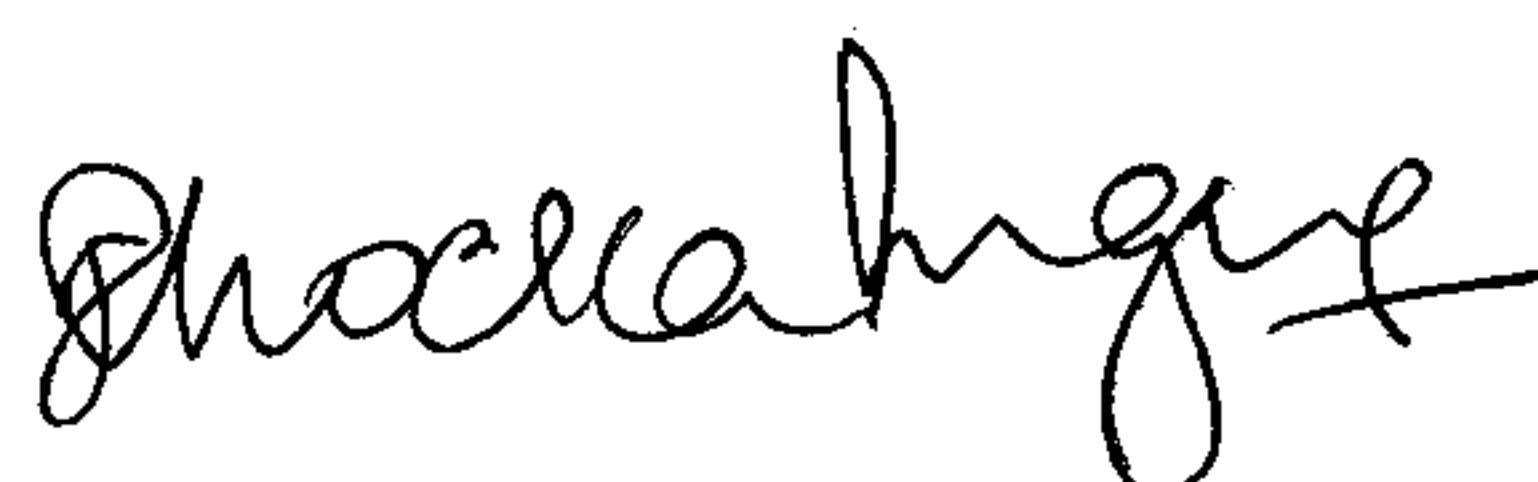
operational creditor did not receive the amount of invoices issued, the operational creditor followed the matter with the representatives of the corporate debtor but failed to get any payment. All the times, assurance was given to make payment shortly. The operational creditor having realised that the intention of the corporate debtor is malicious and, in fact, it is unable to pay the legitimate debts, the representative of the operational creditor visited the office of the corporate debtor in the first week of July, 2019 and informed that non-payment of the legitimate dues can be considered as inability of the corporate debtor to make payment of the outstanding and accordingly, the operational creditor would be forced to initiate proceedings under I & B Code.

7. The operational creditor has further stated that upon failure to make the payment of unpaid amount by the corporate debtor, operational creditor sent a demand notice to the corporate debtor under section 8 of I & B Code in Form 3 on 20.09.2019.
8. In support of its claim, along with the application, the applicant has submitted copy of documents like Board Resolution, unpaid tax invoices, delivery challans, ledger in the books of operational creditor, working computation of default, bank statement, demand notice, form No. 2 etc.
9. That corporate debtor replied to the demand notice dated 20.09.2019 through its Advocate on 08.10.2019 in which corporate debtor raised the same quality issue which he had raised in email dated 12.07.2019 and tried to establish the pre-existing dispute in light of the judgment of Supreme Court in the matter of "**Mobilox Innovation Pvt. Ltd. Vs. Kisura Software Private Ltd**"

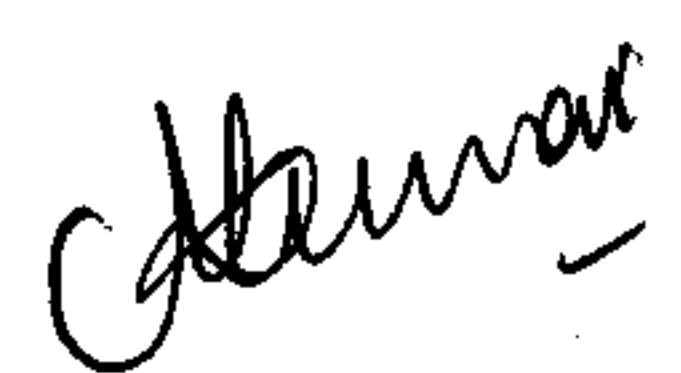
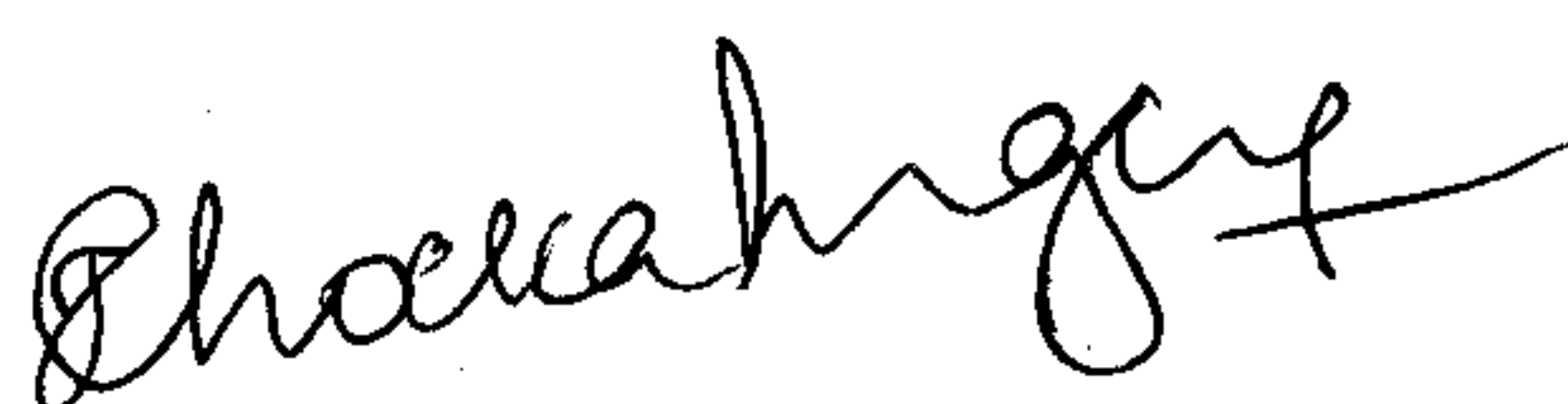


Findings:

10. Heard the Learned Counsel for both the sides and perused the documents annexed to the application/reply.
11. On perusal of the records and documents it is found that the Operational Creditor and Corporate Debtor having business relations, the Operational Creditor had supplied material during the period from 15.10.2016 to 11.10.2016, however, the corporate debtor used to pay lump sum amounts to the operational creditor irrespective of the amount of each invoice. That, the Corporate Debtor used to pay lump sum amount to the Operational Creditor, irrespective of the amount of invoice. As such, the operational creditor/applicant used to adjust the payment of invoice, however, in respect of the invoices raised during the period 10.08.2017 to 11.10.2017, the Corporate Debtor stopped payment. In support of the claim the operational Creditor has annexed the tax invoices and delivery challan which shows that the goods were duly delivered visa-vis received by the corporate debtor.
12. On perusal of the invoices, it is seen that it contains certain terms and conditions, which are as follows: -
 - a. All transactions are subject to Surat Jurisdiction.
 - b. Goods once sold cannot be taken back.
 - c. Any complaints regarding goods should be made within 2 days from the receipt.
 - d. Interest @ 24% per annum will be charged for delayed payment.
 - e. Payment should be made bill to bill by A/C payee cheque/draft only.
 - f. Cheque return charges Rs. 250/-.



- g. We are not responsible for any loss or damage during transit.
- h. Complaints, if any, regarding the invoice must be settled within 2 days from the date of invoice.
13. On perusal of the records it is found that the bottom of delivery challan contains a note which reads as under: -
- "Note: If any difference is found in quality, price, quantity etc. the same should be ratified in writing within 24 hours. Otherwise it will be constraining as accepted in every respect.**
14. Thus, it is amply clear from the terms & conditions of the invoices that complaint, if any, has to be made within 2 days from the receipt of materials and as per delivery challan dispute with regard to quantity, price, quality etc. has to be made within 24 hours. Admittedly, the Corporate debtor has not made any complaint within 24 hours. The very act of the Corporate Debtor shows that there were /are no complaints and/or dispute in respect of the goods.
15. On perusal of the record it shows that for the first time corporate debtor raised dispute on 19th July, 2019 for the goods supplied sometime in the year 2017 i.e almost on completion of 2 (two) years when the goods are/were consumed as reflected from page 62, Annexure F of the application. The said dispute is not only spurious but also appears to be concocted story made with an intention to avoid the dues of Operational Creditor. It is settled law that, terms and condition of the invoices are valid contract and if there were any dispute, it has to be raised within stipulated time i.e as per the terms and conditions of invoices and/or delivery challan, which was not done by Corporate Debtor.



16. Corporate Debtor has totally failed to show bona fide dispute and/or any evidence which will show that the corporate debtor raised dispute just after delivery of goods and/or even within a month or so, so as to show their bona fide. Raising a dispute in the year 2019 in respect of the goods received in year 2017, itself shows that it is a made up story to avoid dues of the operational creditor.
17. It is 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, the Adjudicating Authority 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?
 - (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.

18. 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 20th September, 2019 has been served upon the corporate debtor. Therefore, service is complete. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation.
19. 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 to the Applicant. The documents produced by the operational





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creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.

20. 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 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.
21. 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.

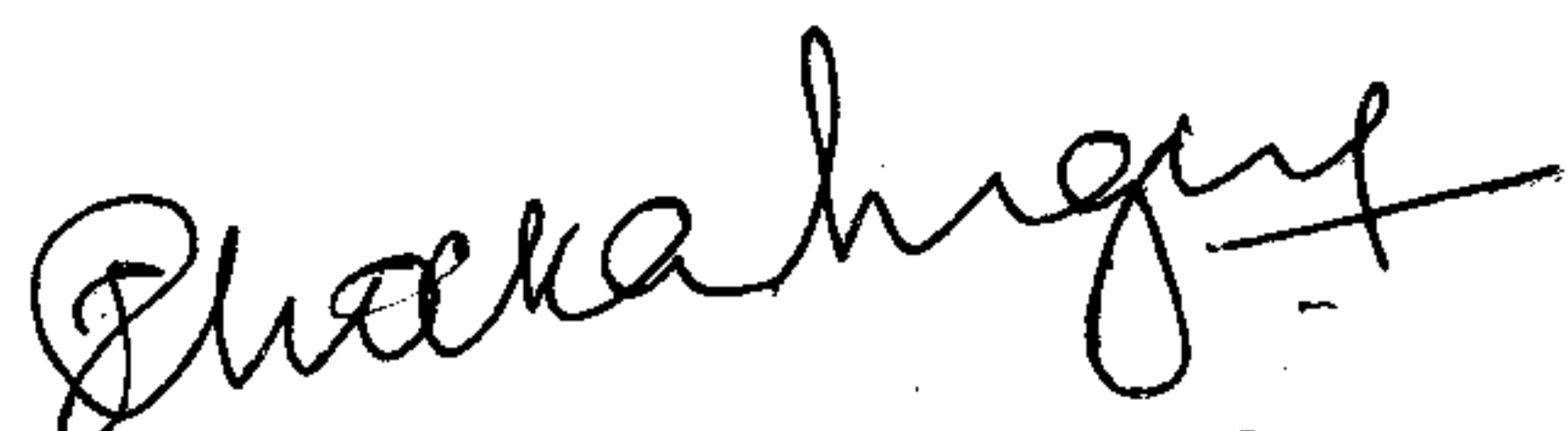


22. From the above stated discussion and on the basis of material available on record it is evident that the corporate debtor has committed default in payment of operational debt and, therefore, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
23. 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 Securitization 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.
24. 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.
25. 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-

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section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

26. The applicant/operational creditor has proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Kailash T. Shah, 505, 21st Century Business Centre, Nr. World Trade, Ring Road, Surat 395 002 (ipktshah@gmail.com) having registration No. IBBI/IPA-001/IP-P00267/2016-17/10511 to act as an interim resolution professional under Section 13(1)(c) of the Code.
27. This Petition is accordingly admitted.
28. 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 realize the amount for all the stakeholders.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)