

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

**C.P. (I.B) No.18/NCLT/AHM/2019**

**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 13.03.2020**

Name of the Company: Pucar Traders  
Through its partners-Tariq puthawala  
V/s.  
Saiswaram Tradelinks 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.	MAUNESH T. PATHAK	ADVOCATE	PETITIONER	<u>M.T. Pathak</u>
2.	Nachiket D. Mehta	Advocate	Respondent	<u>Mehta</u>

**ORDER**

The parties are represented through learned counsels.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
**MEMBER TECHNICAL**

Dated this the 13th day of March, 2020

  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

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

**C.P. No. (IB) 18/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Pucar Traders**

7, Kalpana Industrial Estate  
Behind Ajit Mill Compound  
Rakhial  
AHMEDABAD 380 023

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Saiswaram Tradelinks Private Limited**

Block No. 371, Kasipura Sarar Road  
Opp. Ramdevpir Temple  
Kasipura Por  
VADODARA 391 243  
Gujarat State

**Respondent**  
Corporate Debtor

**Order delivered on 13<sup>th</sup> March, 2020.**

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)**

**Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

**Appearance:**

Advocate Mr. Shail T. Pathak for petitioner

Advocate Mr. Nachiket D. Mehta for respondent

**ORDER**

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

1. The instant application is filed by M/s. **Pucar Traders** through its partner Mr. Tariq Puthawala 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 respondent/corporate debtor is a company registered under the Companies Act, incorporated on 18.02.2013

*Shail T. Pathak*

*Chockalingam*

having identification No. U51909GJ2013PTC073605 and having registered office at Dist. Vadodara, Gujarat State. Authorised share capital of the respondent company is Rs. 1,60,00,000/- and paid up share capital is Rs. 1,57,45,000/-

3. The applicant/operational creditor is partnership firm engaged in the business of paper manufacturing and manufacturing of raw materials for papers and doing wholesale business of papers and providing the same as per the requirements of clients.
4. The applicant/operational creditor has stated that the corporate debtor had approached the applicant in the year 2016 for purchase of raw materials and accordingly during the period 2016-2018 the petitioner had supplied material as per the requirement of the corporate debtor. That, the corporate debtor used to make payment against such supplies and never raised any complaint about the material supplied. That, as per the books of accounts maintained by the operational creditor, as on 31.08.2018, an amount of **Rs. 70,68,544.00 (Rupees seventy lacs sixty-eight thousand five hundred forty-four only)** is due and payable by the corporate debtor. That, the corporate debtor had issued a cheque on 14.02.2018 for Rs. 49,76,257/- towards part payment, but, on submission the cheque was dishonoured with remarks "funds insufficient" That, on 09.03.2018 the applicant issued statutory notice under the Negotiable Instruments Act, but, inspite of service of notice, the corporate debtor failed to clear the outstanding dues. Therefore, the applicant preferred a complaint before the Metropolitan Magistrate Court, Ahmedabad and the same is pending for adjudication.
5. In support of its claim, the operational creditor has annexed to the application, copy of demand notice, certificate/statement issued by the bank showing that no





payment has been received from the corporate debtor towards the operational debt and copy of the dishonoured cheque.

6. The respondent/corporate debtor filed affidavit in reply raising various objections. The first objection raised by the corporate debtor is about the pre-existing dispute between the companies regarding quality/quantity of goods and the quantum of amount raised.


### **Findings**


7. Heard the 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 petitioner has not kept on record copy of purchase order, affidavit in respect of no dispute and has suppressed vital information about the pre-existing dispute regarding quality/quantity and quantum of amount claimed.
9. On perusal of the records it is found that the corporate debtor has kept on record (page 251-256) copy of e-mail communication dated 11.01.2017 sent by the corporate debtor rejecting the material supplied by the operational creditor due to sub-standard quality. It is also found that, subsequently, the corporate debtor had sent number of e-mails dated 22.04.2017, 28.11.2017, 15.05.2017 and 16.05.2017 complaining about the quality of the material and asking for compensation against the same. On perusal of the record it is also found that there was pre-existing dispute much before issuance of demand notice on 25.09.2018.





10. On perusal of the records it is also found that against the defective material supplied by the petitioner, respondent had issued debit notes.
11. In the instant application, from the material placed on record by the respondent, it is evident that there is/are pre-existing dispute regarding quality/quantity and amount raised by the operational creditor against the supply of goods and, therefore, the instant petition is not maintainable.
12. In view of what is stated herein above, the Adjudicating Authority is of the considered view that the instant application devoid of merit and as such is not maintainable on the very reason that there is/are pre-existing disputes with regard to the goods supplied.
13. In the result, the instant application is dismissed. No order as to cost. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim as against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration of the provision of IB Code, 2016.

  
**Chockalingam Thirunavukkarasu**  
**Adjudicating Authority**  
**Member (Technical)**

  
**Ms. Manorama Kumari**  
**Adjudicating Authority**  
**Member (Judicial)**

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