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24/10/2019.

BEFORE THE AJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free of Cost Copy

C.P. (I.B) No. 106/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 17.10.2019

Name of the Company:

B.G.Textile

V/s

H Sakhiya Fashions Pvt Ltd

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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1.

2.

ORDER

None appeared on behalf of the parties.

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

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CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 17th day of October, 2019

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MANORAMA KUMARI
MEMBER JUDICIAL



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

C.P. No. (IB)106/9/NCLT/AHM/2019

In the matter of:

B.G. Textile
A/203, Shreeji Complex
Tirupati Society - 2
Varachha Road
SURAT 395 006

Petitioner
Operational Creditor

Versus

H. Sakhiya Fashions Private Limited
U-55, Diamond World,
Mini Bazar,
Varachha Road
SYRAT 395 006

Respondent
Corporate Debtor

Order delivered on 17th October, 2019.

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

Appearance:

Advocate Mr. Harmish K. Shah for petitioner
Advocate Mr. Anshul Shah for respondent

ORDER

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

1. Mr. Bhadreshbhai G. Gajera, proprietor, M/s. B.G. Textile 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"].



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2. The applicant/operational creditor is a proprietary firm having identification/PAN AXLPG7584P and having office at Varachha Road, Surat, Gujarat State is engaged in the business textile raw material.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 06.01.2012 having identification No. U17120GJ2012PTC068499 having registered office at Varachha Road, Surat, Gujarat State. Authorised share capital of the respondent company is Rs. 24,50,000/- and paid up share capital is Rs. 17,49,800/-.
4. The applicant/Petitioner has submitted that vide invoice No. 8 and 10 and delivery challan No. 8, 11 & 12 respectively dated 06.05.2017 and 14.05.2017, placed at page No. 15 to 19 to the petition, had supplied CATONIC (textile raw material) to the respondent during the period from 6th May, 2017 to 14th May, 2017. That, against the said supplies, an amount of Rs. 2,85,420/- towards principal and Rs. 71,327/- towards interest @ 18% per annum calculated till 30.10.2018 aggregating **Rs. 3,56,747/- (Rupees three lacs fifty-six thousand seven hundred forty-seven only)** is outstanding and to be paid by the corporate debtor. That, the quality of goods and services provided by the operational creditor was of very high standard and there was no dispute ever raised by the corporate debtor. That, despite several reminders the corporate debtor did not clear



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the outstanding on one or the other pretext and, therefore, the operational creditor was constrained to issue notice dated 13th October, 2018, copy of which is placed at page No. 20-21 to the petition. That, on receipt of said notice, respondent company requested for some time for payment of outstanding amount. That, copy of statement of accounts of the respondent company in the books of the petitioner showing the outstanding amount of Rs. 3,56,747/- due and payable by the respondent company for the period from 01.04.2017 to 31.12.2018 is placed at page No. 23 to the application.

5. It is further submitted by the petitioner that, having failed to receive any reply from the respondent, petitioner had issued demand notice in form 3, copy of which is available at page No. 26 to 39 to the report.
6. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Affidavit in support of initiation for corporate insolvency resolution process by operational creditor u/s 9 of the Insolvency and Bankruptcy Code, 2016	6-10
2	General affidavit verifying the petition	11-12
3	PAN card of the petitioner	13
4	Invoices and delivery challans	15-19
5	Notice dated 13.10.2018 issued by petitioner along with postal receipt	20-21
6	Reply dated 18.10.2018 from respondent	22
7	Statement of accounts of respondent company in the books of the petitioner	23
8	Calculation sheet of the total outstanding	24
9	Bank statement for last two years from Kotak Mahindra Bank showing that no payment has been received by the petitioner	25



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10	Form 3 along with other documents and proof of service of notice	26-39
11	Affidavit of no notice of dispute	40-41

7. The respondent filed reply in affidavit inter alia stating that due to demonetization and implementation of GST, the textile business in Surat was severely hit thereby affecting the job-work orders of the respondent company which ultimately resulted into non-payment to the applicant in time. That, there was no prior agreement regarding the payment of interest @ 18%. That, since the respondent has not refused to make the payment to the applicant and has sought some time for the payment, the insolvency proceedings cannot be initiated against the respondent.

Findings

8. Heard learned lawyers appearing for both the sides and also seen the documents annexed to the application.
9. On perusal of the application it is found that at page No. 15 to 19 of the application the operational creditor has placed copy of invoices and delivery challans related to the supply of goods made to the corporate debtor, wherein, it is categorically mentioned that "interest @ 18% p.a. will be payable, if payment not made within 30 days". Therefore, contention raised by the respondent that there was no prior agreement regarding the payment of interest @ 18% is not sustainable.

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10. Further, during the course of hearing, learned lawyer appearing on behalf of the respondent fairly admitted the debt as they are not in a position to make the payment and hence they are admitting the claim of the petitioner.
11. On perusal of the records it is found that the respondent has not raised any dispute regarding the operational debt payable to the operational creditor even after receipt of demand notice.
12. 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?

13. At this stage it is desirable to refer the judgement in ***Innoventive Industries vs. ICICI Bank [2018] 1 SCC 407***

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the Hon'ble Supreme Court after setting out some of the sections of the Code, laid down the scheme of the Code, came to financial and operational creditors triggering the Code against a corporate debtor, it held:

"27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and it is not paid, the insolvency resolution process begins. Default is defined in Section 3 (12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of "debt", we have to go to section 3 (11), which in turn tells us that a debt means a liability of obligation in respect of a "claim" and for the meaning of "claim", we have to go back to Section 3 (6) which defines "claim" to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The Corporate Insolvency Resolution Process may be triggered by the corporate debtor itself or a financial creditor or operational creditor.

14. 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. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section (20) of Section 5 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default.
15. That, the Application filed by the Applicant on 08th January, 2019 is complete in all respect.

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16. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Saurabh Jhaveri, 620 Jolly Plaza, 6th Floor, Athwagate, Surat 395 001 (saumeg@gmail.com) (Mobile: 9228427123) having registration No. IBBI/IPA-002/IP-N00068/2017-18/10146 to act as an interim resolution professional under Section 13(1)(c) of the Code.
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 Insolvency 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 a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.



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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 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

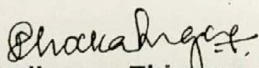


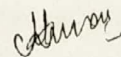
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Central Government in consultation with any financial sector regulator.

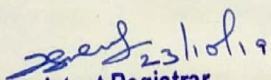
21. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
22. This Petition stands disposed of accordingly with no order as to costs.
23. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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Certified to be True Copy of the Original


Assistant Registrar
NCLT, Ahmedabad Bench
Ahmedabad

