

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

C.P. (I.B) No. 205/9/NCLT/AHM/2019

**Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER (JUDICIAL)
Hon'ble Mr. PRASANTA KUMAR MOHANTY, MEMBER (TECHNICAL)**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 28.05.2020**

Name of the Company: Ahmedabad Strips Pvt Ltd
V/s
Pratiksha Infracon Pvt Ltd

Section of the Companies Act : 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.

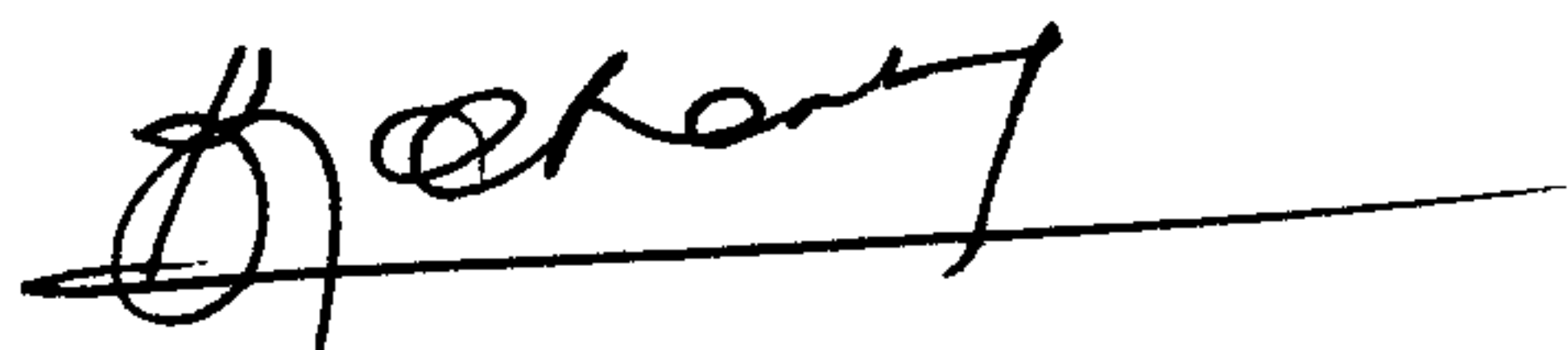
ORDER


The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order is pronounced in open Court.

The present matter i.e. CP (IB) No. 205/9/NCLT/AHM/2019 is admitted as order in detail is recorded vide separate sheet.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 28th day of May, 2020.

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

C.P. (I.B.) No. 205/9/NCLT/AHM/2019

In the matter of:

AHMEDABAD STRIPS PRIVATE LIMITED

Having its Registered Office at:

706-709, Colonnade,
Behind Iskcon Temple,
Iskon – Ambli Road,
Ahmedabad – 380054

..... Petitioner/Operational Creditor

Versus

PRATIKSHA INFRACON PRIVATE LIMITED

Having its Registered Office at:

11, Kaveri Bungalows,
Near Shubham Bungalows,
Nikol Road, Nava Naroda,
Ahmedabad – 382 330.

..... Respondent/Corporate Debtor

Order delivered on 28.05.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member(J)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

Appearance:

Mr. Monaal J. Davawala, Advocate for the Petitioner/Operational Creditor

Mr. Anil H. Soni, Advocate for the Respondent/Corporate Debtor

[Per: Mr. Prasanta Kumar Mohanty, Member (T)]

1. The present petition has been preferred by the Operational Creditor, Ahmedabad Strips Private Limited under Section 9 of the Insolvency and Bankruptcy Code,

✓

✓

2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, Pratiksha Infracon Private Limited.

2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) – U27100GJ1997PTC032714. The registered office of the Petitioner is situated at 706-709, Colonnade, Behind Iskcon Temple, Iskon – Ambli Road, Ahmedabad – 380054. The present Petition is filed through Shri Monaal J. Davawala.
3. The Respondent/Corporate Debtor, namely Pratiksha Infracon Private Limited was incorporated on 11.07.2008 with CIN: U45203GJ2008PTC054458. The authorised capital of the company is INR.50,00,000.00 and the paid-up capital is INR.50,00,000.00. The registered office of the Corporate Debtor Company is situated at: 11, Kaveri Bungalows, Near Shubham Bungalows, Nikol Road, Nava Naroda, Ahmedabad – 382330.
4. It is submitted by the Petitioner that the Respondent/Corporate Debtor is indebted to the Petitioner for INR.4,54,36,705.00 (Rupees Four Crores Fifty Four Lakhs Thirty six Thousand Seven Hundred Five Only) as on 30.11.2018.

✓

[Handwritten Signature]

5. It is submitted that the Operational Creditor and the Corporate Debtor started having business dealings on or about 2014. The Operational Creditor engaged in the business of supply of C. R. Sheets and Coils and the bills raised by the Operational Creditor were cleared from time to time by the Corporate Debtor. No dispute was ever raised with regard to the quality of the products supplied by the Operational Creditor. On or about June 2016, the Corporate Debtor started making irregular payments as in the bills raised by the Operational Creditor were not cleared on time. The Operational Creditor repeatedly pointed this out to the Corporate Debtor. However, the repeated requests have fallen on deaf ears and Corporate Debtor has defaulted in making Payment.
6. It is submitted that the despite repeated requests, reminders and personal follow up; the Corporate Debtor has failed to make the outstanding payments. Under the circumstances, on 10.12.2018, the Operational Creditor was compelled to issue demand notice under Section 8 of Insolvency and Bankruptcy Code read with Rule 5 of the Insolvency and Bankruptcy Rules, 2016 calling upon the Corporate Debtor to pay an aggregate amount of INR.4,54,36,705.00 (Rupees Four Crores Fifty Four Lakhs Thirty six Thousand Seven Hundred Five Only) from the date of receipt of the demand notice till the actual payment and realization, within 10 days of the

receipt of the notice and the notice was initially issued on 12.12.2018 but owing to it not being delivered on the Corporate Debtor, was again issued on 15.01.2019 and delivered at the registered office of the Corporate Debtor on 16.01.2019 but the Corporate Debtor conveniently chose not to reply to the same.

7. It is submitted that the total outstanding amount of INR.4,54,36,705.00 (Rupees Four Crores Fifty Four Lakhs Thirty six Thousand Seven Hundred Five Only) includes the value of supplies made from time to time plus interest amount. The Corporate Debtor has yet not even bothered to reply to the Demand Notice. therefore, the presumption is that the Corporate Debtor has lost its substratum and has become commercial insolvent, as it is unable to pay its debts.
8. It is submitted that the Operational Creditor was thus left with no choice but to file the present petition in February 2019 before this Hon'ble Tribunal as per the provisions of the Code. The Operational Creditor has filed the present petition in the format as prescribed under the Code alongwith affidavit in support for initiated of Corporate Insolvency Resolution Process. The copy of ledger accounts maintained alongwith the invoices raised on the Corporate Debtor and the Bank statements maintained by the Operational Creditor form Annexures to the petition. The Hon'ble Tribunal was

↖

↗

thus pleased to issue notice to the Corporate Debtor vide order dated 28.03.2019.

9. It is submitted that the Corporate Debtor tried to delay the proceedings under one pretext or another including changing of its advocate in order to avoid filing affidavit in reply cum objections in response to the petition.
10. It is submitted that this Hon'ble Tribunal granted accommodation to the Corporate Debtor on 03.05.2019, 10.07.2019, 09.08.2019, 04.09.2019, 03.10.2019, 23.10.2019 and finally on 06.11.2019 for the purpose of filing of reply to meet the ends of justice. Even after repeated imposition of cost, the Corporate Debtor had chosen not to file reply as also its advocate had not remained present at the time of hearing. As a result, the matter was listed for final hearing on 04.12.2019.
11. It is submitted that even on 04.12.2019, no one was present for the Corporate Debtor and the matter was finally heard since ample opportunities were given to the Corporate Debtor. The Operational Creditor was able to satisfy the Hon'ble Tribunal that the petition for initiating Corporate Insolvency Resolution Process against the Corporate Debtor was complete in all respects in accordance with the Code.
12. It is submitted that the Operational Creditor has been able to establish that there exists a debt as well as occurrence of default as per the Code. The amount claimed by the Operational Creditor is operational debt

within the meaning of Section 5 (21) of the Code. That the amount is due from the Respondent, a company registered under the Companies Act. Therefore, the Respondent is a Corporate Debtor within the meaning of Section 3(8) of the Code.

13. In light of the abovementioned facts and circumstance the Applicant's Prayer before this Adjudicating Authority is to Cause public announcement of the initiation of Corporate Insolvency Resolution Process and call for the submission of claims in accordance with Clause (b) of Sub-section (1) of Section 13 read with Section 14 of the Insolvency and Bankruptcy Code, 2016 and be pleased to pass any further order in the interest of justice.
14. The case was taken up by this Adjudicating Authority on 28.03.2019 on the request of the Petitioner's Counsel. The matter was heard on 28.03.2019, 03.05.2019, 10.07.2019, 09.08.2019, 04.09.2019, 03.10.2019, 23.10.2019, 06.11.2019 & 04.12.2019. Arguments of the counsels of the Operational Creditor were heard.
15. The matter was finally heard on 04.12.2019. During the arguments, the Learned Counsel for the Operational Creditor submitted that the Petition may **be admitted** and an Interim Resolution Professional **appointed in** accordance with the provisions of the Section 16 of the Insolvency and Bankruptcy Code, 2016. Further, it is submitted that the Corporate Insolvency Resolution

Process be initiated as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period may also be declared.

16. Further, the Operational Creditor **has not suggested any** name of an Interim Resolution Professional (“IRP” for short). If, this I.B. Petition is admitted, an IRP needs to be appointed.

17. **It is observed that –**

17.1 The Application has been filed on 05.03.2019 for **operational debt due** and defaulted of INR.4,54,36,705.00 (Rupees Four Crores Fifty Four Lakhs Thirty Six Thousand Seven Hundred Five Only) as on 30.11.2018.

17.2 Date of invoice is **28.02.2016 to 21.05.2016**

17.3 Date of first default is **29.03.2016**

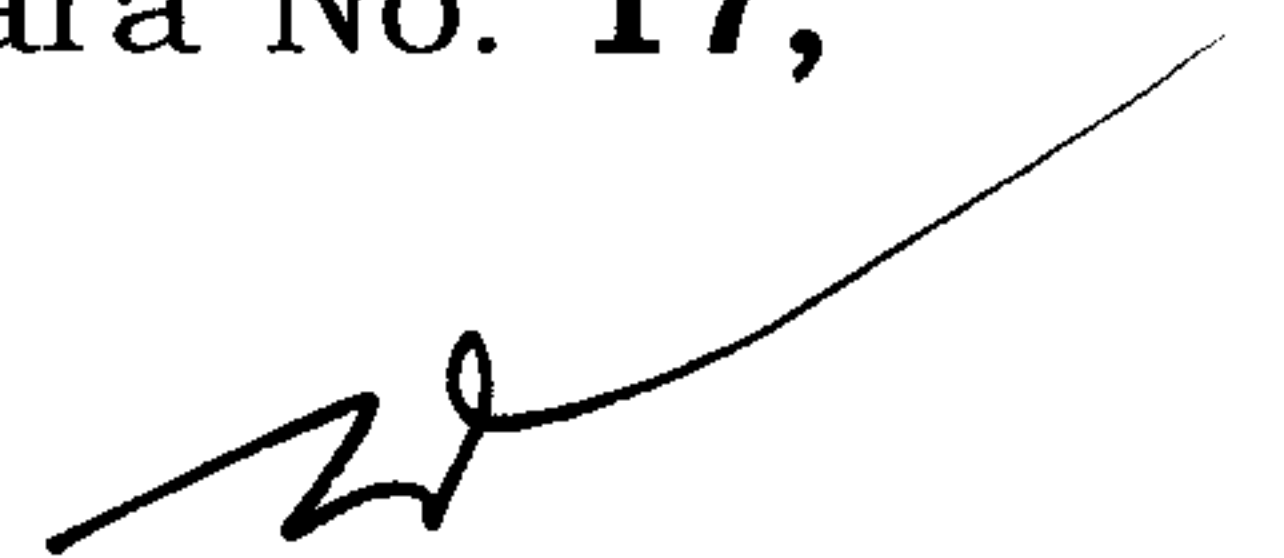
17.4 Application is filed within the limitation period **as the date of default is 29.03.2016 and the date of filing this petition under Section 9 of IBC is 05.03.2019.**

17.5 No pre-existing dispute before the filing of this application is observed.

ORDER

18. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **17,**

↙



17.1, 17.2, 17.3, 17.4 & 17.5, this Adjudicating Authority is **satisfied that**,

- a) Existence of debt is above Rs. One Lac;
- b) Debt is due;
- c) Default has occurred on 29.03.2016;
- d) Petition has been filed within the limitation period as the date of default is 29.03.2016 and the petition has been filed on 05.03.2019.
- e) In spite of giving Demand Notice in Form No.3 as required by Section 8 of the IB Code read with Rule 5 of the IB Rules and Publication of notice in the newspaper Respondent did not choose to give any reply.
- f) Copy of the Application filed before the Adjudicating Authority has been sent to the Corporate Debtor, Paper publication was done and the application filed by the **Petitioner under Section 9 of IBC is found to be complete for the purpose of initiation of Corporate Insolvency Resolution Process** against the Corporate Debtor.

Therefore, the **present IB petition is admitted with the following directions:**

19. As per the provisions of Section 13 and 14 of the I.B. Code on the date of commencement of insolvency, this



adjudicating authority shall declare moratorium for prohibiting all of the following, namely: -

- I.(a) *The institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal arbitration panel or other authority.*
- (b) *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.*
- (c) *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);*
- (d) *The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*
- II. *The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during the moratorium period.*
- III. *The provisions of sub-section (1) shall not apply to (a) such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*
- IV. *The order of moratorium shall have effect from the date of this order till the completion of the Corporate Insolvency Resolution Process.*

20. The Petitioner/Operational Creditor has not suggested the name of any Interim Resolution Professional in the present

✓

✓

Petition. Though it is not mandatory on the part of the Applicant to propose an Interim Resolution Professional when the application is filed under Section 9 of the IBC, 2016, but in that case, the Adjudicating Authority shall appoint an Insolvency Professional from the panel prepared by the IBBI and meant for this Bench on admission of the application. But if it is observed that when an Operational Creditor does not suggest the name of any Interim Resolution Professional and the Interim Resolution Professional is appointed by the Adjudicating Authority from the panel of Insolvency and Bankruptcy Board of India available for NCLT, Ahmedabad, the dispute is arising for payment of Interim Resolution Professional fees, paper publication costs etc., in the first month of the Corporate Insolvency Resolution Process. This is more, when Financial Creditor or other Operational Creditor is not there, CoC is not formed and the Operational Creditor is not able to bear the CIRP expenses.

21. Hence, this Adjudicating Authority hereby appoints **Mr. Amrish Navinchandra Gandhi, having Insolvency Professional Registration No. IBBI/IPA-002/IP-N00670/2018-19/12036, Email ID - amrishgandhi72@gmail.com, Address: Shivalik Abaise-504, Opp. Shell Petrol Pump Near Anand Nagar Bus Stand, Satellite, Ahmedabad, Gujarat-380015 as an Interim Resolution Professional.**



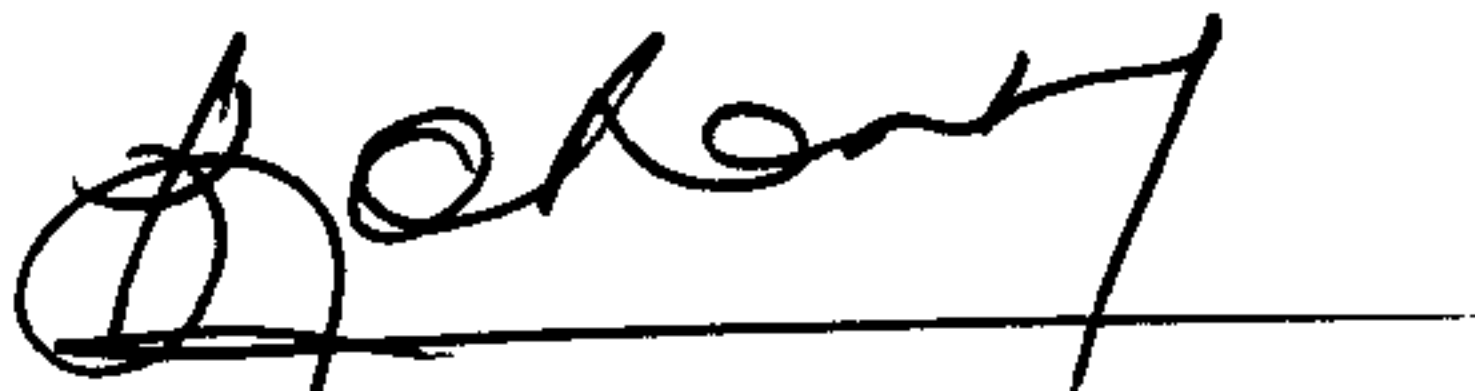
The IRP is advised to file declaration disclosure statement within two days with this Registry.

The Interim Resolution Professional is further directed to make public announcement of moratorium in respect of Corporate Debtor Company soon after receipt of an authenticated copy of this order and to act further as per the order/direction issued by this Adjudicating Authority and to follow the provisions Section 13 and 14 and relevant provisions of the Insolvency and Bankruptcy Code. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, in Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost dedication, honesty and strictly in accordance with the provisions of the 'Code', Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other persons associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional as may be required by him in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the

property of the 'Corporate Debtor' as a part of its obligation imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.

22. An authentic copy of this order to be communicated by this Registry to the Operational Creditor, Corporate Debtor, as well as to the Interim Resolution Professional and the Registrar of Companies by Speed Post/Registered Post at the earliest.

Hence, this **CP(IB) No.205/9/NCLT/AHM/2019** is admitted **on 28.05.2020** with the **above Observations and Directions.**



**(Prasanta Kumar Mohanty),
Adjudicating Authority
Member (T)**



**(Harihar Prakash Chaturvedi),
Adjudicating Authority
Member (J)**