

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



C.P. (I.B) No.508/NCLT/AHM/2019

Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 13.12.2019**

Name of the Company: G Holaram
V/s
Manpasand Beverages Ltd

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	VISHAL J. DAVE NIPUN SINGHVI	Adv.	Respondent	
2.	Prayash LUKTAKA	ADV	Petitioner	

ORDER

The parties are represented through learned counsels.

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


**MANORAMA KUMARI
(MEMBER JUDICIAL)**

Dated this the 13th day of December, 2019.

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

C.P. No. (IB) 508/9/NCLT/AHM/2019

In the matter of:

M/s. G. Holaram
A-61 Hathikhana
Fathepura
VADODARA 390 006

:

Petitioner
Operational Creditor

Versus

Manpasand Beverages Limited
1768 & 1774 Patki - 1,
Village Manjusar,
Taluka Savli
VADODARA 391 775
Gujarat State

:

Respondent
Corporate Debtor

Order delivered on 13th December, 2019.

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

Appearance:

Advocate Mr. Piyush Luktuke for petitioner.
Advocate Mr. Nipun Singhvi along with Advocate Mr. Vishal Dave,
Advocate Ms. Pragati Tiwari and PCS Kumar Pal Mehta for
respondent.

ORDER

1. Mr. Kishore Hazariani, being authorised signatory on behalf of the operational creditor M/s. **G. Holaram** 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.

Manara

2. The petitioner/operational creditor is a proprietary firm of Mr. Kishore Hazariani situated at Hathikhana, Fathepura, Vadodara, Gujarat State engaged in the wholesale supply of sugar.

3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 10th December, 2010 having identification No. L15549GJ2010PLC063283 and having registered office at Fathepura, Vadodara, Gujarat State. Authorised share capital of the respondent company is Rs.115,00,00,000/- and paid up share capital is Rs. 114,46,23,960/-.

4. The applicant/Petitioner has submitted that pursuant to the instruction/order, operational creditor had supplied goods (Sugar) to the corporate debtor during the period from 26.03.2019 to 02.04.2019 under 3 invoices (**Table A – page 10 of the application**). That, against the aforesaid invoices, no payment has been made by the corporate debtor and, therefore, an amount of **Rs. 30,74,768/- (Rupees thirty thousand seventy-four thousand seven hundred sixty-eight only)** is outstanding and due to be paid to the operational creditor. That, the aforesaid amount includes interest @ 18% per annum. That, an amount of Rs. 30,74,768/- is due and the date of default is 2nd April, 2019.



5. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Affidavit in support of the aforesaid application	6
2	Demand notice in form 3	7-13
3	Evidence of issuing demand notice	14-15
4	Bank statement	16
5	Affidavit stating that no dispute has been raised by corporate debtor	17
6	Letter received from corporate debtor	18
7	Evidence of sending copy of application (Form 5) to corporate debtor	19

6. The respondent/corporate debtor filed affidavit in reply inter alia stating that because of a search and seizure proceedings carried out at various premises of the respondent company, custody of the key managerial persons of the company were taken over by Commissioner of Central GST and Customs Department till 25.07.2019. That, due to these events other directors resigned from the post of Director and as a result of the same the company went through a rough patch. That, looking to the current situation, the respondent company has requested the operational creditor to grant extension of 45 days from the schedule which have been agreed on 30.08.2019 as per **Annexure D** to the reply. In reply, the corporate debtor produced following schedule: -

Sr. No.	Amount	Date
1	9,00,000	15.11.2019
2	6,00,000	15.12.2019
3	3,00,000	15.01.2020
4	3,00,000	15.02.2020
5	3,00,000	15.03.2020
6	3,00,000	15.04.2020
7	2,42,974	15.05.2020

Handwritten signature

Findings

7. Heard learned lawyers appearing for both the sides, also seen the documents annexed to the application and the affidavit in reply filed by the corporate debtor.

8. On perusal of the records it is found that as per the original agreement dated 30th August, 2019 entered into between and operational creditor and the corporate debtor, the first instalment of Rs. 9.00 lacs were to be paid within seven days of signing the settlement agreement dated 30.08.2019 and the last instalment of Rs. 2,41,974/- on 29.02.2020. On perusal of the original agreement dated 30.08.2019 and the schedule given at page No. 21 of the reply shows different due dates of instalment and it is not the replica of agreement dated 30.08.2019 which is agreed between the parties.

9. On perusal of the agreement dated 30.08.2019 it is clear that there is/are default in payment and as such the corporate debtor entered into agreement dated 30.08.2019 with covenant to pay as per the schedule mentioned in the agreement but that too corporate debtor has defaulted and has not paid a single instalment.



10. On perusal of the records it is also found that the respondent has not raised any dispute regarding the debt payable to the operational creditor.
11. During the course of hearing, learned lawyer appearing on behalf of the operational creditor submitted that the contention raised by the corporate debtor that payment of Rs. 5,00,000/- has been made towards the outstanding is incorrect and in fact the said amount has been made as advance towards the current supplies.
12. On perusal of the records it is also found that, vide letter dated 02.07.2019, the corporate debtor has acknowledged the debt and has sought more time to clear the dues.
13. On perusal of the record it is found that the petition is complete in all respect.
14. 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.

15. 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 IB Code as enshrined in the Code. That, the respondent also filed affidavit admitting the dues and no dispute has 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.

16. 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.

17. 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.
18. 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.

19. 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.
20. 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.
21. The applicant/operational creditor has not proposed name of the IRP. Therefore, this Adjudicating Authority hereby appoint Mr. Dakshesh Pravinchandra Choksi, 303-305 Vrajbhoomi Complex, Behind Shilp Building, Girish Cold Drinks Char Rasta, Off. C.G. Road, Navrangpura,



Ahmedabad – 380 009 having registration No. IBBI/IPA-001/IP-P00718/2017-18/11300 to act as an interim resolution professional under Section 13(1)(c) of the Code.

22. This Petition is accordingly admitted.
23. 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 the 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 liquidation and sale of assets to realise the amount for all the stakeholders.



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

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