

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

**C.P.(I.B) No.138/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 08.10.2020**

Name of the Company: Mr. Sanjay S Jaiswal  
Prop. Of Trigun Enterprise  
V/s  
Vivek Steelco Pvt Ltd  
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**

Advocate, Mr. Tirth Nayak appeared on behalf of the Petitioner.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 08th day of October, 2020

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

**C.P. No. (IB) 138/9/NCLT/AHM/20120**

**In the matter of:**

**Mr. Sanjay S. Jaiswal**

Proprietor of Trigun Enterprise  
Nr. Pooja Bungalow  
221/1, Opp. Hanumanji Temple  
Next to Chandkheda Bus Stand  
Chandkheda  
AHMEDABAD 382 424

:

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Vivek Steelco Private Limited**

A-201, Mondeal Square  
Opp. Honest Restaurant  
Nr. Prahladnagar Garden  
Prahladnagar  
S.G. Highway  
Ahmedabad  
Gujarat State

:

**Respondent**  
[Corporate Debtor]

**Order delivered on 8<sup>th</sup> October, 2020**

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

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

**Appearance:**

Petitioner : Mr. Yuvraj Thakore, Advocate  
Respondent : Mr. Tirth Nayak, Advocate

**ORDER**

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

1. Mr. Sanjay S. Jaiswal, proprietor of M/s. Trigun Enterprise 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.

2. The applicant/operational creditor is proprietor of the firm having registered office at Chandkheda, Ahmedabad is engaged in the business of steel bars.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 25<sup>th</sup> March, 2009 and having identification No. U27109GJ2009PTC056434 and having registered office At Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 1,25,00,000/- and paid up share capital is Rs. 80,67,650/-.
4. It is stated by the applicant that, it had supplied Round Steel Bars and MS steel bars to the respondent during the period from 29.06.2017 to 30.06.2017 and had raised three invoices (Page 20-22). According to the applicant, net amount of **Rs. 19,55,076/- (Rupees nineteen lacs fifty-five thousand seventy-six only)** is due and payable by the respondent which include interest amount of Rs. 5,17,520/- (Rupees five lacs seventeen thousand five hundred twenty only).
5. The applicant has further submitted that having failed to receive the operational debt due and payable by the respondent, the petitioner was compelled to issue notice to the respondent under section 8 in form No. 3 dated 16.12.2019 (page 27-33). The applicant filed application supported with affidavit, tax invoices, computation of the outstanding invoices, confirmation of outstanding amount, ledger account of the corporate debtor, demand notice, etc.

*Shachin*

*Chhanna*

6. On receipt of notice the respondent filed affidavit in reply inter alia raising various objections and submitted that there is variation of amount so claimed by the petitioner. Further, the applicant has claimed different amounts, applicant has unilaterally calculated the interest without giving detailed calculation, the respondent is not an insolvent company and merely facing a temporary financial crisis and there is nothing on record to show that the goods in respect of the invoices mentioned in the petition were actually delivered on the desired time, date and place.

**Findings:**

7. Heard learned 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 produced on record copy of three invoices (page 20-22), wherein, it is clearly mentioned the registration number of the truck through which the goods were transported thereby establishing that the goods were transported and delivered. It is also found that the copy of confirmation of accounts (page 23-24) dated 1<sup>st</sup> April, 2019, is duly sealed and signed by the corporate debtor acknowledging the corporate debt. On perusal of the records it is also found that, in reply to demand notice dated 16<sup>th</sup> December, 2019, the respondent vide letter dated 20<sup>th</sup> December, 2019 has inter alia acknowledged the operational debt and has requested for more time to clear the outstanding on the ground that the respondent company is facing temporary financial crisis.
9. 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





16.12.2019 has been served upon the corporate debtor, but, no dispute has been raised.

10. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor.
11. 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 due and payable to the Applicant.
12. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
13. 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.

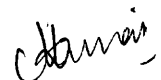


  
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14. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered 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.
15. 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.
16. 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.



17. 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.
18. 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.
19. 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.

20. The applicant/operational creditor has proposed the name of Mr. Trupalkumar Patel to act as Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Trupalkumar Patel, 401-402, Narnarayan Palace, Nr. Kothawala Flats, Pritamnagar, Ellisbridge, Ahmedabad 380 006 (trupal.ip.@gmail.com) having registration No. IBBI/IPA-001/IP-P01186/2018-19/11907 to act as an interim resolution professional under Section 13(1)(c) of the Code.
21. This Petition is accordingly admitted.
22. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
23. 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 realise the amount for all the stakeholders.



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



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