

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

**C.P. (I.B) No.838/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 31.03.2021**

Name of the Company: Sumiran Foods Pvt Ltd  
V/s  
Pankaj Events & Celebrations Pvt Ltd

Section 9 of the Insolvency and Bankruptcy  
Code,2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER**

(through video conferencing/physical)

None appeared on behalf of parties.

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 31st day of March, 2021



**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**C.P. No. (IB) 838/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Sumiran Foods Private Limited**

Sumiran House,  
Behind Katariya Automobiles  
Near Pragati School  
Khokhra  
Ahmedabad 380 008

**Petitioner**  
Operational Creditor

**Versus**

**Pankaj Events & Celebrations Private Limited**

Survey No. 331 & 332  
Ognaj  
Nr. S.P. Ring Road  
Ahmedabad 380 060

**Respondent**  
[Corporate Debtor]

**GUJARAT STATE**

:

**Order delivered on 31<sup>st</sup> March, 2021**

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

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

**Appearance:**

Petitioner : Mr. Kunal Vaishnav, Advocate  
Respondent : Mr. Bhargav Hasurkar, Advocate

**ORDER**

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

1. Mr. Hiten Shah, being authorised signatory, on behalf of **M/s. Sumiran Foods Private Limited** 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 a private limited company incorporated under the Companies Act, 1956, having correspondence address at Ahmedabad and having identification No. U15139GJ2008PTC053499 engaged in the business of trading and selling sweets, cooked/semi-cooked/uncooked and other food products.
3. The respondent/corporate debtor is a private limited company registered on 25.07.2013 under the provisions of Companies Act, 1956, having identification No. U92100GJ2013PTC076178 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 50,00,000/- and paid up share capital is Rs. 15,00,000/-.
4. The applicant/operational creditor has stated that during the course of business it used to supply food and other products to the respondent and used to raise invoices for the same. That, the respondent used to make ad hoc payment and last such payment was received on 16.08.2019.
5. The applicant/operational creditor has stated that despite promises and assurance given, the respondent failed to clear the dues, therefore this petition.
6. The applicant has further stated that having failed to receive the outstanding debt, the applicant was compelled to issue demand notice dated 17.09.2019 through advocate demanding operational debt of **Rs. 7,76,095/- (Rupees seven lacs seventy-six thousand ninety-five only)** due and payable by the respondent.



7. In support of its claim, the operational creditor has annexed to the application documents like; copy of invoices and delivery challans (page 7-111), demand notice dated 17.09.2019 along with proof of dispatch, ledger account (116-120) Board Resolution etc.

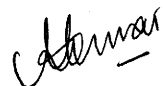
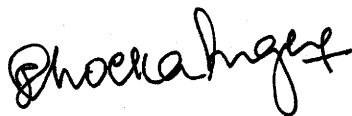
**Findings:**

8. On perusal of the record it is found that the application filed on 28<sup>th</sup> November, 2019 was notified for the first time on 06.12.2019. Thereafter, despite giving number of opportunities, the respondent has not filed any reply.
9. On perusal of the record it is also found that during the period of one year the respondent has changed the advocates in regular intervals consequent upon which, on 02.03.2021, as a last chance, the respondent was allowed to file reply along with a cost of Rs. 10,000/- to be paid to the petitioner. As the notice issued by the Registry was returned with postal remark "insufficient address", as directed by this Bench, the petitioner had also effected paper publication, therefore, the service is complete, however, on the date of final hearing, Mr. Bhargav Hasurkar, Advocate appeared on behalf of respondent.
10. Heard the learned counsels appearing for both the sides and perused the documents annexed to the application.
11. On perusal of the records it is found that the petitioner has filed all the documents and the petition is complete in all respect. Service is complete and the default occurred on 16.08.2019.

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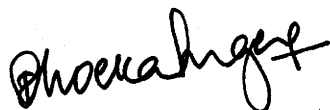
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12. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.
13. 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 pre-existing dispute regarding the operational debt from the side of the corporate debtor.
14. 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.
15. 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'.
16. 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.

17. 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. 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.
18. 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.
19. 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



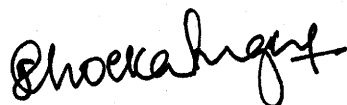
Resolution Process by admitting the Application under Section 9(5)(1) of the Code.

20. 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: -

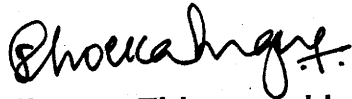
- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) transferring, encumbering, alienating or disposing of by the corporate 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.

21. 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.

22. 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.

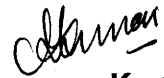


23. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Shri Manish Kumar Bhagat, 103-104 Panchdeep Complex, Mithakhali Six Road, Navrangpura, Ahmedabad 380 009 ([mbhagat2003@gmail.com](mailto:mbhagat2003@gmail.com)) (Mobile 9876061500) having registration No.IBBI/IPA-001/IP-P00856/2017-2018/11438 to act as an interim resolution professional under Section 13(1)(c) of the Code.
24. This Petition is accordingly admitted.
25. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
26. 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 of name of the respondent company be initiated arising out of non-compliance 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 of all the stakeholders.



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

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