

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT 1**

C.P. (I.B) No. 563/9/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 18.02.2020**

Name of the Company: Manishbhai Baghabhai Aahir
V/s
Shree Raghuvanshi Fibers Pvt Ltd

Section: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
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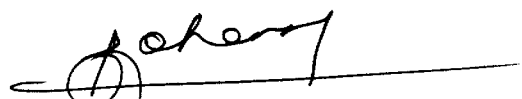
2.

ORDER

The case is fixed for pronouncement of order.

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

The **CP(IB) No. 563/9/NCLT/AHM/2019** is **allowed** and stands disposed of accordingly.


(PRASANTA KUMAR MOHANTY)
MEMBER (TECHNICAL)


(HARIHAR PRAKASH CHATURVEDI)
MEMBER (JUDICIAL)

Dated this the 18th day of February, 2020.

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

C.P. (I.B.) No. 563/9/NCLT/AHM/2019

In the matter of:

MANISHBHAI BAGHABHAI AHIR
Having its address at: Lane No.2,
House No.12, Green Park Society,
Jetpur Road, Nana Sakhpur,
Gujarat.

.....Petitioner

Versus

SHREE RAGHUVANSHI FIBRES
PRIVATE LIMITED
Having its Registered Office at:
C/O Gopal Enterprise, New
Sardar Marketing Yard, Shop
No.A-174, 8B National Highway
Gondal Rajkot.

.....Respondent

Order delivered on 18.02.2020

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (Judicial)
Hon'ble Mr. Prasanta Kumar Mohanty, Member (Technical)**

Appearance:

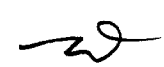
Mr.Sunil Bhavsar Advocate for the Applicant
Mr.Jaimin R. Dave,Priyank S. Dave & Hirva R. Dave Advocates for
the Respondent

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

1. The present Petition is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ('IB Code' for short) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('IB Rules' for short) for initiation of Corporate Insolvency Resolution Process with respect to the CD, Shree Raghuvanshi Fibres Private Limited for the unpaid Operational Debt due.
2. The Petitioner, ManishBhai Baghabhai Aahir having its address at Lane No.2, House No.12, Green Park Society, Jetpur Road, Nana Srkhpur, Gujarat and is engaged in the field of Cotton ginning and pressing business. The present Petition is filed by the applicant himself, i.e. ManishBhai Baghabhai Aahir to initiate Corporate Insolvency Resolution process with respect to the Corporate Debtor.
3. The Respondent/Corporate Debtor, namely Shree Raghuvanshi Fibres Private Limited was incorporated on 03.09.2007 with CIN: U17120GJ2007PTC051651. The authorised share capital of the company is INR.2,60,00,000.00 (Rupees Two Crore Sixty Lakh only) and the paid-up share capital is INR.2,60,00,000.00 (Rupees Two Crore Sixty Lakh Only). The registered office of the Corporate Debtor Company is situated at: C/o



Gopal Enterprise, New Sardar Marketing Yard, Shop No.A-174, 8B National Highway Gondal Rajkot-360311.

4. It is stated that Petitioner (OC) and the Respondent (CD) are in a business relationship from 2018 and Corporate Debtor has been placing orders with the Operational Creditor for Purchase of Cotton for ginning and pressing purpose as raw material between 21.03.2018 to 28.03.2018, the Petitioner (OC) has Supplied goods to the Respondent (CD) aggregating to INR12,21,200.00 (Rupees Twelve Lakhs Twenty One Thousand Two Hundred Only) and the same has been accepted by the Respondent company.
5. The Operational Creditor has submitted an amount claimed to be in default of **INR.12,21,200.00** (Rupees Twelve Lakhs Twenty One Thousand Two Hundred Only) against the Corporate Debtor as per the terms and conditions mentioned in the following Invoices raised–

Sr. No.	Description of Transactions	Default Date	Amount(INR)
1.	Supplied Cotton in net weight 10220 Kg @Rs. 800 per 20 Kg.	21.03.2018	4,08,800.00




2.	Supplied Cotton in net weight 10100 Kg @Rs.800 Per 20 Kg.	25.03.2018	4,04,000.00
3.	Supplied Cotton in net weight 10210 Kg @Rs.800 Per 20Kg.	28.03.2018	4,08,400.00
		Total	12,21,200.00

6. It is submitted by the Operational Creditor that the total amount claimed is INR.12,21,200.00 (Rupees Twelve Lakh Twenty One Thousand Two Hundred Only) for the goods sold to the Corporate Debtor under Tax Invoices and the **Dates of Default started from 21.03.2018, 25.03.2018 & 28.03.2018.**

7. It is submitted that the Operational Creditor had despatched the Demand Notice in Form No.3 dated: 18.06.2019 to the respondent at its Registered Office by way of Speed Post, and the original postal receipt has been enclosed with the petition filed before this Hon'ble Tribunal (Page No. 35 of the Paper book) demanding the

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unpaid Operational Debt due of INR.12,21,200.00 (Rupees Twelve Lakh Twenty One Thousand Two Hundred Only). The Petitioner has neither received any payment nor any reply to the said demand notice disputing the demand of the Petitioner regarding the pending amount from the Corporate Debtor.

8. Therefore, the Petition is filed the under Section 9 of the Insolvency and Bankruptcy Code, 2016 for the unpaid Operational Debt due of INR.12,21,200.00

9. The Operational Creditor has filed its written submissions in the application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016.

9.1 It is submitted that the Operational Creditor that the amount towards the invoices dated 21.03.2018, 25.03.2018 & 28.03.2018, has not been paid and there is a default on the part of the Corporate Debtor.

9.2 It is submitted that the Petitioner is cultivating the cotton in a huge quantity and used to supply the cotton to various companies who are engaged in the field of cotton ginning and pressing business.

9.3 It is submitted that the Respondent has requested to supply the cotton as a raw material to it and after negotiating the rate of Cotton for INR.800.00 per 20 Kg. Vide its invoices dated 21.03.2018, 25.03.2018,



& 28.03.2018. The petitioner has supplied the said cotton through the trucks no. GJ-11U-8888, GTW-3892, i.e. net weight 10220 Kg, 10100 Kg & 10210 Kg and the consideration towards the sale of the said cotton comes to Rs.12, 21,200.00.

9.4 It is submitted that the said Cotton has been received by the Corporate Debtor on 25.03.2018 and the Corporate Debtor Company has issued a Gate Pass Inward dated: 25.03.2018 stating the name of the supplier, Truck number, gross weight, net weight and other details along with a Weight Bridge Slip No. 1115 dated: 25.03.2018 of Shree Raghuvanshi Fibres Pvt. Ltd. for gross weight 16880 Kg, Tare weight: 6780 Kg and Net weight: 10100. A copy of the Gate pass Inward dated: 25.03.2018 is enclosed (Annexure-A5 Colly.)

10. The case was taken up by this Adjudicating Authority on 06/08/2019. The parties were represented through their respective Learned Counsels and Learned Counsels on behalf of the Respondent requested for some time to file reply/objection by serving advance copy to the Petitioner. The permission was granted by this Hon'ble Court. The matter was adjourned to 05.09.2019. The Counsel for the respondent filed its reply dated: 05.09.2019. **Thereafter on 25.09.2019, the Learned Counsel for the**

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Corporate Debtor/Respondent has filed an Affidavit stating interalia that dues of the Operational Creditor /Petitioner are duly admitted and the Corporate Debtor/Respondent is having no objection if CIRP is commenced in respect of it. Equally the Learned Counsel for the Operational Creditor/Petitioner also submitted that the Petitioner would bear the costs of CIRP as per the provision of the Insolvency and Bankruptcy Code.

11. The matter was finally heard. 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 the Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium may also be declared.
12. 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.

OBSERVATIONS

- 13.1 The Application has been filed on 16.07.2019 for **unpaid operational debt due** and defaulted of

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Rs.12,21,200.00 (Rupees Twelve Lakhs Twenty One Thousand Two Hundred Only) as per the Invoices enclosed.

- 13.2 Dates of invoice are 21.03.2018, 25.03.2018, & 28.03.2018.
- 13.3 Date of first default is **21.03.2018**. **Respondent has admitted the default by filing an Affidavit dated:22.08.2019 by the Director of the Corporate Debtor Shri Gopal J. Shelani having office at New Sardar Marketing Yard, Shop no. A-174, 8B National Highway, Gondal Rajkot-360311, Gujarat. However, Copy of the Board Resolution of the Corporate Debtor in respect of admission of the default is not made available.**
- 13.4 Application is filed within the limitation period **as the date of default is 21/03/2018 and the date of filing this petition under Section 9 of IBC is 16/07/2019.**
- 13.5 No pre-existing dispute before the filing of this application is observed.

ORDER

14. Considering the material, papers filed by the Petitioner on record and the facts mentioned in the Para No. **13, 13.1, 13.2, 13.3, 13.4 & 13.5**, this Adjudicating Authority is **satisfied that,**
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- a) **Existence of debt is above Rs. One Lac;**
- b) **Debt is due;**
- c) Default has occurred on **21/03/2018;**
- d) Petition has been filed within the limitation period as the date of default is **21/03/2018** and the petition has been filed on **16/07/2019.**
- e) Copy of the Application filed before the Adjudicating Authority has been sent to the Corporate Debtor, 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:**

15. 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 declares 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.*

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- (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.*
- 16. 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

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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.

17. Hence, this Adjudicating Authority hereby appoints **Shri Divyang Pareshrai Majumdar**, having Insolvency Professional Registration No. **IBBI/IPA-002/IP-N00425/2017-18/11196**, Email ID - **dpm@dpmca.com**, Address: **72, Madhuban Near Madalpur, Under Bridge Ellisbridge, Ahmedabad, Gujarat-380006, India 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 personnels 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.

18. 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.563/9/NCLT/AHM/2019 is admitted on 18/02/2020 with the **above Observations and Directions.**


(Prasanta Kumar Mohanty)
Adjudicating Authority
Member (T)


(Harihar Prakash Chaturvedi)
Adjudicating Authority
Member (J)

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