

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

**C.P. (I.B) No.536/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 16.01.2020**

Name of the Company: Harsh Foundry Fluxes & Alloys  
(Operational Creditor)

V/s

Twenty First Century Castings 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.	Jaimin R. Dave	ABU,	Petitioner	
2.	Pravin S. Dave			
	Shiram D. Parikh			
	Hirsh R. Dave			


**ORDER**

The Petitioner is represented through learned counsel.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU**  
MEMBER TECHNICAL

Dated this the 16th day of January, 2020

  
**MANORAMA KUMARI**  
MEMBER JUDICIAL

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

**C.P. No. (IB) 536/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Harsh Foundry Fluxes and Alloys**

D-15, Shantinath Apartments

Behind Medilink Hospital

132' Feet Ring Road

Satellite

AHMEDABAD 380 015

:

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Twenty First Century Castings Private Ltd.**

Plot No. 445, Phase - IV

GIDC Estate

Vithal Udyognagar 388 121

Gujarat State

:

**Respondent**  
Corporate Debtor

**Order delivered on 16<sup>th</sup> January, 2020.**

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

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

**Appearance:**

Advocates Mr. Jaimin Dave for petitioner

Advocates Mr. Yuvraj Thakore for respondent.

**ORDER**

**[Per: Ms. Manorama Kumari, Member (J)]**

1. Mr. Rajeev I. Doshi, being partner/authorised person on behalf of the operational creditor M/s. Harsh Foundry Fluxes and Alloys 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"].

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2. The applicant/operational creditor is a partnership firm situated at Satellite, Ahmedabad is a leading supplier and trader of foundry fluxes, foundry coatings, resins/binders, feeding materials etc.
3. The respondent corporate debtor is a private limited company registered on 21.01.2010 having registration No. U28112GJ2010PTC059270 having its registered office at Udyognagar, Gujarat state. Authorised share capital of the respondent company is Rs. 7,00,00,000/- and paid up share capital is Rs. 6,70,00,000/-.
4. The applicant/Petitioner has submitted that the respondent company is in total default of **Rs. 11,89,723/- (Rupees eleven lacs eighty-nine thousand seven hundred twenty-three only)** along with interest @ 18% per annum. That, the corporate debtor along with one of its sister concerns, namely M/s. Abhinav Alloys had approached the operational creditor for the supply of different types of metals, hardeners etc. and the corporate debtor and its sister concern started purchasing different types of metals from the operational creditor.
5. It is further stated by the operational creditor that till August, 2017 the corporate debtor and its sister concern have carried out transactions of a considerable amount with the operational creditor and at no point of time, the

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corporate debtor or its sister concern have raised any dispute or demur with respect to the quality of products supplied by the operational creditor.

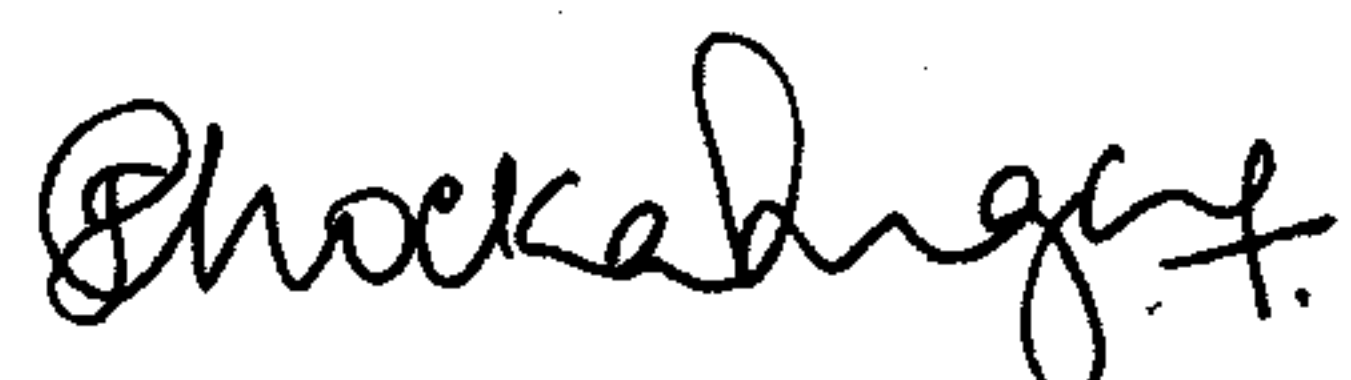
6. It is also stated by the operational creditor that it used to maintain a running account for the supply of products made to the corporate debtor and its sister concern from time to time wherein the operational creditor raised an invoice in pursuance to the requisite supplies made against which the corporate debtor used to make ad hoc payments. That, the last such payment was received by the operational creditor in November, 2017. However, an amount to the tune of Rs. 8,43,013/- and an amount of Rs. 3,46,713/- with respect to sister concern of the corporate debtor remains outstanding and payable since an elongated period of time.
  
7. It is further stated by the operational creditor that there was a specific clause in each of the invoices raised by the operational creditor to the effect that in case of delay in payment of the invoices beyond the due date, the operational creditor shall be entitled to claim interest at the rate of 18% per annum. That, the operational creditor had reminded the corporate debtor and its sister concern to release the above-mentioned outstanding dues from time to time through various emails, calls and letters. In response to such reminders, the corporate debtor had agreed, promised and undertaken to clear the outstanding dues

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payable by the corporate debtor as well as its sister concern within a considerable amount of time. Moreover, the corporate debtor had also transferred and accounted for the outstanding invoices payable by its sister concern i.e. M/s. Abhinav Alloys in its own accounts in the month of April 2018 by agreeing to pay the same to the operational creditor in due course of time. However, till now, the corporate debtor had never bothered to clear or release the admitted and undisputed debt of the operational creditor and have avoided the payment on one or the other pretext.

8. It is further stated by the applicant that, in addition to the above, on 13.05.2019, the corporate debtor admitted and acknowledged an outstanding amount of Rs. 11,89,723/- payable to the operational creditor as on 31.03.2019 by sending a duly signed ledger account as maintained by the corporate debtor for the period between April, 2015 to March 2019. Accordingly, principal amount of Rs. 11,89,723/- along with interest thereon calculated at the rate of 18% per annum from the date of respective invoices remains outstanding and payable by the corporate debtor to the operational creditor.
9. The operational creditor has further stated that the debt fell due between the months of June 2015 to August 2017 which is payable under various invoices raised by the operational creditor for the supplies made from time to time as per the



requirements of the corporate debtor and the default in payment of dues occurred from 09.11.2017 since the last on account payment was received on 08.11.2017.

10. The applicant has further stated that having failed to receive the overdue payments from the corporate debtor and its sister concern, the operational creditor was compelled to issue demand notice under section 8 of the I & B Code in form 3 dated 7<sup>th</sup> June, 2019 demanding payment of unpaid operational debt due from the corporate debtor.
11. In support of its claim, the petitioner has submitted copy of documents like invoices, demand notice, statement of accounts, bank statement, authority letter, affidavit in support of the application and affidavit of no dispute.

### **Findings**

12. Heard the learned lawyers appearing for both the sides. On perusal of the records it is found that despite giving several opportunities, the respondent has not filed any reply and availed adjournments. Accordingly, the right to file reply was closed on 23.10.2019, however the respondent was allowed to advance arguments.
13. On perusal of the records it is found that having failed to get the outstanding payments from the respondent, the

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applicant was compelled to issue demand notice under section 8 of I & B Code on 07.06.2019. Record also shows that the respondent has not raised any dispute against the demand notice, so issued by the applicant.

14. On perusal of the record it is found that the petition is complete in all respect.

15. 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.

16. 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 and payable to the Applicant and it fulfilled the requirement of IB Code as enshrined in the Code. 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 there is/are occurrence of default on the part of the corporate debtor 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.

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.

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

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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. 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 not proposed the name of Insolvency Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Saaurabh Jhaveri, 620, Jolly Plaza, 6<sup>th</sup> Floor, Athwagate, Surat 395 001 ([saumeg@gmail.com](mailto:saumeg@gmail.com)) (Mobile: 9228427123) having registration No. IBBI/IPA-002/IP-N00068/2017-18/10146 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 and to the Interim Resolution Professional.



23. 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.

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

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

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