

BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD  
COURT 1

CP(IB) 513/9/NCLT/AHM/2018

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 THE NATIONAL COMPANY LAW TRIBUNAL,  
AHMEDABAD BENCH ON 02.06.2020

Name of the Company: Manik Comtrade Pvt Ltd  
V/s  
Citizen yarns Ltd

Section: Section 9 of Insolvency and Bankruptcy Code, 2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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**ORDER**

The case is taken up through video conferencing.

The case is fixed for pronouncement of order today.

The order in detail is recorded vide separate sheet.

  
(PRASANTA KUMAR MOHANTY)  
MEMBER (TECHNICAL)

  
(HARIHAR PRAKASH CHATURVEDI)  
MEMBER (JUDICIAL)

Dated this the 2nd June,, 2020

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

C.P. (I.B.) No. 513/9/NCLT/AHM/2018

**In the matter of:**

Mainak Comtrade Private Limited  
Having its Registered Office at:  
9, 3<sup>rd</sup> Floor, Harsidhh Chambers,  
Income Tax Char Rasta, Ashram  
Road, Ahmedabad – 380009,  
Gujarat.

..... Petitioner

*Versus*

Citizens Yarns Limited  
Having its Registered Office at:  
UL-10, Ankur Complex, B/H.  
Town Hall, Opp. X-Ray House,  
Ellisbridge, Ahmedabad,  
Gujarat - 380006

..... Respondent

Order delivered on **02.06.2020**

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)  
Hon'ble Mr. Prasanta Kumar Mohanty, Member (T)**

**Appearance:**

Ms. Himani Chhabra, Ravi Pahwa, and Navin Pahwa with Ritu Shah for Thakkar and Pahwa, Advocates for the Petitioner/Operational Creditor.  
None for the Respondent/Corporate Debtor

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

1. The present petition has been preferred by the reported Operational Creditor Mainak Comtrade Private Limited under Section 9 of the Insolvency and Bankruptcy

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Code, 2016 (herein after referred to as a "Code") seeking for initiation of Corporate Insolvency Resolution Process ("CIRP" in Short) in respect of the Corporate Debtor Company namely, Citizens Yarns Limited.

2. The Petitioner/Operational Creditor is a registered company under the provisions of Companies Act, 1956, with a Company Identification Number (CIN) - U51109GJ2010PTC060973. The registered office of the Petitioner is situated at 9, 3<sup>rd</sup> Floor, Harsidhh Chambers, Income Tax Char Rasta, Ashram Road, Ahmedabad - 380009, Gujarat.
  
3. The Respondent/Corporate Debtor, namely Citizens Yarns Limited was incorporated on 03.05.1990 with CIN: L17119GJ19900PLC013708. The authorised share capital of the company is Rs. 4,00,00,000.00 (Rupees Four Crores only) and the paid-up share capital is Rs.3,14,92,000.00 (Rupees Three Crores Fourteen Thousand Ninety Two Hundred only). The registered office of the Corporate Debtor Company is situated at: UL-10, Ankur Complex, B/H. Town Hall, Opp. X-Ray House, Ellisbridge, Ahmedabad, Gujarat - 380006.

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4. It is submitted that by the Applicant (Page 2 of the Application) that **Rs.20,67,303.00 is due from Corporate Debtor on account of non-payment of amount paid towards the purchase of shares** and other securities by Operational Creditor to Corporate Debtor. The Corporate Debtor has failed to refund the amount in spite of issuance of notice in the said Form-3 and Form-4 in order to clear the dues of the Operational Creditor.
5. In the facts and circumstances of the case it is stated that the Respondent company has failed to refund the outstanding amount of Rs.20,67,303.00 **despite the fact that the Petitioner is an Operational Creditor.**
6. It is further submitted that the despite serving demand notice dated 25.07.2018, neither outstanding **debt was received nor any notice of dispute was communicated.**
7. It is further submitted that as per the order of the Tribunal dated 29.04.2019, the applicant has also **made paper publication in vernacular language, in widely circulated newspaper on 28.05.2019**, where the registered office of the Company is situated. The

Operational Creditor has also filed the proof of service on 11.06.2019 before the Hon'ble Tribunal.

8. In view of the aforesaid, it is submitted by the Operational Creditor that the present application is deserved to be admitted by this Tribunal and the order for initiation of corporate Insolvency Resolution Process of Citizens Yarns Limited be made and order of moratorium be passed. Further applicant begs to exercise its rights under the provisions of Section 16 of the Insolvency and Bankruptcy Code, 2016 for the appointment of Insolvency Resolution Professional and the Tribunal may be pleased to refer the same to IBBI for recommendation of Insolvency Resolution Professional for initiation of Corporate Insolvency Resolution Process of Citizens Yarns Limited.
9. Now, the Petition is filed on 25.09.2018 under the Section 9 of the Insolvency and Bankruptcy Code, 2016 for the unpaid Operational Debt due and defaulted of Rs.20,67,303.00
10. The case was taken up by this Adjudicating Authority on 26.10.2018; however, none appeared on behalf of the Corporate Debtor. The matter was adjourned to 05.12.2018 with directions to the Registry to serve the

notice of date of hearing on the Respondent along with the copy of the order under acknowledgement. Since nobody was present on behalf of the Respondent on the next date of hearing on 05.12.2018, the petitioner was given liberty to publish the **notice in daily newspapers** in the area where the company is situated and subsequently, notice was published in the newspaper and the proof of service was also filed on record.

11. During the arguments, the Learned Counsel for the Operational Creditor has 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 petition may be admitted for initiating Corporate Insolvency Resolution Process as per Section 9 of the Insolvency and Bankruptcy Code, 2016 and the moratorium period 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.

13. **Observations**

**On 06.09.2019** the matter was taken up. The Petitioner Counsel was present but **no one from the Respondent was present. It is further observed no one from the Respondent was from the beginning of the hearing from 26.10.2018.**

Having gone through the application and other papers submitted by the Applicant, this Adjudicating asked the Learned Lawyer representing the Operational Creditor to clarify the following points:

13.1 (a) It is reported by the Petitioner that it has given Rs.20,67,303.00 for purchase of shares and reportedly the shares have not given by the Respondent Company. Then how the Petitioner has filed application under Section 9 as Operational Creditor when Operational Creditor as **per Section 4(20) of IBC says;**

**“Operational Creditor”** means a person to **whom an Operational debt is owed** and includes any person to whom such debt has been legally assigned or transferred and;

4(21) **“Operational Creditor” means a claim in respect of the provision of goods or services including employment or a debt** in respect of the (Payment) of dues arising under any law for the time being **force and payable to the**

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**Central Government, any State Government  
or any local authority;**

(b) The Petitioner has to submit the proof of payment of such amount of Rs.20,67,303.00 to the Corporate Debtor. The Learned Advocate representing the Operational Creditor **sought time to clarify**. Hence, the matter was adjourned to 03.10.2019.

13.2 **On 03.10.2019** the matter was again taken up but the Learned Counsel appearing for the Petitioner **sought an adjournment on the ground that the arguing Counsel was not available that day**. Hence, the learned counsel **could not clarify the queries raised by this Adjudicating Authority on 06.09.2019** and sought adjournments. Hence, the matter was adjourned to 06.11.2019.

13.3 **On 06.11.2019** – The learned counsel of the Applicant could not clarify the points raised by this Adjudicating Authority. Matter was again adjourned to 04.12.2019.

13.4 **On 04.12.2019** – The Counsel of the Applicant sought **further time to give clarifications**. Adjournment was sought. Hence, the matter was adjourned to **18.12.2019**.




13.5 **On 18.12.2019** - The Learned Counsel submitted some photocopies of some share certificates of **Safal Herbs Limited, Gujarat Meditech Limited etc.** which is standing in the name of the Corporate Debtor in this year 2017 etc. These photocopies submitted to the Adjudicating Authority do not have any relation with the present Petition. Moreover, no proof of disbursement/payment of Rs.20,67,303.00 to the Corporate Debtor was also made available in support of the amount claimed. **The Corporate Debtor has never appeared in this matter from the** beginning of the hearing i.e. from 26.10.2018.


### **Judgment**

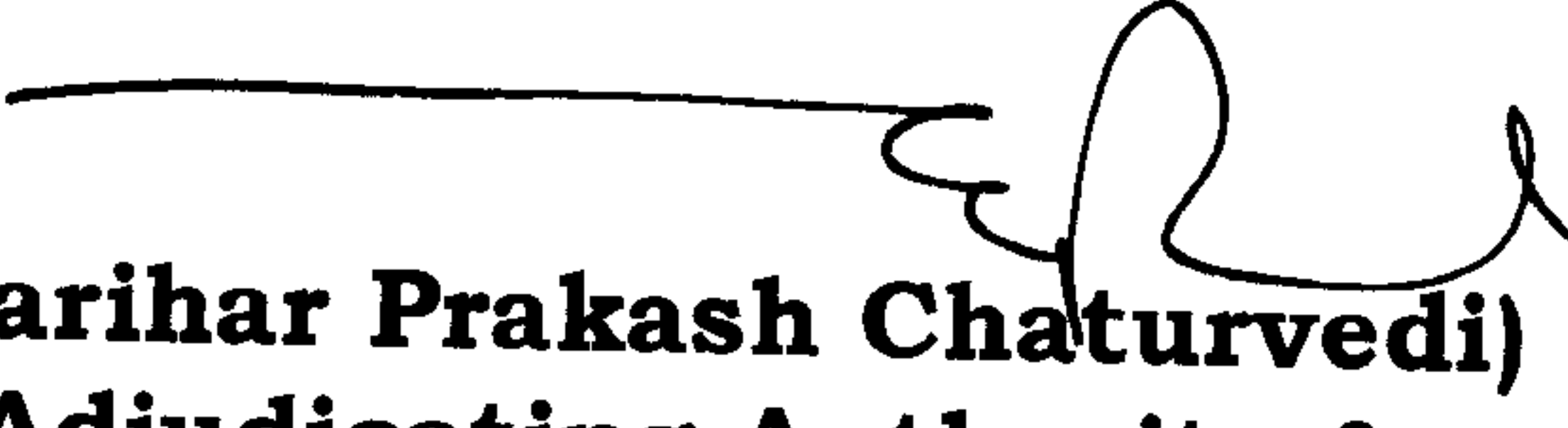
Considering the documents made available and the observations made in the Point Nos.13. 13.1(a), (b), 13.2, 13.3, 13.4 & 13.5 **this Application is rejected as the reported amount given for purchase of share to the Corporate Debtor is not considered as Operational Creditor.**

**Hence, this application is rejected as to no cost.**



**The Registry is directed to communicate this order  
to the Applicant only through registered Post/speed  
post.**

  
**(Prasanta Kumar Mohanty)  
Adjudicating Authority &  
Member (T)**

  
**(Harihar Prakash Chaturvedi)  
Adjudicating Authority &  
Member (J)**

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