

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

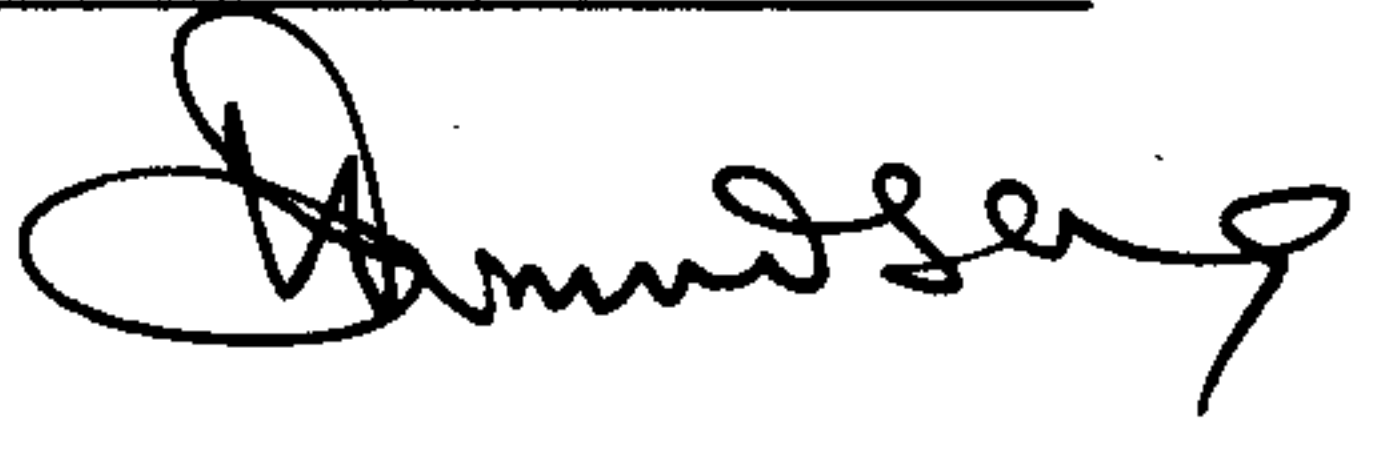
C.P.(T.B) No. 770/NCLT/AHM/2019

**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 18.03.2020**

Name of the Company: Rajendra M Mehta
V/s
GSL Nova Petrochemicals Ltd

Section : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Vinodkumar S. Shah	PCS	Applicant	
2.				

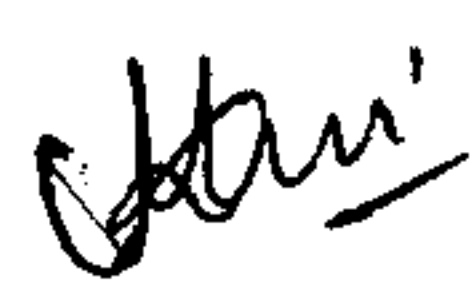
ORDER

The Petitioner is represented through learned PCS.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 18th day of March, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 770/9/NCLT/AHM/2019

In the matter of:

Mr. Rajendra M. Mehta

A-701, Rahul,
100 ft. (Anand Nagar Road)
Satellite
AHMEDABAD 380 015

Petitioner
Operational Creditor

Versus

M/s. GSL Nova Petrochemicals Limited

396, 403 Moraiya Village
Sarkhej-Bavla Highway
Sanand
AHMEDABAD 382 213
Gujarat State

Respondent
Corporate Debtor

Order delivered on 18th March, 2020.

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

PCS Mr. Vinodkumar S. Shah for petitioner.
PCA Mr. Nilesh Dhanuka for respondent

ORDER

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

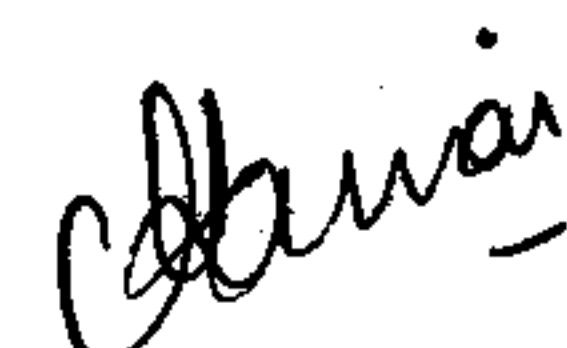
1. The instant application is filed by **Mr. Rajendra M. Mehta**, as an individual, under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.
2. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 23.12.1993





having identification No. L7010GJ1993PLC020927 and having registered office at Village Moraiya, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 32,50,00,000/- and paid up share capital is Rs. 13,50,00,000/-.

3. The applicant/operational creditor is an individual providing consultancy and financial advisory services having office at Satellite, Ahmedabad.
4. The applicant/operational creditor has stated that he had provided consultancy and financial advisory services to the corporate debtor during the period from December, 2011 to October, 2018 and against such services an amount of **Rs. 3,35,950/- (Rupees three lacs thirty-five thousand nine hundred fifty only)** is outstanding and payable by the corporate debtor for the services rendered during the period August, 2017 to October, 2018.
5. It is further stated that the petitioner having failed to receive the payment from the respondent company, the operational creditor had issued demand notice under section 8 of the I & B Code in form 3 on 23.07.2019 which is duly served upon the respondent company. gh his advocate.
6. In support of its claim, the operational creditor has annexed to the application, copy of unpaid tax invoices, computation of default, ledger in the books of operational creditor, PAN, form No. 2 being consent of proposed IRP etc.
7. The respondent/corporate debtor filed an affidavit in reply inter alia stating that the respondent company is under critical financial crisis but is not insolvent or unable to pay

its dues, however, the respondent company requires some time to discharge its liability.

Findings

8. Heard learned counsels appearing on behalf of both the sides and perused the documents attached to the application/reply.
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 23.07.2019 has been served upon the corporate debtor. Therefore, service is complete. Moreover, the corporate debtor has admitted the operational debt and shown its inability to pay the operational debt due to financial crunch.
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 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. From the above discussions it is evident that the respondent has defaulted the debt and has admitted the operational debt.
14. 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?

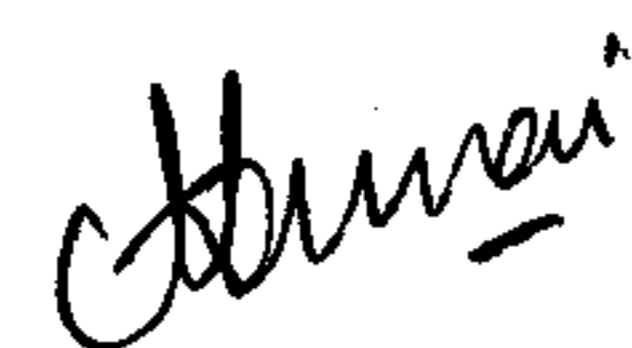
If any of the aforesaid conditions is lacking, the application would have to be rejected.

15. 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 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.

Shachin Kumar

Chatur

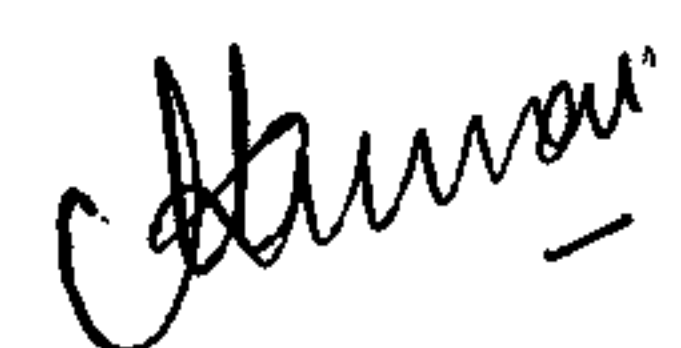
16. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided 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 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. 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.
18. 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.

19. 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.
20. 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.
21. The applicant/operational creditor has proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Kailash T. Shah, 505, 21st Century Business Centre, Nr. World Trade, Ring Road, Surat 395 002 (ipktshah@gmail.com) having registration No. IBBI/IPA-001/IP-P00267/2016-17/10511 to act as an interim resolution professional under Section 13(1)(c) of the Code.
22. This Petition is accordingly admitted.



23. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
24. 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)

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