

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


**C.P. (I.B) No.498/NCLT/AHM/2018**

**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 18.11.2019**

Name of the Company: Siddeshwari Industries.  
V/s.  
Arihant Pumps Pvt. Ltd.

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

<b>S.NO.</b>	<b>NAME (CAPITAL LETTERS)</b>	<b>DESIGNATION</b>	<b>REPRESENTATION</b>	<b>SIGNATURE</b>
1.	ISHAM SHAH	Adv.	Respondent	
2.				

**ORDER**

The Respondent is represented through learned counsels.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 18th day of November, 2019

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**C.P. No. (IB) 498/9/NCLT/AHM/2018**

**In the matter of:**

**Siddheshwari Industries**

Plot No. 2008, Phase II,  
GIDC, Chhatral  
Kalol  
Dist. Gandhinagar 382 729  
Gujarat State

:

**Petitioner**  
Operational Creditor

**Versus**

**Arihant Pumps Private Limited**

Near Laabinala  
Deesa Highway  
Palanpur 385 001  
Gujarat State

:

**Respondent**  
Corporate Debtor

**Order delivered on 18<sup>th</sup> November, 2019.**

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

**Appearance:**

Advocate Mr. Devashish K. Trivedi for petitioner  
Advocate Mr. Ishan Shah for respondent

**ORDER**

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

1. Mr. Shaileshbhai Gordhanbhai Patel, being the proprietor of M/s. Siddheshwari Industries filed this Petition on 28<sup>th</sup> September, 2018 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.

*Chockalingam*

*Manorama*

2. The applicant/operational creditor is a proprietary concern of Mr. Shaileshbhai Gordhanbhai Patel having PAN AHUPP7998M and having office at GIDC, Chhatral, Dist. Gandhinagar, Gujarat State is a Micro, small or medium (MSME) enterprise engaged in manufacturing and supply of electrical motors, submersible pumps, stampings, set stator, set rotor and other goods.
3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 01.11.1988 having identification No. U29120GJ1988PTC011451 and having registered office at Near Laabinala, Deesa Highway, Palanpur, Gujarat 385 001. Authorised share capital of the respondent company is Rs. 1,00,00,000/- and paid up share capital is Rs. 82,70,000/-.
4. The applicant/Petitioner has submitted that the applicant had supplied goods to the corporate debtor during the period from 19.10.2016 to 04.05.2018 as per the invoices and delivery challans annexed at **page No.655 to 722** to the application. That, the operational creditor had started supplying goods to the corporate debtor from March 2012 onwards. That, initially, the corporate debtor was regular in payment of the bills, however, the corporate debtor failed to make payment from 2016 onwards in regard to the goods supplied under the 33 invoices raised on the respondent during the period from 19.10.2016 to 04.05.2018. That,

*Shankar Singh*

*Shankar Singh*

total outstanding towards the goods supplied under aforesaid invoices and delivery challans is Rs. 85,07,478/-. That, as the corporate debtor has failed to pay the dues towards the goods supplied by the operational creditor, amount of interest @ 24% per annum is calculated on the outstanding of Rs. 85,07,478/- up to 10.08.208 which comes to Rs. 20,69,772/-. Therefore, the total amount of default is **Rs. 1,05,77,250/- (Rupees one crore five lacs seventy-seven thousand two hundred fifty only).**

5. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Form No. 5	01-14
2	Affidavit in support of initiation of CIRP under section 9 of the IB Code	15-34
3	Certificate dated 18.04.2011 issued under Micro, Small or Medium Enterprise	35-43
4	PAN Card	44
5	Master data of the respondent company	45
6	Ledger account pertaining to F.Y. 2011-12, 2012-13, 2013-14, 2014-15, 2015-16 & 2016-17	46-356
7	Bank statements	357-634
8	Form 3 - Demand notice with its enclosures	635-725
9	Postal slip along with status report of the consignment	726-728
10	Nine cheques along with memorandum as well as bank advice	729-746
11	Worksheet showing the principal amount claimed to be in default towards the goods supplied	747
12	Covering letter of the advocate under which one set of complete paper book in two volumes is sent to the corporate debtor by RPAD along with RPAD slip evidencing the same	751-752

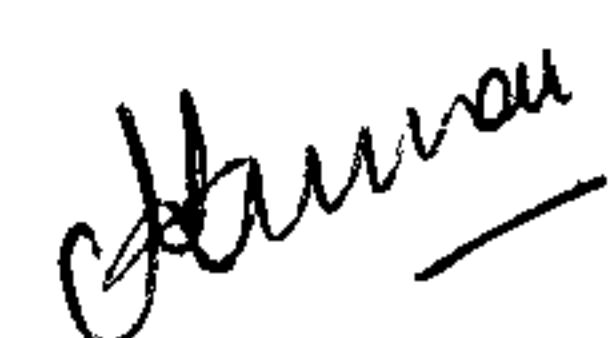
### **Findings**

6. Heard learned lawyers appearing for both the sides and also seen the documents annexed to the application.

*Shoukath*

*Attorney*

7. On filing of the instant application, notice for the first time was issued but none appeared on behalf of the respondent. Therefore, again, notice was issued by the registry on 25.10.2018 and, as per track report, the notice was served upon the respondent on 29.10.2018. On 07.03.2019, during the course of hearing, the learned lawyer attending on behalf of the respondent submitted that the respondent company has not received a copy of the petition. Therefore, the Adjudicating Authority had directed the petitioner to supply a copy of petition to the respondent which was complied by the applicant. On 18.04.2019, as a last chance one weeks' time was granted to the respondent to file reply/objections, if any. On 24.06.2019, learned lawyer appearing on behalf of the respondent requested for time on the ground of settlement. That, request of the respondent was considered with directives to file reply with a condition to pay Rs. 1,00,000/- towards the debts in the account of the petitioner. Again, on 29.07.2019, as a last chance, three days' time was granted to the respondent for filing reply.
8. On perusal of the records it is found that despite giving several opportunities the respondent failed to file any reply. Hence on 23.10.2019 right to file reply is closed. Both the sides argued the matter, however, liberty was granted to respondent to file written submissions within a week but the respondent failed to file even written submission.



9. On perusal of the records it is also found that the respondent has not raised any dispute regarding the operational debt payable to the operational creditor.
10. On perusal of the records it is found that the delivery challans are signed on behalf of the respondent company as a token of having received the goods supplied by the operational creditor.
11. It is also pertinent to note that towards part payment of aforesaid outstanding amount, nine different cheques for aggregate amount of Rs. 35,03,515/- were issued by corporate debtor to the operational creditor. However, all those cheques were dishonoured. The details of the cheques as well as aforesaid fact is mentioned at para 4.8 of the supporting affidavit at page No. 26. For the sake of ready reference, same is reproduced below: -

Sr. No.	Cheque No.	Date	Amount
01	000395	19.05.2018	5,00,000
02	000396	22.05.2018	5,00,000
03	000397	31.05.2018	5,00,000
04	000398	16.06.2018	5,00,000
05	000399	25.06.2018	2,50,000
06	000400	10.07.2018	5,00,000
07	000401	20.07.2018	2,50,000
08	000457	28.06.2018	2,50,000
09	000458	02.07.2018	2,53,515
		<b>TOTAL</b>	<b>35,03,515</b>

Copies of all those cheques along with bank advice are collectedly annexed with the memo of petition at page No. 729 to 746.

*Pharadger*

*Chatur*

12. It is also a matter of record that before filing of the instant application/petition the applicant issued/sent a demand notice in Form 3 dated 18.08.2018 along with its annexures as well as Form 4 dated 18.08.2018 which is annexed and kept at page No. 635 to 725 and the same was duly served upon the corporate debtor. In support of the service of demand notice, the operational creditor has annexed proof of service at page No. 728 which was sent through Registered A.D. and delivered to the corporate debtor on 20.08.2018. Even after receipt of the demand notice, the corporate debtor never came forward to pay the due amount of operational creditor or have raised dispute, if any.

13. 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

*Shaukat*

*Chatterjee*  
Page 6 | 10

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.

14. 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 IB Code as enshrined in the Code. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section (5) of 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.

15. That, the Application filed by the Applicant is complete in all respects.

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-

*Chauhan*

*Chauhan*  
Page 7 | 10

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 Insolvency 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 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

*Shalabh*

*Chatur*

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.

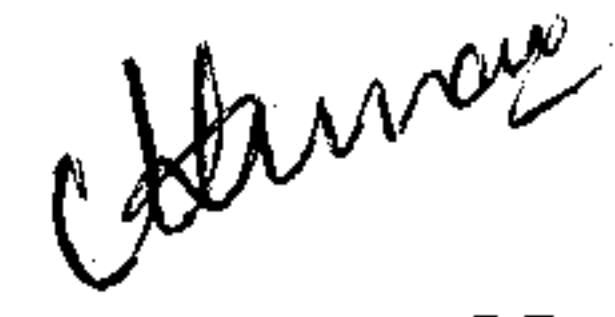
21. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. This Adjudicating Authority hereby appoint Shri Manish Kumar Bhagat, 103-104 Panchdeep Complex, Mithakhali Six Road,

*Chaur*

Navrangpura, Ahmedabad 380 009  
([mbhagat2003@gmail.com](mailto:mbhagat2003@gmail.com)) 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.

22. This Petition stands disposed of accordingly with no order as to costs.
23. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.

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

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

nair