

## NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD BENCH  
AHMEDABAD

C.P. (I.B) No. 404/9/NCLT/AHM/2019

Coram: Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL  
Hon'ble Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICALATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF  
THE NATIONAL COMPANY LAW TRIBUNAL ON 29.08.2019Name of the Company: Nandish Patel  
V/s  
M.V.Omni Projects(India) Ltd  
Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy CodeS.NO. NAME (CAPITAL LETTERS) DESIGNATION REPRESENTATION SIGNATURE

1.	Jaimil Doshi Krina Parekh For Arjun Sheth	Adv Adv Adv & Solicitor	} Respondent } <i>[Signature]</i>
2.	NANDISH PATEL	PARTY IN PERSON	

OPERATIONAL  
CREDITOR*N.S. Patel*ORDER

The parties are represented through their respective learned counsels.

The instant matter was fixed for pronouncement of judgement after hearing both sides on 22.08.2019.

On perusal of the record, it is found that the order passed on 19.08.2019 has not been tagged in record rather the order of some other matter has been tagged due to inadvertence, as such, the order dated 19.08.2019 be read as follows:

*"The petitioner is present in person.**The respondent has filed the reply with an advance copy to the petitioner on the date itself.**List the matter for final hearing on 22.08.2019"*

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

*Chockalingam*  
CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL

Dated this the 29th day of August, 2019

*Manorama*  
MANORAMA KUMARI  
MEMBER JUDICIAL

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

**C.P. No. (IB) 404/9/NCLT/AHM/2019**

**In the matter of:**

**Mr. Nandish Patel**  
9, Kalyan Society  
Nr. Nagri Hospital  
Ellisbridge  
AHMEDABAD 380 006

**Petitioner**  
Operational Creditor

**Versus**

**M.V. Omni Projects (India) Limited**  
201-202-a, Shivalik Yash  
132 Ft. Ring Road  
Opp. Shastrinagar BRTS Bus Stand  
Naranpura  
AHMEDABAD 380 013  
Gujarat State

**Respondent**  
Corporate Debtor

**Order delivered on 29<sup>th</sup> August, 2019.**

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

**Appearance:**

Mr. Nandish Patel for operational creditor, Party in person  
Advocate Mr. Arjun Sheth for corporate debtor

**ORDER**

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

1. Mr. Nandish Patel, Operational Creditor 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"].



*Shoukendra Singh*

*Manorama*

2. The operational creditor - erstwhile employee of the respondent company having his residential address at 9, Kalyan Society, Ellisbridge, Ahmedabad had worked with the respondent company in different capacity from August, 2017 to January, 2019.
3. The respondent/corporate debtor is a company registered under the companies Act on 20.06.2002 having registered office at 202-202-A, Shivalik Yash, Naranpura, Ahmedabad and having identification number U45209GJ2002PLC040887. That, authorised share capital of the respondent company is Rs. 25,00,00,000/- and paid up share capital is Rs. 15,22,72,570/-.
3. It is submitted by the applicant/operational creditor that since August, 2017 he has been working with the respondent company in the Senior Management Role - Chief Operating Officer (COO). That, the respondent company has failed to make payment of salary to the operational creditor for the months July, 2018, September, 2018, October, 2018, November, 2018, December, 2018 and January, 2019, inspite of his requests and pleas as a result of which the applicant has suffered irreparable financial damages and losses including adverse effect in his career and health. That apart the operational creditor has been compelled to take loan for his day to day expenses. That, the amount claimed by the petitioner is **Rs. 14,71,885/-**  
**(Rupees fourteen lacs seventy-one thousand eight**



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**hundred eighty-five only)** as per the computation given at **page No. 28** to the petition.

4. It is further submitted by the applicant that the date of default has been calculated from the 1<sup>st</sup> day of every consequent calendar month for which the respondent has failed to make payment of salary. The applicant has placed detailed computation of the salary and interest payable thereof @ 18% per annum, at **page No. 28** to the main application.
5. It is further submitted by the applicant that he was offered employment in the respondent company for the post of "Chief Operating Officer (COO)" vide order dated 02.06.2017 with compensation on cost to company (CTC) basis of Rs. 22,00,000/- (Rupees twenty-two lacs) per annum as per details placed at **Annexure - XVII** to the application. Subsequently, the corporate debtor issued letter of appointment to the applicant for the post of COO, vide letter dated 08.08.2017 with a CTC of Rs. 1,83,335/- (Rupees one lac eighty-three thousand three hundred thirty-five only), as per details placed at **Annexure XVIII** to the application.
6. It is further submitted by the applicant that, subsequently, the applicant was given additional charge of Chief Financial Officer (CFO) and revised the letter of appointment dated



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08.08.2017 elevating the applicant to the post of Chief Financial Officer cum Chief Operating Officer with CTC of Rs. 1,83,335/- (Rupees one lac eighty-three thousand three hundred thirty-five only), as per the details given at **Annexure XIX** to the application. That, there was no additional compensation provided for the additional responsibility of CFO and the position was not accorded with any authority. That, the date of commencement of job by the applicant with the corporate debtor is **08.08.2017**.

7. It is also submitted by the applicant that, in recognition of the performance of the applicant, compensation of the applicant was revised by the respondent company on COC basis and had fixed at Rs. 30,36,000/- (Rupees thirty lacs thirty-six thousand only) per annum with effect from 01.09.2018 vide letter dated 01.06.2018, as per **Annexure XX** to the application. That, due to personal reasons, the applicant resigned on 30.06.2018 from the additional charge of CFO and his resignation was accepted by the respondent company. However, he continued to work in the original post and accordingly, the respondent paid the salary of Rs. 1,42,535/- for the month of August, 2018

8. It is further submitted by the applicant that, despite assurance given at the time of appointment, on several occasions there was delay in disbursing monthly salary to the applicant causing grievous trouble in livelihood and managing personal affairs. That, due to delay in



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disbursement of monthly salary the applicant was compelled to take personal loan of Rs. 5,00,000/- (Rupees five lacs only). The applicant has submitted the following table showing irregular disbursement/non-disbursement of salary for the period from 17<sup>th</sup> October, 2017 to January, 2019.

Salary for the month	Net salary (Rs.)	Payment Date
August 2017	1,28,111/-	17.10.2017
September 2017	1,65,535/-	02.01.2018
October 2017	1,23,535/-	20.01.2018
November 2017	1,32,535/-	01.03.2018
December 2017	1,61,809/-	30.04.2018
January 2018	1,12,299/-	08.06.2018
February 2018	1,12,298/-	12.12.2018
March 2018	1,14,435/-	30.06.2018
April 2018	1,62,535/-	10.07.2018
May 2018	1,62,535/-	16.07.2018
June 2018	1,62,535/-	05.11.2018
<b>July 2018</b>	95,288/-	<b>PENDING</b>
August 2018	1,42,535/-	31.01.2019
<b>September 2018</b>	1,90,035/-	<b>PENDING</b>
<b>October 2018</b>	1,90,035/-	<b>PENDING</b>
<b>November 2018</b>	1,90,035/-	<b>PENDING</b>
<b>December 2018</b>	1,90,035/-	<b>PENDING</b>
<b>January 2019</b>	1,90,035/-	<b>PENDING</b>

9. It is submitted by the applicant that he made various communication with the respondent demanding his salary as reflected from e-mail dated **28.01.2019, 31.01.2019** as per details placed at **page No. 68** to the application. Finding no alternative, the applicant issued demand notice under Section 8 of the IB Code in form No. 3 under Rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 on 27<sup>th</sup> May, 2019 calling upon the corporate debtor to pay the outstanding but the operational creditor did not receive any reply to the notice to that effect. The operational creditor also filed affidavit of no dispute.



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Failing to receive any response from the side of corporate debtor, the operational creditor filed the instant application.

10. The operational creditor submitted copy of the following documents in support of his claim: -

Annexure	Details of document	Page No.
I	Affidavit to the effect that there is no notice given by the corporate debtor relating to a dispute of the unpaid operational debt	22-23
II	Pan copy of the application	24
	General affidavit verifying application (form No. NCLT 6)	25
III	Company master data of the corporate debtor as available on the website of MCA	26-27
IV	Computation sheet of claim amount	28
V	Salary slip for July, 2018	29
VI	Salary slip for September, 2018	30
VII	Salary slip for October, 2018	31
VIII	Salary slip for November, 2018	32
IX	Salary slip for December, 2018	33
X	HDFC loan sanction letter	34
XI	EPFO pass book showing details of deposit of PF contribution by respondent	37-38
XII	Demand notice in form 3	39-42
XIII	Proof of despatch	43
XIV	Tracking report from India Post website showing delivery date & time of demand notice	44
XV	e-mail from applicant to Chairman & Managing Director of the respondent company dated 30.05.2019 with demand notice in form 3 of Rules	45-49
XVI	Account statement issued by SBI, Mithakali Branch confirming that the operational creditor has not received payment for the period under claim	50-51
XVII	Appointment letter dated 2 <sup>nd</sup> June, 2019	52-53
XVIII	Appointment for the post of Chief Operating Officer dated 08.08.2017	54-58
XIX	Revised letter of appointment for the post of Chief Financial Officer cum Chief Operating Officer dated 08.08.2017	59-62
XX	Increment letter dated 01.06.2018	63-64
XXI	Resignation letter by the applicant with regard to the additional charge of CFO	65
XXII	Email dated 28.01.2019 addressed to the CMD by applicant	66-67
XXIII	Email dated 31.01.2019 addressed to the CMD by applicant	68-70



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XXIV	Email dated 02.02.2019 addressed to the CMD by applicant	71
XXVII	Proof of dispatch of petition to the corporate debtor	74

11. On receipt of the notice, corporate debtor appeared and filed reply denying the allegations so made by the operational creditor.
12. The first objection raised by the respondent is that the petitioner has not disclosed the proceedings filed before the authority under the Minimum Wages Act for non-payment of salary and there exists a pre-existing dispute. That the amount claimed to be in purported default includes salary, interest on salary and interest on personal loan which will not fall within the ambit of operational debt. That, the claim for interest on personal loan is to the tune of Rs. 2,12,864/- which is substantial 20% of the claim qua the salary amount without the interest component. That the laptop given to the petitioner for office work has not been returned. That only with a view to help the petitioner get a higher paying job with better prospects in the future with a bona fide intention, the respondent gave an increased offer letter dated 01.06.2018.

**Findings:**

13. Heard the petitioner, learned counsel appearing on behalf of the respondent and perused the documents submitted by the parties.



*Shri. A. K. Singh*

*Shri. A. K. Singh*

14. On perusal of the records it is found that as such there is no pre-existing dispute as claimed by the respondent. In the eyes of law, the proceedings filed by the applicant before the authority under the Minimum Wages Act for non-payment of salary before a different forum can only be considered as an effort by a layman to recover his hard-earned money. Though the respondent is trying to bring in the issue of pre-existing dispute, no document is filed with the reply in support of such contention.
15. During the course of hearing, learned lawyer appearing on behalf of the respondent company argued that the motive behind giving additional charge of CFO and increase in the salary was to boost the career of the applicant since the applicant was parting ways with the respondent company. Bona fides of such arguments do not hold ground in the eyes of law. More so when the petitioner continued in the service and for the month of August, 2018 the petitioner was paid salary for the post of COO which he was holding.
16. On perusal of the record it is found that the applicant was holding a key position and looking after affairs of the respondent company. The statement submitted by the applicant at **page No. 10** to the application shows that from the beginning the applicant has been receiving the salary as late as sixty days. It is submitted by the applicant that on several occasions he had requested the CMD of the



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respondent company to ensure payment of salary on time as the delay has been causing grievous trouble in livelihood. It is also submitted by the applicant that due to irregular payment of salary, he was forced to take a loan from the bank to run his family. On perusal of record it is also found that during the period from July, 2018 to January 2019, the applicant has received salary for the month August, 2018 only.

17. On perusal of the record it is found that the petitioner has annexed with the application copies of various e-mail communication exchanged between the petitioner and corporate debtor from time to time with regard to the overdue payment.
18. That, the application filed in form No. 5 is supported by affidavit and all the documents as required as per Section 9 of the IB Code and rule made thereon. Hence the application is complete in all respect. The applicant as per Section 5 (2) is the 'operational creditor' and the amount claimed is 'operational debt' as per section 5(21) which reads as under: -

*"(21) "operational debt" means a claim in respect of the provision of goods or services **including employment** or a debt in respect of the repayment of dues arising under any law of the time being in force and payable to the Central Government, any State Government or any local authority;"*



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19. On perusal of the record it is found that the respondent has duly received the demand notice.

20. 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?

21. 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. 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 20 of Section 5 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default.



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22. That, the Application filed by the Applicant is complete in all respects.
23. 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, 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.
24. 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 directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.



*Shri Manish Kumar Bhagat*

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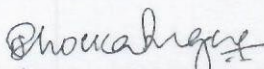
25. From the above stated discussion and on the basis of material available on record, this Adjudicating Authority is of the considered view that it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
26. The petition is, therefore, 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.

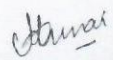


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27. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
28. 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.
29. This Petition stands disposed of accordingly with no order as to costs.
30. 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)

