

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

**C.P. (I.B) No.434/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 02.07.2020**

Name of the Company: Yug International Pvt Ltd  
V/s  
Optus Laminates Pvt Ltd

Section : 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>
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1.

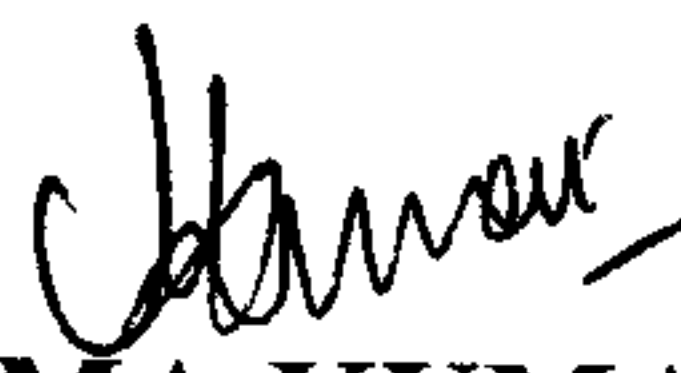
2.

**ORDER  
(through video conferencing)**

Learned Lawyer, Mr. Pratik Thakkar is present for the Respondent.

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

  
**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

  
**MANORAMA KUMARI  
MEMBER JUDICIAL**

Dated this the 2nd day of July, 2020

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

**C.P. No. (IB) 434/9/NCLT/AHM/2019**

**In the matter of:**

**Yug International Private Ltd.**

(Formerly known as Yog International Private Limited)

113/131, Swaroop Nagar

Kanpur

UTTAR PRADESH 208 002

:

**Petitioner**

Operational Creditor

**Versus**

**Opus Laminates Private Limited**

(Formerly known as "Touch Laminates Private Limited)

Block - B,

903 & 904 Solitaire Corporate Park

Nr. Divya Bhaskar Press

S.G. Highway

Ahmedabad 380 051

GUJARAT STATE

:

**Respondent**

Corporate Debtor

**Order delivered on 2<sup>nd</sup> July, 2020**

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

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

**Appearance:**

Learned lawyer Mr. Jaimin Dave for applicant

Learned lawyer Mr. Pratik Thakkar for respondent

**ORDER**

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

1. Mr. Madhur Vinod Gupta, being authorised signatory, on behalf of M/s. **Yug International Private Ltd.** (formerly known as Yog International Private Limited), 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

*Chockalingam*

*Manorama*

Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The petitioner/operational creditor is a private limited company registered under the Companies Act having its registered office at Kanpur, Uttar Pradesh and having identification No. U65910UP1997PTC021784 is in the business of supply of different chemicals.
3. The respondent/corporate debtor is a private limited company registered under the Companies Act, incorporated on 26.10.2004 having identification No. U20210GJ2004PTC044949 and having registered office at S.G. Highway, Ahmedabad 380 51, Gujarat State. Authorised share capital of the respondent company is Rs. 7,30,00,000/- and paid up share capital is Rs. 7,26,55,530/-
4. The applicant/Petitioner has submitted that the corporate debtor had approached the operational creditor for the purpose of procuring different chemicals products and being satisfied with the quality of the products offered by the operational creditor, the corporate debtor started purchasing different chemical products from time to time. That, till January 2019, the corporate debtor had carried out transactions of a considerable amount with the operational creditor, however, at no point of time, the corporate debtor had raised any dispute or demur with respect to the quality of the products supplied by the operational creditor.

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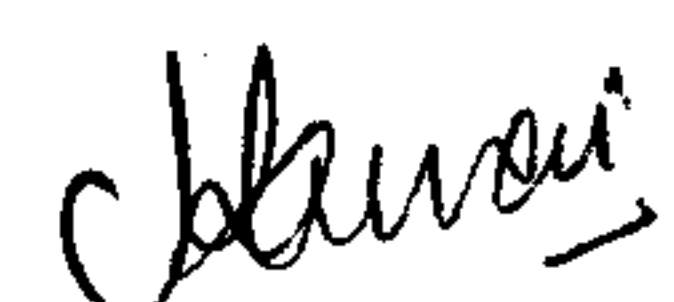
*Shachin*  
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5. That the operational creditor used to maintain a running account for the supply of products made to the corporate debtor from time to time, wherein the operational creditor raises an invoice against which the corporate debtor used to make payments. That, an amount of Rs. 99,18,713/- with respect to seven invoices as per form 5 [Under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016] remain outstanding and payable since an elongated period of time of which details are given below: -

Invoice No.	Invoice Date	Outstanding amount Rs.
GJGM/0727/17-18	02.09.2017	3,15,330/-
GJGM/1041/17-18	26.09.2017	17,82,742/-
GJGM/1695/17-18	09.11.2017	18,31,313/-
GJGM/1728/17-18	10.11.2017	6,42,266/-
GJGM/1977/17-18	24.11.2017	19,92,015/-
GJGM/2304/17-18	19.12.2017	8,44,998/-
GJGM/2614/17-18	09.01.2018	25,10,049/-
	<b>Total</b>	<b>99,18,713/-</b>

6. It is further stated by the applicant that, on 01.03.2019, (page 48-49) the corporate debtor had duly admitted and acknowledged the outstanding principal amount of Rs. 99,18,717/- by sending a balance confirmation letter indicating the details of the accounts of the operational creditor standing in the books maintained by the corporate debtor as on 28.02.2019. That, on several occasions the corporate debtor had promised to clear the outstanding dues of the operational creditor within considerable amount of time, however, never bothered to clear or release the





aforesaid admitted outstanding dues due and payable since December, 2017.

7. The operational creditor issued demand notice under Section 8 of the I & B Code on 03.04.2019 (**page 50-59**) calling upon the corporate debtor to pay an aggregate amount of **Rs. 1,19,00,464/- (Rupees one crore nineteen lacs four hundred sixty-four only)** and interest thereon to the tune of **Rs. 19,81,751/- (Rupees nineteen lacs eighty-one thousand seven hundred and fifty-one only)**. Subsequently, on 17.04.2019, the corporate debtor had released an amount of Rs. 5,00,000/- (Rupees five lacs only) as part payment against the outstanding dues of the operational creditor which has been duly accounted in the books of accounts maintained by the operational creditor. Thereafter, the corporate debtor had issued two cheques of Rs. 20,00,000/- each dated 29.04.2019 and 21.05.2019, however, both these cheques were dishonoured.
8. The operational creditor has further stated that as per the specific clause in the invoices raised by the operational creditor in case of delay in payment of invoices beyond due date, the operational creditor shall be entitled to claim interest at the rate mentioned in the respective invoices. It is alleged that there is gross delay on the part of the corporate debtor in making payment towards the aforementioned seven invoices. Accordingly, interest

amount of delayed payment of invoice is Rs. 22,69,032/- till 31.05.2019. According to the applicant, principal amount of Rs. 94,18,713/- and interest thereon to the tune of Rs. 22,69,032/- remains outstanding and payable by the corporate debtor and as on 31.05.2019, the corporate debtor owes a total admitted debt of **Rs. 1,16,87,745/- (Rupees one crore sixteen lacs eighty-seven thousand seven hundred forty-five only)** to the operational creditor. That, as per the applicant the debt fell due between the months of **December 2017 to April 2018** which is payable against the invoices raised by the operational creditor towards the supplies made from time to time as per the requirement of the corporate debtor.

9. The respondent filed affidavit in reply cum objections inter alia stating that the petition is neither maintainable nor tenable in the eyes of law as it is structured on misconceived facts and legal position. In the reply, the respondent has given details of four letter of credit (LC) opened by them with their bankers – HDFC Bank & Bank of Baroda towards payment of five invoices out of the seven invoices against which the claim has been raised by the applicant. It is further submitted by the respondent that against the two remaining invoices, totally amounting to Rs. 11,60,328/- the respondent had issued cheque dated 17.04.2019 for Rs. 5,00,000/- and receipt of the said amount is admitted by the applicant as reflected at page No. 47 of the petition. As regards the balance amount of Rs. 6,60,328/-, the



respondent is ready to handover the cheque of Rs. 6,60,328/- drawn in favour of the applicant, copy of which has been annexed to the reply filed by the respondent. The respondent has given detailed table of payments as reflected at page 4 of the reply and has also annexed to the reply copy of the four LCs (page 8-23) opened in favour of the applicant towards payment of five invoices. According to the respondent, no amount is due and payable to the applicant by the respondent.

10. **The applicant filed affidavit in support of rebuttal documents** inter alia stating that the respondent company has made a frivolous attempt to project that all the outstanding dues of the applicant company are paid off even though they themselves have issued a ledger confirmation confirming outstanding balance of Rs. 99,18,717/-. The operational creditor has produced copy of statement of account and the petitioner has duly accounted for the amount as mentioned in the reply. That even after taking into consideration the said payment, an amount of Rs. 99,18,713/- remains due and payable. According to the petitioner, the corporate debtor would not have issued two cheques each amounting to Rs. 20.00 lacs in case where no amount was due and payable. The very factum of issuance of cheque indicates that the respondent was indebted to the petitioner. That on account of some misunderstanding of an accountant of the petitioner, wrong invoice numbers are claimed to be outstanding in form 5 of the memo of petition,



however, in reality, the corporate debtor has not made any payment qua the invoices referred to in the rebuttal documents (page 5-6) amounting to Rs. 99,18,713/-.

11. It is further submitted by the applicant that non-mentioning of correct invoices are not fatal to the petition in as much as under Section 9 of the I & B Code and the petitioner is required to show that the application is complete and there is default on the part of the respondent. That, no notice of dispute is received from the respondent disputing the outstanding claim. That in case where the claim of the petitioner was disputed one, the respondent would have disputed the claim of the petitioner immediately on receipt of the demand notice.


### **Findings**

12. Heard the advocates appearing on behalf of both the parties and perused the documents so annexed to the application and reply/objections.
13. On perusal of the application it is found that the applicant has filed his claim based on the details given in form 5 to the petition and demand notice. As per form 5, the total amount claimed to be in default is Rs. 1,16,87,745/- which includes interest whereas the actual amount payable is Rs. 99,18,717/-.

*Shreehari*

*Chatur*

14. On perusal of the demand notice it is found that the details of outstanding invoices given by the applicant in the demand notice and in form 5 are the same. Thereafter, the respondent has filed objections/reply inter alia stating that the outstanding amount reflected in form 5 of the application has already been paid by the respondent as reflected in the letter of credit opened with HDFC Bank & Bank of Baroda (page 8-23). On perusal of the record it is found that, out of the seven invoices as reflected in form 5, payment of five invoices have already been made by way of letter of credit, however, for the balance amount pertaining to remaining two invoices totally amounting to Rs. 11,60,328/-, the respondent has already paid Rs. 5.00 lacs on 17.04.2019. As per the document produced, for the remaining amount of Rs. 6,60,328-, the respondent has shown willingness to handover cheque of the said amount.
15. It is evident that the petitioner by way of filing rebuttal documents has tried to incorporate and replace the details of invoices mentioned in form 5 of the original petition with some other invoices given later on in the rebuttal documents. It is evident that the details of invoices given at page No. 5-6 of the rebuttal documents has not been reflected in form 5 of the original petition. Thus, by filing rebuttal documents, the applicant has admitted that the details of invoices reflected in form 5 of the original petition are of the invoices which were already paid and by filing rebuttal documents the applicant is trying to develop a new

  
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case which is not permissible under the I & B Code. Further, the details of invoices which the applicant is trying to substitute in form 5 by way of rebuttal affidavit are of the invoices against which no demand notice under Section 8 of the I & B Code has been issued which is mandatory for filing an application under Section 9 of the I & B Code. Thus, the invoices against which demand notice has not been issued, application under Section 9 is not maintainable. It is also a matter on record that the applicant has admitted that he has issued demand notice against the invoices which were already paid and the same has also been reflected in form 5. Under such circumstances the instant application is bad in the eye of law and is not maintainable.

16. In the result, the instant petition is dismissed. No order as to cost.



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



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

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