

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

C.P.(I.B) No.170/NCLT/AHM/2020

**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 29.01.2021**

Name of the Company: Rasendra Chemexport Pvt Ltd
V/s
Food Island Pvt Ltd

Section 9 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

Advocate, Mr. Kunal P Vaishnav appeared on behalf of the Petitioner.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 29th day of January, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 170/9/NCLT/AHM/2020

In the matter of:

M/s. Rasendra Chemexport Private Limited

Unit No. 10 & 11, Ground Floor,

Ratnajyot Industrial Estate

Irla Gauthan, Irla Lane

Vile parle (W)

MUMBAI 400 056

:

Petitioner

Operational Creditor

Versus

Food Island Private Ltd.

Shop No. 208/2-09,

Bapasitaram Complex

1st Floor, Shree Ganesh Park

Near HDFC Bank

Gondal Road, Vavadi

RAJKOT 360 004

GUJARAT STATE

:

Respondent

[Corporate Debtor]

Order delivered on 29th January, 2021

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

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

Appearance:

Petitioner : Mr. Kunal P. Vaishnav, Advocate

Respondent :

ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Rasendra D. Desai of **M/s. Rasendra Chemexport 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 Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.





2. The applicant/operational creditor, a private limited company, having its registered office at Mumbai, engaged in supply of various chemicals, has submitted that the respondent is indebted to the operational creditor a total sum of **Rs. 2,10,793/- (Rupees two lacs ten thousand seven hundred ninety-three only)** towards the supply of various chemicals. That, the corporate debtor made ad hoc payment for the goods received from the applicant and the last such payment was received on 25.10.2018, therefore, the aforesaid operational debt fell due on 25.10.2018. That, despite promises and assurances given, the respondent failed to clear the dues and, therefore, the petitioner was constrained to issue notice dated 11.01.2020. That, no reply has been received from the respondent, therefore, this petition.
3. In support of its claim, the applicant has annexed to the application the documents like; copy of purchase order issued by the respondent, copy of invoices raised by the petitioner, copy of demand notice in form 3, copy of bank statement from 01.01.2020 to 31.01.2020 etc.
4. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956, 06th October, 2016, having identification No. U15100GJ2016PTC094012 and having registered office at Rajkot, Gujarat State. Authorised share capital of the respondent company is Rs.1,00,00,000/- and paid up share capital is Rs. 1,00,00,000/-.
5. The instant application filed on 17th February, 2020 was notified on 02.03.2020 for the first time and, despite giving several opportunities, none appeared on behalf of the



respondent. Therefore, the matter is heard in absence of the respondent/corporate debtor.

Findings:

6. Heard learned counsels appearing for the petitioner and perused the documents annexed to the application.
7. On perusal of the records it is found that the petitioner has filed Board Resolution dated 15.01.2021 authorising Mr. Rasendra Desai, Director of the applicant company to initiate CIRP against the respondent company and authority letter issued by Mr. Rasendra Desai authorising Mr. Kunal P. Vaishnav, Advocate to issue demand notice.
8. On perusal of the records it is found that despite issuing notice through the Registry as well as by the applicant, the respondent has neither attended in person/through advocate, nor filed any reply.
9. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted.
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
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

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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. 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.

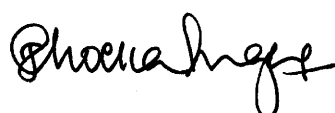
14. Thus, under the facts and circumstances and as discussed herein above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. No dispute has 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.

15. 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.
16. 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.
17. 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


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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.

18. 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.

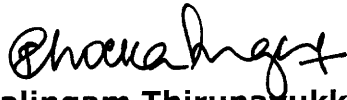
19. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

20. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Darshan Bharatbhai Patel, 31, Vrindavan, Nr. Akshar Flat, Inquilab Society, Gulbai Tekra, Ahmedabad 380 015 having registration No. IBBI/ IPA-001/ IP - P01579/ 2018-2019 /12442 (ca.darshanbpatel@gmail.com) to act as an interim resolution professional under Section 13(1)(c) of the Code.

21. This Petition is accordingly admitted.




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