

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

CP(IB) 788 of 2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

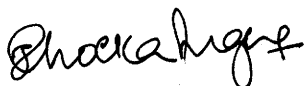
**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.03.2021**

Name of the Company: Kuber Texlen Pvt. Ltd.
V/s
Virar Fabrics Pvt. Ltd

Section 9 IBC,2016

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

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 1st day of March, 2021



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 788/9/NCLT/AHM/2019

In the matter of:

M/s. Kuber Texlen Private Limited
702, Jeevandeep Complex,
Opp. J.K. Tower
Ring Road
SURAT 395 003
GUJARAT STATE

Petitioner
Operational Creditor

Versus

M/s. Virar Fabrics Private Limited
Ratna Jyoti Apartment - C,
Floor 04, 4, Ravidham Sankul
Panjara Pole, Ghod Dod Road
SURAT 395 007
GUJARAT STATE

Respondent
[Corporate Debtor]

Order delivered on 1st March, 2021

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

Appearance:

Petitioner : Mr. Vinod Kumar Shah, PCS
Respondent :

ORDER

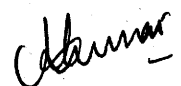
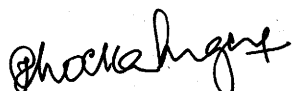
Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Nikhil Agarwal, Director of **M/s. Kuber Texlen 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 identification No. U17120GJ201PTC062096 and having its registered office at Surat, Gujarat State, engaged in manufacturing yarn, has submitted that, the respondent is indebted a total sum of **Rs. 37,08,202.93 (Rupees thirty-seven thousand eight thousand two hundred two and paise ninety-three only) which include interest amount of Rs. 5,53,577.93 against invoices** raised by the petitioner towards goods supplied to the respondent during the period from 15.05.2018 to 01.02.2019.
3. In support of its claim, the applicant has annexed to the application copy of the documents like; copy of unpaid tax invoices along with delivery challans and e-way bills, copy of ledger in the books of operational creditor, working for computation of default amount in tabular form, copy of demand notice in form 3 & 4, consent of proposed IRP, copy of Board Resolution of the applicant etc.
4. It is submitted by the applicant that the respondent is in the business of spinning and finishing of textile fabric and during the course of its business requires yarn which is manufactured and supplied by the applicant. The applicant supplied goods as per the requirement of the respondent at its works at Ring Road, Surat. The respondent has not raised any dispute with respect to the quality or quantity of the goods supplied. That, each bill fell due after 30 days from the date of respective invoice.
5. It is further stated by the petitioner that despite repeated reminders the respondent has not paid the outstanding operational debt, therefore, the applicant was compelled to issue demand notice under Section 8 of the I & B Code in

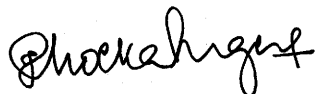


form 3 calling upon the respondent to clear the operational debt.

6. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956, on 29.11.2006 and having identification No. U17120GJ201SPTC085083 and having registered office at Surat, Gujarat State. Authorised share capital of the respondent company is Rs.1,00,000/- and paid up share capital is Rs. 1,00,000/-.

Findings:

7. The instant petition filed on 7th November, 2019 was notified for the first time on 22nd November, 2019. Thereafter, despite giving number of opportunities and even after paper publication, the respondent has not filed any reply/objections. Therefore, the matter is heard in absence of the respondent.
8. Heard learned counsel appearing for the applicant and perused the documents annexed to the application.
9. On perusal of the records it is found that the instant petition filed on 07.11.2019 is well within limitation period. Copy of the postal receipt (page 155) clearly reflects that the demand notice dated 06.08.2019 was delivered on 08.08.2019 establishing that the service is complete.
10. On perusal of the records it is found that the applicant has filed copies of unpaid invoices along with delivery challans and e-way bills (page 20-130) which clearly indicates that the goods delivered by petitioner is duly received by the respondent. From the records available it is clear that the





petitioner had supplied goods to the respondent and the aforesaid chain of events clearly establish that the petitioner is operational creditor as it had supplied goods to the respondent. There is no pre-existing dispute with regard to quality or quantity of the goods received by it.

11. 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.
12. 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 pre-existing dispute regarding the operational debt from the side of the corporate debtor.
13. 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.
14. 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'.
15. It has been observed in ***Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBC (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.

16. 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.

17. 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

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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.

18. 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.

19. 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.

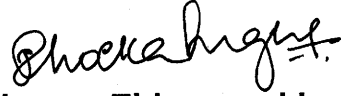
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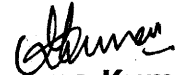
20. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
21. 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.
22. The applicant/operational creditor has proposed name of Mr. Kailash T. Shah to act as Interim Resolution Professional. This adjudicating Authority hereby appoint Mr. Kailash T. Shah, 505, 21st Century Business Centre, Near World Trade, Ring Road, Surat 395 002 having registration No. IBBI/IPA-001/IP-P00267/2016-17/10511 (ipktshah@gmail.com) to act as an interim resolution professional under Section 13(1)(c) of the Code.
23. This Petition is accordingly admitted.
24. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
25. 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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