

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


**C.P. (I.B) No.340/NCLT/AHM/2019**

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH  
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 11.12.2019**

Name of the Company: Grainspan Nutrients Pvt Ltd  
V/s  
Om Cotgin Pvt Ltd

Section of the Companies Act : 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>
1.	Dr. Kamlesh Vaidantkar	Advocate	Petitioner	
2.				

**ORDER**

The Petitioner is represented through learned counsel.

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

  
**MANORAMA KUMARI  
(MEMBER JUDICIAL)**

Dated this the 11th day of December, 2019.

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

**C.P. No. (IB) 340/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Grainspan Nutrients Private Limited**  
504-505, Shapath-V  
Opp. Karnavati Club,  
S.G. Highway,  
Ahmedabad 380 058  
Gujarat State

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Om Cotgin Private Limited**  
Survey No. 262/paiki  
Himatnagar Shamlaji Highway  
At Gambhoi  
Dist. Sabarkantha  
Gujarat 383 001

**Respondent**  
Corporate Debtor

**Order delivered on 11<sup>th</sup> December, 2019.**


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

**Appearance:**

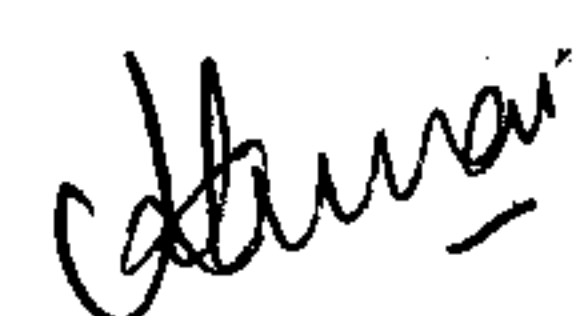
Advocate Ms. Nilu Vaidankar for the petitioner

**ORDER**

1. Mr. Pankit Shah, being authorised signatory on behalf of the operational creditor **M/s. Grainspan Nutrients 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 petitioner/operational creditor is a private limited company incorporated on 24<sup>th</sup> September, 2012 having identification No. U15310GJ2012PTC072076 and having registered office at S.G. Highway, Ahmedabad is engaged in supply of cattle feed.
3. The respondent/corporate debtor is a company registered under the Companies Act on 13<sup>th</sup> August, 2008, having identification No. U01405GJ2008PTC054763 and having registered office at Bharuch, Gujarat State. Authorised share capital of the respondent company is Rs. 5,00,00,000/- and paid up share capital is Rs. 2,57,00,000/-
4. The applicant/Petitioner has submitted that the operational creditor is an agro-based food ingredient company which produces corn based products like flaking grits, snack food grits, brewery grits and other ingredients for food and feed industry and has supplied the goods being cattle feed to the corporate debtor who is the manufacturer of kapasia khal, cotton seed cake papadi & cattle feed maize cake in India. That, the said cattle feed was received and accepted by the corporate debtor without any dispute about the quality/ quantity of goods, but, the corporate debtor failed to make payment of the outstanding dues of the invoices dated 31<sup>st</sup> August, 2018 to 27<sup>th</sup> October, 2018 amounting to **Rs. 6,60,418/- (Rupees six lacs sixty thousand four hundred and eighteen only).**



5. The operational creditor has further stated that the corporate debtor is also liable to pay interest on the outstanding due amount @ 24% per annum as per the terms of the invoice from the due date till the date of the demand notice which comes to Rs. 65,289/- as per the computation attached to the application. Thus, as on date, the corporate debtor is liable to pay to the operational creditor a total sum of **Rs. 7,25,707/- (Rupees seven lacs twenty-five thousand seven hundred seven only)**.
6. The operational creditor has further stated that after giving several reminders through e-mail, the operational creditor had issued statutory demand notice in form 3 along with form 4 dated 27<sup>th</sup> March, 2019 as required under Section 8 of the I & B Code to the corporate debtor. That, demand notice was sent via speed post, copy of the speed post receipts along with track report available from the website it attached to the application as proof of service.
7. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Affidavit in support of the application in form 5	16-17
2	Operational creditor's master data sheet along with list of directors	18-19
3	Corporate debtor's master data along with list of directors	20-21
4	Notice issued by the operational creditor to the corporate debtor	22-24
5	Ledger account of the corporate debtor in the books of accounts of the operational creditor	25
6	Computation showing the details of the outstanding amount along with the calculation of interest and the date of default	26

7	e-mail conversation between the parties	27
8	Statutory demand notice as required under section 8 of the I & B Code	28-36
9	Speed post receipts evidencing the dispatch of demand notice	37-45
10	Statement of bank account of operational creditor with Kotak Mahindra Bank	46-61
11	Affidavit under Section 9 (30 of the I & B Code, 2016	62-64
12	Written communication by proposed IRP along with form 2	65-69
13	Board resolution dated 15.04.2019 authorising Mr. Pankit Shah to initiate CIRP against the corporate debtor	70
14	Proof of service of advance copy of petition to corporate debtor along with copy of track report available from website of Indian Post	71-80

### **Findings**

8. Heard learned lawyer appearing on behalf of the petitioner.
  
9. On perusal of the records it is found that despite giving number of opportunities, the respondent preferred to remain absent. Therefore, the matter is heard in absence of representative of the respondent's side.
  
10. On perusal of the records it is found that the applicant had issued reminders calling upon the respondent to make payment of the outstanding. It appears that having failed to get any reply from the respondent, the applicant was compelled to issue demand notice under section 8 of I & B Code on 27.03.2019. Record also shows that the respondent has not raised any reply/dispute against the demand notice so issued by the applicant. Record also shows that pursuant to order dated 16.07.2019, the petitioner had made paper publication in Financial Express on 05.10.2019.

*Chakravarti*

11. 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**

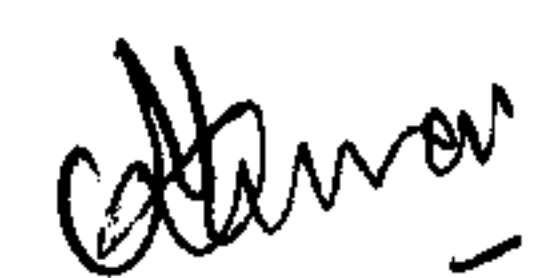
- (iii) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

12. 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. 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.

13. 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.
14. 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.
15. 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.
16. 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.



17. 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.
  
18. The applicant/operational creditor has proposed the name of CA Kedar Ramratan Laddha to act as IRP. Therefore, this Adjudicating Authority hereby appoint CA Kedar Ramratan Laddha, 6/5 Sahyog Apartment, Behind Keshav Nagar, RTO Circle, Ahmedabad 380 027 (ip@kpsjca.com) having registration No. IBBI/IPA-001/IP-P00586/2017-2018/11115 to act as an interim resolution professional under Section 13(1)(c) of the Code.
  
19. This Petition is accordingly admitted.
  
20. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
  
21. Registry is directed to inform the office of the 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 liquidation and  
sale of assets to realise the amount for all the stakeholders.

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

nair