

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

**C.P.(I.B) No. 654/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 19.08.2020**

Name of the Company: Orient Abrasives Ltd  
V/s  
Fairmate Chemicals Pvt Ltd

Section: Section 9 of the Insolvency and Bankruptcy Code,  
2016.

**S.NO. NAME (CAPITAL LETTERS)      DESIGNATION      REPRESENTATION      SIGNATURE**

1.

2.

**ORDER**

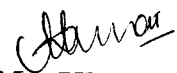
None appeared for the Petitioner.

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER TECHNICAL**

Dated this the 19th day of August, 2020



**MANORAMA KUMARI  
MEMBER JUDICIAL**

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

**C.P. No. (IB) 654/9/NCLT/AHM/2019**

**In the matter of:**

**M/s. Orient Abrasives Limited**  
GIDC Industrial Area  
Porbandar 360 577  
Gujarat State :

**Petitioner**  
Operational Creditor

**Versus**

**M/s. Fairmate Chemicals Private Limited**  
1514, Ranchhod Bhavan  
Motivasan Sheri  
Saraspur  
Ahmedabad 380 008  
Gujarat State :

**Respondent**  
[Corporate Debtor]

**Order delivered on 19<sup>th</sup> August, 2020**

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

**Appearance:**

Advocate Mr. Arpit Singhvi for petitioner.

**ORDER**

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

1. Mr. V. Shashidharan, Chief Financial Officer, being authorised signatory of the operational creditor – M/s. Orient Abrasives 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.

*Shashidharan*

*Manorama*

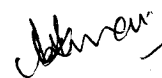
2. The applicant/operational creditor is a limited company having identification L24299GJ1971PLC093248 and having its registered office at Porbandar, Gujarat state is engaged in the manufacturing of fused grains, monolithic and calcined products.
3. The respondent/corporate debtor is a private limited company registered under the Companies Act, incorporated on 27.06.1995 having identification No. U65910GJ1995PTC026528 and having registered office at Saraspur, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 30,00,000/- and paid up share capital is Rs. 30,00,000/-.
4. It is submitted by the conducting counsel that, the applicant/operational creditor had supplied Supercem 50 of different quantities to the respondent pursuant to purchase orders placed by the respondent (Annexure III – page 25-29). That, out of several invoices raised by the applicant, majority are unpaid. That, the respondent had made part payment of Rs. 16,33,898/-, but, despite continuous follow up, the respondent failed and neglected to make payment of the principal outstanding sum of Rs. 21,78,306/- as per ledger account statement of the respondent attached to the application at page 38 as Annexure VIII. That, copy of the invoices raised by the applicant from 23.02.2018 to 18.04.2018 are annexed to the application marked Annexure – IV, V, VI & VII (page 30-37). According to the applicant, an amount of Rs. 21,78,306/- is due and payable by the respondent as per Annexure X to the application (page 402). That, total amount of **Rs. 25,94,596/- (Rupees twenty-five lacs ninety-four thousand five hundred ninety-six only)** which includes interest @ 24% per annum, therefore, this petition.

*Shouabgare*

*Chauhan*

**Findings: -**

5. On perusal of the records it is found that the application filed on 26.08.2019 was notified for the first time on 16.09.2019. That, despite availing several opportunities, the respondent failed to file any reply even after imposing cost which is also not paid by the respondent. Therefore, the matter is heard in absence of the respondent.
6. Heard the advocate appearing on behalf of the petitioner.
7. On perusal of the record it is found that, prima facie, the demand notice in form 4 issued on **12.04.2019** is not as per the rule prescribed. On perusal of the records it is also found that the petitioner has filed a copy of the Board Resolution (Page 404A) passed in the second meeting of the Executive Committee meeting of the Directors of the applicant company held on **8<sup>th</sup> July, 2019** empowering Mr. V. Shashidharan, Chief Financial Officer and/or Mr. Parthiv Thakker, authorised representative of the company, to sign and issue demand notice as required pursuant to I & B Code.
8. Consequent upon the Board Resolution, Mr. V. Shashidharan, CFO appointed M/s. SRA Consulere, Advocates to act, appear and plead for the applicant company whereas the demand notice dated 12.04.2019 is signed and issued by one Mr. Shrikant Gharat, partner of SRA Consulere, advocates for and on behalf of the applicant company. Evidently, on the date of issuance of the demand notice dated 12.04.2019, neither Mr. V. Shashidharan, CFO of the applicant company, nor M/s. SRA Consulere had any authority as the Board Resolution empowering Mr. V. Shashidharan itself was passed on 8<sup>th</sup> July, 2019, after issuance of the demand notice dated 12.04.2019.

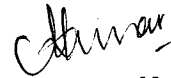


Therefore, the issuance of demand notice is without any authority and bad in the eyes of law.

9. Under the facts and circumstances the petition is bad in the eyes of law and not maintainable on the very reason that the demand notice is issued without any authority.
10. In the result, company petition No. CP (IB) 654 of 2019 stands dismissed and disposed of without cost. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.



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



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

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