

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

Free of Cost Copy

C.P. (I.B) No. 178/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 09.12.2019

Name of the Company: Strawing Plastics & Chemicals Pvt Ltd
V/s
Baid Narrow Fab Pvt Ltd

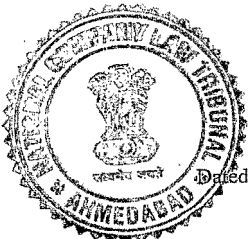
Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Aishwarya Reddy	Advocate	Operational Creditors	<i>Aishwarya</i>
2.				

ORDER

The Petitioner is represented through learned counsel

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



Dated this the 9th day of December, 2019.

Manorama
MANORAMA KUMARI
(MEMBER JUDICIAL)

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

C.P. No. (IB) 178/9/NCLT/AHM/2018

In the matter of:

M/s. Starwing Plastics & Chemicals Private Limited
501 Kaatyayni Business Centre
Off Mahakali Caves Road
MIDC
Nr. Marol Bus Depot
Andheri (East)
MUMBAI 400 093

Petitioner
Operational Creditor

Versus

M/s. Baid Narrow Fab Private Ltd.
2/4569, Sangrapura Main Road
Dipaka Apartment
Ground Floor
SURAT 395 002
Gujarat State

Respondent
Corporate Debtor

Order delivered on 9th December, 2019.

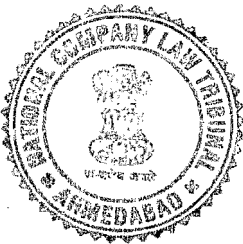
Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Advocate Mr. Ishan Shah for respondent
PCS Mr. Amrish Gandhi for operational creditor

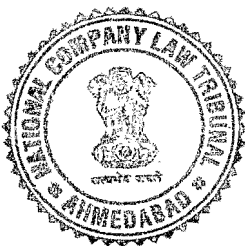
ORDER

1. Mr. Praful Domadia, on behalf of the operational creditor M/s. Starwing Plastics & Chemicals 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"].



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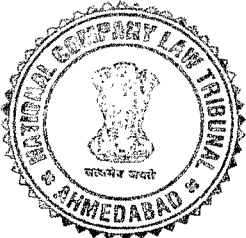
2. The applicant/operational creditor is a registered private limited company having identification No. U25203MH2013PTC244446 and having registered office at MIDC, Nr. Marol Bus Depot, Andheri (E), Mumbai 400 093 engaged in import and distribution of plastic and chemicals i.e. additives. The applicant is also in the business of distribution and supply of polymers, chemicals and polyester raw material products.
3. The respondent corporate debtor is a private limited company registered on 28.10.1996 having registration No. U17110GJ1996PTC031008 having its registered office at Sangrapura Main Road, Surat, Gujarat state. Authorised share capital of the respondent company is Rs. 85,00,000/- and paid up share capital is Rs. 71,00,000/-.
4. It is submitted by the applicant that sometime in the month of December, 2014, M/s. Baid Industries Pvt. Ltd. approached the applicant requesting for supply of PET and polyester super bright chips. That, pursuant to the request/purchase orders, the applicant sold and supplied goods to M/s. Baid Industries Pvt. Ltd. from time to time and M/s. Baid Industries Pvt. Ltd. utilised the goods without any complaint regarding quality/quantity.
5. It is further submitted by the applicant that, in the beginning, M/s. Baid Industries Pvt. Ltd. made certain



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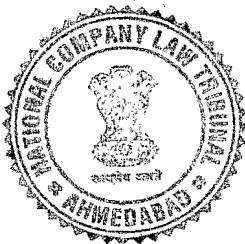
payments to the applicant for the goods received, though belatedly. The last payment of Rs. 6,00,000/- was made by M/s. Baid Industries Pvt. Ltd. on 13.02.2017 towards outstanding of Rs. 4,54,807/- due as per applicant's invoice No. 000057/15-16 dated 17.08.2015 for a sum of Rs. 15,02,530/- and surplus of Rs. 1,45,193/- received from M/s. Baid Industries Pvt. Ltd. was adjusted towards invoice dated 18.08.2015 thereby leaving outstanding balance of Rs. 13,57,337/- due to the applicant.

6. It is submitted by the applicant that M/s. Baid Industries Pvt. Ltd. time and again failed/neglected to make payments towards the invoices raised by the applicant, thereby leaving outstanding of Rs. 1,91,40,826/-. That, despite repeated follow-up, reminders, M/s. Baid Industries Pvt. Ltd. failed/neglected to pay the applicant, the outstanding amount of Rs. 1,91,40,826/-.
7. It is submitted by the applicant that, through its advocate, issued notice dated 24.02.2017 calling upon the respondent to pay the outstanding amount along with interest thereon @ 21% p.a. from the respective due dates till payment. That, instead of making payment, M/s. Baid Industries Pvt. Ltd. through reply dated 21.03.2017 falsely disputed the claim raised by the applicant contending that the goods supplied were defective.



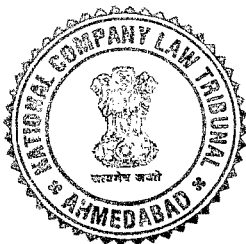
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8. It is submitted by the applicant that, through advocate, vide letter dated 19.04.2017, the applicant had denied all the contentions raised by the respondent and putting the correct facts on record. That, applicant's reply came to be returned by postal authorities with remark "incomplete address".
9. It is submitted by the applicant that fresh notice dated 14.09.2017, through advocate, was issued to the respondent at its registered office address which was duly received by M/s. Baid Industries Pvt. Ltd., but, the same was neither complied with nor replied to.
10. It is submitted by the applicant that, through its advocate, once again issued fresh notice dated 02.11.2017 enclosing therewith a resolution passed by the applicant authorising its advocate to issue demand notice at the registered office of M/s. Baid Industries Pvt. Ltd. under the provisions of the Code. Though the notice was duly received by M/s. Baid Industries Pvt. Ltd., it was not complied with.
11. It is submitted by the applicant that under such circumstances the applicant was constrained to file application under Section 9 of the I & B Code against M/s. Baid Industries Pvt. Ltd. being CP (IB) No. 2/9/NCLT/AHM/2018 before this Tribunal.



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12. The applicant had also filed Commercial Civil Suit No. 27/2018 being Commercial Civil Suit No. 27/2018 against M/s. Baid Industries Pvt. Ltd. **as well as the corporate debtor who is one of the guarantors for recovery of total dues of Rs. 2,63,00,463/- along with compounding interest.** That, M/s. Baid Industries Pvt. Ltd. as well as the corporate debtor during pendency of the above matters, approached the applicant for settlement purpose, pursuant to which a **settlement agreement dated 11.05.2018 came to be executed** and as per the said settlement agreement M/s. Baid Industries Pvt. Ltd. admitted, acknowledged and confirmed that M/s. Baid Industries Pvt. Ltd. does not have any claim against the applicant and undertook to withdraw any pending proceedings against the applicant.
13. It is submitted by the applicant that M/s. Baid Industries Pvt. Ltd. **along with other guarantors confirmed that as on 30.06.2018 a sum of Rs. 2,63,00,463/- along with compound interest @ 12% p.a.** on the above sum, from 01.07.2018 till the payment and/or realisation, is due, outstanding and payment to the present applicant.
14. It is submitted by the applicant that **under the settlement agreement dated 11.05.2018, M/s. Baid Industries Pvt. Ltd. was to pay an amount of Rs. 3,51,02,340/- to the applicant** and had issued and handed over 60 (sixty) post-dated cheques each amounting to Rs. 5,85,039/- to the

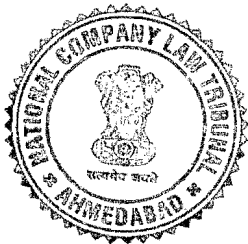


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applicant with undertaking that all the cheques on their respective dates will be cleared.

15. It is submitted by the applicant that the applicant and M/s. Baid Industries Pvt. Ltd. as well as the corporate debtor along with other guarantors jointly filed an application under order XXIII Rule 3 with section 151 of the CPC before the Hon'ble Judge, Commercial Court, Vadodara in the Common Civil Suit No. 27/2018 thereby placing on record the settlement agreement dated 11.05.2018, wherein, the Hon'ble Judge, vide order dated 12.05.2018 decided the joint application filed by the present applicant and M/s. Baid Industries Pvt. Ltd. as well as the corporate debtor along with the other guarantors and further directed both the parties **to abide by the terms and conditions mentioned in the settlement agreement dated 11.05.2018**. That, as per the settlement agreement dated 11.05.2018 and order dated 12.05.2018 of the Commercial Court, Vadodara, the applicant withdrew the application being CP (IB) No. 2/9/NCLT/AHM/2018 filed before this Tribunal.

16. It is submitted by the applicant that, thereafter, as per the settlement agreement dated 11.05.2018, when the first post-dated cheque of Rs. 5,85,039/- dated 20.07.2018 being the first instalment towards payment of total amount of Rs. 3,51,02,340/- was presented, it was dishonoured as per stop payment instruction given by M/s. Baid Industries



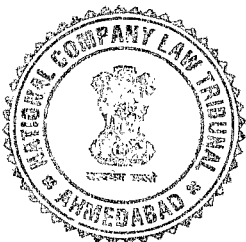
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Pvt. Ltd. violating the terms and conditions of settlement agreement dated 11.05.2018. That, the applicant vide legal notice dated 26.07.2018 brought to the notice of M/s. Baid Industries Pvt. Ltd. that the terms and conditions of the settlement agreement dated 11.05.2018 has been violated.

17. It is submitted by the applicant that the applicant vide demand notice dated 22.01.2019 under Section 8 of the provisions of the IB Code, once again called upon M/s. Baid Industries Pvt. Ltd. to make payment of **Rs. 3,51,02,340.00 (Rupees three crores fifty-one lacs two thousand three hundred forty only)** however, M/s. Baid Industries Pvt. Ltd. failed to clear the outstanding debt.

18. It is further submitted by the applicant that, under these circumstances, the applicant was constrained to file section 9 application under the IB Code against M/s. Baid Industries Pvt. Ltd. being CP (IB) 478/2018 before this bench.

19. It is further submitted that the applicant vide demand notice issued under the provisions of the Code called upon the instant corporate debtor, **being one of the guarantors under the settlement agreement dated 11.05.2018** to make payment of Rs. 3,51,02,340/-, however, the corporate debtor failed to comply with the said demand notice, hence the present application.



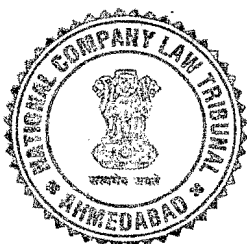
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20. In support of its claim, the petitioner has submitted copy of the following documents along with the application.

Sr. No.	Particulars	Page No.
01	Form No. 5	6
02	Supporting affidavit	7-18
03	Additional affidavit	19
04	Board resolution dated 12.11.2018	20
05	Order dated 12.05.2018 passed by the Hon'ble Judge, Commercial Court, Vadodara in the joint application filed by the applicant and the corporate debtor in Civil Suit No. 27 of 2018 along with copy of the settlement agreement	22-35
06	Working for computation of amount and dates of default	36-48
07	A statement of bank account where deposits are made or credits received normally by the operational creditor in respect of the debt	49-110
08	Bank certificate	111-113
09	Legal notice dated 26.07.2018 issued by the applicant	114-115
10	Demand notice under form 3 of the Code dated 12.01.2019 issued by the applicant to the corporate debtor	116-120
11	Affidavit of service	

Findings:

21. Heard the learned counsel appearing on behalf of the applicant. On perusal of the record it is found that for the first time the matter was notified on 13.03.2019. Since then, the matter was notified for hearing on different dates, but the respondent never appeared either in person or through advocate before the bench nor submitted any reply despite notice issued by the applicant as well as the Registry. The Adjudicating Authority passed an order on 23.07.2019 for paper publication. Since service is complete, the matter has been heard in absence of the corporate debtor.



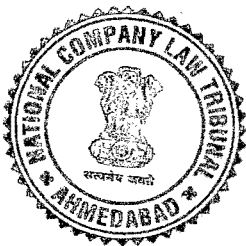
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22. While examining an application under Section 9 of the Act, will have to determine the following: -

- (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.

23. 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. That, service is complete and no dispute has been raised by the respondent. That, Applicant is an Operational Creditor within the meaning of sub-section (5)

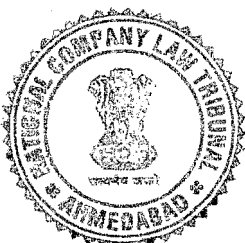


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of Section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default.

24. That, the Application filed by the Applicant is complete in all respects.
25. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Sunil Kumar Agarwal, Tower 6/603 Devnandan Heights, Near Poddar School, New C.G. Road, Chandkheda, Ahmedabad 382 424 (anil91111@hotmail.com) having registration No. IBBI/IPA-001/IP-P01390/2018-19/12178 to act as an interim resolution professional under Section 13(1)(c) of the Code.
26. 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.
27. 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

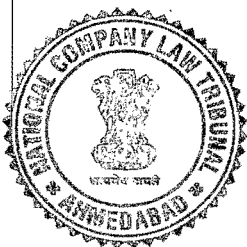


execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

- (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.

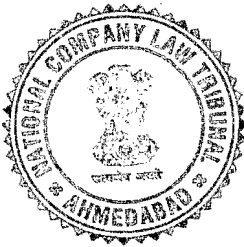
28. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.

29. 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.

30. This Petition stands disposed of accordingly with no order as to costs.
31. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.
32. 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.



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Manora
Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

