

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

C.P.(I.B) No. 700/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 08.10.2020**

Name of the Company: Shashikant Thakar
V/s
Nigo Best Packs Pvt Ltd

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.				
2.				

ORDER

FCA, Mr. Kiran Shah appeared on behalf of the Petitioner.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 08th day of October, 2020

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

C.P. No. (IB) 700/9/NCLT/AHM/2019

In the matter of:

Mr. Shashikant Thakar

Shivam A-11-12, Shyamnagar Society

Nr. Vishramnagar

Memnagar

AHMEDABAD 380 054

:

Petitioner

Operational Creditor

Versus

M/s. Nigo Best Packs Private Limited

801, Avdhesh House

Opp. Guru Govind Gurudwara

S.G. Highway

Thaltej

Ahmedabad 382 054

Gujarat State

:

Respondent

[Corporate Debtor]

Order delivered on 08th October, 2020

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

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

Appearance:

Petitioner : Mr. Kiran Shah, C.A.

ORDER

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

1. Mr. Shashikant Thakar 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.

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2. The applicant/operational creditor is a consultant providing consultancy services for GST matters, secretarial matters etc. having registered office at Ahmedabad and having PAN No. ABGPT1234N and Adhar No. 294329545466.
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 28th May, 1999 and having identification No. U24117GJ1999PTC036063 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 10,00,000/- and paid up share capital is Rs. 1,00,000/-.
4. The applicant/operational creditor provided consultancy services like GST consultancy, assisting in statutory audit and legal consultancy to the respondent for the accounting year 2018-19 and had raised bill No. SNT/19-20/03 dated 03.01.2019 for an amount of **Rs. 1,15,000/- (Rupees one lac fifteen thousand only)** and, according to the applicant the said bill has fallen due on 03.02.2019.
5. The applicant/operational creditor has further stated that, despite vigorous follow-up, the respondent has not paid the aforesaid operational debt, therefore, this petition.
6. The applicant in support of its claim has furnished copy of documents like affidavit in support of the application, pass book entries for the period from 30.09.2019 to 26.07.2019, invoice dated 03.01.2019, demand notice in form 3 and form 4, general affidavit verifying the application, written consent of the IRP etc.

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Findings:

7. On perusal of the records it is found that the petition was filed on 19th September 2019 and the matter was listed for the first time on 26.09.2019. Thereafter, registry issued notice on 30.09.2019 and the same was delivered to the respondent on 04.10.2019 as per the track report. Thereafter, again, registry issued notice on 08.11.2019 and the same was delivered on 11.11.2019 as per the track report. Even after receiving the notice, none appeared on behalf of the corporate debtor. Therefore, again issued notice to the corporate debtor on 13.12.2019 which was delivered on 16.12.2019 as per the track report, but the corporate debtor never responded. Further, when the matter was listed on 02.01.2020, on 04.02.2020 and on 05.03.2020, the corporate debtor did not appear or file any representation/reply. However, due to lockdown, the matter was not taken up for hearing and after lifting the lockdown the matter was again listed for hearing on 02.06.2020, on 29.06.2020 and on 17.08.2020. Since the corporate debtor had not filed any representation, once again, notice was issued to the corporate debtor through the Registry on 21.08.2020, but the same was returned with postal remark "left". However, on perusal of the record it is found that the earlier three notices have already been served to the corporate debtor, therefore, service upon the corporate debtor is complete.
8. Heard the FCA appearing for the petitioner. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 30.07.2019 has been served upon the corporate debtor, but, no dispute has been raised. Therefore, the petitioner has also filed affidavit of no dispute.



9. 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 or any pre-existing dispute regarding the operational debt from the side of the corporate debtor.
10. 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.
11. 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'.
12. 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.

13. 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. That, service is complete and no dispute has ever 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.

14. 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.
15. 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.

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16. 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.
17. 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.
18. 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.
19. The applicant/operational creditor has proposed the name of Mr. Bhavan Trivedi to act as Interim Resolution

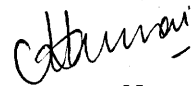


Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Bhavan Trivedi, 55, 6th Floor, Shri Krishna Centre, Nr. Mithakhali Six Roads, Navrangpura, Ahmedabad 380 009 (bhavant@yahoo.com) having registration No. IBBI/IPA-001/IP-P00335/2017-18/10605 to act as an interim resolution professional under Section 13(1)(c) of the Code.

20. This Petition is accordingly admitted.
21. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
22. 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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