

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

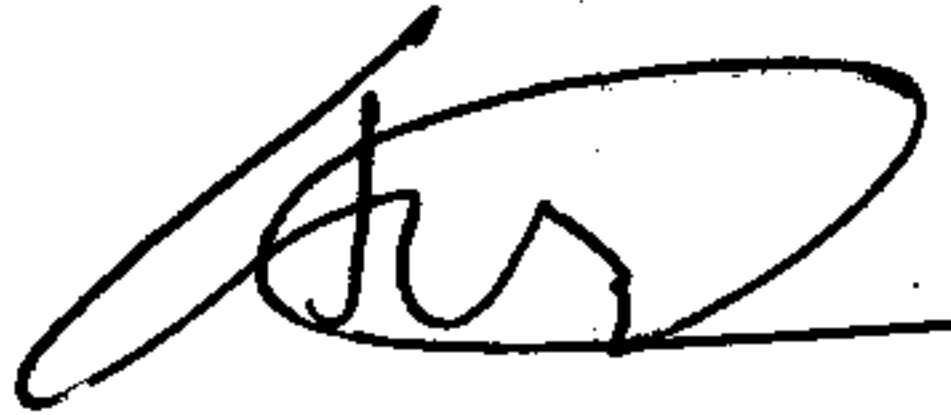
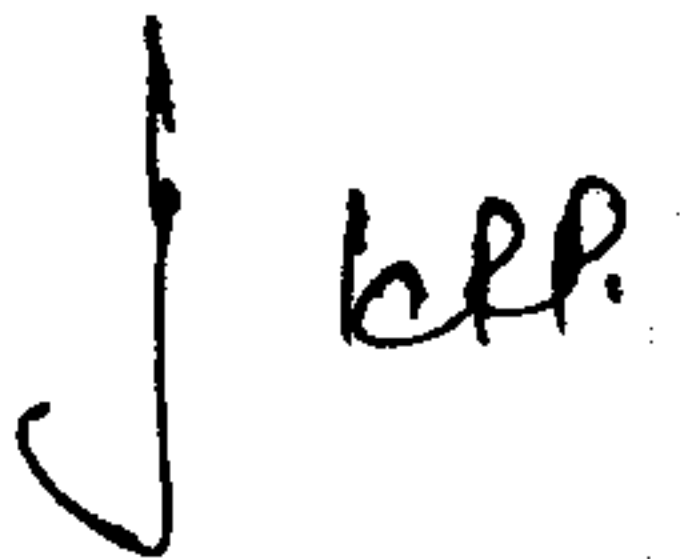
C.P. (I.B) No.448/NCLT/AHM/2019

**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 23.01.2020**

Name of the Company: Quippo Infrastructure Ltd
V/s
Mass Infrastructure 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. | TIRTH BHATT | Advocate | O/C |  |
| 2. | Katira R. Ramesh For Ajay R. Sheth | Adv. Adv. Zsrichor | Res. |  |

ORDER

The parties are represented through learned counsels.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 23rd day of January, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 448/9/NCLT/AHM/2019

In the matter of:

Quippo Infrastructure Limited.

NAC Campus
Izzat Nagar
Post Kondapur
Cyberabad
HYDERABAD 500 084
Telangana

:

Petitioner
Operational Creditor

Versus

Mass Infrastructure Private Limited

1st Floor, Kalapi Avenue
Behind Malhar Point
Opp. Vaccine Institute
Old Padra Road
Vadodara 390 015
GUJARAT STATE

:

Respondent
Corporate Debtor

Order delivered on 23rd January, 2020

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

Appearance:

Advocate Mr. Anmol Mehta along with Advocate Mr. Tirth Bhatt for the operational creditor
Advocate & Solicitor Mr. Arjun Sheth with Ms. Vidhi Thakkar for corporate debtor

ORDER

[Per: Ms. Manorama Kumari, Member (J)]

1. Mr. Karthik Bhavsar, being authorised person of M/s. **Quippo Infrastructure 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

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Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The petitioner/operational creditor is a limited company having identification No. U35203TG2007PLC057400 and having registered office at Cyberabad, Hyderabad, Telangana State engaged in the business of renting infrastructure equipment and manpower to its customers.
3. The respondent/corporate debtor is a private limited company registered under the Companies Act, incorporated on 18.01.2002 and having identification No. U45209GJ2002PTC040369 and having registered office at Vadodara, Gujarat State. Authorised share capital of the respondent company is Rs. 8,00,00,000/- and paid up share capital is Rs. 6,66,66,670/-.
4. The applicant/Petitioner has submitted that the corporate debtor placed its request for equipment with the operational creditor through its work orders dated 05.11.2014, 27.11.2014, 08.10.2015 and 26.10.2016 stating its willingness to avail the following equipment on rental basis for is for its worksite at Choural, Dist. Chhindwara, Madhya Pradesh: -
 - (i) on 05.11.2014 - 4 transit mixers (6 CUM)
 - (ii) on 27.11.2014 - 2 Transit Mixers (6 CUM)
 - (iii) on 08.10.2015 - 2 Transit Mixers (6 CUM)
 - (iv) on 26.10.2015 - 2 Transit Mixers (6 CUM)

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5. Accordingly, the operational creditor agreed to rent out the said equipment for an initial period of three months against a rent payment of: -

- (i) Rs.,1,12,360/- per equipment per month inclusive of service tax, under the agreement dated 05.11.2014;
- (ii) Rs. 1,12,360/- per equipment per month inclusive of service tax, under the agreement dated 27.11.2014;
- (iii) Rs. 1,14,000/- per equipment per month inclusive of service tax, under the agreement dated 08.10.2015;

and

- (iv) Rs. 1,14,000/- per equipment per month inclusive of service tax, under the agreement dated 23.10.2015;

6. The applicant has further stated that the aforesaid equipment was initially rented for a period of three months, however, the corporate debtor through its email dated 18.03.2015, sought extension of duration of usage till 31.05.2015 and, accordingly, the corporate debtor through its letters dated 05.02.2016 and 20.05.2016 sought further extension from the operational creditor, for the purpose of utilising the above equipment at its work site till 30.04.2016 and 30.06.2016 respectively. That, the corporate debtor was to make payment of rent to the operational creditor against the invoices raised for the utilisation of the equipment at the work site of the corporate debtor.

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7. The operational creditor has further stated that from time to time, the operational creditor raised invoices on account of the rent accrued on the equipment so hired by the corporate debtor and the amount due and payable by the corporate debtor was duly debited in the statement of accounts of the corporate debtor, maintained by the operational creditor in its ordinary course of business. That, last such part payment to the tune of Rs. 3.00 lacs was received from the corporate debtor on 13.05.2016 after which the operational debt fell due and payable. That, the operational creditor on 14.07.2016, on instructions of corporate debtor, adjusted a sum of Rs. 2.00 lacs received from the corporate debtor towards advance received and retained by the operational creditor.
8. The applicant has further stated that the corporate debtor in complete breach and deviance of the agreement, has miserably failed to fulfil its obligation to pay the rental of the equipment to the operational creditor. That, the operational creditor has not received a single penny towards the outstanding rental income which works out to a total of **Rs. 30,80,085/- (Rupees thirty lacs eighty thousand eighty-five only).**
9. The applicant has further stated that through letters dated 31.03.2017, 01.05.2017, 01.06.2018, 01.07.2018, 01.09.2018 and email correspondence dated 08.06.2016,

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22.06.2016, 4.07.2016, 25.07.2016 and 08.09.2016 the operational creditor requested the corporate debtor to clear all the outstanding dues, but, the corporate debtor has wilfully and deliberately neglected to pay the total outstanding amount of Rs. 30,80,085/-.

10. The operational creditor has further stated that the corporate debtor never disputed the claim made by the operational creditor, however, despite repeated requests, no payments against the outstanding operational debt was received from the corporate debtor.
11. The operational creditor has further stated that having failed to receive the operational debt/any reply from the corporate debtor, the operational creditor was compelled to issue demand notice under section 8 in form No. 3 and form No. 4 of the I & B Code on 30.04.2019 demanding payment of the unpaid operational debt due as on date. That, no response was received from the corporate debtor against the aforesaid demand notice.
7. In support of its claim, the petitioner has submitted copy of the following documents: -

| Sr. No. | Particulars | Page No. |
|---------|--|----------|
| 1 | Memorandum of application of the operational creditor | 1-21 |
| 2 | Demand notice dated 30.04.2019 in form No. 3 and form No. 4 served on the corporate debtor through electronic mode and speed post along with postal receipts and tracking report | 22-38 |

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| | | |
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| 3 | All the documents referred to in this application | 39-275 |
| 4 | Memorandum and articles of association of the corporate debtor | 39-65 |
| 5 | Resolution passed by the Board of Directors of the operational creditor on 27.07.2017 authorising Mr. Rupesh Kumar to sign the application | 66-67 |
| 6 | Agreements dated 05.11.2014, 27.11.2014, 08.10.2015 and 23.10.2015 | 68-114 |
| 7 | Work orders dated 05.11.2014, 27.11.2014, 08.10.2015 and 26.10.2015 | 115-122 |
| 8 | Statement of accounts maintained by operational creditor dated 30.04.2019 | 123-125 |
| 9 | Statement of bank account of the operational creditor maintained with Axis Bank | 126-192 |
| 10 | Legal notice dated 01.09.2018 | 193-198 |
| 11 | Invoices raised by the operational creditor | 199-236 |
| 12 | Letters sent by the operational creditor to the corporate debtor requesting repayment of outstanding operational dues | 237-241 |
| 13 | Letters sent by the corporate debtor to the operational creditor seeking extension of time | 242-243 |
| 14 | Receipt dated 04.05.2019 of the corporate debtor receiving the demand notice | 244 |
| 15 | Form No. 4 dated 28.03.2019 | 245-255 |
| 16 | Email dated 18.03.2015 sent by corporate debtor seeking extension of time | 256-257 |
| 17 | Emails sent by operational creditor | 258-267 |
| 18 | Email dated 30.04.2019 sent by operational creditor | 268 |
| 19 | Affidavit under section 65-B of the Indian Evidence Act, 1972 | 269-275 |
| 10 | Affidavit of Mr. Kartik Bhavsar in support of application | 276-277 |
| 11 | Affidavit of Mr. Kartik Bhavsar to the effect that no notice has been given by the corporate debtor relating to a dispute of the unpaid operational debt | 278-279 |

Findings

12. On perusal of the records it is found that for the first time the matter was listed on 09.07.2019 and, thereafter, number of opportunities were given to the respondent to file reply. The respondent having failed to file its reply, last chance to file reply with a cost of Rs. 5,000/- was given on 02.12.2019, but, the respondent failed to file reply, therefore, right to file reply was closed. During the last hearing also, the respondent did not argue the matter.

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13. On perusal of the records it is also found that service is complete and no dispute has been raised by the respondent.
14. From the above discussions it is evident that the respondent has defaulted the debt and has admitted the operational debt.
15. 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.

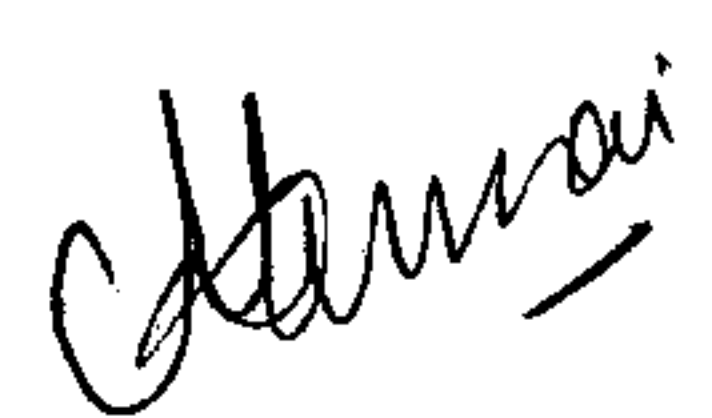
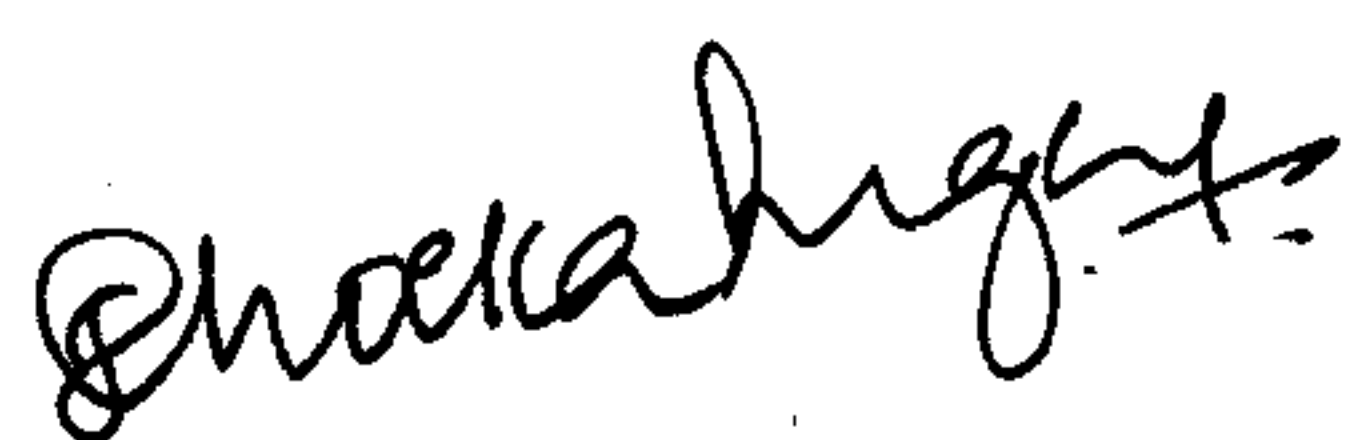
16. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency &

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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 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 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.
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

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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 not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Suhas Bhattbhatt, 212, Atlantis K-10, B Tower, Opp. Honest Restaurant, Near Genda Circle, Sarabhai Road, Vadodara 390 007, (cssuhasb@gmail.com) having registration No. IBBI/IPA-002/IP-N000571/2017-18/11738 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.

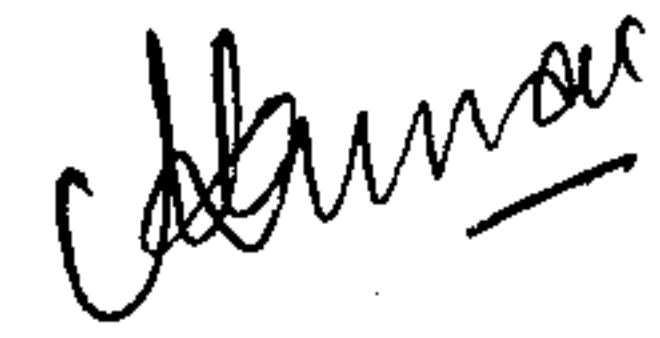


25. Registry is directed to inform the office of Registrar of Companies that the respondent company is under corporate insolvency resolution process and, therefore, no proceedings for striking off name of the respondent company be initiated arising out of non-compliances of Sections 159 to 162 & 220 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)

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Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)