

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

C.P.(I.B) No.186/NCLT/AHM/2020

**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 28.09.2020**

Name of the Company: Rajnikant Shankarlal Patel Through Its
Proprietor of Astha Enterprise
V/s
Khushiya Industries Pvt Ltd
Section 9 of the Insolvency and Bankruptcy Code,
2016

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
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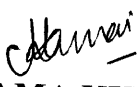
ORDER
(through video conferencing)

No one shown appearance on behalf of the parties.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 28th day of September, 2020


MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No. (IB) 186/9/NCLT/AHM/20 20

In the matter of:

Rajnikant Shankarlal Patel
Proprietor of Astha Enterprise
Plot No. 87
Sardar Gunj, Bazar
Patan 384 265 (North Gujarat):

Petitioner
Operational Creditor

Versus

M/s. Khushiya Industries Private Limited
Shop No. 16
Second Floor
Shriji Arched Complex
B/h. Jalaram Bhojnalay
Highway Road
Deesa 385 535
Gujarat State

Respondent
[Corporate Debtor]

Order delivered on 28th September, 2020

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

Appearance:

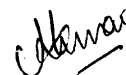
Petitioner : Mr. Aditya J. Pandya, Advocate
Respondent : Mr. Harmish K. Shah, Advocate

ORDER

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

1. Mr. Rajnikant Shankarlal Patel, proprietor of M/s. Astha Enterprise 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 applicant/operational creditor is proprietor of the firm is having PAN AQJPP6924H and GST No. 24AWJPP6924H1ZL and having registered office at Patan, North Gujarat is general merchant and commission agent involved in the business of Aranda (Castor oil seeds).
3. The respondent/corporate debtor is a private limited company registered under the provisions Companies Act, 1956 on 7th March, 2012 and having identification No. U15142GJ2012PTC070644 and having registered office at Deesa, Gujarat State. Authorised share capital of the respondent company is Rs. 4,95,00,000/- and paid up share capital is Rs. 4,95,00,000/-.
4. It is stated by the applicant that, it had supplied castor oil seeds to the respondent during the period from 25.06.2018 to 07.08.2018 and had raised invoices from time to time. Copy of invoice, delivery challan and bill of weigh scale etc. are annexed to the application (page No. 35-485). The applicant has annexed to the application (page 486-488) detailed computation of the outstanding invoices as well as part payment received. According to the applicant, net amount of **Rs. 5,84,15,985/- (Rupees five crores eighty-four lacs fifteen thousand nine hundred eighty-five only)** is due and payable by the respondent as on 07.08.2018 towards supply of goods during the period from 25.06.2018 to 07.08.2018.
5. The applicant has further submitted that having failed to receive the operational debt due and payable by the respondent, the petitioner was compelled to issue notice to the respondent under section 8 in form No. 3 & 4 dated 31.01.2020 (page 496-503). The applicant filed application supported with affidavit, affidavit in compliance of section 9(3)(b) of the IB Code, unpaid/part paid invoices,

Shoekahge

Chhanna

computation of the outstanding invoices, statement of account of the petitioner for the period from 01.04.2018 to 31.03.2019 issued by HDFC Bank and demand notice in form 3 & 4.

Findings:

6. On perusal of the records it is found that the instant petition filed on 26th February, 2020 was notified for the first time on 16.03.2020. Thereafter, despite giving number of opportunities, the respondent has not filed any reply. As per the records respondent appeared through counsel on 16.09.2020 and fairly submitted that property of the respondent company is attached by the GST department and as such the respondent company is unable to pay the dues of the applicant.
7. 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 31.01.2020 has been served upon the corporate debtor, but, no dispute has been raised. Therefore, the petitioner has also filed affidavit of no dispute dated 18.02.2020.
8. 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.
9. 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.

Charakherjee

Chakraborty

10. 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'.
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 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.





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 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.
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);

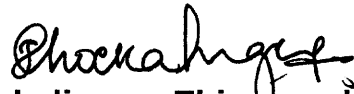
(iv) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

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 Mr. Chirag Rajendrakumar Shah to act as Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Mr. Chirag Rajendrakumar Shah, 208, Ratnaraj Spring, Besides Navnirman Bank, Opp. HDFC Bank House, Navrangpura, Ahmedabad 380 009 having registration No. IBBI/IPA-001/IP-P01169/2018-19/11837 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 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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