

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

C.P. (I.B) No.270/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 17.09.2020**

Name of the Company: Kailash Devbuild (India) Pvt Ltd
V/s
Inox Wind Infrastructure Services 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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1.

2.

ORDER

Advocate, Mr. Tanmay Banthia appeared on behalf of the Petitioner.

Advocate, Mr. Pratik Thakkar appeared on behalf of the Respondent.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 17th day of September, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 270/9/NCLT/AHM/2019

In the matter of:

Kailash Devbuild (I) Private Limited
818, Nr. Employment Exchange Office
Hathilal Colony
Jabalpur 482 001

MADHYA PRADESH

:

Petitioner
Operational Creditor

Versus

M/s. Inox Wind Infrastructure Services Limited
Survey No. 1837 & 1834, At Moje Jetalpur
BS Towers, 2nd Floor
Old Padra Road
VADODARA 390 007
Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 17th September, 2020

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

Appearance:

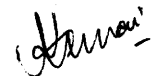
Advocate Mr. Rohit Lalwani for petitioner.
Advocate Mr. Pratik Thakkar for respondent

ORDER

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


1. Mr. Bhanu Shukla, Director, being authorised person, on behalf of **M/s. Kailash Devbuild (India) 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"], as operational creditor/applicant.





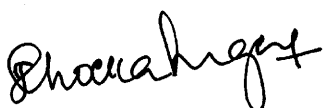
2. The applicant/operational creditor is a private limited company registered under the provisions of Companies Act, 1956 having identification No. U45200MP2012PTC028540 and having its registered office at Jabalpur, Madhya Pradesh and engaged in the business of erection and construction work.
3. The respondent/corporate debtor is a limited company registered under the provisions Companies Act, 1956 on 11th May, 2012 and having identification No. U45207GJ2012PLC070279 and having registered office at Vadodara, Gujarat State. Authorised share capital of the respondent company is Rs. 5,00,000/- and paid up share capital is Rs. 5,00,000/-
4. The applicant has submitted that, during the course of its business, it had supplied materials and rendered erection and construction services to the corporate debtor towards which the corporate debtor is indebted to the applicant a sum of **Rs. 2,51,99,259/- (Rupees two crores fifty-one lacs ninety-nine thousand two hundred fifty-nine only)** which includes interest @ 18% per annum. That, the amount is due from May, 2016, therefore this petition.
5. The applicant in support of its claim has furnished copy of documents like invoices, demand notice, balance confirmation etc.
6. On issuance of notice, the respondent filed affidavit in reply inter alia raising objections and challenging maintainability of the petition on different aspects.





Findings:

7. Heard at length the learned advocates appearing for both the sides and perused the documents filed by the applicant/respondent.
8. On perusal of the record it is found that the demand notice dated 05.01.2019 (page 257-267), which is a pre-requisite under section 8 of the Insolvency & Bankruptcy Code, 2016 for filing the petition under section 9, is signed and issued by one Mr. Kailash Shukla, said to be Director of the applicant company whereas the Board Resolution authorising Mr. Kailash Shukla is of 14.02.2019. That means, at the time of issuing the demand notice dated 05.01.2019, Mr. Kailash Shukla had no authority to sign and issue such notice. Moreover, the Board Resolution also do not specifically empower Mr. Bhanu Shukla to initiate CIRP against the corporate debtor. Admittedly, Director of a company can issue the notice on behalf of the client but due authorisation is required by passing resolution in duly convened Board Meeting and in the instant case the demand notice was issued prior to passing the Board Resolution.
9. Under the facts and circumstances the petition is bad in the eye 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) 270 of 2019 stands dismissed as not maintainable. However, this will not stand in the way of the Petitioner approaching 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.



11. No order as to cost.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

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Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)