

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

C.P.(LB) No. 408/2019 LHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF THE JUDICIAL BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 26.06.2020**

Name of the Company: Neev Construction
V/s
DCOM Systems Ltd

Section : Section 7 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REFERENCE NO.	SIGNATURE
1.				
2.				

**ORDER
(through video conferencing)**

Learned Lawyer, Ms. Natasha Dhruman Shah is present for the Petitioner.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 26th day of June, 2020


**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 408/7/NCLT/AHM/2019

In the matter of:

Neev Construction

413, Shanti Nikatan, Floora Business Hub,
Nr. Sanskar Tirth School, Abrama Road,
Mota Barachha, Surat – 394101, Gujarat:

Petitioner
Financial Creditor

Versus

DCOM Systems Limited

311, RD Floor, Venus Atlantis Corporate Park,
Nr. Prahladnagar Auda Garden, Setellite
Ahmedabad - 380015

Respondent
Corporate Debtor

Order delivered on: 26/06/2020

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

Appearance:

Advocate Natasha Dhruman Shah for petitioners
None appeared on behalf of the respondents.

ORDER

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

1. Mr. Vishal Kevadiya, authorised signatory of the Financial creditors M/s. Neev Construction filed this Petition on 18th June, 2019 under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7(5)(a) and Section 13(1)(a)(b)(c) of the Code.





2. The applicant is a registered private limited company incorporated on 01.01.2012 having registered office at 413, Shanti Nikatan, Floora Business Hub, Nr. Sanskar Tirth School, Abrama Road, Mota Barachha, Surat – 394101, Gujarat.
3. The respondent is a limited company incorporated on 21.02.2000 having identification No. U72200GJ2000PLC037595 and having registered office at 311, RD Floor, Venus Atlantis Corporate Park, Nr. Prahladnagar Auda Garden, Setellite Ahmedabad – 380015. Authorised share capital of the respondent company is Rs. 129,00,00,000/- and paid up share capital is Rs. 112,14,00,000/-.
4. The Applicants/Petitioner has submitted that it provided financial assistance of RS.2,00,00,000/- (Two Crores only) to DCOM Systems Pvt. Ltd. towards execution of NWS water line Projects at Nazafgard & Nagloi New Delhi at the interest rate of 18% per annum for the period of 2 years from the date of disbursement of unsecured loan.
5. The applicants/Petitioners have submitted that as per the computation of claim amount placed at page No. 16 to the application the amount claimed to be in default Rs. 3,08,63,159/- and the amount of default constitutes Rs.1,86,50,000 is the principle amount and Rs.

1,22,13,159/- as the rate of interest at the rate of 18% per annum and the date of default is 01.06.2019. The financial creditor has issued the demand notice dated 01/07/2018 & 20/04/2019 under the provision of section 8 of the I & B Code which was duly served upon the respondent.

6. In support of its claim, the petitioners have submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	A copy of Authority letter dated 23.04.2019 of the applicant companies authorising Mr. Vishal Kevadiya to sign and file the application before NCLT	9-10
2	Computation of claim amount as on 31.03.2018	16-18
3	Financial contract reflecting all amendments and waivers	35-49
4	Entries in bankers book in accordance with the Bankers Books Evidence Act, 1891	24-46

Findings

7. Heard learned lawyer appearing for the Applicant also seen the documents annexed to the application.
8. On perusal of the record it is found that the petition filed on 18.06.2019 was notified for the first time on 25.06.2019. Despite giving number of opportunities, the respondent neither attended the calls nor filed any reply. Even after paper publication by the financial creditor there is no response from the respondent. Therefore the petition is heard in absence of the respondent.




9. On perusal of form no. 1 it is found that name of the Financial Creditor is given as Neev Construction, but on perusal of the record it is found that it is a proprietor ship concerned and Neev Construction has given authority letter on 23/04/2019 to the proprietor himself that is Vishal G Kevadiya. How proprietorship concerned can give an authority letter to its proprietor, when proprietor himself is representing Neev Construction which is not a legal entity.
10. Notwithstanding above as those are the statements/ pleadings of the parties in support of their claim, before proceeding further it is necessary to deal with the legal issue i.e. whether any proprietorship firm claiming to be operational creditor can file a proceeding/suit as it is not legal entity in the eye of law. A proprietor ordinarily means a person who carries on trade or business in a name other than his name. The law on this aspect is fairly well settled. No suit can be instituted by a sole proprietorship firm in its own name unless there are specific amendments stating that proprietorship sues through its proprietor. It has been recognised in number of decisions that a proprietorship concern unlike a company or a partnership is not a legal entity and therefore any proceeding initiated by it would be a nullity.
11. In this regard it is pertinent to refer some of the important decisions which are as under:



In ***Miraj Advertising Corporation vs. Vishaka Engineering 115 (2004) DLT 471*** it is held that

"A proprietorship firm has no legal entity like registered firm. A suit cannot be initiated in the name of an unregistered proprietorship firm and the said suit is to be instituted in the name of proprietor"

Section 3 of sub-section (23) speaks about the definition of a person which read as under: -

"person" includes;

- (a) An individual;***
- (b) A Hindu undivided family;***
- (c) A company;***
- (d) A trust;***
- (e) A partnership;***
- (f) A limited liability partnership and***
- (g) Any other entity established under a statute, and includes a person resident outside India***

12. Thus, ***a proprietorship firm is not a legal entity*** – it is only the proprietor of the firm who is a legal entity and as such the petition should have been filed by the sole proprietor in his name on behalf of his sole proprietorship firm.
13. Thus when person includes an individual the instant application ought to have been filed by Vishal G Kevadiya being the Proprietor as well as financial creditor, instead of doing so, it has been filed by Neev Construction shown himself as financial creditor which is not a legal entity.
14. On perusal of the definition it is clear that "person" must fall on the above category(s). In the case on hand, the petition is filed in the name of **M/s. Neev Constructions**, a proprietary concern as financial creditor, who is not a "person" for the purpose of filing the application u/s. 7 of the I & B Code. Hence, on this ground itself the application is not maintainable.

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15. Since the instant application is not decided on merit as such there is no bar, if the applicant wishes to approach any competent authority for redressal of his grievances. This petition has been dismissed on the issue of the maintainability taking into consideration of the provision of IB Code, 2016. The observations made by us in any other aspect would not constitute an expression of opinion on the merit of controversy. In view of above the instant application is dismissed.
16. Under such circumstances the instant application is bad in the eye of law, therefore stands dismissed. No order as to cost.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

Ksp