

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

C.P.(I.B) No. 656/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 20.03.2020**

Name of the Company: Sumilon Polyester Ltd
V/s
Parikh Packaging Pvt Ltd

Section : 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.	MONAAL J. DAVAWALA	Advocate	Petitioner	<u>Monaal.</u>
2.				

ORDER

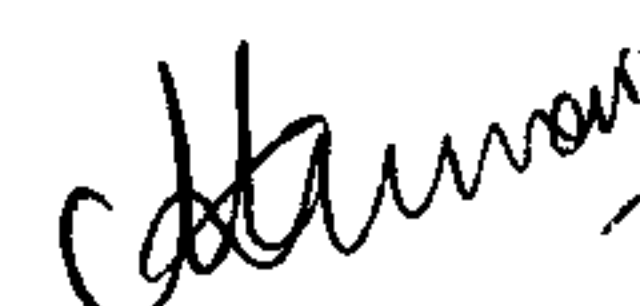
The Petitioner is represented through learned counsel.

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



**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 20th day of March, 2020



**MANORAMA KUMARI
MEMBER JUDICIAL**

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

C.P. No. (IB) 656/9/NCLT/AHM/2019

In the matter of:

M/s. Sumilon Polyester Limited.
6/121 A-1, Paiki, Plot No. 8
1st Floor, Vairagini Wadi
Delhi Gate
SURAT 395 003

Petitioner
Operational Creditor

Versus

M/s. Parikh Packaging Private Limited
Opp. Rotomac Pens
Sarkhej Bavla Highway
Village Moraiya
Taluka Sanand
Ahmedabad 382 213
Gujarat State

Respondent
Corporate Debtor

Order delivered on 20th March, 2020.

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

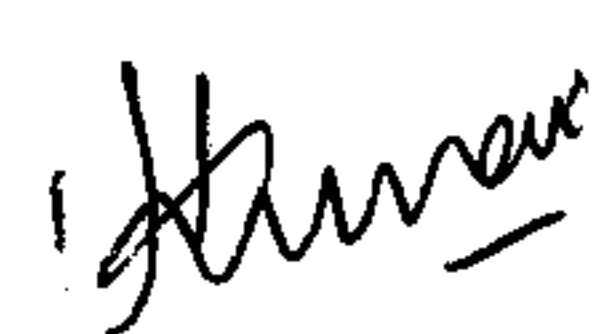
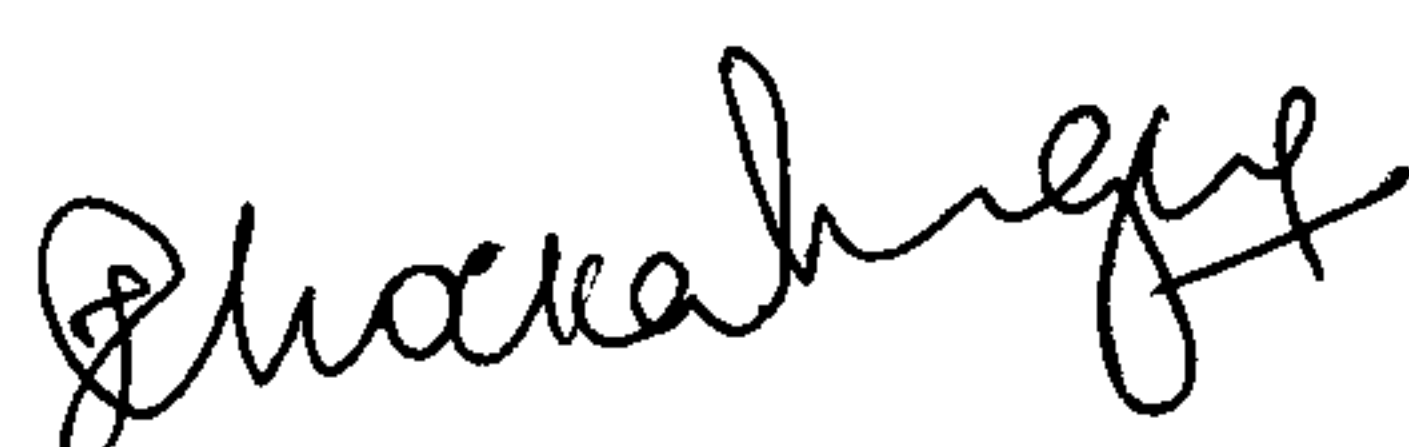
Appearance:

Advocate Mr. Monal Davawala for petitioner
Advocate Mr. Vinay Bairagra for respondent

ORDER

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

1. The instant application is filed by M/s. **Sumilon Polyester Limited** through its partner Mr. Tariq Puthawala 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.



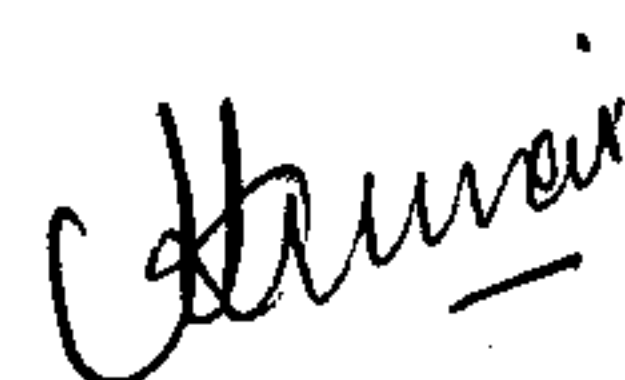
2. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 22.10.1999 having identification No. U25209GJ1999PTC036763 and having registered office at Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs. 4,80,00,000/- and paid up share capital is Rs. 4,16,85,810/-
3. The applicant/operational creditor is a limited company having identification No. U17290GJ2008PLC053619 having its registered office at Surat, Gujarat State.
4. The applicant/operational creditor is engaged in the business of supply of CC Pet and CC Met Pet material. That, the operational creditor has been supplying material to the corporate debtor and due to non-payment of operational debt by the corporate debtor, as on 04.09.2018, a total sum of **Rs. 19,07,560/- (Rupees nineteen lacs seven thousand five hundred sixty only)** is due and payable by the corporate debtor which includes the value of material supplied from time to time and charges which fell due on account of delay in payment of invoices.
5. It is further stated by the petitioner that despite repeated requests, reminders and personal follow-ups, the respondent has failed to make the outstanding payment. Therefore, this petition.
6. In support of its claim, the operational creditor has annexed to the application, copy of demand notice, ledger account maintained from April 2017, invoices, demand notice, reply to the demand notice etc.
7. The respondent filed affidavit in reply raising various objections. The first and foremost objection raised by the



respondent is that a legitimate dispute was raised by the respondent much prior to issuance of the demand notice on 2nd July, 2019. That, due to the poor quality of the material supplied by the petitioner, the clients of the respondent company had rejected their entire laminate quantity and had raised debit notes to the tune of Rs. 11.50 lacs on the respondent company. That, the said aspects were brought to the notice of the petitioner company and it was intimated that due to such rejection, actual loss to the tune of Rs. 22.00 lacs would be debited in the account of the petitioner company. That, the said fact also gets substantiated from the action of the petitioner company of taking back all the rejected quantity of around 9116 kg. of goods on account of their poor quality which was communicated to the respondent company vide email dated 28.12.2017.

Findings

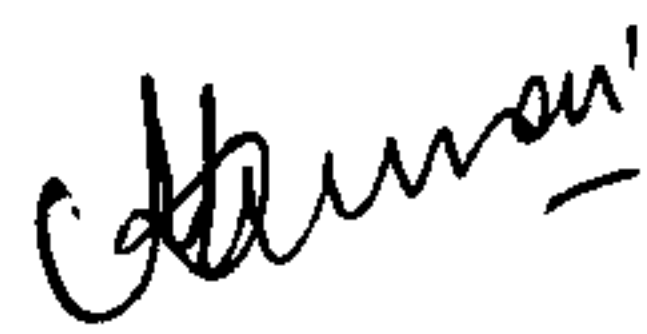
8. Heard the counsels appearing for both the sides and perused the documents annexed to the application/reply.
9. On perusal of the records it is found that, in the email (page 86) dated 2nd January, 2018 addressed to the respondent, the petitioner has admittedly acknowledged the receipt of complaint dated 28.12.2018, agreed to take back the unused material of 9116.4 kgs. On perusal of the records it is also found that both the parties have exchanged number of emails regarding quality of the material, debit note raised on the petitioner by the respondent and rate of interest charged (page 70 - 114). Page No. 95 to the reply is an email addressed to the petitioner by the respondent regarding inconsistent quality of the goods supplied by the petitioner.

10. On perusal of the records it is also found that against the defective material supplied by the petitioner, respondent had issued debit notes.
11. In the instant application, from the material placed on record by the respondent, it is evident that there **is/are pre-existing dispute** regarding quality of the material supplied by the operational creditor and, therefore, the instant petition is not maintainable.
12. In view of what is stated herein above, the Adjudicating Authority is of the considered view that the instant application devoid of merit and as such is not maintainable on the very reason that there is/are pre-existing disputes with regard to the quality of goods supplied.
13. In the result, the instant application is dismissed. No order as to cost. However, this will not stand in the way of the Petitioner invoking the appropriate forum seeking to enforce its claim as against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration of the provision of IB Code, 2016.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)

nair


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)