

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

C.P. No. (IB) 74/9/NCLT/AHM/2020

In the matter of:

Kuber Texlen Private Limited
702, Jeevandeep Complex
Opp. J.K. Tower
Ring Road
SURAT 395 003
Gujarat State

:

Petitioner
Operational Creditor

Versus

Yug Weave Tech Private Limited
405, Dharti Complex
Varachha Road
SURAT 395 006
Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 23rd October, 2020

Coram: Hon'ble Ms. Manorama Kumari, Member (J)

Appearance:

Petitioner : Mr. Vinodkumar Shah, PCS
Respondent : Mr. Ketan M. Parikh, Advocate

ORDER

1. Mr. Nikhil Agarwal, Director, being the authorised signatory, on behalf of **M/s. Kuber Texlen 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.

Manorama

2. The applicant/operational creditor is a private limited company having Identification Number U17120GJ2010PTC062096 and having its registered office at Surat, Gujarat State.
3. The respondent/corporate debtor is a private limited company registered on 07.01.2005 under the provisions Companies Act and having identification No. U17120GJ2015PTC081783 and having registered office at Surat, Gujarat State. Authorised share capital of the respondent company is Rs. 1,00,000/- and paid up share capital is Rs. 1,00,000/-.
4. The applicant/operational creditor has stated that, the respondent is liable to pay a total sum of **Rs. 8,40,664/- (Rupees eight lacs forty thousand six hundred sixty-four only)** consisting of Rs. 6,02,811/- (Rupees six lacs two thousand eight hundred eleven only) being principal amount and Rs. 2,37,853/- (Rupees two lacs thirty-seven thousand eight hundred fifty-three only) towards interest @ 24% per annum till 08.08.2019 for the delay period beyond 15 days from the date of respective invoices as per the terms of the invoice.
5. It is further submitted by the applicant that it had supplied yarn to the respondent of the value of Rs. 6,02,811/- at its works at Karjan during the period from 25.11.2017 to 05.12.2017 and against such supplies the corporate debtor has not made any payment inspite of vigorous follow-up, therefore this petition.
6. The operational creditor has further submitted that having failed to receive the operational debt, the applicant was compelled to issue demand notice dated 08.08.2019 under



section 8 of the I & B Code in form 3 calling upon the respondent to pay the operational debt and the notice is duly delivered to the respondent as per postal acknowledgement submitted by the applicant.

7. The applicant in support of its claim has furnished copy of documents like; affidavit in support of the application, Board Resolution dated 05.08.2019 authorising Mr. Nikhil Agarwal, Director of the applicant company to issue demand notice, to sign, execute and file application u/s 9 of the I.& B Code, demand notice in form 3, copy of invoices, calculation of interest, ledger account, form - 2, copy of demand notice etc.
8. The respondent/corporate debtor filed affidavit in reply inter alia stating that the corporate debtor company is going through severe financial crunch and, therefore, is not in a position to repay its debts including the debts owed to the instant petitioner. The respondent has admitted the operational debt and has stated that it has no objection if the petition is admitted by the Adjudicating Authority.

Findings:

9. Heard the PCS/Advocate appearing on behalf of both the sides and perused the application/reply.
10. During the course of hearing, learned lawyer appearing for the respondent also submitted that the respondent has admitted the dues by way of an affidavit.

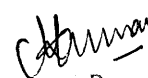


11. On perusal of the record it is found that the demand notice issued by the applicant under section 8 of the I & B Code on 08.08.2019 has been served upon the corporate debtor.
12. On perusal of the record it is also found that the instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor, even after receipt of the notice under Section 8 of the I & B Code.
13. 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.
14. 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'.
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 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.
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 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.

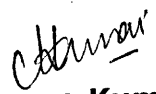


21. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.

22. The applicant/operational creditor has proposed the name of Mr. Kailash T. Shah to act as Interim Resolution Professional. Therefore, the Adjudicating Authority hereby appoint Mr. Kailash T. Shah, 505, 21st Century Business Centre, Nr. World Trade, Ring Road, Surat 395 002 (e-mail ipktshah@gmail.com) having registration No. IBBI/IPA-001/IP-P00267/2016-17/10511 to act as an Interim Resolution Professional under Section 13(1)(c) of the Code.

23. This Petition is accordingly admitted. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.

24. 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.


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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