

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

C.P. (I.B) No.326/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 16.12.2019**

Name of the Company: Jani Mitkumar Anantray
V/s
Devansh International Pvt Ltd

Section of the Companies Act : Section 9 of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Laxmi Pharnal	Advocate	Respondent Petitioner	Laxmi
2.				

ORDER

None appeared on behalf of the parties.

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


CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL

Dated this the 16th day of December, 2019


MANORAMA KUMARI
MEMBER JUDICIAL

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

C.P. No. (IB) 326/9/NCLT/AHM/2019

In the matter of:

Mr. Jani Mitkumar Anantray
Plot No. 1, Street No. 2
Farchariyawad
Vavda
BHAVNAGAR 364 002
Gujarat State

Petitioner
Operational Creditor

Versus

M/s. Devansh International Private Limited
Plot No. 2137
Nr. Golden Arc
Atabhai Circle
BHAVNAGAR 364 002
Gujarat State

Respondent
Corporate Debtor

Order delivered on 16th December, 2019.

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

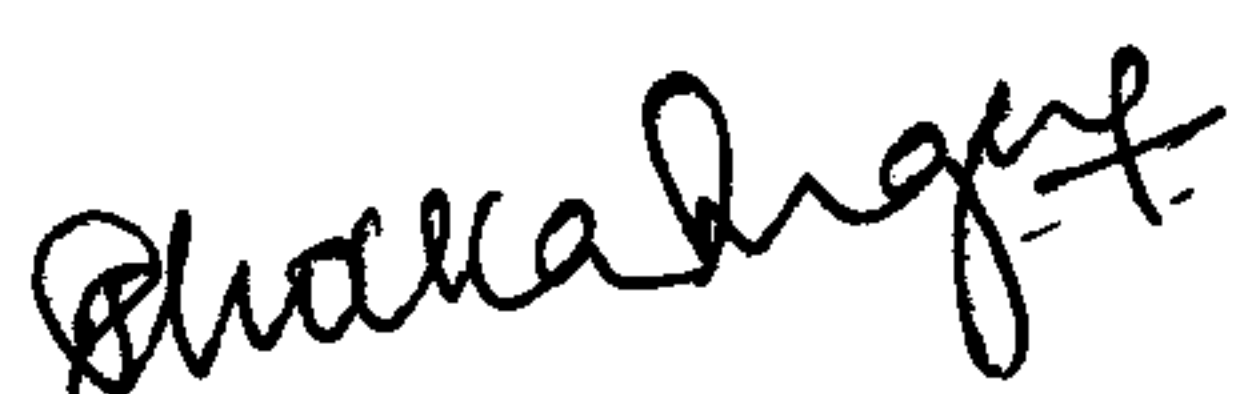
Appearance:

Advocate Ms. Nilu Vaidankar for the petitioner

ORDER

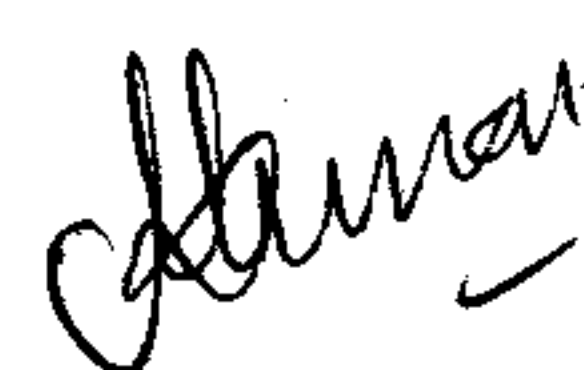
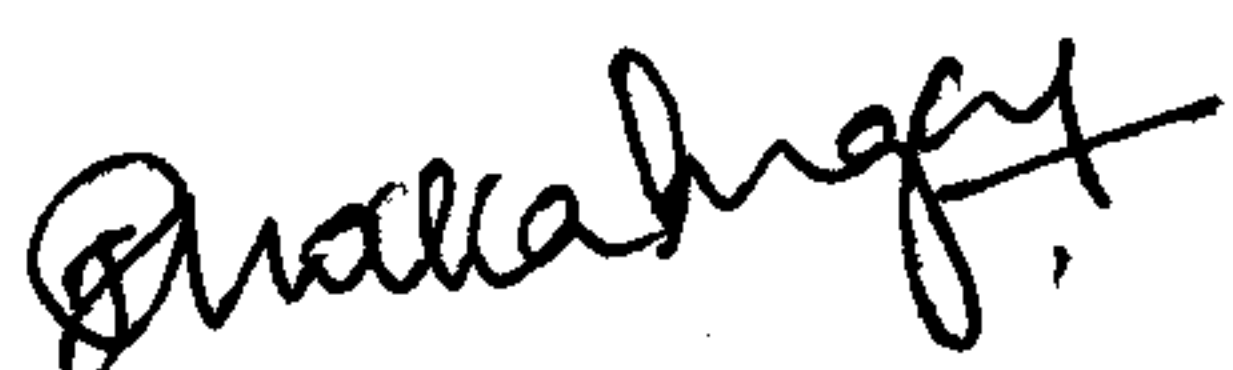
Per: Ms. Manorama Kumari, Member (Judicial)

1. Mr. Jani Mitkumar Anantray, 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 petitioner/operational creditor is an individual having identification No./PAN BEBPJ3151D having correspondence address at Vavda, Bhavnagar, Gujarat State.
3. The respondent/corporate debtor is a company registered under the Companies Act on 11th October, 2013, having identification No. U45400GJ2013PTC094996 and having registered office at Bhavnagar, Gujarat State. Authorised share capital of the respondent company is Rs. 16,50,00,000/- and paid up share capital is Rs. 11,06,50,300/-.
4. The applicant/Petitioner has submitted that under the terms of oral agreement dated 1st November, 2018, the operational creditor provided services as sought by the corporate debtor and raised invoice dated 15th March, 2019 for the said services provided. That, a total sum of Rs. 4,00,000/- is pending on account of the unpaid invoice and the same is now due and outstanding from the corporate debtor. That, inspite of repeated requests and reminders, the corporate debtor failed and neglected to make payment of outstanding dues. That, the said invoice became due and payable by the corporate debtor on 1st November, 2018.
5. The operational creditor has further stated that having failed to get any reply/payment from the corporate debtor, the operational creditor issued demand notice under Section 8



of the I & B Code on 18.03.2019 in form 3. That, inspite of receipt of the said notice, the corporate debtor within a period of 10 days, neither paid the outstanding dues nor replied to the said notice, therefore, this petition.

6. In support of its claim, the petitioner has submitted copy of the following documents: -

Sr. No.	Particulars	Page No.
1	Invoice dated 15 th March, 2019	10
2	Demand notice in form 3 of the I&B Code	11-13
3	Computation of default in tabular form	14
4	Bank statement	15-16
5	Track report regarding delivery of demand notice	17
6	Affidavit under section 9 (3) (B) of the I 7 B Code	20-21
7	Form 2 – consent form of IRP	20-21

7. Mr. Vijaykumar Kakram Bansal, Managing Director of the respondent company filed affidavit in reply inter alia admitting the debt of Rs. 4.00 lacs payable to the operational creditor.

Findings

8. Heard learned lawyer appearing on behalf of the petitioner. During the course of hearing, Mr. Hardik Prajapati, Manager of the respondent company remained present on behalf of the respondent company and submitted that Director of the respondent company has already filed an affidavit admitting the debt amounting to Rs. 4.00 lacs.

Shachin

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9. 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.

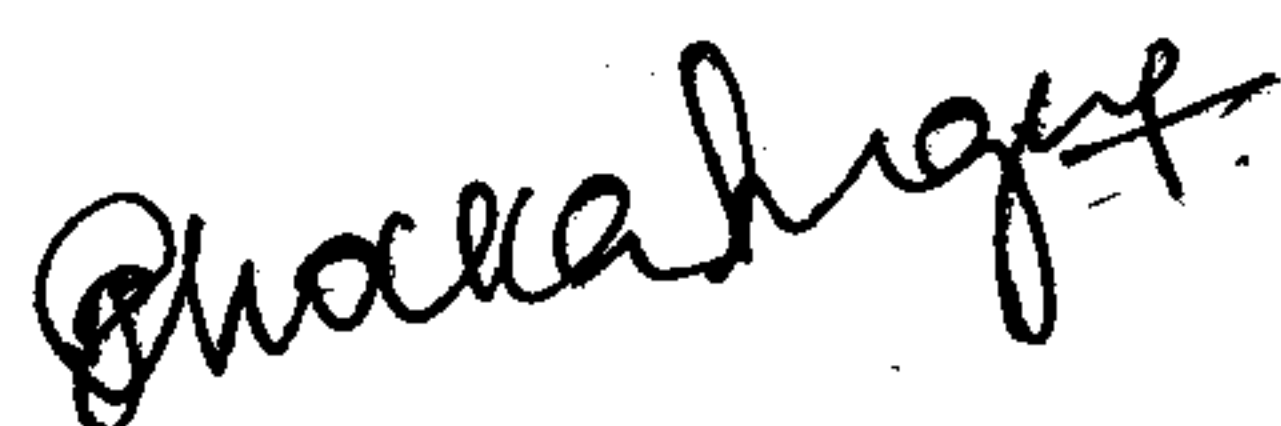
10. Thus, under the facts and circumstances and as discussed above, in the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined in Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of IB Code. 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

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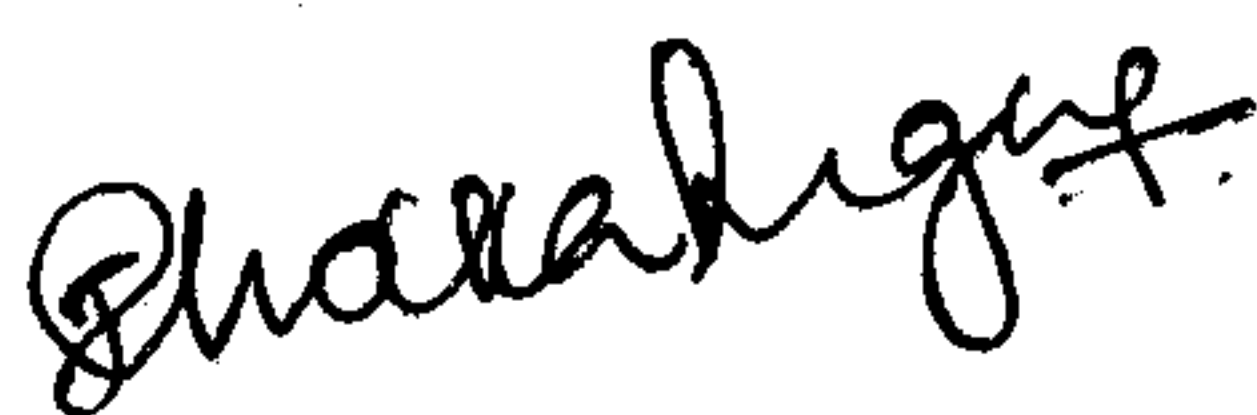
Kirusa

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.

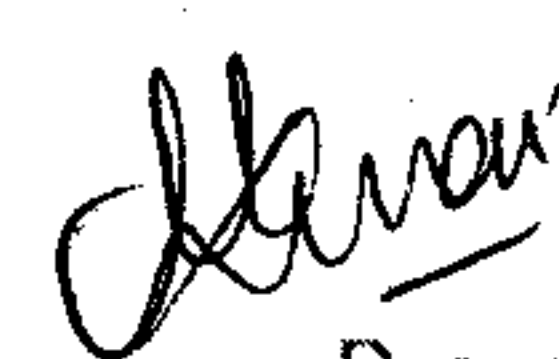
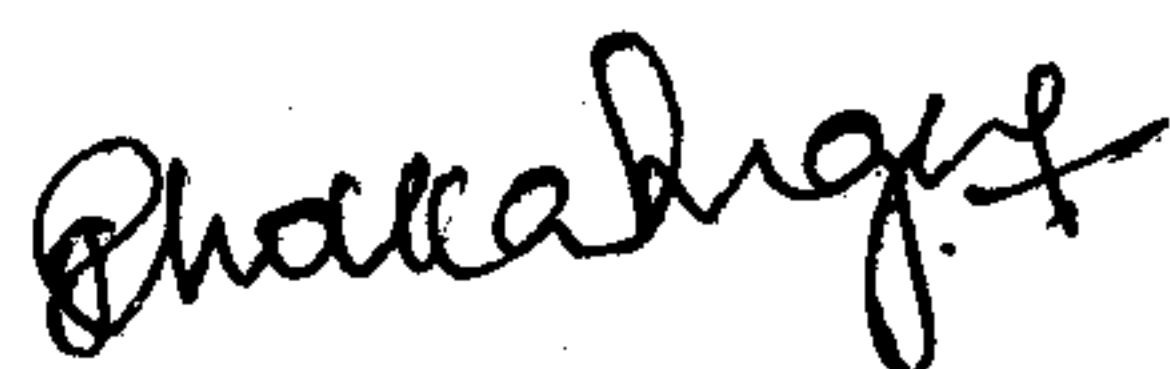
11. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided 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.
12. From the above stated discussion and on the basis of material available on record, it is a fit case to initiate Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
13. 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.
14. 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.



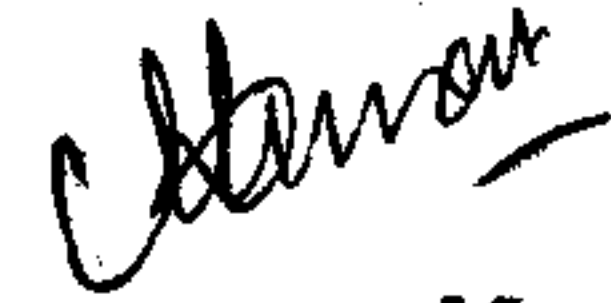
15. The order of moratorium shall have effect from the date of receipt of authenticated copy of this order till the completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of corporate debtor under Section 33 as the case may be.
16. The applicant/operational creditor has proposed the name of Mr. Tejas Shah to act as IRP. Therefore, this Adjudicating Authority hereby appoint Mr. Tejas Shah, B-201, Narayankrupa Avenue, Opp. Prernatirth Derasar, Jodhpur, Satellite, Ahmedabad 380 015 (tejasshah44@yahoo.com) having registration No. IBBI/IPA-001/IP-P00089/2017-2018/10185 to act as an interim resolution professional under Section 13(1)(c) of the Code.
17. This Petition is accordingly admitted.
18. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.
19. Registry is directed to inform the office of the 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 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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