

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

C.P.(I.B) No. 690/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 05.04.2021**

Name of the Company: Sunil Metal Corporation
V/s
ALM Metals & Alloys Ltd

Section 9 of the Insolvency and Bankruptcy Code.

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

ORDER

None appeared on behalf of parties.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**

Dated this the 5th day of April, 2021


**MANORAMA KUMARI
MEMBER JUDICIAL**

**BEFORE THE ADJUDICATING AUTHORITY
(NATIONAL COMPANY LAW TRIBUNAL)**

AHMEDABAD BENCH

AHMEDABAD

Court -2

C.P. (I.B.) No. 690/9/NCLT/AHM/2019

In the matter of:

Mr. Suresh Kumar P. Baheti

Proprietor of **M/s. Sunil Metal**

Corporation

Having its address at:

243, GIDC, IND. Estate,

Bhikshuk Gruh Road,

Ahmadabad-382415, Gujarat

...Applicant

(Operational Creditor)

Versus

M/s. ALM Metals and Alloys

Limited

CIN: U27100GJ2010PLC081572

Having its Registered Office at:

Survey No. 56, N.H. 8A,

Vaghasiya, Nr. Wankaner-Morvi

Toll Plaza,

Shankar

Chakraborty

Wankaner, Rajkot-363621

Gujarat.

...Respondent

(Corporate Debtor)

Order delivered on 05.04.2021

Coram:

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

Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)

Appearance:

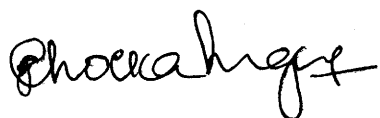
Mr. Tirth Nayak, Advocate, for the Petitioner.

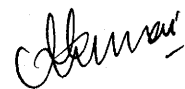
None appeared for the Respondent.

ORDER

[Per se: Mr. Chockalingam Thirunavukkarasu, Member (Technical)]

1. Mr. Suresh Kumar P. Baheti (Petitioner/Operational Creditor) is a Proprietor of **M/s. Sunil Metal Corporation** 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 to as "the Rules"), as Operational Creditor/Applicant.





2. The Respondent/Corporate debtor is a limited company registered under the provision of the Companies Act, 1956 on 10.12.2010, having CIN No. U27100GJ2010PLC081572 and having registered office at Rajkot, Gujarat. Authorised share capital of the respondent company is 3,00,00,000/- and paid-up share capital is 2,70,71,360/-.
3. The Petitioner/Operational Creditor is having office at Ahmadabad engaged in the business of Aluminium Scrap and on-demand and request of the Respondent/Corporate debtor, the petitioner had provided Aluminium Scrap during the financial year 2014-15. The Respondent/Corporate Debtor had maintained a running business account with the Petitioner and accordingly, as against the invoices raised by the Petitioner, the respondent had made various ad-hoc payment in the financial year 2014-15.
4. The Petitioner has submitted that the respondent/corporate debtor is indebted a total sum of Rs.48,02,475 to the applicant towards the goods supplied during the financial year 2014-15 and the last payment was received from the corporate debtor on 10.04.2015 as per the details annexed as Annexure - D. That, the invoices became due for payment within 30 days from the date of delivery. Further, the Petitioner submitted that since the Respondent Corporate Debtor was making payment on an ad-hoc basis as against various invoices raised by the Petitioner, the

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Outstanding amount of Rs. 48,02,475/-pertains to last 4 invoices raised by the Petitioner, details of which are as under:

S/ No.	Invoice Date	Invoice No.	Amount in Rs. (mentioned in Invoice)	Payment in Rs.	Default Amount in Rs.
1.	09/12/2014	EXC-125	15,05,595/-	5,05,595/-	10,00,000/-
2.	23/12/2014	EXC-126	13,51,502/-	0	13,51,502/-
3.	24/12/2014	EXC-138	13,14,831/-	0	13,14,831/-
4.	24/12/2014	EXC-139	11,36,142/-	0	11,36,142/-
			53,08,070/-	0	48,02,475/-

5. In support of its claim, the applicant has annexed to the application copy of documents like; copies of four invoices under which sums are due and outstanding, an affidavit filed by the applicant dated 07/03/2020 along with a copy of the delivery challan in respect of the invoices duly acknowledged by the respondent and copy of bounced cheques along with the return memo and relevant Bank statement, Statement of Bank Account of the operational Creditor, Copy of the Corporate Debtor

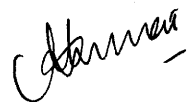
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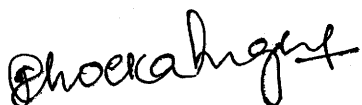
Company's Master data, Copy of Form No.3 dated 20th August, 2018 along with relevant annexure and Form No. 4, Copy of Ledger in the books of Operational Creditor for the financial year 2014-15 and 2015-16, Copy of Emails exchanged with the Corporate Debtor, Copy of the Legal Notice dated 02/07/2015 and complaint filed by the Petitioner before the Metropolitan Magistrate Court, an affidavit under section 9(3)(b) of the Code.

6. The Applicant/Operational Creditor further submitted that the Respondent/Corporate Debtor issued a cheque of Rs. 10,00,000/- in favour of the Applicant drawn on Central Bank of India, which was presented for clearing in June 2015. However, the said cheque was returned un-cleared on 16.06.2015. Thereafter, a notice was issued on 02/07/2015 to the respondent/ corporate debtor informing and demanding to pay Rs.10,00,000/- to the Petitioner within 15 days of the receipt of the said notice, failing which the legal notice u/s 138 of the N.I. Act would be taken. However, the Respondent/Corporate Debtor did not make the payment in respect thereto. Thereafter, the Petitioner filed a complaint u/s 138 of the N.I. Act.
7. Thereafter, Mr. Aftab Rab director of the Respondent/Corporate Debtor wrote an email dated 03/06/2017 to the Petitioner and requested to resolve the issue and withdraw the complaint filed by the Petitioner. Thereafter, emails were exchanged on 05/06/2017 and 06/06/2017 in between the respondent and the Applicant.





8. Thereafter, the applicant/operational creditor issued a demand notice dated 20/08/2018 under section 8 of the Code in form 3 along with its annexures and Form No. 4 to the Corporate Debtor. However, the Respondent/Corporate debtor neither made the payment nor replied to the demand notice issued in Form No.3/4. It is also stated by the applicant that the respondent has also not raised any objection about the default committed by them in making payment of Rs. 48,02,475/- to the Applicant.
9. Further, the I.A. is filed by the Applicant with a prayer to amend the cause title page of the application, wherein the name of the applicant has been reflected as **Sunil Metal Corporation** in Clause no.1, Part -1 of Form-5. Hence, the applicant wants to amend by incorporating the name of the owner, viz., **Mr. Suresh Kumar R. Baheti**, being the proprietor of Sunil Metal Corporation.
- Accordingly, this Adjudicating Authority is allowed the prayer vide order dated 13.11.2020 made by the Applicant and directed the applicant to carry out amendment as mention above.
10. Further, the matter is listed for hearing on 23.09.2019. None appeared for the respondent. Thereafter, this Adjudicating Authority vide order dated 08.11.2019 is directed to the applicant for a paper publication wherein the registered office of the corporate debtor/respondent is situated. In compliance with the





said order, the paper publication is made by the applicant on 10.01.2020 and the proof of paper publication is also filed on 18.02.2020.

11. Heard the learned Counsel for the Applicant in absence of the Respondent and perused the documents annexed to the application.
12. On perusal of the records, it is found that the instant petition was filed on 29.08.2019. The outstanding invoices were raised from 09.12.2014 to 24.12.2014 and the email was sent by the respondent regarding admission/acknowledgement of debt on 03rd June, 2017. The demand notice was issued by the applicant under section 8 of the Code on 20.08.2018. The petition filed by the applicant is within the limitation period. The corporate debtor has admitted the debt and not raised a pre-existing dispute and has not paid the amount due. The application is complete.
13. In view of the above and based on 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 the Insolvency Resolution Process by admitting the Application under Section 9(5)(1) of the Code.
14. The Operational Creditor has proposed the name of Mr. Sanjay Badrilal Punglia having Registration No. IBBI/IPA-001/IP-





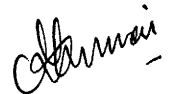
14. The Operational Creditor has proposed the name of Mr. Sanjay Badrilal Punglia having Registration No. IBBI/IPA-001/IP-P00855/2017-2018/11437 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(c) of the IB Code and written communication in Form -2 of IBBI has been submitted by the proposed IRP.
15. 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002(54 of 2002);

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- (iv) the recovery of any property by an owner as lessor where such property is occupied by or in the possession of the Corporate Debtor.
16. The supply of goods and essential services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during the 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.
17. The order of moratorium shall affect the date 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.
18. This Adjudicating Authority hereby appoints Mr. Sanjau Badrilal Punglia having Registration No. IBBI/IPA-001/IP-P00855/2017-2018/11437 to act as "Interim Insolvency Resolution Professional" under Section 13(1)(c) of the IB Code. Further, this Adjudicating Authority directs the "Interim Insolvency 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.





19. This Petition CP(IB) 690/9/NCLT/AHM/2019 is accordingly admitted.
20. Communicate a copy of this order to the Applicant, Corporate Debtor, Registrar of Companies, and to the Interim Resolution Professional.
21. 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 the name of the respondent company be initiated arising out of non-compliance of sections 159 to 162 & 220 etc. of the Companies Act, 2013 as it would be detrimental to the process of CIRP/liquidation and sale of assets to realize the amount for all the stakeholders.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

R.S.