

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

C.P.(I.B) No. 678/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 13.10.2020**

Name of the Company: Ankita Industries Pvt Ltd
V/s
Biopac India Corporation Ltd

Section 9 of the Insolvency and Bankruptcy Code,
2016.


<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER

Advocate, Mr. Piyush Luktuke appeared on behalf of the Petitioner.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 13th day of October, 2020

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

C.P. No. (IB) 678/9/NCLT/AHM/2019

In the matter of:

Anika Industries Private Limited

7th Floor, Lodha Excelus
Apollo Mills Compound
N.M. Joshi Marg
Mahalaxmi
MUMBAI 400 011

:

Petitioner
Operational Creditor

Versus

M/s. Biopac India Corporation Limited

Survey No. 38
Silvassa Khanvel Road
Dapada, Silvassa
Dadra & Nagar Haveli 396 230

:

Respondent
[Corporate Debtor]

Order delivered on 13th October, 2020

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

Appearance:

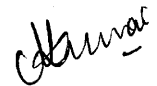
Petitioner : Mr. Piyush Luktuke, Advocate
Respondent : Ms. Kristy A Bapist, Advocate

ORDER

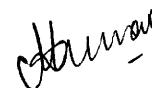
Per se : Ms. Manorama Kumari, Member (Judicial)

1. Mr. Deependra Ramjidas Gupta, Director, being the authorised signatory, on behalf of **M/s. Anika Industries 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.





2. The applicant/operational creditor is a private limited company having identification No. U51100MH2013PTC251306 and having its registered office at Mumbai is engaged in the business of trading of plastic granules of polypropylene.
3. The respondent/corporate debtor is a limited company registered on 02.04.1987 under the provisions Companies Act, 1956 and having identification No. L51900DN1987PLC000441 and having registered office at Silvassa (UT). Authorised share capital of the respondent company is Rs. 2,00,00,000/- and paid up share capital is Rs. 17,25,01,000/-.
4. The applicant/operational creditor has stated that, against the orders placed by the respondent (page 34-38), the applicant had supplied Polypropylene HP PP RH03 to the respondent during the period between August 2018 and September 2018 and had raised invoices (page 46-58) It is also submitted by the applicant that the total amount of operational debt payable by the respondent comes to **Rs. 71,39,000/- (Rupees seventy-one lacs thirty-nine thousand only)** which include interest @ 15% per annum. That, as per the terms and conditions of the invoice, upon expiry of 45 days' credit period from the date of invoice, 15% per annum interest is charged. That, despite several reminders, the corporate debtor has not made payment towards the principal outstanding amount, therefore this petition.
5. The applicant/operational creditor has further stated that, having failed to receive the outstanding amount, the applicant was compelled to issue demand notice dated 26.07.2019 calling upon the respondent to pay total



outstanding of Rs. 71,39,000/-. That, respondent has replied the demand notice vide letter dated 09.08.2019.

6. The applicant in support of its claim has furnished copy of documents like, affidavit in support of the application, Board Resolution dated 19.07.2019 authorising the advocate to issue demand notice, Board Resolution dated 09.08.2019 authorising Director of the company to sign, execute and file application u/s 9 of the I & B Code, demand notice in form 3, affidavit of no dispute, copy of purchase orders, sales orders and invoices and proof of delivery, track report of delivery of consignment containing demand notice, copy of demand notice etc.
7. On issuance of notice, respondent filed affidavit in reply inter alia raising various objections that, the goods supplied by the applicant was not as per the specification, interest claimed is illegal and the applicant has filed the instant petition with mala fide intentions.

Findings:

8. On perusal of the records it is found that the instant application filed on 30.08.2019 came to be notified for hearing for the first time on 23.09.2019. Thereafter, despite giving number of opportunities the respondent did not file reply, sought adjournments and prolonged hearing of the matter. Ultimately, the matter was notified for final hearing on 06.10.2020.
9. Heard the learned lawyers appearing on behalf of both the sides and perused the application/reply filed.

Shoora Hige

Abhinav

10. On perusal of the records it is found that the operational creditor has annexed to the application copy of the purchase orders issued by the corporate debtor, sale orders issued by the operational creditor as well as invoices raised from time to time. On perusal of the record it is also found that all the sale orders issued by the operational creditor stipulate the condition that "interest @ 36% will be charged on overdue payment".
11. On perusal of the records it is found that no document is produced by the corporate debtor in support of its contention that the goods supplied were of inferior quality. Thus, it is apparent that the reasons raised by the corporate debtor for non-payment of dues, are illusory and not sustainable in the eye of law.
12. 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 26.07.2019 has been served upon the corporate debtor.
13. 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.
14. 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.



15. 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'.
16. 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.

17. 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.

Shreea Huges

Sharma
Page 5 | 8

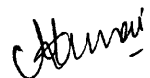
18. Section 13 of the Code enjoins upon the Adjudicating Authority to exercise its discretion to pass an order to declare a moratorium for the purposes referred to in Section 14, to cause a public announcement of the initiation of corporate insolvency resolution and call for submission of claims as provided 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.
19. 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.
20. 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.

21. 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.
22. 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.
23. The applicant/operational creditor has not proposed the name of Interim Resolution Professional. Therefore, this Adjudicating Authority hereby appoint Shri Saaurabh Jhaveri, 620, Jolly Plaza, 6th Floor, Athwagate, Surat 395 001 (saumeg@gmail.com) (Mobile: 9228427123) having registration No. IBBI/IPA-002/IP-N00068/2017-18/10146 to act as an interim resolution professional under Section 13(1)(c) of the Code.
24. This Petition is accordingly admitted.

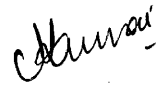


25. Communicate a copy of this order to the applicant, Corporate Debtor, Registrar of Companies and to the Interim Resolution Professional.

26. 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.



Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)



Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

nair