

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

C.P. (I.B) No. 117/9/NCLT/AHM/2018

Coram: **Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF
THE NATIONAL COMPANY LAW TRIBUNAL ON 09.04.2019**

Name of the Company: Dharmendra Enterprise.
V/s.
H V Synthetics Pvt Ltd.

Section of the Companies Act: 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. | Rajiv Kothari | Adv. | Applicant | R. |
| 2. | Arun Gandhi | | | |

ORDER

The petitioner is represented through their learned counsel.

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

Manorama
**MANORAMA KUMARI
(MEMBER JUDICIAL)**

Dated this the 9th day of April, 2019

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

C.P. No.(IB) 117/9/NCLT/AHM/2018

In the matter of:

M/s. Dharnendra Enterprise
12, Eden Gardens Society
Near Bansidhar Garden
Narayan Nagar
Paldi
AHMEDABAD 380 007 ...

Petitioner
[Operational Creditor]

Versus

M/s. H.V. Synthetics Private Limited
225/2 Madhu Textile Mills Compound
Behind Asopalav Hotel,
Nr. Narol Circle
AHMEDABAD 380 007 ...

Respondent
[Corporate Debtor]

Order delivered on 09th April, 2019.

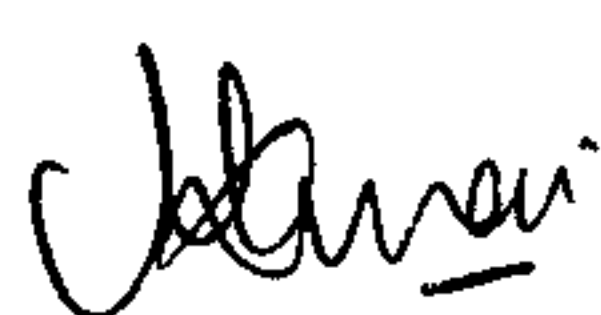
Coram: Hon'ble Ms. Manorama Kumari, Member (J).

Appearance:

Advocate Mr. Raju Kothari & Advocate Mr. Anip Gandhi present for the applicant

ORDER

1. That, the instant application is filed by Mr. Mehul Ramanlal Gohil, proprietor of applicant/operational creditor M/s. Raw Edge Industrial Solution Private Limited, under Section 9 of the Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"].
2. That, the applicant/operational creditor M/s. Dharnendra Enterprise is the proprietorship firm of Mr. Mehul Ramanlal



Gohil having permanent account No. AERPG2205E, having its registered office at 12, Eden Gardens Society, Narayan Nagar, Paldi, Ahmedabad (Gujarat) is engaged in the business of supply of chemicals like soda ash, caustic soda, sulphur black etc.

3. That, M/s. H.V. Synthetics Private Limited is a company incorporated under the Companies Act, 1956 on 2nd June, 2006 and having its registered office at 225/2, Madhu Textile Mills Compound, Near Narol Circle, Ahmedabad 382 405 Gujarat State having identification No. U17121GJ2006PTC048378. That, authorised share capital of the corporate debtor is Rs. 5,00,000/- and paid up share capital is Rs. 5,00,000/-.
4. The applicant has submitted additional affidavit inter alia stating that that the respondent company has been purchasing different chemicals from the applicant company since November, 2014. That, during the period from 11th May, 2015 to 31st May 2017 the applicant has supplied different chemicals to the applicant worth Rs. 14,33,787/- and the applicant had received last payment of Rs. 41,738/- on 14.06.2017. That, the applicant is maintaining a running account with the respondent towards the goods supplied from time to time. That, during the pendency of the instant application the respondent company has made payment of Rs. 3,50,000/- in two instalments through RTGS on

Chhavan

21.04.2018 and 24.05.2018. That as on 30.11.2017 the respondent company is indebted to the applicant to the tune of Rs. 20,50,609/- (Rupees twenty lacs fifty thousand six hundred nine only) which includes principal amount of Rs. 14,33,787/- + interest of Rs. 6,16,822/- at the contractual rate of 18% per annum out of which the corporate debtor paid through RTGS on 21.04.2018 and 24.05.2018 a sum of Rs. 3,50,000/- (Rupees three lacs fifty thousand only).

4. The learned appearing on behalf of the applicant submitted that the applicant had issued demand notice dated 07.12.2017 which was served upon the respondent on 09.12.2017. The copy of demand notice is placed at **page No. 8, Annexure – I** to the application.
5. The applicant has submitted copy of the following documents in support of his claim: -

| Sr. No. | Particulars | Page Nos. |
|---------|--|-----------|
| 01 | Demand notice in form No. 3 along with money receipt and track report | 1-7 |
| 02 | All the documents referred to in the application | 100-184 |
| 03 | Account statement of the bank | 185-401 |
| 04 | Affidavit in support of application in accordance with the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 | 402-410 |
| 05 | Written communication by the proposed interim resolution professional as set out in form No. 2 | 411 |

6. On perusal of the material available on record it is found that despite of service of notice to the respondent informing

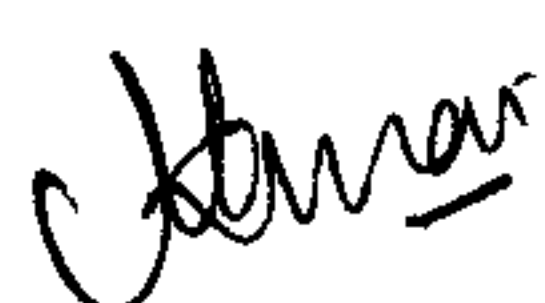
John

the date of hearing, letter of the applicant along with copy of the order was returned unserved with endorsement "refused" and to that effect of service dated 04.02.2019, affidavit is filed by the applicant. Hence the notice served upon the corporate debtor is complete. Moreover, by way of RTGS the corporate debtor paid an amount of Rs. 3,50,000/- to the applicant during the pendency of the case that itself shows that the case is pending before the NCLT.

7. Heard the arguments of the learned counsel appearing for the applicant.

Findings:

8. On perusal of the material available on record it is found that the respondent is having knowledge of pendency of the case as the respondent has made part payment during pendency of the application as also refused to accept the notice sent by the applicant. That, despite repeated efforts by the applicant the respondent has neither come forward for settlement nor appeared before the Bench.
9. That, the records available shows that the amount due to the Applicant from the Respondent is in respect of supply of goods. Therefore, the amount claimed by the Applicant from the Respondent is operational debt within the meaning of Section 5, sub-section (21) of the Code. The operational debt is due to the Applicant. Therefore, Applicant is an



Operational Creditor within the meaning of sub-section (5) of 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.

10. That, the Application filed by the Applicant is complete in all respects. That, record show that, on two occasions, the respondent has refused to accept the notice issued by the applicant.
11. Proposed Interim Insolvency Resolution Professional has made a declaration that no disciplinary proceedings are pending against him.
12. In the case on hand petitioner has proposed the name of Mrs. Bhavi Shreyans Shah, C-201, Embassy Apartments, Nr. Ketav Petrol Pump, Dr. V.S. Road, Ahmedabad 380 015, Gujarat State (email ID ca.bhavishah@gmail.com) having registration No. IBBI/IPA-001/IP-P00915/2017-18/11521. Adjudicating Authority is appointing Mrs. Bhavi Shreyans Shah as interim resolution professional u/s 13 (1)(b) of the Code.
13. 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

Chaman

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.

14. Hence, Mrs. Bhavi Shreyans Shah is appointed as "Interim Insolvency Resolution Professional" who filed Form-2 and Certificate of Registration issued by the Insolvency and Bankruptcy Board of India. This Adjudicating Authority directs the Insolvency Resolution Professional to make public announcement of initiation of Corporate Insolvency Process and calls for submission of claims under Section 15 as required by Section 13(1)(b) of the Code.
15. 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.
16. 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

Adhwar

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.
17. 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.
18. 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.
19. This Petition stands disposed of accordingly with no order as to costs.



20. Communicate a copy of this order to the Applicant, Financial Creditor, Corporate Debtor and to the Interim Insolvency Resolution Professional.



Ms. Manorama Kumari
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

Nair