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02/03/19

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


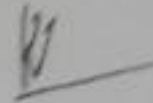
C.P. (LB) No. 433/9/NCLT/AHM/2018

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 26.02.2019

Name of the Company: Chitra Publicity Company(OOH) Gujarat
V/s.
Oasis Tradelink Limited.

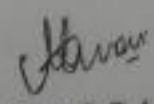
Section of the Companies Act: Section 9 of the Insolvency and Bankruptcy Code

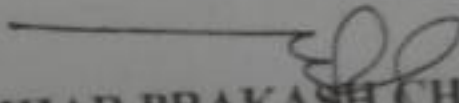
S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
	ZEAL SHAH	ADVOCATE	CD	
1.	TOR RAJESH BOHRA			
2.	KUNAL R VASHNANI	ADVOCATE	Petitioner	

ORDER

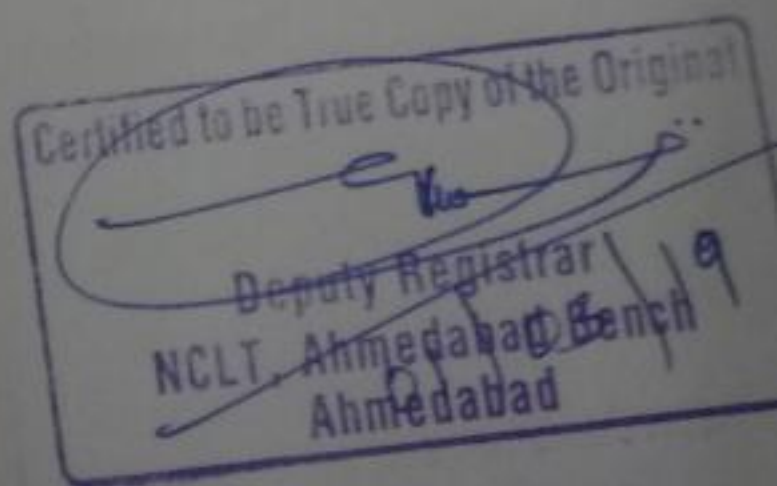
The Parties are present through their respective Learned Counsel(s).

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


MANORAMA KUMARI
MEMBER (JUDICIAL)


HARIHAR PRAKASH CHATURVEDI
MEMBER (JUDICIAL)

Dated this 26th February, 2019.



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

C.P.(IB) No.433/9/NCLT/AHM/2018

In the matter of:

Chitra Publicity Company (OOH) Gujarat
"Ashish" Building, 2nd Floor,
Swastik Cross Road, C.G. Road,
Navrangpura,
Ahmedabad

.....Petitioner
Operational Creditor

Versus

Oasis Tradelink Limited
1st Floor, Maruti House,
Opp. Sales India Show Room,
Ashram Road,
Ahmedabad-380 009

.....Respondent
Corporate Debtor

Order delivered on 26th February, 2019

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J)
Hon'ble Ms. Manorama Kumari, Member (J)**

Appearance: Advocate Mr. Kunal Vaishnav for the Petitioner

ORDER

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

1. The instant petition is filed by Chitra Publicity Company (OOH) Gujarat through its proprietor, 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"].

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2. The claim of the Petitioner is that Corporate Debtor, namely Oasis Tradelink Ltd., approached the Operational Creditor for displaying its oil advertisements by hiring advertising hoarding space from the Operational Creditor as per the terms and conditions mentioned in the agreements entered into between the petitioner, the Operational Creditor and the respondent, the Corporate Debtor and the Operational Creditor raised invoices on the Corporate Debtor for display of advertisement across the State of Gujarat.
3. Chitra Publicity Company (OOH) Gujarat, hereinafter referred to as "Operational Creditor" is into the business of outdoor advertisement and provides display space (hoardings) to its clients for advertisement of their products across the State of Gujarat.
 - 3.1 It is stated in the petition that Oasis Tradelink Limited, is into the business of manufacturing and trading in edible oils in the name and style and the brand "Maruti Oil". Oasis Tradelink Limited for displaying its oil advertisement used to hire advertisement spaces from the Petitioner at various places in the various cities of the State of Gujarat and for that various agreements were signed between the Petitioner and the Respondent for display of advertisements as per the terms and conditions agreed between the Petitioner and the Respondent and as set out in the Agreements. Copies of the Agreements entered into between the Petitioner and the Respondent are annexed with the petition and are marked as **Annexure A (Colly)**.
 - 3.2 It is stated by the Petitioner that during the course of the business and as per the terms and conditions of the agreements as referred above at Annexure-A, the Petitioner used to raise invoice on the Respondent on monthly basis as per the terms agreed with the Respondent. Copies of the



invoices raised upon the Respondent, the Corporate Debtor are annexed with the application and marked as **Annexure B (Colly)**.

3.3 It is stated that the Operational Creditor has maintained a ledger account of the Corporate Debtor which clearly and categorically mentions all the invoices raised upon the Corporate Debtor as also the amounts due and payable by the Corporate Debtor. A copy of the Ledger Account of the Corporate Debtor in the books of Operational Creditor is annexed with the application and is marked as **Annexure D (Colly) Page 48 and 49.**

3.4 It is further stated in the petition that since 2017, the Oasis Tradelink Limited started defaulting in making payment and the outstanding started mounting and as on 01.07.2018, the principal outstanding amount to be recoverable from Oasis Tradelink Limited rose to Rs. 51,75,393/- (Rupees Fifty-One Lakhs Seventy-Five Thousand Three Hundred Ninety-three only). After an oral assurance, a meagre amount of Rs. 50,000/- (Rupees Fifty Thousand only) was lastly paid on 21.07.2018. Therefore, as on date, the principal amount of Rs. 51,75,393/- (Rupees Fifty-One Lakhs Seventy-Five Thousand Three Hundred Ninety-Three only) is payable by the Oasis Tradelink Limited, the Respondent Corporate Debtor to the, the Petitioner, Operational Creditor.

3.5 It is stated that several reminders were sent by the Operational Creditor to the Corporate Debtor but despite promises and assurance given by the Corporate Debtor, the dues of the Corporate Debtor remained unpaid and the Operational Creditor was compelled to serve statutory Demand Notice in Form 3 on 07.08.2018 under the Insolvency and Bankruptcy Code, 2016 (annexed with the Petition as

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Annexure D) along with invoices and the Ledger Account of the Corporate Debtor in the books of accounts of the Operational Creditor, demanding the outstanding amount, by Registered Post with Acknowledgment Due, calling upon the Corporate Debtor to pay the outstanding amount within 10 days from the date of receipt of the notice. The Acknowledgement Due receipt is annexed with the petition with the stamp of the post office of the delivery with date 11.08.2018 meaning thereby the notice has been received by the Corporate Debtor on 11.08.2018. This Petition has been filed by the Petitioner on 28.08.2018 before this Adjudicating Authority. Petitioner despatched copy of the Petition to the Corporate Debtor on 28.08.2018 through Registered Post and filed Registered Post Receipt along with the Petition.

4. This Petition was listed before this Adjudicating Authority for admission on 12.09.2018. This Adjudicating Authority vide order dated 12.09.2018 directed the Petitioner to inform the date of hearing to the Corporate Debtor. The Adjudicating Authority also directed the Registry to serve the notice of date of hearing on the Respondent along with the copy of the order under acknowledgement and file the proof of service. Accordingly, the Petitioner sent notice to the Corporate Debtor on 20.09.2018 informing the date of hearing and filed proof of despatch of the notice of hearing to the Corporate Debtor by RPAD. The Registry also sent the notice of date of hearing on the Respondent along with the copy of the order under acknowledgement on 18.09.2018 and filed the proof of the same showing the notice of hearing has been served upon the Respondent on 24.09.2018. The Respondent was directed to file its objections, if any, within two weeks by serving an advance copy to the Petitioner. The advocate for the Respondent sought adjournment of the hearings on 05.11.2018 and 05.12.2018 and finally on 04.01.2019 filed its written submissions with a copy of the Petitioner.



5. In order to pass an order under Section 9(5) of the Code, the Adjudicating Authority shall necessarily give a finding on the following aspects;
 - (i) Whether the claim of Petitioner is an 'operational debt or not;
 - (ii) Whether Petitioner is 'Operational Creditor';
 - (iii) Where there is occurrence of default;
 - (iv) Whether Operational Creditor delivered Demand Notice on the Corporate Debtor;
 - (v) Whether there is existence of dispute and record of pendency of suit or arbitration proceedings; and
 - (v) Whether there is compliance of sub-sections (1) to (4) of Section 9 of the Code.
6. A perusal of the Invoices and the additional affidavit submitted by the Petitioner clearly goes to show that the Petitioner is a service provider and provided outdoor hoardings for advertisement of the products of the Respondent, and in that connection, certain amount is due to the Petitioner. Therefore, the claim of the Petitioner is an 'Operational Debt'.
7. Since the operational debt is due to the Petitioner from the Corporate Debtor, Petitioner is an 'Operational Creditor'.
8. A perusal of the agreements entered between the Petitioner and the Respondent, Invoices, details of transactions, copies of statements of Bank accounts of Dena Bank clearly establish the occurrence of default.
9. As far as existence of dispute is concerned, the Respondent in its written submissions has mentioned about dispute but has neither annexed with its submissions, copy of the dispute nor deliberated the dispute in its submissions. The existence of




dispute has been mentioned in the written submissions in a very casual manner. It is the considered view of this Bench that had the dispute in existence; the Corporate Debtor would have communicated the same to the Operational Creditor, when the Demand Notice in Form 3 was served upon him. The Corporate Debtor did not raise this issue during the hearings before this Bench on 05.11.2018 and 05.12.2018. Therefore, it is considered an afterthought with the sole intention to stall the commencement of insolvency resolution proceedings against the Corporate Debtor. Therefore, it is held that there exists no dispute, as contemplated under Section 8(2)(a) of the Code.

10. The application filed by the Operational Creditor is complete. Petitioner issued Demand Notice on 07.08.2018 and it was served on the Corporate Debtor on 11.08.2018. Operational Creditor stated on Affidavit that no reply has been given by the Corporate Debtor.
11. In the case on hand, since the Petitioner has not given the name of IRP, this Adjudicating Authority is appointing Mr. Pinakin Surendra Shah who has shown his address at A-201, Siddhivinayak Towers, Behind DCP Office, Next to Kataria House, Markarba, S.G. Highway, Ahmedabad having Registration Number as IBBI/IPA-002/IP-N00106/2017-18/10248 as "Interim Insolvency Resolution Professional under Section 13(1) of the Code. This Adjudicating Authority directs the Petitioner 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.
12. In view of the commencement of the Insolvency Resolution process with the admission of this Petition and appointment of the Interim Insolvency Resolution Professional, this Adjudicating



Authority hereby declares moratorium under Section 13(1)(a) prohibiting the following as laid down in 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.

12.1 However, the supply of goods and essential services to the Corporate Debtor shall not be terminated or suspended or interrupted during moratorium period. The moratorium order in respect of (i), (ii), (iii) and (iv) above shall not apply to the transactions notified by the Central Government.

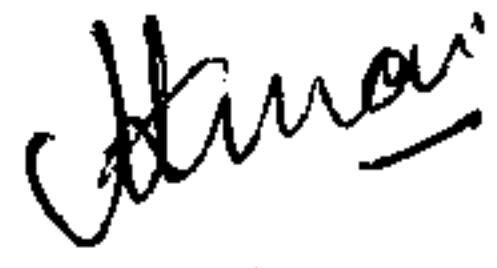
12.2 This order of moratorium shall not apply to such transactions that might be notified by the Central Government in consultation with any financial sector regulator in view of sub-section (3) of Section 14 of the Code.


12.3 This order of moratorium shall be in force from the date of order till the completion of Corporate Insolvency Resolution Process subject to the Proviso under sub-section (4) of Section 14 of the Code.

13 This Petition is disposed of accordingly.

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14. Communicate a copy of this order to Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional.


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)


Harihar Prakash Chaturvedi
Adjudicating Authority
Member (Judicial)

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