

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

**C.P.(I.B) No.20/NCLT/AHM/2020**

**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 25.01.2021**

Name of the Company: Continental Piling & Excavation Pvt Ltd  
V/s  
Anwasha Engineering & Projects 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**

(Through Video Conferencing)

Advocate, Mr. Jaimin Dave is present on behalf of the petitioner and Advocate Mr. Monaal J. Davawala is present on behalf of the respondent.

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



**CHOCKALINGAM THIRUNAVUKKARASU  
MEMBER (TECHNICAL)**



**MANORAMA KUMARI  
MEMBER (JUDICIAL)**

Dated this the 25<sup>th</sup> day of January 2021

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

**C.P. No. (IB) 20/9/NCLT/AHM/2020**

**In the matter of:**

**M/s. Continental Piling and Excavation (Private Limited)**

A-73, New Friends Colony

NEW DELHI 110 025

:

**Petitioner**

Operational Creditor

**Versus**

**M/s. Anwasha Engineering and Projects Limited**

(formerly known as IOT Anwasha Engineering &  
Construction Limited)

Anwasha House,

Senate Square A tower

Vadu Road

Gotri

Vadodara 390 021

**GUJARAT STATE**

:

**Respondent**

[Corporate Debtor]

**Order delivered on 25<sup>th</sup> January, 2021**

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

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

**Appearance:**

Petitioner : Mr. Jaimin Dave, Advocate

Respondent : Mr. Monal Davawala, Advocate

**ORDER**


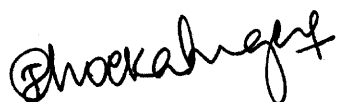
**Per se : Ms. Manorama Kumari, Member (Judicial)**

1. Mr. Dhruv Gupta, Director of **M/s. Continental Piling and Excavation (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.

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2. The applicant/operational creditor, a private limited company, having its registered office at New Delhi, engaged in piling work services, has submitted that the respondent is indebted a total sum of **Rs. 29,58,776/- (Rupees twenty-nine lacs fifty-eight thousand seven hundred seventy-six only)** towards piling work carried at the site of ONGC, Hazira against work order dated 27.01.2016 issued by the corporate debtor. Accordingly, the operational creditor had duly carried out the work and had raised nine R.A. bills between January 2016 and September 2016 against the aforesaid work order. That, at no point of time, the corporate debtor had raised any dispute or protest with respect to the services rendered by the operational creditor and the said fact is evident from the job completion certificate dated 22.09.2017 issued by the corporate debtor itself.
  
3. It is further stated by the operational creditor that, against the aforesaid R.A. bills, the corporate debtor used to make ad hoc payments. At the instance of the corporate debtor, a Minutes of Meeting (MoM) dated 19.06.2018 came to be executed between the parties wherein it was mutually agreed that a total amount of Rs. 25,26,311/- was to be paid by the corporate debtor to the operational creditor in full and final settlement of the dues pertaining to the work order dated 27.01.2016.
  
4. In accordance with the aforementioned MoM dated 19.06.2018, corporate debtor had issued two post-dated cheques dated 22.06.2018 and 31.07.2018 respectively amounting to Rs. 10,00,000/- and 15,26,311/-. Out of the above two cheques, the one amounting to Rs. 15,26,311/- came to be dishonoured. Be that as it may, in the meantime, corporate debtor issued another work order dated 01.08.2018 for carrying out piling works at



Vishakhapatnam, Andhra Pradesh and the operational creditor had carried out the work in accordance with the requirement of the corporate debtor and raised invoices for an aggregate amount of Rs. 19,21,465/-. That, the operational creditor used to maintain a running account for the services rendered to the corporate debtor from time to time. According to the petitioner, after dishonour of cheque dated 31.07.2018, corporate debtor had released payments aggregating to Rs. 4,89,000/-, however, a total amount of Rs. 29,58,776/-, still remains outstanding and payable.

5. In support of its claim, the applicant has annexed to the application copy of the documents like; copy of work orders, copy of RA bills, copy of job completion certificate, copy of MoM, copy of ledger account, copy of demand notice etc.
6. The applicant has stated that despite repeated reminders the respondent has not paid the outstanding operational debt, therefore, the applicant was compelled to issue demand notice under Section 8 of the I & B Code in form 3 on 13.08.2019 calling upon the respondent to clear the operational debt.
7. The respondent/corporate debtor is a public limited company registered under the provisions Companies Act, 1956, on 20.05.1998, having identification No. U29199GJ1998PLC034128 and having registered office at Vadodara, Gujarat State. Authorised share capital of the respondent company is Rs. 7,50,00,000/- and paid up share capital is Rs. 4,87,45,550/-.
8. Despite giving number of opportunities the respondent/corporate debtor has not filed any reply.

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**Findings:**

9. Heard learned counsels appearing for both the sides and perused the documents annexed to the application.
10. Advocate, Mr. Monaal Davawala appearing on behalf of the respondent submitted that he has filed an affidavit admitting the debt.
11. The Adjudicating Authority is only required to consider whether there is any default and the debt is due and payable. In the instant case, the applicant has placed on record enough documents evidencing the default and hence, the present application deserves to be admitted. In fact, the advocate appearing on behalf of the respondent confirmed having filed an affidavit admitting the debt, the corporate debtor has admitted the liability.
12. 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.
13. 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.
14. 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'.

15. 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.

16. 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. No dispute has 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.

17. 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

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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.

18. 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.

19. 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: -

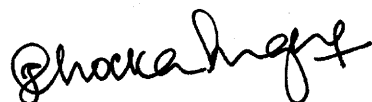
- (i) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;
- (ii) transferring, encumbering, alienating or disposing of by the corporate 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.

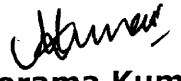
20. It is further directed that the supply of goods and essential services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during moratorium period. The provisions of sub-section (1) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.
21. 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.
22. The applicant/operational creditor has not proposed name of the Interim Resolution Professional. This Adjudicating Authority hereby appoint Mr. Sachin Bhattbhatt, A-103, Yogiraj Villa 2, Kunal Char Rasta, Nr. Signat Plaza, Behind Iscon Heights, Gotri Laxmipura Road, Gotri, Vadodara 390 023 having registration No. IBBI/IPA-003/IP-N000138/2017-18/11514 to act as an interim resolution professional under Section 13(1)(c) of the Code.
23. This Petition is accordingly admitted.





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

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