

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

C.P. (I.B) No.364/NCLT/AHM/2019

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 15.06.2020**

Name of the Company: Silvassa Cement Products Pvt Ltd
V/s
Noor India Buildcon Pvt Ltd

Section : Section 9 of the Insolvency and Bankruptcy Code

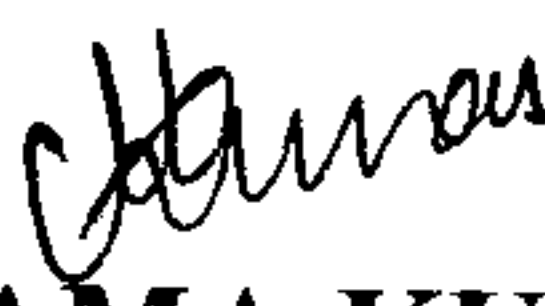
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

ORDER
(Through Video Conferencing)

Mr. Dhruv K. Dave, Learned Lawyer, appeared on behalf of the Petitioner.

Mr. Devashish K. Trivedi, Learned Lawyer, appeared on behalf of the Respondent.

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


MANORAMA KUMARI
MEMBER (JUDICIAL)

Dated this the 15th day of June, 2020

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

C.P. No. (IB) 364/9/NCLT/AHM/2019

In the matter of:

M/s. Silvassa Cement Products Private Limited.

206, Arohi Complex
B/S Rasranjan Sweets
Nr. Vijay Restaurant Cross Roads
Naranpura
AHMEDABAD 380 013

Petitioner
Operational Creditor

Versus

M/s. Noor India Buildcon Private Limited

12-20, First Floor
Sahara Market
Vapi Silvassa Main Road
Nr. Reliance Petrol Pump
VAPI 396 191
Gujarat State

Respondent
Corporate Debtor

Order delivered on 15th June, 2020.

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

Appearance:

Advocate Mr. Dhruv Dave for petitioner
Advocate Mr. Devashish Trivedi for respondent

ORDER

(through video conferencing)

1. The instant application is filed by M/s. **Silvassa Cement Products Private Limited** through its Manager Mr. Praveenkumar B Mundra 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 registered under the Companies Act, 1956, having



identification No. U26941GJ1992PTC017768 and having its registered office at Vapi, Gujarat State.

3. The respondent/corporate debtor is a company registered under the Companies Act, incorporated on 04.01.2007 having identification No. U45200GJ2006PTC048615 and having registered office at Vapi, Gujarat State. Authorised share capital of the respondent company is Rs. 50,00,000/- and paid up share capital is Rs. 25,00,000/-.
4. The applicant/operational creditor is a stockist of cement and building material engaged in the business of supply of cement, A.C. Sheet etc. It is submitted by the applicant that it sold various goods against purchase orders (Page 18-23), supplied and delivered as per delivery challans (page 30-35) and raised invoices (page 24-29) on the respondent. That, the petitioner has been maintaining a running ledger account of the respondent and according to his ledger an amount of **Rs. 1,58,29,059.00 (Rupees one crore fifty-eight lacs twenty-nine thousand fifty-nine only)** is due and payable by the respondent towards principal with interest. According to the applicant interest payable @ 24% per annum by the respondent works out to Rs. 3,21,27,736.00. Thus the total amount of debt payable by the respondent as on the date of filing the application comes to **Rs. 4,79,56,795.00 (Rupees four crores seventy-nine lacs fifty-six thousand seven hundred ninety-five only)**. According to the applicant date of default is 15.11.2017 and the last payment was made on 17.03.2018.
5. It is further stated by the petitioner that due to an accidental fire broke out in the factory premises of the petitioner, several documents related to the year 2008 to 2016 were lost and the petitioner had lodged an FIR on 21.05.2017.
6. It is further submitted by the petitioner that having failed to receive the outstanding debt from the respondent, the

Handwritten signature

petitioner issued notice dated 04.10.2018 (page 52-54) through advocate. It is further submitted by the petitioner that in spite of receipt of the said notice, the respondent has neither made payment of the outstanding amounts nor replied to the said notice. Therefore, the petitioner was compelled to issue demand notice under Rule 5 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, through advocate, on 01.11.2018 (page 55-57).

7. In support of its claim, the operational creditor has annexed to the application, copy of demand notice, ledger account, invoices, demand notice, reply to the demand notice etc.
8. The respondent filed affidavit in reply raising following objections.
 - (i) Form 3 dated 01.11.2018 is signed by Advocate and not by petitioner and the respondent has not received said notice;
 - (ii) Details of transactions are not mentioned in form 5;
 - (iii) No affirmation to the effect that no dispute is pending in regard to the due amount;

Findings

9. Heard the counsels appearing for both the sides and perused the documents annexed to the application/reply.
10. Before discussing about eligibility of the application and taking any decision in the matter, the Adjudicating Authority is of the considered view that it is necessary to refer the following decisions: -

Lakshmi Trading Company vs. Dokkoda Satyavani and Ors. – AIR 2006 AP 389, 2006 (4) ALD296 2006 (5) ALT 13

Abhinav

7. Basically, an advocate is not supposed to file affidavits in any proceedings except where certain facts relating to his conducting of the case are required to be stated. Any relief, be it final or interlocutory, must be claimed on the strength of the pleadings made by the parties and not the advocates.

Premier Chemical Industries and Ors. vs. Member Convener and Jt. Director (M and HC and Ors. (Andhra Pradesh HC) air 2006 AP 242

6. A reading of Rule 33 read with form 12 (vakalatnama) shows that a pleader, an advocate, who is given vakalatnama can only appear in the court as contemplated by Rule 4 of Order III and he has no such power or authority to file or sign affidavits before the Court except by way of third party affidavit in proof of affidavit allegations made by a party. For example, in applications for condonation of delay or applications to set aside ex parte orders, generally the parties attribute some cause and delay to advocate's office or advocates themselves. In such an event, an advocate can always give a third party affidavit in support of allegations made by the Counsel for the party/petitioner in the affidavit accompanying the application.

Except to the limited extent, an advocate acting under vakalatnama is not permitted and cannot file application on behalf of the parties.

Baljeet Singh Vs. Pratap Singh and Ors. (Allahabad HC) 2017(7) ADJ507, AIR 2017ALL165,2017(124) ALR 93, 20174AWC 3266ALL, 2017 137 RD391

3. In the instant case the petitioner had not filed the petition in public interest and did not disclose the circumstances which prevented the affected persons from approaching the court. In the discharge of his professional obligations, the petitioner-advocate is not obliged to file the writ petition on behalf of his clients. No circumstance was mentioned in the petition which allegedly incapacitated the affected persons from filing the writ petition.

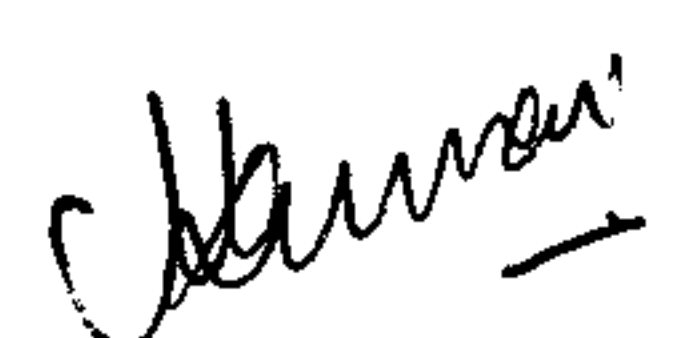
Section 30 of the Advocates Act, only entitles an advocate to practise the profession of law and not to substitute himself for his client. The filing of the writ petition in his own name, being not a part of the professional obligation of the advocate, the High Court was justified in dismissing the writ petition holding that the petitioner had no locus standi.

11. On perusal of the record it is found that Board Resolution was passed on 28.09.2018 authorising Mr. Praveen Kumar B. Mundra (Manager) to file/defend the legal proceedings and Insolvency and Bankruptcy Code on behalf of the

Praveen Kumar

company (Page No. 16 – Exhibit A) apart from other powers such as filing of Vakalatnama, engaging counsel etc. but, in the instant case Form 5 i.e. application is neither signed by authorised person named above nor it is notarized; rather the petition is signed by Mr. Niraj Shah and Mr. Dhruv K. Dave, advocates and date is also not mentioned. Thus, in view of the above, the petition is bad in the eye of law and it is not maintainable in view of the above case laws.

12. Further, the petition does not disclose the due date of payment. On the other hand, on perusal of the mail communication sent by the applicant (annexed with reply by the corporate debtor) it is found that there is outstanding payment of Rs. 1,79,83,190.00 against the supply of cement/steel at Alok Industries Ltd. which was/is due from 2012 onwards. The said mail was of 22nd July, 2015 whereas the invoice annexed with the application are of 13th July, 2017 onwards.
13. Under the facts and circumstances as discussed in sequel herein above, the application, so filed by the applicant is not maintainable and is bad in law as well as in facts.
14. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent as this petition has been dismissed on the issue of maintainability and taking into consideration the provisions of IB Code, 2016. The observations made by us on any other aspect would not constitute an expression of opinion on the merit of controversy.


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)