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

C.P. (I.B) No. 52/9/NCLT/AHM/2017

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 02.08.2017**

Name of the Company: Ramesh Kumar Pasvan
V/s.
International Frozen Foods Industries Ltd.


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

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

ORDER

None present for both sides.

Order pronounced in open Court. Vide separate sheet.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 2nd day of August, 2017.

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

CP(IB) No.52/NCLT/AHM/2017

In the matter of :-

Mr. Ramesh Kumar Pasvan,
R/o. H. No.65, Kumharpura,
Shah Jahana Bad,
Bhopal,
Madhya Pradesh – 462 001. ...

Applicant/Operational Creditor

Vs.

International Frozen Food Industries Limited,
8-A, Third Floor,
Metro Plaza E-5,
Arera Colony, Bhopal,
Madhya Pradesh – 462 001. ...

Respondent/Corporate Debtor

Order delivered on 2nd August, 2017

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

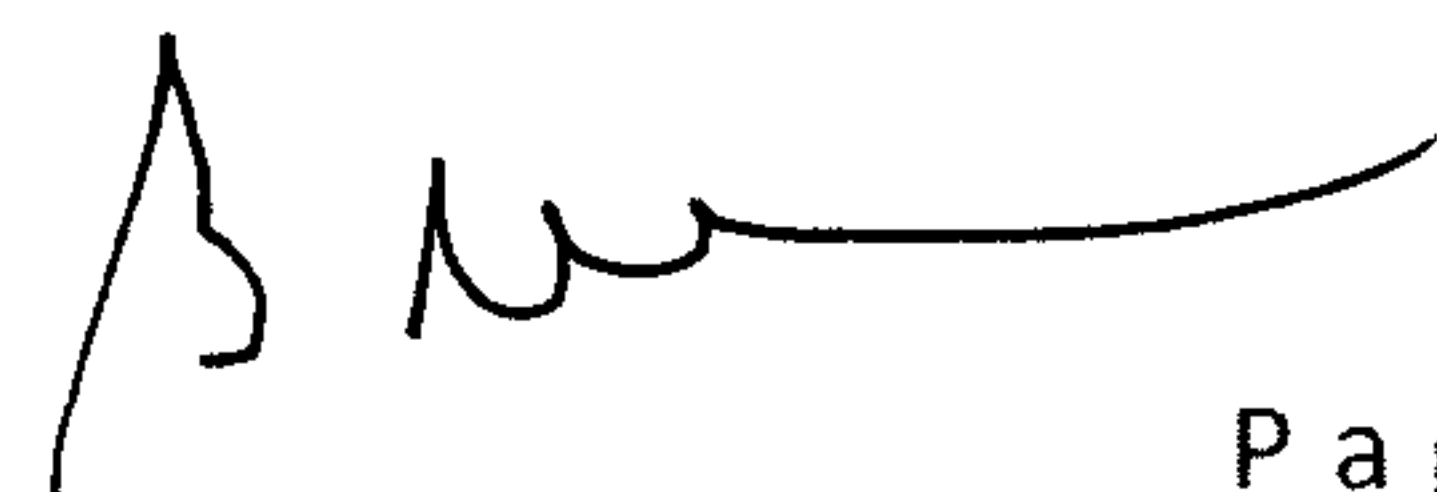
Appearance:

Mr. M. N. Marfatia, Advocate for the Applicant/Corporate Creditor.

ORDER

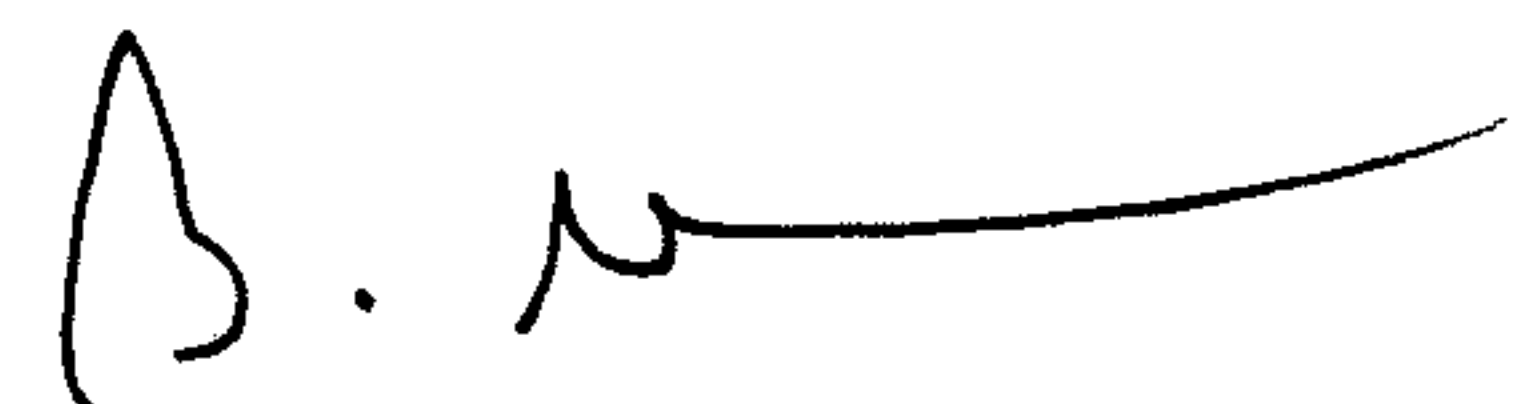
1. Mr. Ramesh Kumar Pasvan has filed this application seeking Corporate Insolvency Resolution process under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules").

2. The facts, in brief, that are germane for the disposal of this application are as follows :-



3. Mr. Ramesh Kumar Pasvan worked with International Frozen Food Industries Limited (hereinafter referred to as "the Corporate Debtor") from March, 2010 to May, 2017. By the date of his resignation from the office of the Corporate Debtor, his designation was "Accountant". According to the applicant, the Corporate Debtor was liable to pay Rs.21,000/- per month, which includes Basic Pay of Rs.20,000/- and Compensation for Conveyance of Rs.1000/-. It is the claim of the applicant that the Corporate Debtor did not pay his salary for a period of six months, i.e. from November, 2016 to April, 2017. It is stated by the applicant that in spite of several e-mails to the Senior Management of the Corporate Debtor, the amount due to him has not been paid. In view of the non-payment of salary, the applicant resigned from the post of Accountant in the office of the Corporate Debtor on 5th May, 2017 and his resignation has been accepted.

4. The applicant issued a demand notice under Section 8(1) of the Code as per Form 3, under Rule 5 of the Rules on 1st June, 2017 demanding payment of Rs.1,26,000/- as unpaid operational debt. The said demand notice was served on the Corporate Debtor by hand and obtained endorsement of the Corporate Debtor. The Corporate Debtor failed to give reply to the demand notice. The Corporate Debtor did not raise any dispute in respect of the operational debt. The Corporate Debtor



did not make any payment within 10 days from the date of receipt of demand notice.

5. This application is filed before the Registry on 29th June, 2017. This matter was listed before this Authority, for the first time, on 13.7.2017. The applicant dispatched copy of the application to the Corporate Debtor on 11.7.2017. The applicant filed a letter along with copy of the speed post receipt.

6. This Adjudicating Authority, on 13.7.2017, directed the applicant to issue notice of date of hearing to the respondent and fixed the date of hearing as 20th July, 2017. The applicant dispatched the notice of hearing to the Corporate Debtor by Speed Post on 15.7.2017 and it was returned unserved, as can be seen from the affidavit of service filed by the applicant.

7. During the course of hearing, it was noticed that statements of bank accounts of the applicant were not filed. Therefore, this Adjudicating Authority directed the applicant to file the bank account statement with a view to rectify the defect. In spite of granting 7 days' time, the applicant did not choose to file the bank account statement. Learned counsel appearing for the applicant stated that the applicant is having only one bank account in Syndicate Bank, Bhopal and salary has not been deposited in that bank account.

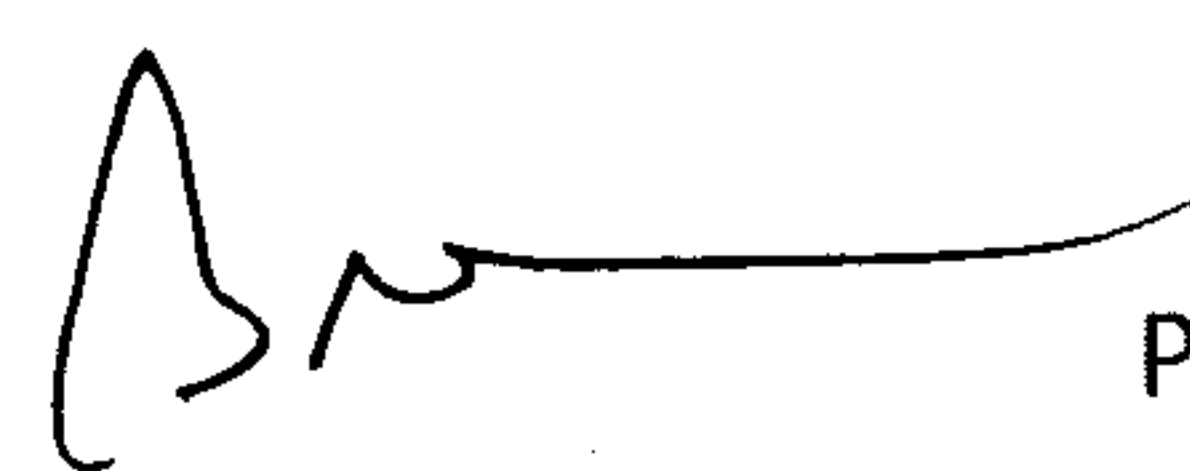


8. The point for consideration is whether the application deserves to be admitted. In an application filed under Section 9 of the Code, this Adjudicating Authority has to see whether any dispute has been raised by the Corporate Debtor in respect of the existence of the amount of debt, the quality of goods or services or the breach of representation or warranty. In the case on hand, according to the applicant, he was an employee of the Corporate Debtor. The applicant filed the letter of appointment, which is at page 14 of the application. It shows that the basic pay of the applicant is Rs.20,000/- and Conveyance is Rs.1000/- per month. The applicant filed a letter dated 30th January, 2017, wherein the applicant requested the Corporate Debtor to pay Rs.63,000/- due to him towards salary for three months. The applicant also filed another letter dated 30th April, 2017, wherein the applicant requested the Corporate Debtor to make payment of Rs.1,26,000/- towards six months' salary. The applicant filed a letter dated 5.5.2017 addressed to the Corporate Debtor, whereby he tendered his resignation and requested the company to pay Rs.1,26,000/- due to him towards six months' salary. All the above said letters contained the seal and initial appeared to be that of the Corporate Debtor. The applicant filed bank certificate issued by Syndicate Bank, Bhopal, stating that the applicant is maintaining savings bank account with Syndicate Bank and no payment has been made by or on behalf of International Frozen Food Industries Limited during the period

from 1.11.2016 to till date. The applicant issued demand notice dated 1.6.2017 to the Corporate Debtor in Form-3 under clause (a) of sub-rule (1) of the Rules. The applicant also filed affidavit stating that the Corporate Debtor did not give any notice of dispute and did not make payment within 10 days of the receipt of the demand notice.

9. The crucial question here is whether the demand notice was duly served on the Corporate Debtor. On the copy of the demand notice filed by the applicant, there appears to be an endorsement of the Corporate Debtor to the effect "Received" with the purported seal of the Corporate Debtor. Therefore, in absence of any contest from the Corporate Debtor, it can only be said that the demand notice issued under Rule 5 was duly served on the Corporate Debtor.

10. The application is filed in Form-5. Column 7 of Part V of Form 5 requires the applicant to file statement of bank account where deposits are made or credits are received normally by the Operational Creditor in respect of debt of the Corporate Debtor. The said column also requires the applicant to attach a copy of the statement of bank account. Annexure-III of column 7 also enjoins upon the applicant to file copy of the relevant account from the bank maintaining accounts of the Operational Creditor confirming that there is no payment of the unpaid operational



debt by the Operational Debtor. Section 9(3)(c) of the Code requires the applicant to furnish along with the application a copy of certificate from the financial institutions maintaining accounts of the Operational Creditor confirming that there is no payment of unpaid operational debt by the Corporate Debtor. No doubt, the applicant attached such copy of certificate from the Syndicate Bank, Bhopal. But this Adjudicating Authority directed the applicant to comply with column 7 of Part V of Form 5 by filing statement of bank account. The applicant was given seven days' time to file the bank statement. The applicant, instead of filing the statement of bank account, stated that his salary has not been deposited in that bank account. When the applicant is able to produce a certificate from the Syndicate Bank to the effect that operational debt has not been credited to the account of the applicant, it is not known what prevented the applicant from filing the statement of accounts for the period for which he claimed amount as operational debt. The above said non-compliance by the applicant disentitles him for the relief of triggering insolvency resolution process.

11. In view of the above discussion, this application is rejected under section 9(5)(ii)(a) of Insolvency and Bankruptcy Code. No order as to costs.

Signature.....
[Bikki Raveendra Babu, Member (J)]

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