

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL  
MUMBAI BENCH**

CP No. 1378/IBC/NCLT/MB/MAH/2017

Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016

In the matter of

Mr. S. Gurumoorthi

..... Operational Creditor  
(Petitioner/Applicant)

V.

M/s. Sahara Q Shop unique Products Range  
Limited

..... Corporate Debtor  
(Respondent)

Order delivered on : 15.12.2017

**Coram :**

Hon'ble M.K. Shrawat, Member (J)

Hon'ble Bhaskara Pantula Mohan, Member (J)

**For the Petitioner :**

Ms. Trupti Shetty, Advocate i/b. Dhruve Liladhar & Co. – Advocates for the  
Petitioner/Operational Creditor

**For the Respondent :**

None Present.

*Per: M. K. Shrawat, Member (J)*

**ORDER**

1. Mr. S. Gurumoorthy (hereinafter as **Operational Creditor**) has furnished Form No. 5 under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter as **Rules**) in the capacity of "Operational Creditor" on 8<sup>th</sup> September, 2017 by invoking the provisions of Section 9 of the Insolvency and Bankruptcy Code (hereinafter as **Code**).
2. In the requisite Form, under the Head "Particulars of Corporate Debtor" the description of the debtor is stated as, M/s. Sahara Q Shop unique Products Range Limited

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(hereinafter as **Debtor**) having registered address at, 25-28, 2<sup>nd</sup> Floor, Plot No. 209, Atlanta Building, Jamnalal Bajaj Marg, Nariman Point, Mumbai – 400021.

3. Further under the Head “Particulars of Operational Debt” the total amount in default is stated to be ₹ 46,57,019/-.
4. The Learned Counsel for the Operational Creditor has submitted that, the nature of the Debt is in the nature of unpaid salary for the period from 1<sup>st</sup> September, 2014 to 15<sup>th</sup> June, 2016.
5. It is further submitted that, the default has occurred on 1<sup>st</sup> October, 2014 and thereafter it continued till the last working day of the Debtor.
6. The Learned Counsel also submitted that, on 22<sup>nd</sup> March, 2013 the Debtor has issued an appointment letter confirming the appointment of Operational Creditor as ‘Assistant General Manager – Head Business Excellence’ w.e.f. 15.02.2013. The copy of the same is attached herewith as **Exhibit – D**.
7. It is further submitted that, since joining of the Operational Creditor the Debtor has paid the monthly salary on regular basis upto month of August, 2014 but thereafter there is no payment has been received by the Operational Creditor from the side of Debtor. To this effect salary slips for every month have been attached with this Application/Petition.
8. It is also submitted that, on various occasions the Operational Creditor has sent number of e-mails to the Debtor claiming the outstanding salary amount but the Debtor has not sent any reply to the said e-mails. Copy of the said e-mails are annexed herewith.
9. Hence, consequentially on 31<sup>st</sup> July, 2017 the Operational Creditor has issued a Demand Notice claiming the outstanding amount of unpaid salary from the Debtor.
10. It is further submitted that, there is no reply to that Demand Notice from the side of the Debtor. It is also submitted that, the Operational Creditor, time to time, has informed the dates of hearing to the Debtor and to that effect the **Affidavit of Service** is placed on record.
11. The statement of bank account of the Operational Creditor stating that, in the account of the Operational Creditor no payment has been received by the Debtor from 1 September, 2014 to till date of the certificate i.e. 13<sup>th</sup> July 2017.





12. It is also submitted that, the non-appearance or non-communication of the Corporate Debtor has thus established that it has nothing to say in defence in respect of the impugned outstanding amount.
13. **FINDINGS :-** Considering the above facts, it is established by the Operational Creditor that the nature of Debt is an “Operational Debt” as defined under section 5 (21) of the Definitions under The Code. It has also been established that admittedly there was a “Default” as defined under section 3 (12) of The Code on the part of the Corporate Debtor. On the basis of the evidences on record the Petitioner has established that the advance was given against the goods to be supplied and invoices were raised to claim the amount but there was non-payment of Debt on the part of the Corporate Debtor.
14. We have perused the notice sent under Section 8 (2) of the Insolvency and Bankruptcy Code, 2016 and if the Respondent wanted to place on record evidence of ‘Dispute’ then he could have raised the objection within 10 days as prescribed under section 8 (2) of The Code which had also lapsed now. Hence, admittedly there is no ‘Dispute’ in respect of the outstanding Debt.
15. Further we have also perused our record and it is noticed that from the side of Debtor no representation has been done.
16. As a consequence, after the expiry of the period as prescribed and keeping admitted facts in mind that the Operational Creditor had not received the outstanding Debt from the Debtor and that the formalities as prescribed under The Code have been completed by the Petitioner we are of the conscientious view that this Petition deserves ‘**Admission**’.
17. The Operational Creditor has not proposed the name of Interim Resolution Professional hence, Registry is directed to refer this matter along with the copy of this order to the IBBI, New Delhi to appoint IRP from their impanelled list. After communication from the IBBI the Registry is further directed to post this matter on cause list for confirming the appointment of IRP suggested by the IBBI.
18. Having admitted the Application, the provisions of **Moratorium** as prescribed under **Section 14 of the Code** shall be operative henceforth with effect from the date of appointment of IRP shall be applicable by prohibiting institution of any Suit before a Court of Law, transferring/encumbering any of the assets of the Debtor etc. However, the supply of essential goods or services to the “Corporate Debtor” shall not be terminated during Moratorium period. It shall be effective till completion of the

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Insolvency Resolution Process or until the approval of the Resolution Plan prescribed under Section 31 of the Code.

19. That as prescribed under **Section 13 of the Code** on declaration of Moratorium the next step of **Public Announcement** of the Initiation of Corporate Insolvency Resolution Process shall be carried out by the IRP immediately on appointment, as per the provisions of the Code.
20. The IRP so appointed shall also comply the other provisions of the Code including **Section 15** and **Section 18** of The Code. Further the IRP is hereby directed to inform the progress of the Resolution Plan to this Bench and submit a compliance report within 30 days of the appointment. A liberty is granted to intimate even at an early date, if need be.
21. The Petition is hereby **“Admitted”**. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date appointment of Interim Resolution Professional by further order.

Sd/-

**BHASKARA PANTULA MOHAN**  
**MEMBER (JUDICIAL)**

Sd/-

**M. K. SHRAWAT**  
**MEMBER (JUDICIAL)**

**Dated : 15<sup>th</sup> December, 2017**