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

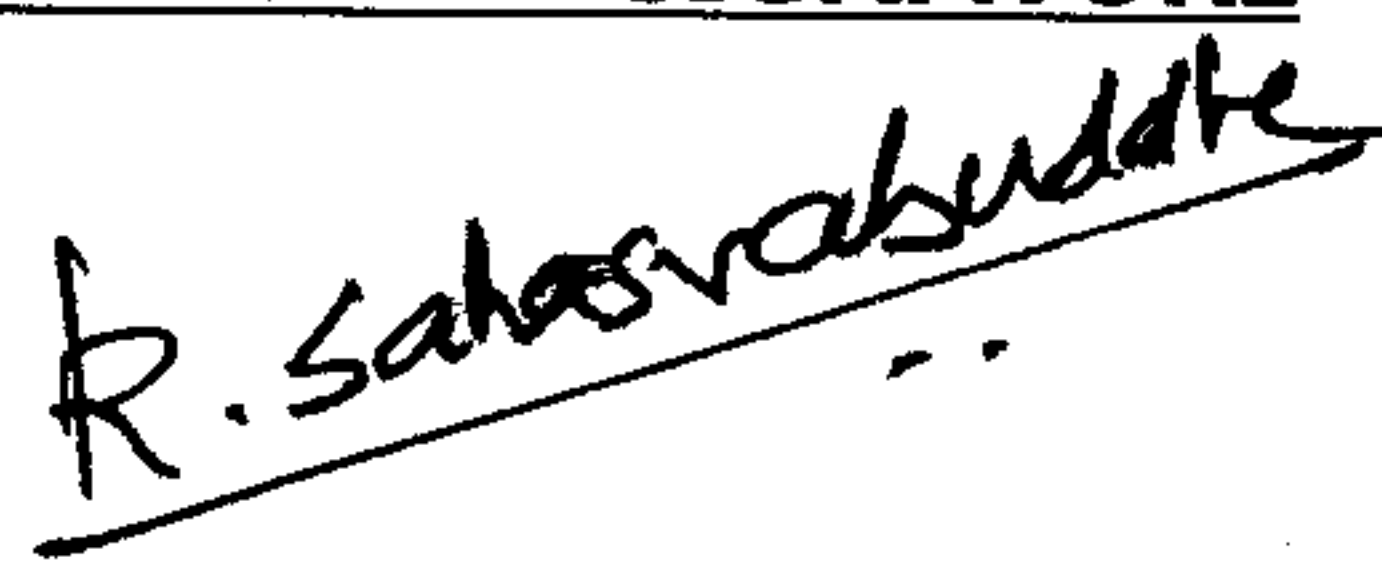
C.P. (I.B) No. 285/9/NCLT/AHM/2018

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 12.11.2018**

Name of the Company: Venus Furnitures
V/s.
Aum Structbuild Pvt. Ltd.

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

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	CS RAHUL SAHASRABUDDHE	PCS	Petitioner	
2.				

ORDER

PCS Mr. Rahul Sahasrabuddhe is present for the Operational Creditor/petitioner


The instant matter is fixed for pronouncement of the judgment.

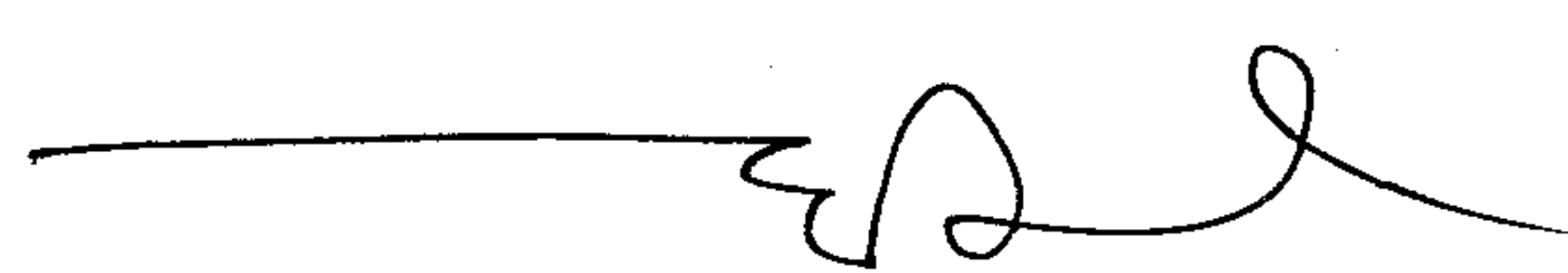
PCS Mr. Rahul Sahasrabuddhe is present and has categorically stated that no settlement arrived between the Corporate Debtor and the Petitioner. Hence, stated that the instant application may proceed for pronouncement of the order.

In view of the statement, so made by the learned PCS, the petition is admitted and the order recorded separately.

Since, the petitioner has not proposed the name of IRP, hence this Court is appointing Mr. Pinakin Surendra Shah, Regn. No. IBBI/ IPA-002/IP-N00106/2017-18/10248 as Interim Resolution Professional in the present CP(IB) No. 285/2018.

The Registry is directed to appoint Mr. Pinakin Surendra Shah as Interim Resolution Professional and IRP is directed to take appropriate steps.


**MANORAMA KUMARI
(MEMBER JUDICIAL)**


**HARIHAR PRAKASH CHATURVEDI
(MEMBER JUDICIAL)**

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

C.P. No. (I.B) 285/9/NCLT/AHM/2018

In the matter of:

M/s. Venus Furnitures
Plot No. 15, Girnar House
Adarsh Society
Nr. Bank of Baroda
Market Yrd Road
Pune 411 037
Maharashtra State

:

Applicant
[Operational Creditor]

Versus

M/s. Aum Structbuild Private Limited
Office No. 6 to 12, 2nd Floor
Subhash Park Shopping Centre
Sangam Char Rasta, Harni Road
Vadodara 390 018
Gujarat State

:

Respondent
[Corporate Debtor]

Order delivered on 12th November, 2018.

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

Appearance:

CS Mr. Rahul Sahasrabuddhe on behalf of SPRS & Co. is present for the operational Creditor/petitioner. PCS Mr. Ashish Shah is present for the respondent.

ORDER

Per: Ms. Manorama Kumari, Member (Judicial)

1. M/s. Venus Furnitures, through its Authorised Signatory, filed this Application with a prayer for initiation of corporate insolvency resolution process against M/s. Aum Structbuild Private Limited, under Section 9 of the Insolvency and

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Bankruptcy Code, 2016 [hereinafter referred to as "the Code"].

2. The applicant is a company registered under the Companies Act, 1956 having its registered office at Pune, Maharashtra State. The applicant company is authorised dealer and franchisee of Godrej & Boyce Mfg. Co. Ltd. engaged in the business of all types of wooden, steel modular furniture and allied items. It is submitted by the applicant that, against the purchase orders issued by the corporate debtor for the supply of Godrej Lab Furniture and Office furniture on 21.12.2016 and 26.12.2016 respectively, corresponding tax invoices were raised by the applicant dated 30.03.2017 and 02.03.2017 respectively, totally amounting to Rs. 2,76,17,772/-, out of which, the corporate debtor has paid Rs. 2,22,32,000/- and the balance amount is still unpaid along with delayed interest payment which works out to Rs. 79,19,876/-. This amount includes interest @ 24% per annum on outstanding/partly paid consideration, calculated from the date on which payment became due. The operational creditor has attached to the application, copy of the confirmation of accounts sent to and accepted by the corporate debtor, e-mail communication evidencing acceptance of offer by the corporate debtor and issuance of purchase order to the applicant. The applicant has also submitted copy of e-mail communication evidencing continuous follow-up done by the applicant and acceptance of debt by the corporate debtor.



3. The applicant issued demand notice of unpaid operational debt to the corporate debtor with copies of invoices in form No. 3 and 4 demanding payment under the Insolvency and Bankruptcy Code on 2nd May, 2018 as specified in the manner provided in Section 8(1) of the IB Code. Said demand notice is annexed at page No. 179 of the petition. Further, petitioner has produced proof of service of demand notice vide annexure "K" to the petition which indicates that the demand notice was duly served upon the corporate debtor on 07.05.2018 as per the track report. The Corporate debtor, even after receipt of the demand notice, have not replied within the stipulated period of 10 days as contemplated in the IB Code nor came forward to pay the outstanding amount. Finding no other alternative the applicant filed the instant application for initiating Corporate Insolvency Resolution Process under the IB code with advance copy along with other documents to the corporate debtor.
4. The instant application was listed before this Authority for the first time on 09.07.2018 wherein PCS appearing for the respondent prayed for time and two weeks' time was granted to file reply with advance copy to the petitioner.
5. Respondent filed affidavit in reply on 26th July, 2018 wherein the following objections have been raised: -
 - (a) there was a pre-existing dispute with the applicant for installation of furniture at National Aids Research Institute, (NARI) Pune and thus the applicant has not



completely fulfilled terms of the contract which was the basis of works contract assigned to the petitioner by the respondent under which payment was to be made. It is the say of the respondent that, as per the contract, applicant was supposed to install the furniture at the ground and first floor premises of NARI which the applicant did not complete to enable the respondent to release final payment and that is the reason why final payment was not released by NARI and consequently by the respondent.

(b) According to the respondent, pursuant to terms of payment, outstanding balance towards the work is Rs. 42,10,772/- and there is no provision for interest for delayed payment in any of the invoices raised by the applicant and have no legal sanctity to seek interest on delayed payment, therefore, Rs. 78,19,876/- (including interest of Rs. 24,34,103/-) claimed by the applicant is not correct and not justified.

(c) According to the respondent, they have made payment of Rs. 10.00 lacs to the applicant before filing the petition and the applicant has not made any mention about that amount and entire claim of the applicant is subject to fulfilment of terms of contract.

6. The matter was again listed on 09.08.2018. Heard arguments of learned counsel for both the sides.

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7. On perusal of the records it is found that in this case the ingredients as provided under Section 9(5) (a) to (c) are satisfied by the petition for admission of this petition under Section 9 of the Code. Petitioner produced certificate issued under Section 9(3)(c) of the Code i.e. Bank Statement confirming that there is no payment of unpaid operational debt by the respondent.

8. Though the respondent has raised the issue of pre-existing dispute, the respondent has failed to file any evidence with regard to the existence of dispute as defined under sub-section (6) of Section 5 of the Code which reads as under:

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"Dispute" includes a suit or Arbitration proceedings relating to: -

- (i) the existence of the amount of debt;
- (ii) the quality of goods or services; or
- (iii) the breach of a representation or warranty;

9. That apart, Hon'ble Supreme Court of India in *Innovative Industries Ltd. v. ICICI Bank* [2017] 140 CLA 39 (SC)/[2017] 143 SCL 625 has held that "the moment is the existence of such a dispute, the operational creditor gets out of the clutches of the Code". To understand the principle laid down in the citation above referred it is necessary to refer para 29 of the judgement which reads as follows: -

"29. The Scheme of Section 7 stands in contrast to the scheme under Section 8 where an

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operational creditor is, on the occurrence of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in section 8(1) of the Code. Under Section 8(2), the Corporate debtor can within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing – i.e., before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code”.

10. On perusal of the record it is found that, no record of dispute is made available to this Adjudicating Authority. The respondent has not succeeded in proving the existence of dispute regarding the services provided by the operational creditor whereas the corporate debtor has committed default by not making payment of outstanding dues along with interest to the operational creditor as reflected in the application in accordance with clause (a) and Clause (b) of sub-rule (1) of Rule 5 of the Insolvency and Bankruptcy Rules, 2016. The Applicant has placed on record the Ledger Account of Applicant in the account books of Corporate Debtor.
11. It is pertinent to mention here that, mere mentioning in the notice that dispute is in existence, in relation of impugned debt is not sufficient. Dispute shall be pre-existing prior to receipt of the demand notice by the respondent. This fact has




not been brought to the notice of this Authority in the instant case from the side of the respondent. No proof has been produced in support of pre-existing dispute with regard to the services provided by the petitioner. On perusal of the records it is found that, though the demand notice was received by the respondent on 07.05.2018, the respondent did not choose to give any reply within the stipulated period. In view of these facts, it is found that the contention of the respondent that there was/were pre-existing dispute regarding services provided by the petitioner to the respondent hold no merits.

12. The amount due to the Applicant from the Respondent is in respect of supply of goods. The claim made by the Applicant is in respect of provision of goods. Therefore, the amount claimed by the Applicant from the Respondent is operational debt within the meaning of Section 5, sub-section (21) of the Code. The operational debt is due to the Applicant. Therefore, Applicant is an Operational Creditor within the meaning of sub-section (5) of Section 20 of the Code.
13. The amount is due from the Respondent to the Applicant. Respondent is a Company registered under the Companies Act. Therefore, Respondent is a Corporate Debtor within the meaning of sub-section (8) of Section 3 of the Code.
14. The Application filed by the Applicant is complete. In spite of service of notice, Respondent did not choose to clear the debt. No notice of dispute has been given by the

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Respondent to the Applicant even after receipt of demand notice from the Applicant.

15. From the above discussion and on the basis of the material available on record, it is held that it is a fit case to initiate insolvency resolution process by admitting the Application under Section 9(5)(1) of the Code.
16. Applicant did not name the Interim Insolvency Resolution Professional in the Application. Applicant made a request to refer the matter to the Insolvency Board under Section 16 of the Code. Therefore, there is no need to file the Written Communication of the Interim Resolution Professional.
17. That as in the present application, the Applicant did not name the Interim Insolvency Resolution Professional in the Application the Adjudicating hereby appoint Mr. Pinakin Surendra Shah having registration No. IBBI/IPA-002/IP-N00106/2017-18/10248 as Interim Resolution Professional from the list provided by IBBI having office at A-201, Siddhivinayak Towers, Behind DCP Office, Next to Kataria House, Makarba, S.G. Highway, Ahmedabad. Registry is directed to intimate the IRP and after appointment it may be informed to IBBI.
18. 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 Resolution Professional. In the instant case, simultaneous with the admission order, this Adjudicating Authority is not going to appoint Interim Resolution Professional because the Applicant did not propose the name of Interim Resolution Professional. But, this Adjudicating Authority is going to appoint Interim Resolution Professional after the same is recommended by the Insolvency and Bankruptcy Board of India under Section 16(4) of the Code. The Registry is directed to address a letter to the Insolvency and Bankruptcy Board of India, New Delhi recommending the name of Interim Insolvency Resolution Professional as named above and to confirm the appointment.

19. (a) In view of the above discussion, the Petition is admitted.
- (b) This Adjudicating Authority hereby makes reference to Insolvency and Bankruptcy Board of India to recommend above referred name of Insolvency Professional to act as an Interim Resolution Professional if there are no disciplinary proceedings are pending against him. Such recommendation to be made to this Authority within 10 (Ten) days from the date of receipt of reference.
- (c) This Adjudicating Authority hereby declares the moratorium in respect of the Respondent/ Corporate





Debtor Company, under Section 13(1)(a) and Section 14 of the I.B. Code; by prohibiting following action and further issuing necessary direction as stated as under:

- (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.
- (d) 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.

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20. That the order of moratorium shall have the effect from 13.11.2018 till the completion of Corporate Insolvency Resolution Process as prescribed under Section 12 of the Code.
21. That this Bench hereby directs to cause public announcement of the Corporate Insolvency Resolution process immediately as specified under Section 15 of the Code.
22. That this Bench hereby appoints Mr. Pinakin Surendra Shah as Interim Resolution Professional to carry out the functions as mentioned under the Insolvency and Bankruptcy Code.
23. That this Bench hereby directs the Registry, NCLT, Ahmedabad to communicate this order to the petitioner i.e. operational creditor and the Corporate Debtor.
24. Accordingly, the petition is admitted.


Ms. Manorama Kumari
ADJUDICATING AUTHORITY
MEMBER JUDICIAL


Harihar Prakash Chaturvedi
ADJUDICATING AUTHORITY
MEMBER JUDICIAL

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