

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2



ITEM No.301
C.P. (IB)/198(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

HIRALAL BHIMJIBHAI KUMAVAT PROPRIETOR OF B N
ENTERPRISES
VS
VASUNDHARA SEAMLESS STAINLESS TUBESPRIVATE
LIMITED

.....Applicant

.....Respondent

Order delivered on: 22/08/2024

Coram:

Mrs. Chitra Hankare, Hon'ble Member(J)
Dr. Velamur G Venkata Chalapathy, Hon'ble Member(T)

ORDER

The case is fixed for pronouncement of order.

The order is pronounced in open Court vide separate sheet.

-sd-

DR. V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

CP(IB) No. 198 of 2023

(Under Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

Hiralal Bhimjibhai Kumavat

Proprietor of B N Enterprises
1/132, Sarvodaynagar,
Bhuyanagdev Cross Roads,
Ahmedabad-380061

...Operational Creditor

V/s

Vasundhara Seamless Stainless Tubes Pvt. Ltd.

Address: 9-B, 9th Floor, B.D. Patel House,
Naranpura Road, Naranpura, Ahmedabad-38009

... Corporate Debtor

Order pronounced on 22.08.2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

**Present:**

For the Applicant : Mr. Ravi Pahwa, Adv.
For the Respondent : MR. Manish Bhatt, Sr. Adv. a.w. Mr.
Dheeraj Garg, Adv.

JUDGEMENT

1. Under consideration, is an application filed by the Operational Creditor viz. Hiralal Bhimjibhai Kumavat Proprietor of B N Enterprises under Section 9 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. Vasundhara Seamless Stainless Tubes Private Limited seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.
2. In Part II of the application it is stated that the Operational Debtor was incorporated on 27.05.2014 with the Nominal share capital of Rs.1,00,000/- (Rupees One Lakh only) and the paid up capital of Rs.1,00,000/- (Rupees One Lakh only). In Part IV of the application the default amount is stated to be 1,00,00,000/- and date of default is mentioned as 28.03.2019.



3. Applicant submitted that the parties entered into a sale agreement dated 31.01.2019 agreeing to sell the machineries and scrap lying in the factory previously known as 'Choksi Tubes Company' situated at Kalol-Rancharda Highway, Moti Bhoyan Village for a sale consideration of Rs.1 crore. The operational creditor paid Rs.1 Crore as advance which is also reflected in the Financial Statements of Corporate Debtor for Year 2018-19 to 2021-22 in the following manner:-

Amount	DD/Cheque No.	Date
20 Lakhs	DD No.695	29.01.2019
40 Lakhs	Cheque no.002104	12.02.2019 encashed on 14.02.2019
40 Lakhs	Cheque no.002105	24.02.2019 encashed on 27.02.2019

4. Applicant further submitted that though the entire amount of sale consideration being Rs.1 Crores was received by the Corporate Debtor towards advance, the Corporate Debtor did not permit the Operational Creditor to lift the machineries and scrap from the factory on false excuses in



spite of several letters dated 01.05.2019, 12.11.2019, 06.06.2022 and 23.03.2023 addressed to the corporate debtor requesting to either give the machineries and scrap or to refund the amount. It is submitted that the last payment of Rs.40 Lakhs was made on 27.02.2019, after which the 30 days' time period was given to lift the machineries and scraps as per the Sale Agreement between the parties. The debt has fallen due w.e.f. 28.3.2019 and the same is continuous. Applicant submitted that the Hon'ble Supreme Court vide order dated 10.1.2022 passed in Suo Moto Writ Petition No.3 of 2020 has held that the period between 15.3.2020 till 28.2.2022 shall be exempted while computing the period of limitation.

5. It is stated that the Operational Creditor sent a demand notice to the Corporate Debtor on 03.05.2023 through Speed Post AD. The same has been served upon the Corporate Debtor but no reply was given by the Corporate Debtor disputing the same.
6. Respondent in his reply submitted that the Applicant is not coming before this Tribunal with true and complete facts in a transparent manner. It is submitted that the Applicant



placed in the petition certain fake and concocted letters dt. 01.05.2019; 12.11.2019; 06.06.2022; and 23.03.2023 which are alleged to have been received by the Corporate Debtor, however, no such letters have ever been received by the Corporate Debtor. A Police Complaint has also been lodged on 20.07.2024 for taking criminal actions against the creation and usage of such fabricated documents and stamps.

7. Respondent further submitted that there is no certificate of default from NeSL in prescribed Form-D and the debt is marked as "Dispute" over the portal of NeSL. It is stated that there is no valid service of demand notice as no acknowledgement card has been placed on record. Also there are two different dates of default in the application and NeSL. It is submitted that there is no obligation as per the underlying Agreement on the part of the Respondent to pay any amount to the Applicant, hence, there cannot be a default in payment of any debt and resultantly no application under IBC shall lie.
8. It is submitted that the present application is barred by limitation. Respondent further submitted that time limit for



performance of reciprocal promise has expired and also there is non-performance of part of promise on the part of the applicant as no GST came to be paid by the applicant, thereby no invoice could be raised by the CD under GST law thereby leading to carry forward of the advance amount in the books of accounts albeit the scrap having already lifted by the OC.

9. We have heard the Ld. Counsel appearing for the Applicant and the Respondent and perused documents filed on record.
10. The applicant/Operational Creditor served a demand notice dated 03.05.2023. Tracking report is filed which shows that notice is served. The Respondent/Corporate Debtor in feeble voice raised pre-existing dispute. However, no document is attached along with the reply showing such dispute was raised before issue of demand notice. There are also various allegations made by the respondent which are not relevant at this stage of proceeding to decide the admissibility of Section 9 proceeding.
11. In our view the application is complete in terms of Section 9 of the Code. As the Applicant/Operational Creditor has proved that there is debt and despite service of notice under



Section 8, the same was not paid by the Respondent/Corporate Debtor. We have also seen that the amount defaulted is Rs. 1.00 Cr. which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

12. Hence we pass the following order:

ORDER

- I. The CP(IB) 198 of 2023 is allowed.
- II. The Respondent/Corporate Debtor Vasundhara Seamless Stainless Tubes Pvt. Ltd. is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- III. The order of moratorium under section 14 of the Code shall come to effect from the date of this order till the completion of the Corporate Insolvency Resolution Process or until this Adjudicating Authority approves the Resolution Plan under sub-section (1) of section 31



or passes an order for liquidation of the corporate debtor under Section 33 of the IBC 2016, as the case may be.

- IV. However, in terms of Section 14(2) to 14(3) of the Code, the supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- V. As the Applicant/Operational Creditor has suggested the name of the IRP in the application, we hereby appoint Sachin Naveen Sinha, Registered Insolvency Professional having registration number as IBBI/IPA-002/IP-N00939/2019-2020/12985 under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- VI. The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims



under section 15, as required by Section 13(1)(b) of the Code.

VII. The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

VIII. The IRP is expected to take full charge of the corporate debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.



- IX. The IRP shall be under a duty to protect and preserve the value of the property of the 'corporate debtor company' and manage the operations of the corporate debtor company as a going concern as a part of obligation imposed by section 20 of the Code.
- X. The IRP or the RP, as the case may be shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- XI. We direct the Operational Creditor to pay IRP a sum of Rs.2,00,000/- (Rupees Two Lakh Only) in advance within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims till the CoC decides about his fees/expenses.
- XII. The Registry is directed to communicate this order to the Operational Creditor, corporate debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days and



upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

XIII. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

-Sd-

DR.V. G. VENKATA CHALAPATHY
MEMBER (TECHNICAL)

-Sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

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