

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT - 1

ITEM No. 301

CP(IB)/74(AHM)2024

Order under Sec 9 of IBC, 2016

In The Matter Of:

Raghuvir Steel Through its Proprietor
Annand Chimanlal Patel

.....Applicant

Vs

.....Respondent

Raghuvanshi Cotton Ginning And Pressing Private
Limited

Order delivered on: 06/01/2025

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

Mr. Sameer Kakar, Hon'ble Member(T)

PRESENT:

For the Applicant :

For the Respondent :

ORDER

(Hybrid Mode)

The case is fixed for the pronouncement of the order. The order is pronounced
in the open court, vide separate sheet.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH, COURT-I, AHMEDABAD**

CP(IB) No. 74 of 2024

[Petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.]

In the matter of:

Raghuvir Steel

Through its Proprietor Annand Chimanlal Patel

Having Registered Address at:

Lohanagar, Opp. Telephone Exchange,
Gondal Road, Rajkot- 360001

.... Operational Creditor/Applicant

Versus

**Raghuvanshi Cotton Ginning and Pressing
Private Limited**

(CIN: U17110GJ2006PTC047456)

Having Registered Address at:

Survey no. 34, Movia Padadhari,
Tal Padadhari, Rajkot- 360110

.... Corporate Debtor/Respondent

Order Pronounced on: 06.01.2025

CORAM:

SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)

SH. SAMEER KAKAR, HON'BLE MEMBER(TECHNICAL)

For the Applicant : Mr. Monaal Davawala, Advocate

For the Respondent :Mr. Parth Shah, Advocate

ORDER
Per Bench

1. The Present Application was filed on 07.02.2024 by **Raghuvir Steel through its Proprietor Annand Chimanlal Patel** (hereinafter referred to as "**the Applicant/Operational Creditor**") against **M/s. Raghuvanshi Cotton Ginning and Pressing Private Limited** (hereinafter referred to as "**the Respondent/Corporate Debtor**") under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC, 2016) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 with a prayer to initiate the Corporate Insolvency Resolution Process (in short "**CIRP**") against the Respondent for having defaulted in payment of its outstanding dues of **Rs.5,15,27,116/-**.
2. On perusal of **Part-I** of the Form-5 reveals that the Applicant - Raghuvir Steel is Proprietorship firm which is represented through its Proprietor Annand Chimanlal Patel. The registered Address of the Applicant is situated at Lahanagar,

Opp. Telephone Exchange, Gondal Road, Rajkot- 360001
and the GST No. of the Applicant is 24ADDPP8710G1ZO.

3. On perusal of **Part-II** of the Form-5 reveals that the Respondent is one M/s. Raghuvanshi Cotton Ginning and Pressing Private Limited having CIN No. U17110GJ2006PTC047456. The registered office of the Respondent/Corporate Debtor is situated at Survey No. 34, Mavia Padadhari, Tal Padadhari, Rajkot- 360110. A copy of Master Data of the Corporate Debtor is annexed in the application as **ANNEXURE - A**.
4. Affidavit dated 29.01.2024 affirming this application is signed by one Mr. Annand Chimanlal Patel, Proprietor of the Applicant.
5. On perusal of **Part-III** of the Form-5 reveals that the Applicant has not proposed the name of any person to be appointed as Interim Resolution Professional.
6. On perusal of **Part-IV** of the Form-5 reveals that total dues as claimed by the Applicant is Rs.5,15,27,116/- consisting of Rs.1.78 crore being principle ~~and~~ ^{Rs} amount plus interest

up-to date as on 01.05.2023 is due and payable on account of supply of Cotton Bales by the Operational Creditor being Raghuvir Steel for the period spanning June 2016 to the Respondent. The date of default as stated to be 02.07.2016.

7. The averments made by the Applicant in its application are summarized hereunder: -

- a) It is submitted that the present application is filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 for the purpose of initiating Corporate Insolvency Resolution Process against the Respondent ("Corporate Debtor") since it has lost its substratum and it is unable to repay outstanding amount of Rs. 5,15,27,116/- (Rupees Five Crore Fifteen Lakhs Twenty-Seven Thousand One Hundred Sixteen Rupees only) which it admittedly owes to the petitioner herein as on 1.5.2023. Copy of the Master Data of the Corporate Debtor as available on the MCA website is annexed hereto and marked as "ANNEXUREA" to this affidavit.
- b) It is stated that the petitioner ("Operational Creditor") is a proprietorship run by its proprietor Mr. Annand Chimanlal Patel and is based out of Rajkot. The Operational Creditor is engaged, inter alia, in the business of supply of cotton bales and in during the course of its dealings with the Corporate Debtor, the Corporate Debtor has defaulted in clearing the bills raised by the Operational Creditor. Copy of the invoices raised by the Operational Creditor along with all supporting documents are annexed hereto and marked as "ANNEXURE - B" to the Petition.

- c) It is stated that the Operational Creditor has repeatedly pointed out to the Corporate Debtor to clear the pending dues but to no avail. The Operational Creditor states that despite repeated requests, reminders and personal follow up by the petitioner; the Respondent has failed to make the outstanding payments. However, the Corporate Debtor has been providing balance confirmation of its dues to the Operational Creditor from time to time. Copy of the ledger accounts maintained from April 2016 till date by the Operational Creditor as well as the balance confirmation provided by the Corporate Debtor from time to time is annexed at "ANNEXURE - C" to the Petition.
- d) It is stated that under the circumstances, on 6.6.2023, the Operational Creditor was compelled to issue demand notice under Section 8 of Insolvency and Bankruptcy Code read with Rule 5 of the Insolvency and Bankruptcy Rules, 2016 calling upon the Corporate Debtor to pay an aggregate amount of Rs. 5,15,27,116/- (Rupees Five Crore Fifteen Lakhs Twenty-Seven Thousand One Hundred Sixteen Rupees only) from date of receipt of the demand notice till the actual payment and/or realization, within 10 days of the receipt of the notice. The said notice was issued and served upon the Corporate Debtor on 8.6.2023. There is no response to the said notice till date. Copy of the demand notice issued under Form-3 along with the acknowledgment as well as delivery report is annexed hereto and marked as "ANNEXURE D" to this affidavit.
- e) It is submitted that in the facts and circumstances as set out hereinabove, it is clear that the Corporate Debtor is unable to pay off its debts arising in the usual and ordinary course of its business and has become commercially insolvent. In such circumstances, it is just, necessary and imperative that the CIRP be initiated against the Corporate Debtor.

- f) It is further submitted that no notice has been served upon the Operational Creditor by the Corporate Debtor indicating existence of any dispute with respect to the amount outstanding as stated herein.
- g) Thus, it is clear that the Corporate Debtor is not in a position to clear its debts and liabilities. In such circumstances, where the Corporate Debtor has become insolvent and is unable to pay its outstanding debt, it would be in the fitness of things to initiate the insolvency proceedings against the Corporate Debtor forthwith failing which the Operational Creditor will be left high and dry. Under the circumstances, it is utmost necessary to initiate the corporate insolvency resolution process against the Corporate Debtor.
- h) It is stated that the registered office of the Corporate Debtor is situated at Rajkot, Gujarat. This Tribunal thus has jurisdiction to entertain, try and dispose of the present petition.
- i) It is submitted that the claim of Operational Creditor arises in respect of the supply of Cotton Bales to the Corporate Debtor from time to time. Therefore, it is an operational debt within the meaning of Section 5 (21) of the Insolvency and Bankruptcy Code, 2016. The petitioner is an Operational Creditor within the meaning of Section 5 (20) of the Insolvency and Bankruptcy Code, 2016. The Respondent is a Corporate Debtor within the meaning of Section 2 (8) of the Insolvency and Bankruptcy Code, 2016.

8. The present matter was first listed for hearing on 16.02.2024, during which this Tribunal heard the submissions advanced by the counsel for the Applicant and

issued notice to the Respondent, directing the Respondent to file a reply within seven days from the date of receipt of the said notice. This Tribunal further directed the Applicant to file a rejoinder within seven days thereafter from the date of filing of the reply by the Respondent.

9. Pursuant to the application the respondent filed a reply on 12.03.2024 vide Diary no. D2211 in which the contention of the Respondent is stated as under: -

- a) At the very outset and without prejudice to anything stated herein, it is stated that the present Petition ought to be dismissed solely on the ground that even though the Petitioner has produced invoices and other apparently necessary documents against the Corporate Debtor, the Petitioner has failed to establish an operational debt and default in respect of the entire amount as alleged to be due and payable. It is submitted that the since the amount as indicated by the Petitioner is not completely accurate and factual, the petitioner deserves to be dismissed on this ground itself.
- b) It is submitted that the Corporate Debtor / the Respondent company is an established company from last 18 years dealing in textiles. It is majorly dealing in the pinning, weaving and finishing of textiles., along with various other activities. The Company is a Private Limited concern and to continue its business, the Corporate Debtor was in touch and doing business with Operational Creditor.



- c) It is submitted that the company is going through financial crunch and is trying its best to make the payments. However, the invoices as stated herein and raised by the Petitioner have remained unpaid.
- d) However, on a demurrer, it is submitted that the invoices as put before this Hon'ble Tribunal and the claim that arises from the same are barred by limitation. The invoices as raised from the year June, 2016. The petition being filed in 2023-2024, the petition is clearly time barred. 6. It is further submitted that at Annexure C, the Respondent has addressed various letters dated 02.04.2017, 04.04.2018, 01.04.2019, 10.04.2021. 08.04.2022 and 07.04.2023 written to the Operational Creditor evidencing the same as acknowledge of Debt by the Corporate Debtor. It is submitted that the said letter was sent by the Corporate Debtor as way of Balance Conformation so that the entries in books of both the parties are matching and the same, but it was never an acknowledge of the debt by the Corporate Debtor. It is clearly stated in the said letter that the said letter is only for routine verification, as can be seen from the dates of the various letters and there is no other intention.

It is therefore submitted that by way of Doctrine of Estoppel, any meaning that is contrary to what is stated in the said letter cannot be constituted. It is reiterated that the said letter can in no sense be constituted to be an acknowledge of debt due on behalf of the Corporate Debtor.

- e) Further, the answering respondent states that there is a difference in the amount as being claimed as default / debt, and the amount which is acknowledged by the answering respondent since the respondent has attempted to make part payments. Hence, there is no ascertainment of the actual amount of default by the Petitioner and the same makes the entire petition unviable.

f) However, in demurrer is it the amount due pertains to different transactions. It is submitted that as the said are different transactions, a conjoint petition which pertains to unrelated transactions and therefore different subject matter cannot be held to be maintainable in the eyes of law.

10. Vide order dated 01.05.2024, it is stated by the Applicant that there is no need to file rejoinder to the reply of the CD. Further it is recorder in the said order that on perusing the application the total principal amount outstanding is 1.78 crores. However, Respondent confirmed that the balance as on 31.03.2023 at page 87 of the Petition which is Rs. 5,15,27,116/- including interest. Since, both Parties were of the view that the CD was to pay interest this Tribunal directed both parties to share the details of TDS on the interest payment credited and debited by the respective parties. The said order dated 01.05.2024 is reproduced as under:

"Learned counsel for the applicant submits that is there is no need to file rejoinder in reply to the respondent. However, written submission has been filed by the applicant on 01.05.2024 vide inward diary no. 3736 and by the respondent vide inward diary no. D3736 both are taken on record.

A perusal of the application reveals at page no. 82 list of invoices is appended. The first invoice of 16.06.2016 and the last invoice is of 17.06.2016. The total principal amount outstanding is shown as 1.78 crores.

It is the case of the petitioner that they have obtained confirmation from the Corporate Debtor on yearly basis since, 2017 onwards till 2023. The Respondent has also confirmed the account for which the confirmations are attached at page no. 25 to 87. The respondent also confirms that the balance is on 31.03.2023 at page no. 87 which is Rs.5,15,27,116/- including 15% interest.

As such both the parties are of the view that the Corporate Debtor was to pay interest. The Applicant stated that interest was charged in the account and the account of the corporate debtor maintained with the Operational Creditor on the yearly basis. On the other hand respondent counsel confirms that interest was charged in their books of accounts on yearly basis.

We direct both the parties to share the details of TDS on the interest payment credited and debited by the respective parties.

We also direct the applicant to place on record the various income tax returns filed by the Operational Creditor for the period ended 31.03.17 till 31.03.2023 claiming the income of interest which according to the applicant has accrued to them. Both parties request two weeks' time to comply with the directions."

- 11.** It is stated that the in pursuant to the order dated 01.05.2024 both parties filed their compliance affidavit on 01.10.2024 vide diary no. D6367 by the Petitioner and on 21.06.2024 vide inward diary no. D4879 by the Respondent.

- 12.** It is recorded in the order dated 12.08.2024 that the Petitioner sought time to file an additional affidavit clarifying the position where the corresponding credit was taken in the books of account of the Operational Creditor. The order is reproduced as under:

"Learned counsel for the Applicant states that as per the information made available by the client the amount of interest was debited to the account of the Corporate Debtor on a yearly basis.

Learned counsel for the Applicant was asked the second impact/credit with respect to the interest debited to the account of the Corporate Debtor.

At this stage, learned counsel for the Applicant seeks and is granted two weeks time to file additional affidavit clarifying the position where the corresponding credit was taken in the books of account of the Operational Creditor."

- 13.** It is stated that vide order dated 16.12.2024 this bench recorded as under:

"It is seen that the previous orders, despite 04 adjournments, have not been complied with by the Applicant and the adjournment was sought on one pretext or other.

The earlier additional affidavit in compliance filed on 01.10.2024 vide Diary No. D- 6367 states that no TDS was deducted while booking the interest payment for the years in which interest has been added to the outstanding of the Corporate Debtor and accordingly shown in the books of accounts."

- 14.** It is pertinent to note that both parties were directed to file a summary of their respective submissions pursuant to the order dated 13.03.2024. The applicant and the respondent both the parties filed their written submissions on 01.05.2024.
- 15.** Subsequent to the submission of the written synopsis, the matter was taken up for final hearing on 16.12.2024, during which this Tribunal heard the arguments advanced by the

learned Counsel for the applicant as well as the learned Counsel for the respondent and perused the material on record.

16. Observation and Findings of this Tribunal:

- A. On perusal of the records, it is found that the Operational Creditor had supplied supply of Cotton Bales to the Corporate Debtor. The Operational Creditor had raised various invoices from 16.06.2016 to 17.06.2016. The goods sold or supplied by the Operational Creditor to the Corporate Debtor were duly received. The copies of the Invoices with supporting documents are attached with the Petition.
- B. However, the Corporate Debtor failed to clear the invoices as per terms stated therein and defaulted its repayment which is considered as a date of default against each invoice. Copy of Ledger Account of Corporate Debtor as maintained by Operational Creditor for the period from 01.04.2016 till 31.03.2023 as well as the balance

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confirmation provided by the Corporate Debtor from time to time are annexed with the Petition.

- C. It is observed that the Applicant, an Operational Creditor, issued a demand notice to Raghuvanshi Cotton Ginning and Pressing Private Limited on 06.06.2023 which was served on upon the Corporate Debtor on 08.06.2023, requiring payment of the outstanding dues, which was never responded to by the Respondent/Corporate Debtor.
- D. It is further noted that the principal outstanding amount claimed in respect of the goods allegedly supplied to the Corporate Debtor is Rs. 1.78 crore and total outstanding amounts of Rs. 5.15 crore.
- E. Furthermore, it is pertinent to note that the Respondent has not responded to the Demand notice dated 06.06.2023 and also not notice indicating existence of any dispute with respect to the amount outstanding has been served to the Petitioner by the respondent. Hence, there is no pre-existing dispute in the matter. The status

of the Authentication can be seen from the Form D of NeSL as '**Deemed to be Authenticated**'.

- F. It is seen from the pleadings that the date of default is mentioned as 02.07.2016 and the CD has provided acknowledgments at the end of financial year from 02.04.2017 up until 07.04.2023.
- G. It is seen that the query raised by this bench regarding interest which as per the Applicant was debited to the account of the CD, more particularly on the corresponding credit was taken in the books of accounts of the Operational Creditor, were never answered by the Applicant. However, it is quite clear from the pleadings that there is debt and default and more particularly the reply of CD, through which the CD has acknowledged receipt of goods, issuing confirmation of account, agreeing to the interest, etc. The principle amount of debt is Rs. 1.78 crore. Hence we are inclined to initiate the Corporate Insolvency Resolution Process (CIRP) proceedings against the CD.

H. 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 more than 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.

17. Accordingly, in light of the above, it is, hereby ordered as under: -

- (i) The Respondent/Corporate Debtor **M/s Raghuvanshi Cotton ginning and Pressing Private Limited** is admitted in Corporate Insolvency Resolution Process under section 9(5) of the Code.
- (ii) As a consequence, thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 2016 is

declared for prohibiting all of the following in terms of Section 14(1) of the Code:

- (a) 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;
- (b) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
- (c) 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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2022;
- (d) The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.
- (e) The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor.

- (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. 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.
- (v) As the Applicant/Operational Creditor has not named any IRP in the matter, we hereby appoint **M/s Truvisory Insolvency Professionals Private Limited**, Registered Insolvency Professional Entity having registration number as **IBBI/IPE-0103/IPA-2/2022-2023/50020**, email-ID:contactanshulgupta@gmail.com under section 13 (1)(c) of the Code to act as Interim Resolution Professional (IRP). The IRP 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.4,00,000/- (Rupees Four 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.

18. Accordingly, the present Petition **CP(IB)/74/AHM/2024** is **admitted**. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

Sd/-

SAMEER KAKAR
MEMBER (TECHNICAL)

Sd/-

SHAMMI KHAN
MEMBER (JUDICIAL)

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