

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

ITEM No. 303- C.P.(IB)/53(AHM)2023
With
ITEM No. 304- IA/1344(AHM) 2023 in
C.P. (IB)/53(AHM) 2023

Proceedings under Section Rule 49 of NCLT Rules, 2016

IN THE MATTER OF:

Sebacic India Ltd
V/s
Basil Enterprise

.....Applicant

.....Respondent

Order delivered on: 15/05/2024

Coram:

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

PRESENT:

For the Applicant :
For the Respondent :

ORDER

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

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SAMEER KAKAR
MEMBER (TECHNICAL)

-sd-

SHAMMI KHAN
MEMBER (JUDICIAL)

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

**CP (IB)/53(AHM) 2023
With
IA/1344(AHM) 2023**

(An application 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:

BASIL ENTERPRISE

C-215, Siddharth Annexe-3
Near Plazzo Hotel, NH-8
Vemali, Vadodara-390024

.....Applicant/Operational Creditor

VERSUS

SEBACIC INDIA LIMITED

(CIN No: U24100GJ2007PLC051697)

Having its registered office at
Plot no. 461,462, ECP Chanal,
Village Umraya, Taluka – Padra,
Vadodara, Gujarat - 391440

..... Respondent/Corporate Debtor

Order Pronounced On: 15.05.2024

CORAM:

**SH. SHAMMI KHAN, HON'BLE MEMBER (JUDICIAL)
SH. SAMEER KAKAR, HON'BLE MEMBER (TECHNICAL)**

APPEARANCE:

For the Applicant/OC : Mr. Prashant Patel, Advocate

For the Respondent/CD : Mr. K. Parth, Advocate

ORDER

1. The Present Application is filed on 20.01.2023 by the Applicant- Basil Enterprise (hereinafter referred to as **“Operational Creditor”**) against the Respondent- Sebacic India Limited (hereinafter referred to as **“Corporate Debtor”**) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as **“IBC, 2016”**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as **“IB (APPLICANT) Rules, 2016”**) for initiation of Corporate Insolvency Resolution Process (**CIRP**), to appoint Interim Resolution Professional (hereinafter referred to as **“IRP”**) and declare the moratorium for having defaulted payment of the operational debt of **Rs.2,19,31,400/-**.
2. On perusal of Part-I of the Form-5 it reveals that this application is filed by one Mr. Ashish Kantibhai Patel, stated to be one of the partners of the applicant’s partnership firm

who has been authorised by an Authority letter/Resolution dated 15.12.2022.

3. On perusal of Part-II of the Form-5 it reveals that the Corporate Debtor is one M/s Sebacic India Limited is registered under the Companies Act, 1956 having CIN No. U24100GJ2007PLC051697. The Corporate Debtor was incorporated on 10.09.2007 and having registered office at Plot No. 461, 462, ECP, Chanal, Village Umraya, Ta. Padra, Vadodara Gujarat- 391440.
4. On perusal of Part-III it reveals that the Operational Creditor has not named any IP under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).
5. On perusal of Part-IV of the Form-5 it reveals that total operational debt as claimed by the Operational Creditor is Rs.2,19,31,400/- consisting principle amount of Rs. 1,60,54,117/- + interest Rs. 58,77,283/- from the due date of invoices. The date of default is stated to be w.e.f. 11.04.2021 to 17.07.2021.

6. It is stated that from 11.01.2021 to 18.04.2021, Operational Creditor through multiple tranches supplied imported coal worth Rs.1,60,54,117/- to the Corporate Debtor and raised various Tax Invoices.
7. As per each Tax Invoices due date for payment was 90th day. Accordingly, for fist Tax Invoice dated 11.01.2021 the amount fell due on 11.04.2021 and for last Tax Invoice dated 18.04.2021 amount fell due on 17.07.2021 respectively.
8. Therefore, from 19.04.2021 to 30.11.2022, the Operational Creditor demanded money from the Corporate Debtor mostly over phone but no payment received till the date of filing of present application.
9. On 21.12.2022, the Operational Creditor has issued Demand Notice in Form-3 which was duly served to the Corporate Debtor on 24.12.2022 as per tracking report of postal Authority which annexed as Annexure-VII at page 284. However, Corporate Debtor neither made the payment nor replied the said notice, being aggrieved by the acts of the Corporate Debtor, the Operational Creditor has filed this

present application for initiation of Corporate Insolvency Resolution Process against the Corporate Debtor.

10. The Operational Creditor has relied upon the following documents which are as under:-

- a.** Copy of the Demand Notice dated 21.12.2021 as in Form 3 of the I.B. (AAA) Rules, 2016 alongwith, Computation Chart, all Tax Invoices, E-way Challan etc. as **Annexure -I.**
- b.** Outstanding Summary of all Invoices with interest w.e.f. 11.04.2021 upto 20.12.2022 as **Annexure -II.**
- c.** Table of Computation of all Invoices for computation of amount, debt fell due and dates of default of each invoices in tabular form as **Annexure -III.**
- d.** Copy of Bank Account statement of Basil Enterprise maintained with Bank of Baroda evidencing that the operational creditor normally deposits the proceeds of the operational debt in the said account as **Annexure -IV.**
- e.** Affidavit of declaration that no notice of dispute qua the unpaid Operational debt U/s 9(3)(b) received from the Corporate Debtor as **Annexure -V.**
- f.** Copy of Postal Receipts dated 22.12.2021 of dispatch of Demand Notice & Postal Authority Delivery Report dated 24.12.2022 as **Annexure -VII.**
- g.** Master data of Corporate Debtor as **Annexure -IX.**
- h.** NeSL Certificate in the shape of FORM-D being record of default.

11. It is seen that, after issuance of notice by this Tribunal the Corporate Debtor appeared. However, no reply was filed after availing two consecutive dates. Therefore, the Adjudicating Authority on 19.09.2023, closed the right to file reply.

12. Thereafter, the Corporate Debtor filed I.A. 1344 of 2023 under Rule 49 of NCLT Rules for setting aside the order dated 19.09.2023 passed by this Hon'ble Tribunal and on 14.12.2023 reply was filed by the Corporate Debtor vide inward diary No. D-5001. The reply is affirmed by one Mr. Nimesh Mehta, who is the Director of the Corporate Debtor, denying various averments made in the Application.
 - i. The Corporate Debtor inter-alia contended that on several occasions, the coal supplied by the Operational Creditor was not to the standard but contained moisture beyond the acceptable limit, not meeting with the parameters and were of much poorer quality, resulting into rejection

 - ii. The Corporate Debtor started business with the Operational Creditor in January, 2021, it stopped procuring coal from the Operational Creditor Firm in

April, 2021 i.e. within just 3 months. At the relevant time, the Operational Creditor agreed for issuance of Credit Notes. However since the Corporate Debtor stopped procuring further coal from the Operational Creditor Firm on account of its poor quality, the Operational Creditor Firm did not issue the Credit Notes.

- iii. Thereafter, Mr. Ravi Jain, the Manager, unfortunately expired. It is only after the death of Mr. Ravi Jain the Operational Creditor appears to have issued the Demand Notice dated 21.12.2022 and has filed the present proceedings in January, 2023. However, the other officers of the Corporate Debtor could not appropriately respond to the said demand notice.
- iv. Moreover, the Petition of the Operational Creditor is barred by section 10A of the IBC. The invoices have been issued from 11.01.2021 to 18.04.2021. It will be appreciated that the invoices from 11.01.2021 to 24.03.2021 fall within the section 10A period. As a result, the outstanding, if any, fails the threshold limit of Rs.1.00 crore.
- v. Thus, there exists a bona-fide dispute with regard to the entitlement of the claimed amount by the Operational Creditor Firm. The Respondent also

submits that the present petition in its present is not maintainable and is required to be rejected in limine.

13. Thereafter, on 02.04.2014 the Operational Creditor also filed Rejoinder to the reply of the Corporate Debtor which was taken on record. The Operational Creditor denied all the averments made by the Corporate Debtor which are as under:-

- i. It is submitted that the statement made by the Corporate Debtor regarding quality of coal supplied is not acceptable and denied as Operational Creditor never received any compliant regarding quality of standard of coal from Corporate Debtor whether orally or in writing for sub-standard of quality of coal supplied. So, there is no questions of any dispute arise.
- ii. It is submitted that as per the Section 10A of the Insolvency and Bankruptcy Code, 2016 No CIRP proceedings can be initiated for the default of debt between the period 25.03.2020 to 24.03.2021 for the amount of debt has become due and payable in that period. However, in this petition the amount of debt has become due and payable between 11.04.2021 to 17.07.2021. So, 10 A is not applicable in this petition.

iii. For ready reference, relevant definition of debt and default as per Section 3 (11) and (12) of the Insolvency and Bankruptcy Code, 2016 are mentioned as follows:-

11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be

iv. The Corporate Debtor has not raised any dispute regarding the quality of goods supplied and the claim before the filing of this petition and also petition is not barred by Section 10A the Insolvency and Bankruptcy Code, 2016 so Operational Creditor is entitled to make present petition & considering the facts, it is in interest of all the stakeholders that CIRP proceedings are initiated against the Corporate Debtor -Sebacic India Limited.

14. The Operational Creditor has also filed Form-D vide inward diary No. D-1652 on 06.03.2024 being record of debt and default issued by National E-Governance Services Limited ("**NeSL**") in which date of default is reordered as 11.04.2021 with status "Deemed to be Authenticated".

15. On 13.05.2024 the matter came up for hearing. However, Ld. Counsel for the Respondent was not willing to make submissions in the matter, and constantly sought adjournment, which was not granted by this Tribunal. Therefore, we heard the arguments of Ld. Counsel for the Applicant, considered the reply of the Corporate Debtor and perused the material available on record. The matter was ordered to be decided on the basis of pleadings available on record.

- a. On perusal of the records, it is found that the Operational Creditor had supplied goods & services in the shape of imported Coal to the Corporate Debtor/Corporate Debtor from 11.01.2021 to 18.04.2021.
- b. The Operational Creditor had raised various tax invoices from 11.01.2021 to 18.04.2021 aggregating to an amount of Rs.1,60,54,117/-. The goods sold and supplied by the Operational Creditor to the Corporate Debtor were duly received.
- c. As per the Tax invoices, the Corporate Debtor was required to clear the invoice by 90 days from the date

of invoice. The terms of the Invoices were never disputed by the Corporate Debtor.

- d. 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.
- e. Demand Notice dated 21.12.2022 was sent by the Operational Creditor on 22.12.2022 which was delivered to the Corporate Debtor on 24.12.2022 and was admittedly never replied by the Corporate Debtor.
- f. Further, there is no communication from the side of the Corporate Debtor which speaks about any defect in the material. Hence, there is no pre-existing dispute in the matter in terms of Section 8(2)(a) of the IB Code. Further, the Operational Creditor has filed affidavit u/s 9 (3)(b) of the IB Code.
- g. The Operational Creditor has also filed Form-D, which is the Record of Default with National E-Governance Services Limited (NeSL). The date of Default is recorded as 11.04.2021 and the status of authentication is “Deemed to be authenticated”.
- h. In its reply the Corporate Debtor has in feeble voice raised technical objections which have been duly

covered under the Rejoinder regarding by the Operational Creditor.

- i. As neither Operational Creditor ever received any compliant regarding quality of standard of coal from Corporate Debtor whether in writing for sub-standard of quality of coal supplied nor any proof of the same has been placed before us in reply except bald averment.
- j. Further, plea of the Section 10A of the Insolvency and Bankruptcy Code, 2016 is also not sustainable as debt has become due and payable between 11.04.2021 to 17.07.2021 as per each Tax Invoices itself. As a result, the outstanding operational debt is within the threshold limit of Rs. 1.00 crore.

16. Hence, in over view, the present application is complete in terms of Section 9 of the Code. The Operational Creditor is entitled to claim its dues, establishing the default in payment of the Operational Debt beyond doubt. The outstanding Operational Debt is of more than rupees one crore which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Moreover, the said default is not covered under the period exempted under Section 10A of IBC, 2016.

17. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Corporate Debtor deserves to be admitted.
18. The Operational Creditor in Part-III of the Form-5 has not proposed the name of any Insolvency Professional under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**).
19. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-
- (i) The Corporate Debtor **SEBACIC INDIA 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- 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 specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.
- (v) Further, we appoint **Mr. Manish Kumar Bhagat**, having Registration No. IBBI/IPA-002/IP-N00214/2017-18/10666, having address: Gujarat, Ahmedabad (**e-mail:mbhagat2003@gmai.com**) 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 etc. 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.

21. Accordingly, **CP(IB)/53/AHM/2023** is allowed and disposed of. Further, **I.A. No.1344 of 2023** is disposed of. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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SAMEER KAKAR
MEMBER (TECHNICAL)

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SHAMMI KHAN
MEMBER (JUDICIAL)