

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
CP(IB)/294(AHM)2022

Order under Section 9 IBC

IN THE MATTER OF:

Anfaa Masbak Pvt Ltd
V/s
BTI Tex Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 25/07/2024

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.

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

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

CP(IB) No. 294 of 2022

(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:

ANFAA MASBAK PRIVATE LIMITED

CIN:-U24295GJ2011PTC067328

20, Shrine Industrial Estate

B/H Gujarat Bottling Co.,

Rakhial Ahmedabad -380023

Gujarat

.....Operational Creditor

V/s

BTI TEX PRIVATE LIMITED

CIN:-U29260GJ2005PTC045808

Shrine Co Op Industrial estate,

B/H Gujarat Bottling,

National Highway, Rakhial,

Ahmedabad – 380023

Gujarat

... Corporate Debtor

Order pronounced on 25.07.2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)
MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

Present:

For the Applicant : Mr. Tirth Nayak, Adv. for Mr. Yuvraj
Thakore, Adv.

For the Respondent : Mr. Mohammed Arkam G. Shaikh, Adv.

JUDGEMENT

1. This is an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "IBC, 2016) by the petitioner operational creditor having its registered office at 20, Shrine Industrial estate B/H Gujarat Bottling Co, Rakhial Ahmedabad against the Corporate Debtor viz Bti Tex Private Limited seeking thereof to initiate Corporate Insolvency Resolution Process (hereinafter referred to as "CIRP") as against the Corporate Debtor due to non-payment of debt due on invoices raised on supply of goods along with interest @ 12%.
2. In part II of the application, it is stated that the Corporate Debtor was incorporated on 01.04.2005 with the Nominal

Share Capital) and the Paid Up Share Capital of Rs.71,99,500/- (Rupees Seventy One Lacs Ninety Nine thousand Five hundred Only). In Part IV of the application, default amount Rs.1,77,91,885/- (One Crore Seventy Seven Lakhs Ninety-One Thousand Eight Hundred Eighty-Five Only) of which the principal amount is mentioned to be Rs 1,10,50,672 and interest amount is Rs 67,41,213 is claimed to be due on account of supply of goods as per invoice raised from various dates till 31 March 2019 when it is stated that the debt fell due The stated invoices were initiated from 10 August 2018 up to 21 Dec 2018. The applicant has excluded the period starting from 15 March 2020 till 28 Feb 2022 in computing the limitation for institution of proceedings. The Form 3 Demand Notice was issued on 25 August 2022 in terms of Rule 5 of the Insolvency and Bankruptcy Regulations 2016. There was no reply from the CD nor the amount repaid till date of filing the application. The Applicant has further stated that the CD respondent had raised huge debts and has liabilities and its financial position is not stable to pay all the outstanding liabilities. Applicant has claimed that the

Hon'ble Supreme Court order extending the period for computing the limitation applies for any suit, appeal with effect from 15 March 2020.

3. The respondent in his preliminary reply dated 30 January 2023 has objected the application on the ground that the invoices were actually verified and accepted by another company named BTI Ferrocast Pvt Ltd and it can be concluded that applicant has not verified the matter which is contrary and non-compliance to Rule 26 of the NCLT Rules 2016. Further by filing a fresh affidavit the respondent has stated that the directors and shareholders of the petitioner/applicant company and the respondent company were related and had originally formed the respondent company as first directors which can be seen from the Memorandum of Association and Article of Association of the respondent company. The director of the applicant had resigned on 15 July 2017 and further the respondent had already paid an amount of Rs 28,80,000 to the petitioner for which evidence of bank statement was enclosed. By this payment, the total dues payable if accepted, comes below the threshold limit as only Rs

81,70,672 is due and payable even if the debt due is considered which is below the threshold of Rs 1 crore under Sec 4 of IBC 2016. Respondent has also alleged that certain machineries costing Rs.3,02,59,359/- (items listed) against bank loans were not given back to the respondent company by the applicant company's Director. It is also stated that they have leased certain machineries to the applicant and there is a huge amount outstanding. It has also further stated that the last date of invoice was 21 Dec 2018 and not 31 March 2019 for the purpose of reckoning the limitation period of 3 years. As a proof of their financial standing, the respondent has submitted its balance sheet as on 31 March 2022 stating that they never defaulted with any of the creditors and this is a personal family dispute.

4. Heard the submissions and records. The reply of respondent that they were related parties and there were counter dues to be paid is beyond the reasons for considering or rejecting this application. Further the invoices are raised on the respondent, while the supply has been acknowledged by BTI Ferrocast Pvt Ltd. No due date or destination for delivery or interest is stipulated in the invoices and there is no

purchase order. There are no terms of delivery to confirm where it was delivered. The applicant has also not supplied a copy of proof of bank statement. Further clearly the application has been filed after 3 years of due mentioned, even though the exact due date has not been exactly corroborated by both the parties, and clearly the debt and the interest charged do not form a part of a debt due and payable after a certain period to be reckoned and hence it is barred under limitation. Neither parties have a clear contract only the invoice stated that they dealt in scrap.

5. In view of the above, we pass the following order:

ORDER

CP(IB) 294 of 2022 is rejected.

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

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**CHITRA HANKARE
MEMBER (JUDICIAL)**