

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

ITEM No.304
C.P.(IB)/281(AHM)2023

Proceedings under Section 9 IBC

IN THE MATTER OF:

Torrecid India Private Limited
V/s
Capson Tiles Private Limited

.....Applicant

.....Respondent

Order delivered on: 05/07/2024

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 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
AHMEDABAD BENCH
COURT-I**

CP (IB) No.281/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:

TORRECID INDIA PVT. LTD.

(CIN: U26915GJ2010FTC104703)

Registered office at

Plot No. 29, 30 and 31, GIDC,

Savli, Alindra, Ta. Savli,

Dist. Vadodara, Gujarat-391775.

...Applicant/Operational Creditor

VERSUS

CAPSON TILES PVT. LTD.

(CIN: U26933GJ2007PTC052201)

Registered office at

Survey No. 86, Ta. Morbi Na Juna Jambudiya,

Gujarat- 363642

...Respondent/Corporate Debtor

Order Pronounced On: 05.07.2024

CORAM:

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

APPEARANCE:

For the Applicant : Dr. Kamlesh Vaidankar, Advocate
For the Respondent : Mr. Arjun Padhiyar, Advocate

O R D E R

1. The Present Application is filed on 3.11.2023 was filed through E-Mode and physical copy was filed on 07.11.2023 vide inward diary No. 1980 by the Applicant M/s. Torrecid India Pvt. Limited (hereinafter referred to as **“Operational Creditor”**) against the Respondent M/s. Capson Tiles Private 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.1,15,06,632/-** including interest. The date of default is stated to be 27.01.2023 to 19.03.2023 for the invoices raised from 19.10.2022 to 09.12.2022.

2. After issuance of the notice in the matter, the Respondent appeared through its Counsel and filed reply on 28.02.2024 vide inward diary No. D-1647 to which the Applicant has also filed rejoinder on 17.05.2024 vide inward diary No. 2127.
3. On 24.06.2024 the matter was taken up for hearing and during the course of hearing the following one of the defense was taken by the Ld. Counsel for the Respondent which is recorded as under:-

“During the course of hearing, one of the defence taken by the Respondent is that the date of the petition is dated 11.10.2023 whereas the affidavit in support is a prior date 27.07.2023. Further affidavit annexed in support of the documents is also dated 18.08.2023 which is also prior to the date of the petition.

In rebuttal the counsel for the applicant submitted that he has initially filed the petition on 05.09.2023. However, due

to the certain objection raised by the Registry he had to file a fresh petition due to which this discrepancy has occurred.

Let the details of the filing inward no. be provided to the Registry and Registry to place on records the previous filed petition to ascertain the correctness of the submissions.”

4. In compliance of order dated 24.06.2024 Registry of the Tribunal has submitted its report by way of Note dated 02.07.2024 which is reproduced herein:-.

- 1. “Company Petition (IB) bearing e-filing No.2401105/01586/2023 was e-filed on 01.09.2023 which was entered in inward register on 5.9.2023 bearing No.1586 when physical copy was filed (copy of acknowledgement attached).*
- 2. The said petition was scrutinized on 14.09.2023 in which objection with regard to Form-5 (date of default) and NeSL certificate was raised. (copy attached)*
- 3. Thereafter, despite giving ample opportunity to remove the defects, the applicant did not do so. As result, by an order dated 18.10.2023, the Company Petition (IB) bearing e-filing No.2401105/01586/2023 was declined to register vide serial No.9 of Annexure-A. (copy attached).*
- 4. Thereafter, the applicant’s Advocate (Dr. Kamlesh Vaidankar) by a letter dated 27.10.2023, approached the registry and requested to return the original/physical*

copy of petition for the purpose of re-filing. As allowed, the original set of petition was returned to the said Advocate on 01.11.2023 which has duly acknowledged by him on the said letter dated 27.10.2023 (copy attached).

5. *Thus, after returning the original set to the applicant's Advocate, nothing remained with the registry.*

6. *Subsequent to the passing of the said order dated 24.6.2024, the registry pursued with the concerned Advocate to file the original set of earlier petition bearing e-filing No.2401105/01586/2023. However, the Advocate has filed a copy of re-filed application since he had used the earlier original petition in re-filing and nothing new vide letter dated 25.6.2024. (copy attached).*

7. *The set of said copy is placed on record for kind perusal.”*

- 5.** Learned Counsel for the Applicant submitted that initially the petition was filed before this Tribunal in the registry on 01.09.2023 through E-mode and through inward registered on 05.09.2023 bearing diary No. 1586 and the same was returned to the Applicant in original due to the certain defects in the said petition. Thereafter, the same petition after replacing certain pages in the Form – 5, again was filed before this

Tribunal which is presently before the Tribunal for consideration. The discrepancy in the date mentioned at page-1 of the petition as 11.10.2023 and affidavit in support dated 27.07.2023 has occurred due to this fact.

- 6.** It is noticed that initially, on 01.09.2023 a petition which was filed before this Tribunal, page -1 of the same there is a column of date is left blank. The affidavit in support filed with that petition was affirmed on 27.07.2023 which is at page 11 and 12. The Xerox copy of the old petition has been placed by the Registry through its report dated 02.07.2024 as Xerox copy has been provided by the learned Counsel for the applicant to the Registry.
- 7.** As per the report of the registry, the said petition was scrutinized on 14.09.2023 in which objection regarding form – 5 and NeSL certificate were raised. However, despite giving ample opportunities to remove the defects the applicant did not do so as a result vide order dated 18.10.2023 the said company petition was declined to

register by the Joint Registrar of this Tribunal in exercising the power under Rule 28 of the NCLT Rules, 2016 giving liberty to file appeal against the order within 15 days under Rule 63 of the NCLT Rules, 2016.

- 8.** Thereafter, the learned Counsel for the applicant approached the Registry on 27.10.2023 and gets back the original / physical copy of the petition for the purpose of refilling and same was returned to the said advocate on 01.11.2023 against acknowledgement.
- 9.** The present petition has been filed as noted above on 03.11.2023 wherein, the date of petition is mentioned at page no. 1 of the present petition as 11.10.2023 and affidavit in support is prior to the date of petition being 27.07.2023. Further affidavit annexed in support of the documents is also dated 18.08.2023 which is also prior to the date of the petition.
- 10.** This petition has been numbered as CP (IB) No. 281 of 2023. Since it is the plea of the learned Counsel for the applicant that same petition with the same affidavit has

been refilled after replacing certain pages in the petition. If it is the case of the applicant even then present petition is defective as no fresh affidavit has been filed with present petition after replacement of alleged pages.

- 11.** Since, fresh case has been filed before this Tribunal by fresh inward diary number on payment of fresh court fees, this petition is considered as fresh petition and both affidavits in support filed along with the petition are prior to the date of the petition, the same cannot be taken into consideration and the petition is considered as a defective petition. Further these defects are fatal and in our view cannot be rectified.
- 12.** In view of above, we find this **CP (IB) 281/2023** as defective and is rejected accordingly.

**-Sd-
SAMEER KAKAR
MEMBER (TECHNICAL)**

**-Sd-
SHAMMI KHAN
MEMBER (JUDICIAL)**

MD