

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

ITEM No.302
C.P.(IB)/189(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

Jay Chemical Industries Pvt Ltd
V/s
Ronson Pigments Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 19/04/2024

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.

-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.189/9/AHM/2023

(An application filed 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: M/s. Ronson Pigments Private Limited

M/s. Jay Chemical Industries Private Limited,

(CIN: U24119GJ2000PTC037683)

Having Registered Office at:

Jay House,

Nr. Saffron Building, Panchvati,

Ellisbridge, Ahmedabad-380006.

..... Applicant/ Operational Creditor

VERSUS

M/s. Ronson Pigments Private Limited

(CIN: U24117GJ2008PTC053199)

Having Registered Office at:

Plot No. 6006, GIDC, Ankleshwar,

Bharuch-393002, Gujarat.

..... Respondent/ Corporate Debtor

Order Pronounced On: 19.04.2024

CORAM:

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

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

APPEARANCE:

For the Applicant : Mr. Ravi Pahwa, Ld. Advocate

For the Respondent : Ms. F.Y. Mansuri, Ld. Advocate

ORDER
[Per: Bench]

1. The present Application is filed on 20.07.2023 by one Mr. Utsav Pandwar, the authorised signatory of M/s. Jay Chemical Industries Private Limited (hereinafter referred to as **‘Operational Creditor’**) against the Respondent M/s. Ronson Pigments 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 (AAA) Rules, 2016”**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as **“IRP”**) and declare the moratorium for having defaulted payment of the operational debt of Rs.1,33,57,931/-. The date of default is said to be fallen on 05.02.2022 and 07.02.2022.

2. On perusal of Part-I of the Form-5 reveals that the Applicant/Operational Creditor is the company incorporated under the provisions of the Companies Act, 1956 vide CIN:

U24119GJ2000PTC037683 and having its registered office at: Jay House, Nr. Saffron Building, Panchvati, Ellisbridge, Ahmedabad-380006.

3. A perusal of Part-II of the Form-5 reveals that the Respondent/ Corporate Debtor is a company incorporated under the provisions of the Companies Act, 1956 vide CIN: U24117GJ2008PTC053199. The company was incorporated on 11.03.2008 and having its authorised share capital at Rs.25,00,000/- and the paid up share capital is Rs.25,00,000/-. The Registered address of the Respondent/ Corporate Debtor is: Plot No. 6006, GIDC, Ankleshwar, Bharuch-393002, Gujarat.

4. A perusal of Part-III of the Form-5 reveals that the Applicant/Operational Creditor has not proposed any name of the Interim Resolution Professional, under section 13 (1)(c) of the Code to act as Interim Resolution Professional (**IRP**) in case the Application gets admitted and left the matter to the discretion of this Bench.

5. A perusal of Part-IV reveals that total operational debt as claimed by the Applicant/Operational Creditor is Rs.1,33,57,931/-, consisting of Rs.93,22,000/- towards the principal and Rs. 34,20,280/- towards the 24% interest from 5-7.02.2022 till 19.06.2023 and Rs.6,15,650/- towards the 18% GST on interest amount).
6. The Applicant/Operational Creditor has submitted the brief facts as below:-
- (a) The Applicant/Operational Creditor is a company engaged in the business of manufacturing, selling and exporting of all types of chemicals, compounds and intermediates.
 - (b) The Respondent/Corporate Debtor approached the Applicant/Operational Creditor and placed a purchase order to supply CPC Blue Crude bearing order no: RPPL-2021-22/010 dated 03.12.2021.
 - (c) In pursuance to the above request, the Applicant/Operational Creditor supplied goods to the Respondent/Corporate Debtor and raised following invoices:

Sr. No.	Invoice No.	Date	Amount (Rs)
1.	SDU042202634	07.12.2021	46,61,000
2.	SDU042202676	09.12.2021	46,61,000
Total			93,22,000

- (d) As per the terms of the purchase order, the Respondent/ Corporate Debtor was required to make payment of the above invoices within a period of 60 days from the date of invoice. Further, as per the terms, if he fails to pay the amount within the period, the Respondent/ Corporate Debtor was liable to pay the interest @24% p.a. + GST @18%.
- (e) It is stated that the Respondent failed to pay the invoices on the due date, viz. 05.02.2022 and 07.02.2022 respectively. It is stated that the Respondent further failed to pay the outstanding amount even after the period of 60 days and hence, he is liable to pay the interest as per the agreed terms. It is stated that the Applicant/ Operational Creditor thus claims an amount of Rs.1,33,57,931/-.
- (f) It is submitted that various emails and reminders were sent to the Respondent/Corporate Debtor;

however, no payment was received. It is further stated in the Application that the Applicant/ Operational Creditor personally visited the office of the Respondent/ Corporate Debtor at various dates to receive the payment. However, the payment is still due and unpaid by the Respondent/ Corporate Debtor.

(g) As submitted, the Applicant/Operational Creditor finally served a copy of the demand notice u/s. 8 of the Insolvency and Bankruptcy Code, 2016 dated 19.06.2023 in Form-4, calling upon the Respondent to pay the outstanding amount of Rs.1,33,157,931/- within ten (10) days of service of notice. It is further stated that the Respondent neither replied the Demand Notice nor paid the outstanding amount.

7. The Applicant/ Operational Creditor also filed Form-D being the Record of Default with National E-Governance Services Limited (NeSL) by way of purshis on 24.08.2023 vide Diary No.D3215. The date of Default is recorded as 05.02.2022 and the status of authentication is “Deemed to be authenticated.”

8. After issuance of notice, the Respondent/Corporate Debtor appeared through One Mr. Maheshbhai Parbatbhai Borad, the director of the Respondent/Corporate Debtor and filed its reply on 07.12.2023 vide diary no. D4939. The brief of the said reply is as under:

- (a) The Respondent admits that it purchased the material from the Applicant Company.
- (b) The Respondent further admits that he is having business relations with the Applicant Company for more than three years.
- (c) The Respondent in his reply Para no.5 states that the goods received through these two invoices mentioned above, were found to be defective and the Respondent sent the evidence of video of the goods. It is contended that the Applicant did not made any corrective action or compensated the mistake and hence, the Respondent/ Corporate Debtor did not pay the outstanding amount.
- (d) The Respondent in its reply Para no.-7 contended on GST amount by contending the calculation of GST. However, the Respondent is silent on the 24%

interest calculated by the Applicant/ Operational Creditor.

- (e) The Respondent further contended in Para no.-10 that **he is ready to pay the principal amount of Rs.93,22,000/-**. The Respondent under Para-11 had contended the hefty 24% interest as claimed by the Applicant.

9. Mr. Utsav Pandwar, the authorised signatory of the Applicant/ Operational Creditor filed its “Affidavit-in-Rejoinder” on 08.01.2024 vide diary no.D204. The brief facts are mentioned here below:

- (a) It is submitted in Para no.-2 that the Respondent never addressed or replied any communication or raised any dispute before the issuance of the Demand Notice or even before filing the Application before this Bench.
- (b) It is stated that the dispute regarding the quality of raw-material is an “afterthought” and misleading this Bench.

- (c) As submitted that the calculation of GST on goods is appropriate by the Applicant and not imposed on the interest part of amount.
- (d) It is stated that the Applicant has filed the Criminal Case no.107113 of 2023 in the Court of Ld. Metropolitan Magistrate, Ahmedabad. A copy of the said status report of the complaint is annexed with the Rejoinder as Annexure-S2 (page-11).
- (e) With reference to the contentions of the Respondent as defective raw material was sent, it is contended that the same material had been supplied to other companies as the Applicant Company is the supplier of CPC Blue Crude since 58 years.
- (f) It is further contended that the Respondent/Corporate Debtor owns currently a huge debt to various creditors. The Applicant annexed copies of the balance sheets from the Respondent Company as extracted from RoC/MCA portal as Annexure-S4 to the present Application.
- (g) The Applicant further submitted that the debt of Rs.93.30 Lakhs was admitted in a meeting held on

29.06.2022. A copy of Minutes of Meeting signed by the Respondent Director, Mr. Mahesh Borad is annexed as Annexure-S5 with the Rejoinder.

10. We heard the Learned Counsels from both sides. We perused the material available on record.

11. Following are the undisputed facts in the matter:-

- a. On 30.12.2021 the Respondent/Corporate Debtor placed purchase order with operational creditor for supply of CPC Blue Crude. The Respondent/Corporate Debtor was in a need of material and has placed a written purchase order by agreeing on the terms and conditions.
- b. It is also not in dispute that on 07.12.2021 and 09.01.2021 the Applicant/Operational Creditor supplied the goods to the Respondent/Corporate Debtor and raised two invoices aggregating to Rs. 93,22,000/-. The goods sold or supplied by the Applicant/Operational Creditor to the Respondent/Corporate Debtor were duly received.

- c. There is no communication from the side of the Corporate Debtor which speaks about any defect in the material.
- d. Demand Notice was served by the Applicant/Operational Creditor on 19.06.2023 and was never replied by the Respondent/Corporate Debtor.
- e. From the ledgers, it is evident that there is a clear default from the side of the Respondent/Corporate Debtor.
- f. As per the invoices, the Respondent/Corporate Debtor was required to clear the invoice within a period of 60 days from the date of invoice. Further, as per the invoice, in case, the Corporate Debtor fails to pay the due amount within 60 days, the Corporate Debtor is required to pay interest @ 24% p.a. Further, the Corporate Debtor is also liable to pay GST @18%. These terms were never disputed by the Respondent/Corporate Debtor even after service of statutory Demand Notice. Hence, there is no pre-existing dispute exists in the matter.

- g. As per the both invoices, the due dates for payment was 05.02.2022 and 07.02.2022. However, the Respondent/Corporate Debtor failed to clear both the invoices which is considered as a date of default. This application has been filed on 20.07.2023, which is well within the limitation.
- h. The Applicant/Operational Creditor has also filed Form-D being the Record of Default issued by the National E-Governance Services Limited (NeSL) by way of purshis on 24.08.2023 vide Diary No.D3215. The date of Default is recorded as 05.02.2022 and the status of authentication is “Deemed to be authenticated.
- i. The Respondent/Corporate Debtor has agreed to pay the Applicant/Operational Creditor a sum of Rs.93,22,000/- in his reply under Para-10. In view of the same, defence as to quality of goods is a moonshine defence. Further, no material was placed on record to prove the same, only pleadings were made.

- j. The amount of debt is Rs.1,33,57,931/-, which is more than the minimum threshold limit required to trigger the Corporate Insolvency Resolution Process.
- k. Hence, we are left with no choice except admitting the Respondent/Corporate Debtor into the Corporate Insolvency Resolution Process. Hence, the order.
12. Thus, present application is complete in terms of Section 9 of the Code. The Applicant/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. 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.
13. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **M/s. Ronson Pigments Private Limited** is hereby **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 shall have 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 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) Since, the Applicant/ Operational Creditor has not proposed any name of Insolvency Professional, hence we appoint **Mr. Omkarchand Rikhabdas**

Maloo, having Registration No. IBBI/IPA-001/IP-P00435/2017-18/10758, having **e-mail address: omkar@ormaloo.com** Mobile No: 98795-48695, 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 shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. Where any personnel of the Corporate Debtor, its Promoter or any other person required to assist or co-operate with IRP, do not assist or co-operate with the IRP the IRP is at liberty to make appropriate application to this Adjudicating

Authority with a prayer for passing an appropriate order.

- (vii) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under Section 15 as required by Section 13(1)(b) of the IBC, 2016.
- (viii) The IRP is expected to take full charge of the Corporate Debtor 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 a copy of this order to the Operational Creditor, Corporate Debtor and to the IRP and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after the pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in the 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.

(xiv) The Registry is further directed to send a copy of this order to the Insolvency and Bankruptcy Board of India for their record.

14. Accordingly, **CP (IB) No.189 of 2023** is hereby allowed and stands 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)

AT