

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

ITEM No.304
RCP(IB)/2(AHM)2023
(Old Case C.P. (IB)/131/AHM/2020

Order under Section 9 IBC

IN THE MATTER OF:

Dayaram G Teli Proprietor of Jagdishwar Trading Co.
V/s
Mangalam Paper Pvt Ltd

.....Applicant

.....Respondent

Order delivered on 22/04/2024

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**

**RCP(IB) No.2 of 2023
in Old CP(IB) No.131 of 2020**

(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. Manglam Paper Private Limited

Mr. Dayaram G. Teli,
Proprietor of Jagdishwar Trading Co.
338, Hanumannagar,
Near Rashtra Bharti School,
Nr. CTM Road, Amraiwadi,
Ahmedabad – 380026.

..... Applicant/ Operational Creditor

VERSUS

M/s. Manglam Paper Private Limited,
(CIN: U21019GJ1981PTC004585)
Having Registered Office at:
305, Akshat Tower,
Nr. Pakwan Dining Hall,
Bodakdev, Ahmedabad – 380054.

..... Respondent/ Corporate Debtor

Order Pronounced On: 22.04.2024

CORAM:

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

APPEARANCE:

For the Applicant : Mr. Jeet Karia, Advocate,
For the Respondent : Mr. Vinodkumar Shah, PCS

ORDER **[Per: Bench]**

1. The present Application is filed initially on 05.02.2020 by one Mr. Dayaram G. Teli, the proprietor of M/s. Jagdishwar Trading Company, (hereinafter referred to as '**Operational Creditor**') against the Respondent M/s. Manglam Paper 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.50,60,964/-.

2. On perusal of Part-I of the Form-5 reveals that the Applicant is a proprietor of the company M/s. Jagdishwar Trading Co. in the capacity of the Operational Creditor and having its registered office at: 304-5, Akshar Arcade, Opp. Memnagar Fire Station, Navrangpura, Ahmedabad – 380014.
3. A perusal of Part-II of the Form-5 reveals that the Respondent is a company incorporated under the provisions of the Companies Act, 1956 vide CIN: U21019GJ1981PTC004585. The company was incorporated on 31.08.1981 and having its authorised share capital at Rs.14,00,00,000/- and the paid up share capital is Rs.13,54,16,670/-. The Registered address of the Respondent is: 305, Akshat Tower, Nr. Pakwan Dining Hall, Bodakdev, Ahmedabad – 380054.
4. A perusal of Part-III of the Form-5 reveals that the Applicant has not proposed the 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 of the Form-5 reveals that total operational debt as claimed by the Applicant is Rs.50,60,964/-. It is submitted that the Respondent has till date made payment of Rs.2,20,316/- and additionally given a debit note of Rs.38,987/- to the Applicant.
6. The Applicant has submitted the brief facts as below:-
- (a) The Applicant is an owner of the company, namely Jagdishwar Trading Co.
 - (b) The Respondent approached the Applicant for procuring Waste Paper O.N.P. During the period from 04.06.2019 to 29.07.2019 (inclusive of both dates) the Applicant supplied Waste Paper Local amounting to Rs.53,20,267/- to the Respondent, for which various tax invoices were raised on the Respondent for the period 04.06.2019 to 29.07.2019 which are annexed as Exhibit-A (Colly).
 - (c) The amounts due from the Respondent to the Applicant were payable immediately upon issuance of tax invoice. It is further stated that the Respondent has till date made payment of

Rs.2,20,316/- and additionally given a debit note of Rs.38,987/- to the Applicant. Thus, the Respondent owes the balance of Rs.50,60,964/- to the Applicant to pay as an outstanding.

- (d) The Respondent provided a copy of ledger account during the period from 01.04.2019 to 25.09.2019 which mentions the balance amount payable to the Operational Creditor being Rs.50,60,964 which is annexed as Exhibit-B.
- (e) The Applicant supplied the goods to the Respondent, fulfilled the contractual obligations and rendered the goods in a timely manner to the satisfaction of the Respondent. However, Respondent failed pay the amount of the aforementioned invoices dues as on date and committed default.
- (f) The Applicant issued a Demand Notice in Form-3 dated 11.12.2019 under Section 8 of the Insolvency and Bankruptcy Code, 2016 r.w. Rule 5(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (by RPAD and electronic mail). The copy of the demand notice along

with the proof of receipt/acknowledgement at all the registered addresses and the email sent to the email address of the Respondent is annexed as Exhibit-C.

(g) There was no communication received from the Respondent within 10 days of the receipt of the demand notice by the Respondent. However, the Respondent belatedly sent a reply through his counsel dated 23.01.2020 to the Demand Notice, received by the Applicant on 25.01.2020.

(h) It is contended that in the said reply, the Respondent neither brought to the notice of the Applicant (a) the payment of unpaid Operational Debt nor (b) existence of any dispute, or record of any pendency of the suit or arbitration proceedings filed before the receipt of the demand notice in relation to any dispute. The said reply is annexed to the present petition as Exhibit-D on page no.58.

7. After the notice in the Application, a reply-cum-counter-notice was filed by one Mr. Lalitkumar C. Patel, the director of the Respondent company on 27.08.2020 vide inward number-6574 as under:

- (a) It is contended that the Ministry of Corporate Affairs has revised and specified the minimum threshold from rupees one lakh to one crore to initiate the insolvency proceedings and therefore, the insolvency proceedings cannot be triggered.
- (b) Further, the present application has been filed by an Individual, Mr. Dayaram G. Teli, as a proprietor of M/s. Jagdishwar Trading Company. It is contended that as per the definitions, Section 3(23), a person includes, (a) an Individual, (b) a Hindu Undivided Family, (c) a Company, (d) a trust (e) a partnership (f) a limited liability partnership and (g) any other entity established under a statute and therefore, M/s. Jagdishwar Trading Company is also not entitled to file the present application and hence deemed to be rejected.
- (c) The Respondent further contended that the Applicant did not enclosed the “No-Dispute” affidavit i.e. the Affidavit u/s. 9(3)(b) of the Insolvency and Bankruptcy Code, 2016.

- (d) It is further contended by the Respondent that the Applicant did not file statement of account along with the present application and without which, the outstanding dues cannot be claimed.
- (e) It is further contended by the Respondent that the Applicant has failed to adjudicate the date of default as on what basis, the Applicant has stated the said date of default to be 29.07.2019.
- (f) It is further contended by the Respondent that present petition is filed by Mr. Dayaram G. Teli and the invoices and ledger documents are enclosed of M/s. Jagdishwar Trading Company. Hence, there is no nexus between the application and the documents enclosed along with the application.

8. An affidavit-in-rejoinder was filed by the Applicant on 01.09.2020 vide inward number 6819.

- (a) It is averred that the Respondent has lost its opportunity to file reply as this Tribunal had ordered the matter to be kept for Ex-Parte and hence, the reply of the Respondent is liable to be disregarded.

- (b) It is averred that the claim of the Respondent regarding the revised threshold limit is misinterpreted. It is contended that such notification by the Ministry of Corporate Affairs has “retrospective” effect and shall apply in future, not in the currently ongoing proceedings.
- (c) Regarding the contention of the Respondent that eligibility for filing of Petition, the Applicant and the Firm, M/s. Jagdishwar Trading Company are sole proprietorship firm owned by the Applicant. Therefore, the Applicant is eligible to file the petition u/s. 9.
- (d) It is averred by the Applicant that filing of “no-dispute” affidavit under Section 9(3)(b) is a mala-fide attempt on the part of the Respondent.
- (e) The Applicant claimed that he has filed complete statement of account (Ledger Statement) at Exhibit-B at page no.43-44. Hence, the allegation of the Respondent in this regard is not acceptable.

9. However, on 08.06.2022 vide Diary No.3085 a withdrawal pursis was filed by the Advocate of the Applicant. For the

sake of brevity, both the paragraphs of the said pursis is reproduced as under:

“1. The Advocate for the Applicant herein most respectfully submits that the parties hereto have executed a Settlement Agreement dated 07/06/2022 and have arrived at an amicable settlement. The Corporate Debtor has promised to make the payment of settlement amount of Rs. 50,60,964/- (of which Rs.5,50,000/- is already paid) towards full and final settlement over the period of time as mentioned in the payment schedule in clause 2 of the Settlement Agreement.

2. Therefore, the present Pursis has been filed in furtherance of the Settlement Agreement to withdraw the captioned-Petition. Hence, the Applicant most respectfully prays that to this Hon'ble Tribunal to permit the withdrawal of the present Petition.”

10. Thus, in view of above on 09.06.2022 on the ground of settlement this Bench allowed the purshis and CP(IB) No.131 of 2020 stand withdrawn and disposed of with liberty to revive in case settlement fails.

11. Therefore, on 14.07.2023 Rest.App-6(AHM) 2023 was filed seeking the restoration of CP(IB) No.131 of 2020 as

Respondent failed to honour settlement agreement dated 07.06.2022. As out of total amount of settlement of Rs.45,10,160/-, only an amount of Rs.50,000/- was paid by the Respondent. It is stated that the cheques issued by the Respondent were dishonoured for insufficient funds. The Adjudicating Authority, vide its order dated 07.09.2023 allowed the restoration of this application with directions to serve notice to Respondent and to file reply. Accordingly, CP(IB) No.131 of 2020 was restored and renumbered as RCP(IB) No.2 of 2023.

12. After the notice in the RCP(IB) No.2 of 2023, Affidavit in Reply was filed through e-mode by one Mr. Lalitkumar C. Patel, the director of the Respondent company on 26.03.2024. The Respondent in this reply in para (iii), (iv), (v) categorically admitted the Respondent in original CP(IB)131/AHM/2020 had objected the Application of the Applicant on some technical grounds. However, the Respondent Company is in financial crunch and due to its poor financial conditions could not pay debt of others. Therefore, Respondent has no objection if this Hon'ble

Tribunal admits the present Application. The Relevant paras are reproduced here under:-

- (iii) *It is humbly submitted that the Respondent in original CP(IB)131/AHM/2020 had objected the Application of the Applicant on some technical grounds. However, on account of settlement, the said Application came to be withdrawn.*
- (iv) *it is further submitted that the Respondent Company due to its poor financial conditions could not pay debt of others also and this had resulted an Application U/s 7 of the IBC being CP(IB)14(AHM)2023 which came to be dismissed by this Hon'ble Tribunal vide order dated 30.01.2024 though the debts were not disputed.*
- v) *The Respondent submits that due financial crunch there are no business activities since June 2021 and further there is no hope of revival. Apart from other creditors, there are due of the banks.*

In view of the above submission, Respondent submits that there is no objection if this Hon'ble Tribunal admits the Application.

13. Further, on 17.04.2024 Learned PCS for the respondent also reiterated that he has e-filed a reply on 26.03.2024, and physically on 01.04.2024, vide inward diary No. 2618. Learned Counsel for the respondent submitted that the corporate debtor has admitted the liability as, due to the financial crunch, there has been no business activity since 2021 and there is no hope of revival. Apart from other creditors, there are dues of the bank. Hence, there is no

objection, if this Tribunal admits the application of the operational creditor.

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

a. It is not in dispute that the Applicant has supplied goods from 04.06.2019 to 19.07.2019 being Waste Paper Local amounting to Rs.53,20,267/- to the Respondent, for which the Applicant raised various tax invoices on the Respondent for the period 04.06.2019 to 19.07.2019.

b. As per Tax invoices the amounts due from the Respondent to the Applicant were payable immediately upon issuance of tax invoice which was not paid.

c. The Respondent provided a copy of ledger account during the period from 01.04.2019 to 25.09.2019 which mentions the balance amount payable to the Operational Creditor being Rs.50,60,964/-.

- d. As per the Tax Invoices, the default occurred in default of payment of each Tax Invoice which starts w.e.f. from 04.06.2019 to 19.07.2019 which was never disputed by the Respondent.
- e. The Applicant did serve a Demand Notice dated 11.12.2019 which was delivered to the Respondent/Corporate Debtor on 11.12.2019 which was belatedly replied by the Respondent vide Reply dated 23.01.2020. However, the Respondent neither brought to the notice of the Applicant (a) the payment of unpaid Operational Debt nor (b) existence of any dispute, or record of any pendency of the suit or arbitration proceedings filed before the receipt of the demand notice in relation to any dispute.
- f. On 07.06.2022 the Respondent executed a Settlement Agreement wherein promised to make the payment of settlement amount of Rs.50,60,964/- (of which Rs.5,50,000/- is already paid) towards full and final settlement. However, out of total amount of settlement of Rs.45,10,160/-, only an amount of Rs.50,000/- was

paid by the Respondent and the cheques issued by the Respondent were dishonoured for insufficient funds.

- g. Further, the Respondent in the reply dated 23.03.2024 categorically admitted the Respondent Company is in financial crunch and due to its poor financial conditions could not pay debt of others. Therefore, the Respondent has no objection if this Hon'ble Tribunal admits the present Application.
- h. The Applicant has proved and the Respondent has admitted an Operational Debt is Rs.50,60,964/- which is over Rs.1.00 Lakh (at the time of filing of the Application U/s 9 of the IBC threshold limit U/s 4 of the IBC was Rs.1.00 Lakh) is due and that the Respondent has defaulted in payment of the same which 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 deserves to be admitted.

i. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

(i) The Respondent/Corporate Debtor **M/s. Manglam Paper 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. Ashish Anantray Shah**, having Registration No. IBBI/IPA-002/IP-N00214/2017-18/10666, having email id: ashish@ravics.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 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.

23. Accordingly, **RCP(IB) No.2 of 2023** in **Old CP(IB) No.131 of 2020** 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