



NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH
COURT VI

Item No. 2

C.P. (IB)/4171(MB)2019

CORAM:

SHRI SANJIV DUTT
HON'BLE MEMBER (TECHNICAL)

SHRI K.R. SAJI KUMAR
HON'BLE MEMBER (JUDICIAL)

ORDER SHEET OF HEARING (HYBRID) DATED **08.05.2025**

NAME OF THE PARTIES: **Gujarat Metal Rolling Mills**

Vs

Bhanu Cosmetics Packaging Pvt Ltd

For Applicant: Adv. Shirley Mody i/b M/s. K. Ashar & Co.

For Respondent: Not given

IBC Under Sec 9

ORDER

The order pronounced in the Open Court *vide* separate orders. In view of the above **CP/4171/2019 is admitted** and **Mr. Girish Prabhakar Muley is appointed as IRP**. Detailed order will be uploaded.

Sd/-
SANJIV DUTT
MEMBER (TECHNICAL)
//AJ//

Sd/-
K.R. SAJI KUMAR
MEMBER (JUDICIAL)



IN THE NATIONAL COMPANY LAW TRIBUNAL MUMBAI - BENCH-VI

CP (IB) No. 4171/MB/2019

[Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016]

IN THE MATTER OF:

GUJARAT METAL ROLLING MILLS

Registered Office: 112/A

Thakurdwar Road, Guru Dutta Mandir Compound

Vidyaram Wadi, Thakurdwar

Mumbai-400002, Maharashtra.

...Operational Creditor

V/s

BHANU COSMETICS PACKAGING PRIVATE LIMITED

[CIN: U24246MH2001PTC134166]

Registered Office: 18, Nigos Industrial Estate

Cama Estate Road, Goregaon (East)

Mumbai-400063, Maharashtra.

...Corporate Debtor

Pronounced: 08.05.2025

CORAM:

HON'BLE SHRI K. R. SAJI KUMAR, MEMBER (JUDICIAL)

HON'BLE SHRI SANJIV DUTT, MEMBER (TECHNICAL)

Appearances: Hybrid

Operational Creditor: Adv. Shirley Mody a/w. Adv. Arshaan Lentin and Adv.

Dhaval Patil i/b. K. Ashar & Co.

Corporate Debtor: None (*ex-parte*)



ORDER

[PER: K. R. SAJI KUMAR, MEMBER (JUDICIAL)]

1. BACKGROUND

1.1 This C.P. (IB) No. 4171/MB/2019 (Application) was filed on 05.11.2019 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by Gujarat Metal Rolling Mills, the Operational Creditor (OC), through Mr. Suresh Shah, Partner of the OC, authorised *vide* Authority Letter dated 08.11.2019, for initiating Corporate Insolvency Resolution Process (CIRP) in respect of Bhanu Cosmetics Packaging Private Limited, the Corporate Debtor (CD).

1.2 The total amount of default alleged is Rs.19,90,193/- (Nineteen Lakh Ninety Thousand One Hundred Ninety-Three Rupees), which comprised of principal amount of Rs. 13,90,506/- as well as the amount of Rs.5,99,687/- as interest calculated at the rate of 18 (Eighteen) per cent per annum from respective due dates of payment for each invoice as on 31.08.2019. The alleged default amount is based on 13 unpaid invoices issued by the OC against supply of goods to the CD during the period of November, 2016 to April, 2017.

1.3 The date of default mentioned in Part-IV of the Application is 17.11.2016 i.e., the date on which the first invoice No. 264 was raised by the OC. Further, the OC placed invoices dated 17.11.2016 to 08.04.2017 on record, showing due dates of payment for each unpaid invoice. Since the CD defaulted in payment of its outstanding dues, the OC prays that CIRP may be initiated in respect of the CD under Section 9 of the IBC.



1.4 During the proceedings, the Application was withdrawn as settled *vide* order dated 05.10.2023 on account of settlement between the parties as per the Memorandum of Settlement (MoS) dated 05.10.2023. Under the MoS, the CD was supposed to make total payment of Rs. 22,27,709/- in six instalments to the OC. Aggrieved by the non-compliance of MoS, the OC filed the IA (IBC) No. 5795/2024 for restoration, which was allowed by order dated 11.12.2024.

2. CONTENTIONS OF OC

2.1 The OC is involved in the business of manufacturing Aluminium Sheets and other Aluminium products, while the CD is a Mumbai-based private company, engaged in the packaging of cosmetic products. For business purposes, the CD sought supply of Aluminium slug from the OC, pursuant to which the OC supplied the said goods against the purchase orders. The goods were duly received by the CD without raising any dispute over the quality or quantity of the supplied goods.

2.2 It is submitted that the CD issued purchase orders from 13.10.2016 to 27.02.2017, for supply of goods and the OC, in compliance of the CD's purchase orders, supplied the same and raised invoices. As per the invoices, interest would be charged at the rate of 18% per annum, in the event of non-payment on the due dates of payment. As per the CD's purchase orders, the due date of payment for each invoice was 60 (Sixty) days from the date of invoice.

2.3 It is submitted that the CD made part-payment of Rs.10,020/- upon the OC's first invoice i.e., Invoice No. 264 dated 17.11.2016. However, the CD failed to



make payment against the OC's invoices from 17.11.2016 to 08.04.2017. The list of invoices raised by the OC are as follows:

Sr. No.	Invoice No.	Invoice Date	Last Date of Payment	Invoice Amount (In Rs.)	Amount Receivable (In Rs.)
1.	264	17.11.2016	16.01.2017	80,798/-	70,778/-
2.	280	29.11.2016	28.01.2017	2,03,832/-	2,03,832/-
3.	308	25.12.2016	23.02.2017	1,43,711/-	1,43,711/-
4.	323	11.01.2017	12.03.2017	1,27,221/-	1,27,221/-
5.	348	22.01.2017	23.03.2017	1,07,122/-	1,07,122/-
6.	395	23.02.2017	24.04.2017	93,413/-	93,413/-
7.	402	03.03.2017	02.05.2017	76,241/-	76,241/-
8.	424	14.03.2017	13.05.2017	70,733/-	70,733/-
9.	427	16.03.2017	15.05.2017	53,533/-	53,533/-
10.	446	28.03.2017	27.05.2017	1,22,933/-	1,22,933/-
11.	DN 10	31.03.2017	30.05.2017	39,434/-	39,434/-
12.	009	05.04.2017	04.06.2017	1,81,313/-	1,81,313/-
13.	013	08.04.2017	07.06.2017	1,00,242/-	1,00,242/-
TOTAL AMOUNT				14,00,526/-	13,90,506/-

2.4 It is submitted that the OC attempted to remind the CD about its outstanding dues by emails dated 29.03.2017; 05.05.2017; 09.06.2017; 22.06.2017; 02.09.2017; 29.09.2017; 01.11.2017 and 18.12.2017. The CD, by its email dated 22.06.2017 assured the OC to revert back on the payment schedule or updates but it failed to do the same. The emails reveal that the CD gave some cheques for payment to the OC but these were not deposited in bank as per



CD's telephonic requests. On account of CD's failure in clearing the outstanding dues, the OC issued demand notice dated 20.09.2019 under Section 8 of the IBC, through its advocate, demanding payment of operational debt for Rs.13,90,506/- along with the interest. The said demand notice was sent at the CD's registered address as per its Master Data.

2.5 Upon receipt of the OC's demand notice, the CD, by its letter dated 01.10.2019, not only sought co-operation for facilitating payments but also gave assurance of making payments towards the outstanding dues. However, the CD failed to make any payment to the OC. This compelled the OC to file the present Application under Section 9 of the IBC against the CD.

2.6 During the pendency of the present Application, both the parties entered into a settlement and executed the MoS dated 05.10.2023, wherein the CD agreed to pay the amount of Rs.22,27,709/- to the OC which comprised of the principal amount of Rs.13,90,506/-, interest of Rs.7,09,494/- and Rs. 1,27,709/- as GST Charges, and the OC undertook to withdraw the said Application. The said amount was to be paid in six instalments on or before the following dates which were as follows:

Sr. No.	Instalment Date	Amount (In Rs.)
1.	05.10.2023	1,77,000/-
2.	30.10.2023	1,77,000/-
3.	30.11.2023	4,72,000/-
4.	30.12.2023	4,01,709/-
5.	30.01.2024	5,00,000/-
6.	29.02.2024	5,00,000/-
TOTAL AMOUNT		22,27,709/-



2.7 Pursuant to the filing of MoS before this Tribunal, the said Application was withdrawn as settled *vide* order dated 05.10.2023 of this Tribunal, with liberty granted to the OC for revival of the said Application in the event of any violation of the conditions of the MoS. It is submitted that the CD has only paid the first instalment i.e., Rs.1,77,000/- on 05.10.2023, and since then, it defaulted in payment of the remaining instalments as per the MoS. Due to such misconduct on CD's part, the IA(IBC) No. 5795/2024 was filed by the OC to revive the present Application against the CD, which was allowed on 11.12.2024.

3. CONTENTIONS OF CD

3.1 The CD was served fresh notice on 17.12.2024 through the Registry, which was returned with endorsement "*Door Locked-Intimation Served*". Since the postal authorities have endorsed that '*Intimation Served*' to the CD, the notice is deemed served as per order dated 02.01.2025 of this Tribunal. It was observed that post the revival of the present Application *vide* order dated 11.12.2024, the CD did not make appearance.

3.2 We also observe that since the CD remained unrepresented in spite of the above, it was set as *ex-parte* on 02.01.2025. Hence, we proceed to deal with the matter based on the material available on record.

4. ANALYSIS AND FINDINGS

4.1 We have perused all the documents and pleadings and heard the Ld. Counsel for the OC.

4.2 The Main Application was revived on 11.12.2024, in IA(IBC) No. 5795/2024. However, pursuant to the notice issued by the Court, the CD avoided appearance in spite of postal authorities serving intimation to it. The CD has



been appearing and defending its case before the parties who entered into MoS dated 05.10.2023. Hence, it cannot be said that the CD is not aware of IA No. 5795/2024 for restoration, which was allowed by us on 11.12.2024.

4.3 The only issue to be determined in this matter is whether the present Application is barred by limitation.

4.4 On perusal of Part-IV of the Application, the date of default is mentioned as 17.11.2016, which is same as the default date mentioned in the demand notice sent by the OC to the CD dated 20.09.2019. However, the CD also acknowledged the debt on 01.11.2019. It is observed that the date of payment for each invoice fell due with the expiry of sixty days from the invoice date, we determine 16.01.2017, being the date of payment against the first invoice, as the date of default. This makes the last date of filing the present Application on 15.01.2020, i.e., three years from the date of default, under the Limitation Act, 1963. We find that the present Application was filed on 05.11.2019, i.e., within three years from the date of default. Hence, it is maintainable to be adjudicated by us under Section 238A read with Article 137 of the Limitation Act, 1963. Hence, we hold that the Application is not barred by limitation.

4.5 We find that the OC issued thirteen invoices for Rs.13,90,506/- for the goods supplied to the CD from 17.11.2016 to 08.04.2017. However, since the CD defaulted the very first payment due, i.e., 16.01.2017 as default date for the first invoice and 07.06.2017 as the default date for the last invoice dated 08.04.2017. Pursuant to the issuance of demand notice dated 20.09.2019, the CD gave assurance to the CD of making payments by its letter dated 01.10.2019. However, there is nothing to show that the CD has ever fulfilled the commitment to pay off the OC's debt since then. Further, the email



correspondence between the parties shows that the CD was aware of the outstanding dues to the OC and the MoS dated 05.10.2023, mentioned the settlement amount as Rs. 22,77,709/-, which comprised of the principal amount of Rs.13,90,506/- i.e., the outstanding invoice amounts. This shows that the debt and default has not been discharged by the CD, which is admittedly continuing.

4.6 We find that despite several opportunities granted by this Adjudicating Authority to the CD to be represented; file its reply; and present its case on merits, it chose not to avail itself of the opportunities. As a result, the CD was set *ex-parte*.

4.7 It is not disputed that the parties have had business relationship for supply and receipt of goods. Therefore, we hold that the debt in respect of the goods and materials provided by the OC to the CD falls within the meaning of “*operational debt*” under Section 5(21) of the IBC. The default amount in the present application is Rs.13,90,506/-, which far exceeds the threshold limit of One Lakh Rupees under Section 4 of the IBC, as the law then was. The Application was filed on 05.11.2019, which is prior to the Notification of the Government of India in the Ministry of Corporate Affairs, No. S.O. 1205 (E) dated 24.03.2020, wherein the threshold limit to trigger CIRP was increased from One Lakh Rupees to One Crore Rupees under Section 4 of the IBC, in order to avoid bringing more corporates into insolvency, in the aftermath of COVID-19 Pandemic. For the purpose of this Application, it is clear that the operational debt of more than One Lakh Rupees is due and payable by the CD to the OC and is not paid. Therefore, this Application under Section 9 of the IBC is maintainable.



4.8 The OC has thus successfully demonstrated and proved the debt and default in this case. Therefore, we are of the considered view that this Application is complete and satisfies all the necessary requirements for admission under Section 9 of the IBC. In view of the above, we find that the matter is fit for admission under section 9(5)(i) of the IBC.

ORDER

This Application bearing **C.P. (IB) No. 4171/MB/2019** under Section 9 of the IBC, filed by Gujarat Metal Rolling Mills, the OC, for initiating CIRP in respect of Bhanu Cosmetics Packaging Private Limited, the CD is **admitted**.

We further declare moratorium u/s 14 of the IBC, with consequential directions as follows:

I. We prohibit-

- a) institution of suits or continuation of pending suits or proceedings against the CD 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 CD 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 CD in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);



- d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the CD.
- II. That the supply of essential goods or services to the CD, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
- III. That the order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Bench approves the resolution plan under Section 31(1) of the IBC or passes an order for the liquidation of the CD under Section 33 thereof, as the case may be.
- IV. That the public announcement of the CIRP shall be made in accordance with the provisions of the IBC, the Rules and Regulations made thereunder.
- V. That this Bench hereby appoints **Mr. Girish Prabhakar Muley**, a registered Insolvency Professional having Registration Number- **IBBI/IPA-002/IP-N01288/2024-2025/14419** and e-mail- **muleyg@gmail.com** having valid Authorisation for Assignment up to **30.06.2025** as the Interim Resolution Professional (IRP) to carry out the functions under the IBC. The fee payable to IRP/RP shall be in accordance with the Regulations/Circulars issued by the IBBI.
- VI. That during the CIRP Period, the management of the CD shall vest in the IRP or, as the case may be, the RP in terms of Section 17 or Section 25, as the case may be, of IBC. The officers and managers of the CD are directed to provide effective assistance to the IRP as and when he takes charge of the assets and management of the CD. The officers and managers of the CD shall provide all documents in their possession and furnish every information in their knowledge to the IRP/RP within a period of one week from the date of receipt of this Order and shall not commit any offence punishable under Chapter VII



of Part II of the IBC. Coercive steps will follow against them under the provisions of the IBC read with Rule 11 of the NCLT Rules for any violation of law.

- VII. In exercise of the powers under Rule 11 of the NCLT Rules, we order the OC to deposit a sum of Rs.3,00,000/- (Three Lakh Rupees) with the IRP to meet the initial CIRP cost, if demanded by the IRP to fund initial expenses on issuing public notice and inviting claims, etc. The amount so deposited shall be interim finance and paid back to the OC on priority upon the funds available with IRP/RP. The expenses, incurred by IRP out of this fund, are subject to approval by the Committee of Creditors (CoC).
- VIII. A copy of this Order be sent to the Registrar of Companies, Mumbai Maharashtra, for updating the Master Data of the CD.
- IX. Registry is directed to immediately communicate this Order to the OC, the CD and the IRP by way of e-mail and WhatsApp.
- X. The Registry is directed to communicate this order to the Insolvency and Bankruptcy Board of India forthwith for information and record.
- XI. **Compliance report of the order by Designated Registrar is to be submitted today.**

Sd/-

SANJIV DUTT
MEMBER (TECHNICAL)

//LRA-Tanmay Jain//

Sd/-

K. R. SAJI KUMAR
MEMBER (JUDICIAL)