IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.304
CP(IB)/164(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

Sundram Fasteners Limited	**........Applicant**
Vs.	
Amul Industries Private Limited	**........Respondent**

Order delivered on: 08/04/2024

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 the order. The order is pronounced in the open court, vide separate sheet.

SD/-	SD/-
DR. V. G. VENKATA CHALAPATHY **MEMBER (TECHNICAL)**	**CHITRA HANKARE** **MEMBER (JUDICIAL)**

BEFORE THE ADJUDICATING AUTHORITY
IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD (COURT - II)

C.P. (IB) No. 164 of 2023

(Filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016)

IN THE MATTER BETWEEN

Sundram Fasteners Limited ... Operational Creditor

Vs.

Amul Industries Private Limited ... Corporate Debtor

Order pronounced on 08/04/2024

Coram:

MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY
HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

Sundram Fasteners Limited
98-A, 7th Floor,
Dr. Radhakrishnan Salai,
Mylapore, Chennai- 600004 ..Applicant/Operational Creditor

Versus

Amul Industries Private Limited
No. 2, Plot No. 332-333,
Aji Industrial Estate,
Rajkot Gujarat- 360003 ...Respondent/Corporate Debtor

Present:

Ms. Aishwaraya Reddy a.w. Laghima Jain, Advocate for the Operational Creditor/ Petitioner

Mr. Dhruvit Shah, Advocate for the Respondent/ Corporate Debtor

J U D G E M E N T

1. This application is filed by the Operational Creditor viz. M. Sudaresan under Section 9 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. Sundram Fasteners Limited seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.
2. Brief facts of the case -
3. The Corporate Debtor was incorporated on 30.05.1995 with the Nominal Share capital of Rs. 5,00,00,000/- and

the paid up share capital of Rs. 4,55,00,000/-. The default amount is stated to be Rs. 2,02,89,708/- (Rupees Two Crore two Lakhs Eighty nine Thousand and seven hundred eight Only) and date of default is mentioned as 17.12.2022.

4. It is stated that the Operational Creditor M/s. Sundram Fasteners Limited had supplied various types of Con Rod Bolts, Shaft Balance Weight Bolts and Nuts to Amul Industries Private Limited i.e. Corporate Debtor pursuant to purchase orders placed by the Corporate Debtor from its units situated at Rajkot (Gujarat) and Ranipet (Tamilnadu)

5. The Operational Creditor had supplied the commodities, in various consignments, to the Corporate Debtor as per the terms of the purchase orders and thereafter raised Invoices during the period 04.03.2021 to 06.04.2022(Rajkot) and 3.08.2022 to 18.10.2022(Ranipat) on the Corporate Debtor for the supplies made. Further, there are TCS collectibles due from 31.10.2020 upto 30.11.2021. The Principal outstanding amount also includes TCS collectibles. The total Principal amount due and payable by the Corporate Debtor under various Invoices and TCS Collectibles (in respect of its both plants) is Rs. 1,61,50,728/- (Rupees One Crore Sixty

one lakhs Fifty Thousand Seven Hundred and Twenty Eight only)

6. It is further stated that despite the Operational Creditor's e-mails dated 12.01.2022, 15.04.2022, 25.04.2022 and 02.05.2022 to the Corporate Debtor and reply vide e-mail dated 20.09.2022 by the Corporate Debtor, did not come forward to make payment. Hence, the Operational Creditor issued Recovery notice dated 30.12.2022 to which the Corporate Debtor had replied vide its letter dated 05.01.2023 promising to pay the sum of Rs. 1,61,50,728/- during the month of February, March and April 2023 in equal installments. The Operational Creditor vide letter dated 25.01.2023 advised to pay the outstanding dues as mentioned in reply of the Corporate Debtor. The Corporate Debtor vide letter dated 05.01.2023 admitted the liability though failed to make payment. Hence, the Operational Creditor vide board resolution dated 10.04.2023 proceed under the IBC, 2016.

7. The Corporate Debtor had filed its Affidavit-in-Reply admitting the liability in respect of the amounts to the tune of Rs. 1,61,50,728/- (Rupees One Crore Sixty One Lakhs Fifty Thousands Seven Hundreds twenty eight

only) which is payable to the Operational Creditor towards goods/commodities received. It is also submitted that there is no dispute between the parties regarding principal amount claimed by the Operational Creditor, however, Corporate Debtor does not admit the interest claimed against the principal amount as the same was not specifically agreed upon by the Corporate Debtor and same is imposed by the Operational Creditor.

8. Heard both the sides and perused documents submitted.

9. Vide order dated 12.12.2023, the Operational Creditor has filed an Additional Affidavit declaring that there has been no settlement arrived at between the parties after detailed discussions and payment plan.

10. The applicant vide its letter dated 30 December 2022 sent a letter demanding payment of Rs.1,61,50,728 with interest of Rs.23,07,686 as interest at 18% p.a. The respondent replied 5th April 2023 that they are agreeable to clear the outstanding amount of Rs. 1,61,50,728 and they would pay the same during months of February 2023 and March and April 2023 in equal installments. The respondent had not confirmed to pay the interest amount claimed by applicant.

11. From the invoices raised, purchase order and other relevant documents and the acceptance of debt due on the commercial invoices, it appears that there was no interest to be charged. If

the demand notice was issued with interest that has not been accepted. A debt due for default in this commercial transaction becomes due on its terms and conditions which did not have any interest as it is not a financial debt but an operational debt on account of supply. The applicant has produced an Annexure A/3 in page 234 in para 2.8 that any payment when due and not paid will be charged at 18% per annum. However the copy produced is not signed by the Corporate Debtor.

12. A default has occurred which has not been rejected by the applicant. However the interest claim made has not been accepted. The default of principal invoice is due for payment. Thus there is debt as well as default.

13. In view of the above facts, it is held that, the Corporate Debtor has defaulted in the payment of its debt of Rs. 1,61,50,728/- (Rupees One Crore Sixty One Lakhs Fifty Thousands Seven Hundreds Twenty Eight Only) Accordingly, we admit this Application and order as under:-

<u>O R D E R</u>

(i) The Application bearing CP(IB)/164/(AHM)/2023 filed by **M/s. Sundram Fasteners Limited** (Operational Creditor) under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating

CIRP against **M/s. Amul Industries Private Limited** (Corporate Debtor) is admitted and the moratorium 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 Respondent/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 Respondent/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 Respondent/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 Respondent/Corporate Debtor.*

(ii) 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 the Section 31 or passes an order for liquidation of Respondent/Corporate Debtor Company under Section 33 of the IBC, 2016, as the case may be.

(iii) We hereby appoint Ms. NIHARIKA MAHESHWARI having Registration No. IBBI/IPA-001/IP-P-02725/2022-2023/14157 E-mail Id NIHARIKAMAHESHWARI2011@ GMAIL. COM to act as an IRP under section 13(1) (c) of the

Code. He shall conduct the Corporate Insolvency Resolution Process as per the provisions of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder.

(iv) The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 & 21 of the Code. It is further made clear that all personnel connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are under legal obligation under Section 19 of the Code to extend every assistance and co-operation to the Interim Resolution Professional. Where any personnel of the Corporate Debtor, its Promoter or any other person, is required to assist or co- operate with IRP, do not assist or Co-operate, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(v) This Adjudicating Authority directs the IRP to make public announcement of initiation of Corporate Insolvency Resolution Process (CIRP) and call for submission of claims under Section 15 as required by Section 13(1) (b) of the Code.

(vi) The IRP is expected to take full charge of the CD's 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.

(vii) 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.

(viii) It is further directed that the supply of goods/services to the Corporate Debtor Company if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.

(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 the obligation imposed by Section 20 of the Insolvency & Bankruptcy Code, 2016.

(x) The Operational Creditor is directed to pay an advance of Rs. 2,00,000/- (Rupees Two Lacks Only) to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of the Corporate Insolvency Resolution Process (CIRP) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days.

(xi) The Registry is directed to communicate a copy of this order to the Operational Creditor, the Corporate Debtor and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. The Registrar of Companies shall update its website by updating the Master Data of the Corporate Debtor in MCA portal specific mention regarding admission of this Application and shall forward the compliance report to the Registrar, NCLT.

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

Accordingly, CP(IB)No. 164 of 2023 is allowed and stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

SD/-

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

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

Vaishali PS