

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

ITEM No.
CP(IB) 249 of 2020

Order under Section 9 IBC

IN THE MATTER OF:

Westin Resins & Polymers Pvt Ltd
V/s
Balaji Fiber Reinforce Pvt Ltd

.....Applicant

.....Respondent

Order delivered on ..13/05/2022

Coram:

Madan B. Gosavi, Hon'ble Member(J)
Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

(Under Rule 154 of NCLT Rules, 2016)

The matter was heard and pronounced in the open court on 11.05.2022. However, we have noted a typographical error in the name of Corporate Debtor, which has been mistyped as Westin Resins & Polymers Pvt Ltd instant of M/s Balaji Fiber Reinforce Pvt Ltd in page no. 5 para 1. Hence, by invoking provisions under Rule 154 of the National Company Law Tribunal Rules, 2016 the aforesaid correction is carried and they amended order be uploaded.

-Sd-
(Kaushalendra Kumar Singh)
Member (Technical)

-Sd-
(Madan B. Gosavi)
Member (Judicial)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-I**

CP (IB) 249 of 2020

*[Application for initiation of Corporate Insolvency Resolution Process
under Section 9 of the Insolvency & Bankruptcy Code, 2016]*

In the matter of:

Westin Resins and Polymers Pvt. Ltd.

(CIN: U24100MH2010PTC210913)

Having office at;

117, Sagar Prabhat Industrial Estate,

Near Dahisar Checknaka,

Dahisar-East, Mumbai – 400068

.....Operational Creditor

Versus

Balaji Fiber Reinforce Pvt. Ltd.

(CIN: U25206GJ2007PTC050407)

Having office at;

Survey No. 293, Sakarda, Badrva Road,

Near S.D.Finechem, Village Poicha,

Taluka: Savli, Vadodara – 391780

.....Corporate Debtor

Order reserved on 09.05.2022

Order pronounced 11.05.2022

Coram: MADAN B. GOSAVI, MEMBER (Judicial)

KAUSHALENDRA KUMAR SINGH, MEMBER (Technical)

Appearance:

PCA Jignesh Ajit Ganatra appeared for the Operational Creditor

Learned Counsel Mr. Jaimin Dave appeared for the Corporate Debtor

ORDER
[Per: M. B. Gosavi]

1. This application under Section 9 of the I.B. Code has been filed by M/s. Westin Resins and Polymers Private Limited, the Operational Creditor to initiate Corporate Insolvency Resolution Process of the Corporate Debtor M/s. Balaji Fiber Reinforce Private Limited on the ground that that the Corporate Debtor committed default in paying operational debt of Rs.3,24,12,207/-.
2. It is stated that the Operational Creditor sold and supplied resin in between 24.11.2017 to 13.01.2018. The Operational Creditor sold and supplied the Corporate Debtor certain sum of goods. It is stated that the Corporate Debtor failed and neglected to pay on standing amount of Rs.3,24,12,207/- on 17.07.2019. The Corporate Debtor sent an email to the Operational Creditor and admitted that certain sum of money remains unpaid. Since the amount is not paid on 19.10.2019, the Operational Creditor sent the Corporate Debtor a demand notice under Section 8 of the I.B. Code. In-spite of receipt of the demand notice, the Corporate Debtor did not pay the debt nor pointed out any pre-existing dispute by way of reply and hence, this application.
3. The Corporate Debtor was served with the notice of this application. It has entered and appeared through Mr. Suresh Patel, CEO of the Corporate Debtor. He filed affidavit-in-reply. We have gone through the affidavit in reply. The Corporate Debtor raised some technical defenses say as for numbers of invoices one proceeding is filed, notice under Section 8 of the

I.B. Code was sent under the signatory of Insolvency Professional without any authorization. It is also contended that the goods supplied was of inferior quality and there is a serious dispute pending about goods supplied. The Corporate Debtor denied that it had any debt at any point of time. It is prayed that the application may be rejected.

4. We heard the learned counsel for the Operational Creditor and the learned counsel for the Corporate Debtor at length. We have gone through the evidence and materials on record.
5. To prove the existence of debt and its default by the Corporate Debtor, the Corporate Debtor, the Operational Creditor relied on certificate of debt and its default issued (from information utility, Annex.-„L“) All relevant invoices are produced at Annex.-K. A copy of demand notice served under Section 8 of IBC is also annexed at Annex.-„F“. It has been delivered to the Corporate Debtor by post. The postal track report is also on record as Annex.-„G“.
6. It is not in dispute the Corporate Debtor did not reply the demand notice. Although, the Corporate Debtor submitted and contended that nothing is due and payable but the record reveals that is has sent an email dated 11.07.2019 to the Operational Creditor admitting that certain money is due and payable.
7. It is true that notice under Section 8 of the I.B. Code was sent by Insolvency Professional for and on behalf of the Operational Creditor, one Mr. Jignesh Ganatra, but it was

sent under valid authorization and that authorization is produced at Exhibit-I by the Operational Creditor.

8. In short, there is sufficient evidence and materials on record to hold that the Corporate Debtor has committed default in paying the operational debt of more than rupees one crore in spite of receipt of the demand notice.
9. The Corporate Debtor contended that no amount remains to be unpaid, it did not produce any evidence to prove accordingly. The Corporate Debtor also contended that there is a pre-existing dispute in between them but again, no material is produced to sustain this defense. All invoices produced by the Operational Creditor in support of its claim proves the series of transactions and that cannot be treated as separate invoices.
10. We have also noted certain orders passed in daily proceedings wherein, the Corporate Debtor made statement and sought time to make that it will settle the dispute and sought some time to make the payment. Be that as it may, the evidence and material on record has proved that, in spite of receipt of the demand notice, the Corporate Debtor committed default in paying the operational debt of more than rupees one crore. The Corporate Debtor did not produce defense worth to contest this application.
11. The Operational Creditor proposed the name of Interim Resolution Professional, Mr. Jignesh Ajit Ganatra in case, the application gets admitted.

12. This application is free from defects. Hence, we allow the application admitting the Corporate Debtor in CIRP by following order:

ORDER

1. The Corporate Debtor, **M/s. Balaji Fiber Reinforce Pvt. Ltd. (CIN: U25206GJ2007PTC050407)** is hereby admitted in Corporate Insolvency Resolution Process under Section 9 of the Insolvency and Bankruptcy Code, 2016.
2. The 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.

3. 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 Corporate Debtor Company under Section 33 of the Insolvency & Bankruptcy Code, 2016, as the case may be.
4. We hereby appoint **Mr. Jignesh Ajit Ganatra, having registration no. No.IBBI/IPA-001/IP-P01506/2018-2019/12393, email: ganatraj@gmail.com, Address: 701, Sai Heritage CHS, Opp. Ebenezer Society, Ashok Nagar, Nahur Road, Mulund West, Mumbai-400080** to act as an IRP under Section 13(1)(c) of the Code. He shall conduct the Corporation Insolvency Resolution Process as per the provision of Insolvency and Bankruptcy Code, 2016 r.w. Regulation made thereunder:
5. 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 extending every assistance and co-operation to the Interim Resolution Professional. 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, the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

6. This Adjudicating Authority directs the IRP to make a 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.
7. It is further directed that the supply of goods/service to the Corporate Debtor Company, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.
8. The IRP shall be under 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 Insolvency & Bankruptcy Code, 2016. The Operational Creditor is directed to pay an advance of **Rs.50,000/- (Rupees Fifty Thousand Only)** to the IRP within two weeks **from the date of this order** for the purpose of smooth conduct of Corporate Insolvency Resolution Process (“CIRP”) and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report. Subsequently, IRP may raise further

demands for Interim funds, which shall be provided as per Rules.

9. The Registry is directed to communicate a copy of this order to the Operational Creditor, 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 website immediately after pronouncement of the order.
10. Accordingly, **CP (IB) No.249/9/NCLT/AHM/2020** stands admitted.

-Sd-
(Kaushalendra Kumar Singh)
Member (Technical)

-Sd-
(Madan B. Gosavi)
Member (Judicial)

Alpesh/Ramashish