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**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD
Court 2**

C.P.(I.B) No. 570/NCLT/AHM/2019

**Coram: HON'BLE Ms. MANORAMA KUMARI, MEMBER JUDICIAL
HON'BLE Mr. CHOCKALINGAM THIRUNAVUKKARASU, MEMBER TECHNICAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 10.02.2021**

Name of the Company: Wrinkle Marketing Pvt. Ltd.
V/S.
Roselabes Polymers Ltd.

Section 7 of the Insolvency and Bankruptcy Code,
2016.

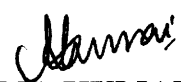
<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.				
2.				

**ORDER
(through video conferencing)**

None appeared on behalf of the parties.

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


**CHOCKALINGAM THIRUNAVUKKARASU
MEMBER TECHNICAL**


**MANORAMA KUMARI
MEMBER JUDICIAL**

Dated this the 10th day of February, 2021

**BEFORE ADJUDICATING AUTHORITY (NCLT)
AHMEDABAD BENCH
AHMEDABAD**

**C.P. No. (IB) 570/7/NCLT/AHM/2019 &
C.P. No. (IB) 571/7/NCLT/AHM/2019**

C.P. No. (IB) 571/7/NCLT/AHM/2019

In the matter of:

Wrinkle Marketing Private Limited
18, Giri Babu Lane, 3rd Floor
Room No. 3C
Kolkata 700 012

Petitioner No. 1
Financial Creditor

Somnath Merchandise Private Limited
36, Ganesh Chandra Avenue, 4th Floor,
Kolkata 700 013

Petitioner No. 2
Financial Creditor

Versus

M/s. Roselabs Bioscience Limited
Opp. Kerala GIDC
Village Kerala
Ahmedabad 382 220
GUJARAT STATE

Respondent
[Corporate Debtor]

C.P. No. (IB) 570/7/NCLT/AHM/2019

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Ahmedabad 382 220
GUJARAT STATE

Respondent
[Corporate Debtor]

Shoekha Hages

Chatterjee

Order delivered on 8th January, 2021

**Coram: Hon'ble Ms. Manorama Kumari, Member (J)
Hon'ble Mr. Chockalingam Thirunavukkarasu, Member (T)**

Appearance:

Petitioner : Mr. Navin Phawa, Sr. Advocate
Respondent : Mr. Kunal Vaishnav, Advocate

COMMON ORDER

Per se : Ms. Manorama Kumari, Member (Judicial)

C.P. No. (IB) 571/7/NCLT/AHM/2019

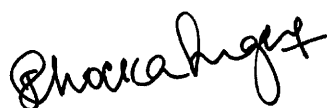
1. M/s. Wrinkle Marketing Private Limited (hereinafter referred to as Financial Creditor No. 1) and M/s. Somnath Merchandise Private Limited (hereinafter referred to as Financial Creditor No. 2), through authorised signatory, filed this petition on 13th June, 2019 under section 7 of The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "the Code") read with Rule 4 of The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (hereinafter referred to as "the Rules") seeking reliefs under Section 7 (5)(a) and Section 13(1)(a)(b)(c) of the Code.
2. The applicants/financial creditors, both private limited companies, having identification No. U51909WB1995PTC0 72728 and U51909WB2010PTC142335 respectively and having registered office at Kolkata, submitted that the respondent is indebted a total sum of **Rs. 11,27,30,250.00 (Rupees eleven crores twenty-seven lacs thirty thousand two hundred fifty only)**.
3. It is submitted by petitioner No. 1 that sometime in April, 2014, the petitioner had instituted a suit against the

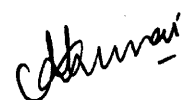
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corporate debtor for recovery of its dues before the Hon'ble High Court at Calcutta, which suit was numbered as C.S. 120 of 2014 and in the said suit an application for judgement on admission was filed which was numbered as G.A. No. 1106 of 2014. That, the Hon'ble High Court of Calcutta passed judgement and decree dated 07.11.2014 against the corporate debtor by which the corporate debtor was directed to pay principal sum of Rs. 3,69,00,000/- to petitioner No. 1 along with interest @ 18% per annum for the period from 24.07.2013 to 31.03.2014 and interest @ 12% per annum from 01.04.2014 till the date of full and final payment of decretal amount along with interest be paid to the financial creditor No. 1. That, there is no challenge to the said judgement and decree dated 07.11.2014.

4. It is further submitted that petitioner No. 2 sometime in April, 2014, the petitioner had instituted a suit against the corporate debtor for recovery of its dues before the Hon'ble High Court at Calcutta, which suit was numbered as C.S. 121 of 2014 and in the said suit an application for judgement on admission was filed which was numbered as C.A. No. 1111 of 2014. That, the Hon'ble High Court of Calcutta passed judgement and decree dated 20.08.2014 against the corporate debtor by which the corporate debtor was directed to pay principal sum of Rs. 2,83,50,000/- to petitioner No. 2 along with interest @ 18% per annum for the period from 24.07.2013 to 31.03.2014 and interest @ 12% per annum from 01.04.2014 till the date of full and final payment of decretal amount along with interest be paid to the financial creditor No. 2. That, there is no challenge to the said judgement and decree dated 07.11.2014.
5. It is further submitted by the petitioners that the corporate debtor who is a judgement debtor in G.A. No. 1106 of 2014 in C.S. No. 120 of 2014 and G.A. No. 1111 of 2014 in C.S.





No. 121 of 2014 has not paid any amount under the said judgement and decree to any of the applicants even after passing of the judgement and decree in aforesaid Civil Suit. That, the total outstanding dues payable by the corporate debtor to financial creditor No. 1 and financial creditor No. 2 comes to Rs. 11,27,30,250/- is on the basis of the aforesaid judgement and decree dated 07.11.2014 and 20.08.2015 respectively.

6. In support of the claim, the applicants have annexed to the application copy of the documents like; affidavit on behalf of financial creditors in terms of Section 7 of the I & B Code, affidavit verifying the petition, Board Resolution dated 21st August, 2018 and 28th August, 2018 judgement and decree dated 07.11.2014, bank statement for the period from 01.03.2014 to 13.04.2018, bank statement for the period from 01.04.2016 to 31.03.2017 etc.
7. The applicants have also submitted in tabular form the break-up of the claim amount which is reproduced here below: -

Financial Creditor No. 1

Particulars	Amount Rs.
Decretal amount	3,69,00,000/-
Interest @ 18% per annum from 01.09.2013 till 31.03.2014	38,74,500/-
Interest @ 12% p.a. from 01.04.2014 till 09.06.2019	2,29,76,400/-
Total outstanding	6,37,50,900/-

Financial Creditor No. 2

Particulars	Amount Rs.
Decretal amount	2,83,50,000/-
Interest @ 18% per annum from 01.09.2013 till 31.03.2014	29,76,750/-
Interest @ 12% p.a. from 01.04.2014 till 09.06.2019	1,76,52,600/-
Total outstanding	4,89,79,350/-

Shankar Singh

Abhinav

8. The applicants have further submitted that the aforesaid amount is due in terms of judgement and decree passed by Hon'ble High Court, Calcutta and in case of financial creditor No. 1 default occurred on 07.11.2014, whereas, in case of financial creditor No. 2 default occurred is 20.08.2015.
9. The applicants have stated that they are constrained to file the instant petition seeking initiation of CIRP against the corporate debtor for recovery of dues, therefore, this petition.
10. The respondent/corporate debtor is a limited company registered under the provisions Companies Act, 1956, on 6th January, 2010 having identification No. U24290GJ2010PLC059109 and having registered office at Village Kerala, Ahmedabad, Gujarat State. Authorised share capital of the respondent company is Rs.29,00,00,000/- and paid up share capital is Rs. 2,89,00,000/-.
11. The respondent/corporate debtor filed affidavit in reply inter alia denying the debt and raising following objections: -
 - that, adjudicating authority has no jurisdiction to try this matter as the applicants have already approached the Hon'ble High Court, Calcutta;
 - that, handwritten orders are not legible and readable;
 - that, present petition is filed without any authority;
 - that, the application is not drawn as per the proforma prescribed under the IB Code;
 - that, the application is completely misconceived;
 - that, claim is highly inflated;
 - that, the application is barred by law of limitation;

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C.P. No. (IB) 570/7/NCLT/AHM/2019

12. Since, contents of the instant petition are more or less identical to that of petition No. CP (IB) 571 of 2019, submissions made by the petitioner as well as reply by the respondent are not repeated, however, break-up of the claim amount is reproduced here below: -

Financial Creditor No. 1

Particulars	Amount Rs.
Decretal amount	31,00,000/-
Interest @ 18% per annum from 01.09.2013 till 31.03.2014	3,85,249/-
Interest @ 12% p.a. from 01.04.2014 till 09.06.2019	19,30,267/-
Total outstanding	54,15,516/-

Default occurred on 20.08.2015

Findings:

13. Heard both sides at length also seen the records and the documents annexed therein along with the application and objection/reply filed by the corporate debtor.
14. It is admitted fact that instant application is filed by the applicant claiming themselves as financial creditor based on the judgement and the decree passed in their favour by the Hon'ble High Court of Calcutta in the aforesaid civil case (s) as detailed in para 3 herein above. The said judgement and decree is passed on 07.11.2011 against the corporate debtor (judgement debtor).
15. It is also a fact that on getting the decree in favour of the petitioner(s), the petitioner(s) had ample opportunity to execute the said decree. Had the petitioner started execution proceedings of the decree in the year 2014, by now petitioner could have succeeded in th execution proceedings, but the same has not been opted by the petitioner. It is to be noted that in the year 2014, the IB

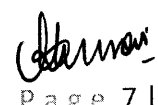
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Code was not in existence and it has come into existence in the year 2016, whereas, the instant applications are filed on 13th June, 2019. May be, most of the time, it is difficult to execute the decree provided by the Court as there would be long drawn litigation and delay while executing the decree.

16. It is important to note that IB Code is not a law for recovery of money unlike Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 and recovery of the debt due to banks and financial institutions, whose main purpose is to recover money of banks and other financial institutions.
17. The very intent of the IBC is the resolution of corporate debtor and maximisation of value of corporate debtor. Therefore, the legislature has provided section 65 of the IB Code to avoid abuse of the process of IBC, which deals with fraudulent or malicious initiation of proceedings with IBC, according to which, if corporate insolvency is initiated only for the purpose of recovery of the debt of the creditor, it is liable to be dismissed and may attract penalty ranging from rupees one lakh to rupees one crore.
18. Though in IBC the decree holders are classified as a creditor under Section 3 (10), but it does not spell whether a decree holder be classified as 'financial creditor' or 'operational creditor' for the purpose of filing application in the IBC. While dealing with the issue, it is found that there are various conflicting decisions of NCLT, NCLAT and Hon'ble Supreme Court of India on the issue that whether decree holder can execute their decree under IBC and if they can execute the decree, they will come under which category of creditor – financial or operational as decree holder do not have separate provision like section 7 for financial creditors or section 9 for operational creditors. However, it can be






considered by taking into consideration of the nature of claim in the case and facts and circumstances of particular case.

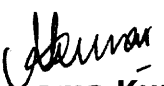
19. In **Urgo Capital Limited v. Bangalore Dehydration and Drying**, Hon'ble three judge bench of NCLAT held that decree holders can file for insolvency proceedings as the word creditor as defined under Section 3 (10) of the IBC includes decree and therefore if a petition is filed for execution of decree it cannot be dismissed on the fact that decree holder should file decree for execution in civil Court.
20. In **International Asset Reconstruction Company Pvt. Ltd. v. Jayant Vitamins Ltd.**, NCLAT dismissed an application by a financial creditor for initiation of insolvency proceedings against corporate debtors stating that application for initiating insolvency cannot be accepted if execution of a decree is pending.
21. In **HDFC Bank Ltd. v. Bhagwan Das Auto Finance Ltd.**, a three judge bench of the NCLAT clearly and unequivocally dismissed an insolvency application solely on the ground that the IBC could not be used to execute an arbitral award or decree.
22. It is a matter of record the applicants filed Civil Suits wherein decrees have been passed and the applicants being decree holders are entitled to execute the decree. It is pertinent to mention here that upon hearing both the sides and considering the materials on record, the Hon'ble High Court had passed decrees in favour of the financial creditors and the decrees passed have not been challenged by the corporate debtor herein and has attained its finality. The very act of said creditor approaching Civil Suit and obtaining



decree against the corporate debtor instead of NCLT for resolution of corporate debtor itself proves that the creditor is interested in recovery and not resolution of corporate debtor.

23. Under these circumstances, it is expedient to refer to the latest judgement of Hon'ble National Company Law Appellate Tribunal in the case of **Sh. Sushil Ansal Vs Ashok Tripathi and Ors.**, wherein it is reiterated that a decree-holder though covered under the definition of creditor under Section 3(10) of the Insolvency and Bankruptcy Code (IBC) would not fall within the class of financial creditors and therefore, a decree holder cannot initiate a corporate insolvency resolution process (CIRP) against a corporate debtor with an object to execute a decree.
24. Under the facts and circumstances and as discussed above the petition is not maintainable and deserves to be dismissed. In the result, company petition No. CP (IB) No. 570 of 2019 and company petition No. CP (IB) No. 571 of 2019 stand dismissed and disposed of without cost.
25. However, this will not stand in the way of the Petitioner approaching the appropriate forum seeking to enforce its claim against the Respondent, as this petition has been dismissed on the issue of maintainability taking into consideration the provisions of IB Code, 2016.


Chockalingam Thirunavukkarasu
Adjudicating Authority
Member (Technical)


Ms. Manorama Kumari
Adjudicating Authority
Member (Judicial)

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