

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
C.P. (IB)/195(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

SUMIRAN FOODS PRIVATE LIMITED

.....Applicant

.....Respondent

Order delivered on: 01/05/2024

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 order.

The order is pronounced in open Court vide separate sheet.

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

-sd-

CHITRA HANKARE
MEMBER (JUDICIAL)

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

CP(IB) No. 195 of 2023

(Application is filed under Section 65(1) of IBC, 2016)

IN THE MATTER OF:

**Joint Registrar,
NCLT, Ahmedabad**

... Applicant

Vs.

Sumiran Foods Pvt. Ltd. & ors.

... Respondents

Order pronounced on 01.05.2024

Coram:

**MRS. CHITRA HANKARE
HON'BLE MEMBER (JUDICIAL)**

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

MEMO OF PARTIES

Joint Registrar
NCLT, Ahmedabad

... Applicant

Versus

1. Kalpesh Hasvantrai Desai
Director of M/s. Sumiran Foods Pvt. Ltd.
3, Setu Bungalows, Chimanbhai Patel Institute
Road, Prahladnagar, Vejalpur
Ahmedabad-380015
2. Dharmendra Hasvantrai Desai
Director of M/s. Sumiran Foods Pvt. Ltd.
25, Jay Yamuna Society, Opp: Maniyasa
Society, Maninagar East, Maninagar
Ahmedabad-380008
3. Hiten Prafulchandra Shah
Director of M/s. Sumiran Foods Pvt. Ltd.
Flat No.A/72, Shaligram-3. Opp: Setu Bungalows,
Prahladnagar road, Satelite,
Ahmedabad-380015
4. Karan Dharmendra Desai
Director of M/s. Sumiran Foods Pvt. Ltd.
25, Jay Yamuna Society, Opp: Maniyasa
Society, Maninagar East, Maninagar
Ahmedabad-380008
5. Rushil Dharmendrakumar Desai
Director of M/s. Sumiran Foods Pvt. Ltd.
25, Jay Yamuna Society, Opp: Maniyasa
Society, Maninagar East, Maninagar
Ahmedabad-380008
6. M/s. Sumiran Foods Pvt. Ltd.
Survey No.33, Nr. Pragati High School,
Opp: Anupam Cinema, Khokhra,
Ahmedabad-38008

... Respondents

Present:

For the Applicant : Mr. Mahendra Parmar, Dy. Registrar
For the Respondents : Mr. Kunal Vaishnav, Adv. For R-1 to 6

JUDGEMENT

1. Show-cause notice was issued by the Joint Registrar to the respondents calling its explanation as to why penalty as stipulated u/s 65(1) shall not be imposed upon it as per the directions given by this Tribunal while disposing off IA 338 of 2023 in CP(IB) 838 of 2019.
2. Respondent M/s. Sumiran Foods Pvt. Ltd. filed an application as an Operational Creditor u/s 9 of the IBC, 2016 for initiating Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) against the Corporate Debtor Pankaj Events & Celebrations Pvt. Ltd. which was allowed vide order dated 31.03.2021. Mr. Manish Kumar Bhagat was appointed as IRP. IRP started further resolution process. He has issued various letters, publication, conducted meetings of CoC etc. The CoC has not taken any decision about his fees though they were some Financial Creditors, Operational Creditors etc. During meeting of CoC, they have withdrawn their claims. Applicant informed CoC that there are no provisions in IBC, 2016 for withdrawal of CIRP. Liquidation application filed by the applicant was rejected by the Tribunal as all the Financial Creditors and

Operational Creditors have withdrawn their claim and considering all other facts, this Tribunal revised to extend CIRP period and also rejected the liquidation application. Thereafter Resolution Professional filed closure/termination application of CIRP bearing IA No.338 of 2023.

3. While deciding that application, Tribunal made certain observations as the Operational Creditor had withdrawn its claim. CIRP was terminated, however, it was observed as under:

“The sequence of events narrated in the body of the order show that the intention of the Operational Creditor i.e. M/s. Sumiran Foods Pvt. Ltd. at whose instance the CIR Process was initiated, was not for the resolution of Insolvency. Instead, the Operational Creditor has used this forum for recovery and had initiated the CIR process with malicious intention for purpose other than the resolution of insolvency of the Corporate Debtor, which is not in accordance with the aim of IBC, 2016. As per the Code, if any person initiates the Insolvency Resolution Process fraudulently or with malicious intent for any purpose other than for the resolution of the insolvency, or liquidation, such an act is punishable under

Section 65(1) of IBC 2016. Hence, before taking any action under Section 65(1) of IBC 2016, we deem it appropriate to issue a show cause notice, under Rule 59 of the National Company Law Tribunal Rules, 2016 to the Operational Creditor - M/s. Sumiran Foods Pvt. Ltd. through its Directors as to why penalty as stipulated under Section 65(1) of IBC, 2016 should not be imposed on it. Learned Joint Registrar NCLT, Ahmedabad is directed to issue the show cause notice under Section 65(1) of IBC, 2016 read with Rule 59 of the National Company Law Tribunal Rules, 2016 to M/s. Sumiran Foods Pvt. Ltd. through its Directors giving them fifteen days' time to explain and submit in writing as to why the penalty as stipulated under Section 65(1) of IBC, 2016 shall not be imposed on them. The Registry is directed to allot a case No. for the proceedings for which the Show Cause Notice is being issued to the Operational Creditor under Section 65(1) of IBC, 2016. Registry/Court Officer to list this matter on 01.10.2023.

4. On receiving the notice of Registrar, respondents appeared and filed its affidavit in reply. Respondents submitted that Pankaj Events & Celebration Pvt. Ltd. was into the business

of event management while respondent company is engaged in the business of providing various types of dairy products foods etc. Pankaj Events & Celebration Pvt. Ltd. used to give orders for foods and other related products to the applicant. Accordingly, applicant used to supply foods and other products and raised invoices and Pankaj Events & Celebration Pvt. Ltd. used to make ad-hoc payment. The last payment was made on 16.08.2019. According to the respondent company, several reminders were sent for outstanding amount but despite assurance given, Pankaj Events & Celebration Pvt. Ltd. failed to clear the dues. Therefore, statutory notice was issued and finally CP(IB) 838 of 2023 was filed. Respondent further stated about admission of Corporate Debtor in CIRP as well as appointment of applicant as a Resolution Professional. It has further stated that IRP informed Operational Creditor M/s Sumiran Foods Pvt. Ltd. to deposit amount as per letter dated 20.12.2023 which the Operational Creditor has paid. The letter is for payment of CIRP costs. According to the respondents, they had rightly initiated proceedings under IBC, 2016 for the admitted liability of Corporate Debtor and

they prayed for terminating this proceedings against Operational Creditor and its director as intention of action taken by Operational Creditor as bonafide and has followed proceedings.

5. Heard Ld. Counsel for the respondents.
6. From the observations made by the Tribunal, it is clear that whenever CoC meeting was fixed, one or other creditor had withdrawn its claim. Respondents only submitted that they were absent during meetings but they have paid the cost amount. When the respondents itself filed an application for initiation of CIRP against the Corporate Debtor, it was their duty to remain present and take active part in the process of CIRP even if they were operational creditors. When they had not desired to proceed with the resolution process, they should have filed necessary application for its closure before the Tribunal. It was clearly observed by the Tribunal that respondents, i.e., Operational Creditors has used this forum for recovery with purported malicious intention and not in accordance with the aim of IBC, 2016. When the respondents had not taken active participation in the process after initiation of CIRP shows their clear intent that

they have received the amount and used this forum for recovery only. The explanation given by the respondents for initiation of CIRP is not convincing. We therefore, hold that penalty is to be imposed upon them as per 65(1) of IBC, 2016 and they are directed to pay the CIRP cost to the RP.

7. Hence we pass the following order:

ORDER

- I. Application CP(IB) 195 of 2023 is allowed.
- II. Penalty of Rs.1 lakh imposed upon each respondents u/s 65(1) of IBC, 2016 to be paid to Prime Minister's National Relief Fund within one month and receipt to be submitted to the Registry. Additionally, the CIRP cost including RPs fees if any due and payable is to be made by the applicants who are respondents in this show cause notice.

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

CHITRA HANKARE
MEMBER (JUDICIAL)