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

ITEM No.301
C.P.(IB)/83(AHM)2023

Order under Section 9 IBC, 2016

IN THE MATTER OF:

Saheb Impex Through Raviraj Tapulal Aghara a Partner of Saheb Impex **........Applicant**

V/s **........Respondent**

Camerich Papers Pvt Ltd

Order delivered on 27/02/2024

Coram:

Mr. Shammi Khan, Hon'ble Member (J)
Mr. Sameer Kakar, Hon,ble Member (T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of the order. The order is pronounced in open Court, vide separate sheet.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Rajeev/P.S

BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
DIVISION BENCH –I, AHMEDABAD

CP(IB)/83(AHM)/2023

(An application under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

In the matter of **M/s. Camerich Papers Pvt. Ltd.**

M/s. SAHEB IMPEX
Having address at:
Shop No.6, 2nd Floor,
A-1 Shopping Center,
Avani Chokdi,
Canal Road, Morbi.

...Applicant/Operational Creditor

VERSUS

M/s. CAMERICH PAPERS PVT. LTD.
Having address at:
229, 2nd Floor, Kohinoor Complex,
Canal Char Rasta, Ravapar Road,
Morbi.
Alternate Address:
Survey No.283/1/24,
Lakaddhar – Anandpar Road,
National Highway 8-A,
Nr. Dhuva Over Bridge,
At Matel, Taluka: Wankaner,
Motel, Gujarat.

...Respondent/Corporate Debtor

Order pronounced on 27.02.2024

CORAM:

SH. SHAMMI KHAN, MEMBER (JUDICIAL)
SH. SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance

For the Applicant	: Mr. P. M. Lakhani, Ld. Adv. a.w. Ms. Dhwani Lakhani, Ld. Adv.
For the Respondent	: Dr. Hiten Parikh, Ld. PCA

O R D E R

***(Per:* BENCH)**

1. This application is filed on 20.03.2023 by one M/s. Saheb Impex (**"Applicant/Operational Creditor"**) through its partner Mr. Raviraj Tapulal Aghara against M/s. Camerich Papers Pvt. Ltd., (**"Respondent/Corporate Debtor"**) having CIN: U21000GJ2014PTC080492 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (**"IBC, 2016"**) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Respondent/Corporate Debtor, to appoint Interim Resolution Professional (hereinafter referred to as **"IRP"**)

and declare the moratorium for having defaulted payment of the operational debt of Rs. 4,18,51,629.68 including interest.

2. A perusal of Part-I of the Form-V reveals that the Applicant is a Partnership Firm and this application is filed through its Partner by one Mr. Raviraj Tapulal Aghara. A copy of Partnership Deed is annexed at Annexure-I.

3. On perusal of Part-II of the Form-V reveals that the Respondent/Corporate Debtor was incorporated on 14.08.2014, having its registered address at; 229, 2nd Floor, Kohinoor Complex, Canal Char Rasta, Ravapar Road, Morbi.

4. On perusal of Part-III of the Form-V reveals that the Applicant/Operational Creditor has not proposed the name of any Interim Resolution Professional (**"IRP"**).

5. On perusal of Part-IV of the Form-V reveals that the debt claimed is Rs.3,63,92,927/- and interest thereon of Rs. 54,58,702.68 and the total debt is Rs. 4,18,51,629.68.

6. It is stated that the Applicant was supplying waste papers to Respondent between the periods from 03.09.2019 to 24.12.2022. This application was filed on 20.03.2023.

7. It is stated that pursuant to an oral agreement between the parties, goods were supplied. Despite repeated reminders, the Corporate Debtor has not paid the amount demanded.

8. It is stated that the invoice became due and payable by the Corporate Debtor within 15 days from the date of issuance of the said invoice.

9. It is stated that all the invoices carried a clause of interest at the rate of 18% per annum.

10. It is stated that Demand Notice was issued on 16.01.2023 in Form-3 which is annexed as Annexure-C at page nos. 1676 to 1685.

11. It is stated that in spite of the receipt of the said notice, the Corporate Debtor failed to give any reply to the said notice and neither has paid the outstanding demand and, hence, the present application.

12. The Demand Notice was delivered on 18.01.2023 and proof of the same is attached at page no. 1689 of the application.

13. A copy of the ledger account of the Operational Creditor depicting unpaid operational debt along with confirmation of outstanding and unpaid operational debt is attached as Exhibit-D.

14. The list of documents relied upon by the Applicant is as follows:-

    a. *Copy of registered partnership deed of the Operational Creditor along with a copy of the GST registration certificate of M.S Saheb Impex is annexed hereto and marked as "Exhibit-F".*

    b. *Affidavit of Mr. Raviraj Tapulal Aghara, a Partner of M/s Saheb Impex, to the effect that no legal reply to the notice has not* *been given by the Corporate Debtor relating to dispute of the unpaid operational debt, the said affidavit is annexed hereto and marked as "Exhibit-G".*

c. *A copy of proof of service of Advance Copy of the application being sent to the Corporate Debtor is annexed hereto and marked as "Exhibit-H" to this application.*

d. *A copy of the authorization letter issued to Raviraj Tapula Aghara by Saheb Impex is annexed hereto and marked as "Exhibit I".*

15. Order of this Tribunal dated 09.01.2024 records as under:-

"A service affidavit report has been filed on 03.01.2024, vide inward diary No. 41, which reflects that notice was sent to the respondent through registered post on 03.12.2023 and delivered on 15.12.2023 as per the tracking report of the postal authority and on another address on 18.12.2023. Further, the respondent was also served through email on 01.01.2024.

In view of the above, we consider the service upon the respondent is sufficient and complete. However, despite due service, neither the respondent has come present nor any reply has been filed in terms of the previous order dated 05.12.2023, as well as per the *notice dated 08.12.2023, issued by the registry and duly served upon the respondent.*

Last opportunity is given to the respondent to appear in the matter and to file a reply, if any, within seven days' from today, failing which the matter shall be proceeded without reply and heard accordingly..".

16. Ld. PCA, Mr. Vivek Zalavadiya had appeared on 29.01.2024. However, neither any reply nor any application seeking extension of time for filing the reply was filed.

17. Vide order of this Tribunal dated 29.01.2024, right to file the reply by the Respondent was closed.

18. Form-D was filed under Inward Diary No. D4886 dated 04.12.2023. A perusal of the same reveals that the default is "DEEMED TO BE AUTHENTICATED".

19. Written Synopsis as well as Written Submissions have been filed by the Operational Creditor under Diary

No.D1147 and Diary No. D1141 dated 09.02.2024 respectively.

20. The Applicant has attached ledger account of the Operational Creditor in the books of the Corporate Debtor from page no. 1771 to 1782.

21. Learned PCA Dr. Hiten Parikh appeared on behalf of the Corporate Debtor and stated that the application was filed by the non-registered firm and admitted that the Demand Notice was not replied by the Corporate Debtor.

22. In reply, Learned Counsel for the Operational Creditor pointed out that the partnership deed is attached with the application along with the registration certificate from page no. 1999 to 2009.

23. We have heard the counsels for the Applicant as well as the Respondent in the matter. The Applicant has filed several invoices along with e-way bills which goes to prove that supplies were made by the Applicant to the Respondent. The ledger account of the parties are

annexed from page no.1691 to 1782. The Corporate Debtor has not filed the reply to the Demand Notice nor has filed any reply in the present matter. The applicant has filed Form-D which is as under:-

NeSL
India's First Information Utility

NATIONAL E-GOVERNANCE SERVICES LIMITED

FORM D
RECORD OF DEFAULT(RoD)

(Issued By information utility under sub- regulation (4) of regulation 21 of the Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017)

This Record of Default is issued to the Operational Creditor M/s AGHARA RAVIRAJ TAPULAL in respect of the default of debt as per details given below-

(a) Name of the Submitter:	M/s AGHARA RAVIRAJ TAPULAL
(b) Schedule-2 Bank (Y/N):	N
(c) Name of Corporate Debtor:	M/s MS CAMERICH PAPERS PVT LTD
(d) Unique Debt Identifier Number:	AWTPA6702C_GST 1 TO S 10
(e) Registered Address:	N.A
(f) Total Outstanding Amount:	41851629.68
(g) Default Amount:	41851629.68
(h) Date of Default:	30-05-2019
(i) Status of Authentication of Default:	DEEMED TO BE AUTHENTICATED
(j) Date of Last Acknowledgement of Debt (AoD):	Not Available

Filing of Default(Submission ID No.)	Submitted on	Status of Authentication(Authenticated /Disputed/Deemed to be authenticated)	Authentication completed on
(1)	30-10-2023 18:52:49	*DEEMED TO BE AUTHENTICATED Colour Code :YELLOW	15-11-2023 00:06:12

NeSL is authorized to issue this record of default and has accordingly affixed its digital signature, as per the provisions of the Insolvency and Bankruptcy Code, 2016 read with Insolvency and Bankruptcy Board of India (Information Utilities) Regulations, 2017, Guidelines for Technical Standards for Performance of Core Services and Other Services and the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2017.

24. A perusal of the same reveals that the same is under DEEMED TO BE AUTHENTICATED status and the default amount is indicated as Rs.4,18,51,629.68 and the date of default is mentioned as 30.05.2019.

25. The Hon'ble Supreme Court in the matter of M/s. Innoventive Industries Ltd vs. ICICI Bank & Anr., has held as under:-

> *30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise.*

26. It is seen that the Operational Creditor was maintaining the running account of the Corporate Debtor in the books. The last payments were made sometime in December, 2022.

27. In view of the above, it is seen that this application is filed on 20.03.2023 and the date of default is stated to be 30.05.2019 for a sum of Rs. Rs.4,18,51,629.68 which meets the threshold limit. Accordingly, we hold that this application is within the limitation and defect-free and pass the following orders:-

(i) The Application bearing **CP(IB)/83(AHM)2023 filed by M/s. Saheb Impex** ("the Applicant/ Operational Creditor"), under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against **M/s. Camerich Papers Private Limited** ("the Corporate Debtor") is hereby admitted and the moratorium under Section 14 of the IBC, 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.

e. The provisions of sub-Section (1) shall however, not apply to such transactions, agreements as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a 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 Section 31 or passes an order for liquidation of Corporate Debtor under Section 33 of the IBC, 2016, as the case may be.

(iii) It is further directed that the supply of essential goods/services to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period as per provisions of sub-Sections (2) and (2A) of Section 14 of IBC, 2016.

(iv) The Operational Creditor has not proposed the name of IRP. Hence, this Tribunal hereby appoints **Mr. Ashish Anantray Shah, having Reg. No. IBBI/IPA-002/IP-N00214/2017-2018/10666, (Email ID: ashish@ravics.com)** as per the panel suggested by IBBI for this Bench for the period of January, 1 to June 30, 2024. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.

(v) The IRP shall perform all his functions as contemplated, inter-alia, by Sections 17, 18, 20 & 21 of the IBC, 2016. It is further made clear that all personnel connected with the Corporate Debtor, its Promoter or any other person associated with the management of the Corporate Debtor are under legal obligation under Section 19 of the IBC, 2016 for extending assistance and co-operation to the IRP. 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 with the IRP the IRP is at liberty to make appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

(vi) This Adjudicating Authority directs the IRP to make a public announcement of the initiation of CIRP and call for the submission of claims under Section 15 as required by Section 13(1)(b) of the IBC, 2016.

(vii) The IRP is expected to take full charge of the Corporate Debtor 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.

(viii) 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 obligation imposed by section 20 of the Code.

(ix) 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.

(x) The Operational Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within two weeks from the date of receipt of this order for the purpose of smooth conduct of CIRP and IRP to file proof of receipt of such amount to this Adjudicating Authority along with First Progress Report within 30 days. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per the Rules.

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

(xii) The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

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

28. Accordingly, **CP(IB)/83(AHM)2023** is allowed.

29. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-	**-SD-**
SAMEER KAKAR	**SHAMMI KHAN**
MEMBER (TECHNICAL)	**MEMBER (JUDICIAL)**

Rajeev/PS