



**IN THE NATIONAL COMPANY LAW TRIBUNAL,**  
**NEW DELHI COURT III**

**Item No. 03**  
IB-702(ND)/2021

**IN THE MATTER OF:**

Late Smt. Sunil Chhabra

**.....OPERATIONAL CREDITOR**

**Vs.**

M/s. Shib Dass Metal Private Limited

**.....CORPORATE DEBTOR**

**SECTION**

**U/s 9 of IBC, 2016**

**Order Pronounced on 01.08.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS, HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI, HON'BLE MEMBER (TECHNICAL)**

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**


Order pronounced in open court vide separate sheets. IB-702(ND)/2021  
is **admitted**.

-SD-

**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

-SD-

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**



**IN THE NATIONAL COMPANY LAW TRIBUNAL  
NEW DELHI COURT-III  
IB – 702/ND/2021**

Order 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:**

**LATE SMT. SUNILA CHHABRA**

Proprietor of Chhabra Electricals and Electronics  
Since deceased through her legal heir

**Mr. Gauraav Kumar and Mr. Aditya Kumar**

Both R/o C-75, Mahendru Enclave,  
New Delhi.

**..... Applicant/Operational Creditor**

**VERSUS**

**M/s. SHIB DASS METALS PRIVATE LIMITED**

*Having Its Registered Office at:*

1/7B, Asaf Ali Road, New Delhi -110002.

*Through Its Authorised Representative/Director*

**Mr. Vivek Arora**

**..... Respondent/Corporate Debtor**

**Order Pronounced On: 01.08.2023**

**CORAM:**

**SHRI BACHU VENKAT BALARAM DAS,  
HON'BLE MEMBER (JUDICIAL)**

**SHRI ATUL CHATURVEDI,  
HON'BLE MEMBER (TECHNICAL)**

**Late Smt. Sunila Chhabra vs. M/s. Shib Dass Metals Private Limited**

**IB – 702(ND)/2021**

**Date of Order: 01.08.2023**



## **APPEARANCES**

- For the Applicant : Mr. Karan Malhotra, Mr./Ms. Mishra, Mr. Tushan Goel, Advs.
- For the Respondent : Mr. Hrishikesh Baruah, Ms. Apoorva Jain, Ms. Mehak Dogra, Advs.

## **ORDER**

### **PER: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. This Application has been filed on behalf of Late Smt. Sunila Chhabra, the Applicant/Operational Creditor on 19.11.2021, before this Adjudicating Authority under Section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC” or “Code”) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, (“Adjudicating Authority Rules”), for initiating the Corporate Insolvency Resolution Process (“CIRP”), declaring moratorium and for appointment of Interim Resolution Professional (“IRP”), against M/s. Shib Dass Metals Private Limited, the Respondent/Corporate Debtor on the ground that the Corporate Debtor has defaulted/failed to clear the outstanding amount of Rs. 1,55,78,369/- [(Rupees One Crore Fifty Five Lakh Seventy Eight Thousand Three Hundred and Sixty Nine Only), inclusive of the principal sum of Rs. 80,04,000/- plus Interest of Rs. 75,74,369/- @ 18% p.a.] as on 30.07.2021

### **2. Submissions of the Applicant:**

- i. The Corporate Debtor is a private limited company registered under the Companies Act, 1965 engaged in the business of industrial raw materials like stainless steel sheets, plates & pipe fittings. The Corporate Debtor approached Late Smt. Sunila Chhabra, Proprietor of Chhabra Electricals and Electronics (Operational Creditor), who was engaged in the business of trading and support services, inter-alia, electrical and electronics like cables, switches, MCBs, etc. for the

**Late Smt. Sunila Chhabra vs. M/s. Shib Dass Metals Private Limited**

**IB – 702(ND)/2021**

**Date of Order: 01.08.2023**



purpose of purchasing electrical goods. The goods worth Rs. 80,04,000/- were supplied by the Operational Creditor to the Corporate Debtor in 2017 vide invoice bearing no. 1080 dated 28.04.2017. As per the terms of payment maintained/mentioned in the invoice, the payment against the goods supplied to the Corporate Debtor had to be made within 60 days from the date of the invoice. The terms of payment were duly agreed upon by the Corporate Debtor. However, no payment was made by the Corporate Debtor in the agreed terms.

- ii.** The Operational Creditor made several requests and also sent several reminders to the Corporate Debtor for the payment of pending dues. The Operational Creditor also visited the office of the Corporate Debtor and approached the Directors of the Corporate Debtor for the payment due to it. However, the Corporate Debtor failed to make any payment. In the meantime, Smt. Sunila Chhabra, the Applicant/Operational Creditor passed away on 11.12.2020 living behind her sons as her legal heir.
- iii.** Finally, the Corporate Debtor agreed to make the payments to the Operational Creditor and ensure that all the payments will be made in July 2021 and a Post Dated Cheque Bearing Cheque No. 905984 was issued by the Corporate Debtor for Rs. 80,00,000/- drawn on Canara Bank, Quazi Hauz, Delhi-110006 dated 23.07.2021, issued by the Corporate Debtor in partial discharge of their liabilities. However, the said cheque got dishonoured and was returned back on 30.07.2021 with the remark "Account Closed".
- iv.** It is submitted by the Operational Creditor that as on 30.07.2023 a total sum of Rs. 1,55,78,369/- (Rupees One Crore Fifty Five Lakh Seventy Eight Thousand Three Hundred and Sixty Nine Only) with interest @ 18% per annum calculated from the date of default till 30.07.2023 is



outstanding against the Corporate Debtor with respect to the material supplied by the Operational Creditor.

- v. Since no payment was received from the Corporate Debtor, the Operational Creditor on 30.07.2021 issued a demand notice under Section 8 IBC, 2016 to the registered email address of the Corporate Debtor by speed post seeking payment of the outstanding amount. The Corporate Debtor, on 06.08.2021 sent a reply to the said demand notice denying its liabilities. Thereafter, the Operational Creditor issued a legal notice under Section 138 of the Negotiable Instrument Act to the Corporate Debtor for dishonoured Cheque No. 905984. Since the Corporate Debtor did not make any payment the present application has been filed.

**3. Submissions of the Respondents:**

- i. The Respondent filed a reply affidavit denying the allegations made by the Applicant herein, the Corporate Debtor raised the Preliminary Objection that the amount claimed in this petition is Rs. 80,04,000/- which is below the threshold limit of Rs. 1,00,00,000/- as per the notification issued by the Ministry of Corporate Affairs dated 20.04.2023. It is submitted that the interest cannot be added to the principal amount for the purpose of the threshold limit. The Corporate Debtor has relied upon a judgement in the case of CBRE South Asia Private Limited Vs. M/s. United Concept and Solution Private Limited reported in 2022 SCC Online NCLT 36.
- ii. The Corporate Debtor also submitted that the Tax Invoices dated 28.04.2017 and the balance confirmation for the years 2018-19 and 2019-20 are all forged and fabricated and cannot be relied upon by the Operational Creditor. Further, no agreement between the parties for the supply of electrical goods was interred into between the parties.



- iii. The Corporate Debtor further submitted that these documents are unsigned and not annexed along with the demand notice. It is further submitted that as per the terms of payment mentioned in the invoices, the payment against the goods supplied to the Corporate Debtor has to be made within 60 days from the date of invoices, however, the Corporate Debtor denied having agreed to the terms of payment.
- iv. The Corporate Debtor has contended that the Post Dated Cheque Bearing Cheque No. 905984 was misplaced from its office and therefore, a complaint has been filed on 12.01.2022 under Section 420, 465, 467, 468, 471 and 120B of IPC, 1860 and therefore has denied having issued any such check to the Operational Creditor. The Corporate Debtor also denied having issued the Post Dated Cheque Bearing Cheque No. 905984 to the Operational Creditor for Rs. 80,00,000/- drawn on Canara Bank, Quazi Hauz, Delhi-110006 dated 23.07.2021

#### 4. **Analysis and Findings**

- i. We have heard the Ld. Counsels appearing for both parties and also perused the documents on record.
- ii. The Respondent/Corporate Debtor has raised a Preliminary Objection as to the maintainability of the present application filed under Section 9 of the Code on the ground that the amount claimed is below the threshold limit and interest component cannot be clubbed with the principal amount for meeting the threshold of Rs. 1,00,00,000/- as envisaged under Section 4 of the Code.
- iii. In this regard, we may observe that there is a divergence of opinions in the Coordinate Benches of this Tribunal. In the case of **M/s. Bhotika Trade & Services Pvt. Ltd. Vs. M/s. Avinash EM Projects Pvt. Ltd.**, (IB)-598/ND/2022 dated 13.07.2023, this Tribunal (Court-II) has taken a view that *“interest can be added to reach Rs. 1,00,00,000/- threshold limit only if provided*



*in the agreement*". As submitted by the Ld. Counsel for the Applicant, the Invoice No. 1080 dated 28.04.2017 clearly mentioned that in the event of failure on the part of the Corporate Debtor to pay the invoiced amount, the Applicant was entitled to interest @ 18% per annum on the due amount which is read as follows: Declaration No. 4 "*Interest @18% will be charged on delayed payments to be compounded annually*". In the present case, the Invoice No. 1080 dated 28.04.2017 provides that interest will be charged in the case of delayed payment which has been agreed by the parties. Hence, we observe that the Interest can be clubbed together to reach the threshold limit of Rs. 1,00,00,000/-.

- iv.** The Corporate Debtor has denied having received any invoices and confirmation of accounts. The Corporate Debtor also submitted that the invoices and confirmation of accounts do not bear the signature of the Operational Creditor and these documents are forged and fabricated. In response to the said contention, the Operational Creditor has submitted that the Invoice No. 1080 dated 28.04.2017 is a computer-generated invoice and is not required to bear the Stamp and Signature of the Corporate Debtor. However, the ledger account as well as the Tax Invoice has been signed by the legal heir and also bears the official seal of the company which is "*For Chhabra Electricals & Electronics, Prop. Sunila Chhabra, Legal Heir*"
- v.** The Corporate Debtor raised a contention that Smt. Sunila Chhabra passed away on 11.12.2020, however, invoices and balance confirmation of accounts were signed by her legal heirs much prior to the date of her death and therefore, the documents are forged and fabricated.
- vi.** However, from the records we find that the confirmation of accounts for the period from 01.04.2018 to 31.03.2019 dated 01.04.2019 issued by the Operational Creditor to the Corporate



Debtor have been duly received and acknowledged and sealed with proper stamp by the Corporate Debtor.

Hence, we do not find any infirmity in the fact that the legal heirs of Smt. Sunila Chhabra signed the invoices and confirmation of accounts.

- vii.** Similarly, the confirmation of accounts for the period 01.04.2019 to 31.03.2020 dated 01.04.2020 has also been received and acknowledged with proper signature and seal by the Corporate Debtor and there is no denial to this aspect. Therefore, we do not agree with the objection raised by the Corporate Debtor that they have not received the invoices and that the documents in question can be considered to be forged and fabricated.
- viii.** Having considered the facts and circumstances of the case we are of the considered view that the Operational Creditor has established that the debt is due and there is a default committed by the Corporate Debtor and therefore we are of the view that the present application under Section 9 of the IBC, 2016 ought to be **admitted**.

## 5. Order

In view of the above facts and circumstances and the foregoing discussion, we are satisfied that the present petition fulfills the criteria laid down under Section 9 of the Code. It is accordingly, hereby ordered as follows: -

- a)** The Application bearing **IB-702/ND/2021** filed by the Applicant under Section 9 of the Code r/w Rule 6 of the Adjudicating Authority Rules for initiating CIRP against the Respondent is hereby **admitted**.
- b)** We also declare a moratorium in terms of Section 14 of the Code. The necessary consequences of imposing the moratorium flows from the provisions of Section 14(1)(a), (b),



(c) & (d) of the Code. Thus, the following prohibitions are imposed:

- i. *“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;*
- ii. *Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*
- iii. *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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
- iv. *The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.*

*[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;]”*

- c) It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor as may be specified, are not to be



terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018 which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14(3)(b) of the Code.

- d)** Since section 9(4) of the code does not make it mandatory for the Operational Creditor to propose the name of the Resolution Professional along with the application to act as Interim Resolution Professional for the Corporate Debtor, the Operational Creditor has not proposed any name of the Resolution Professional. Therefore, this Adjudicating Authority appoints Mr. Mukesh Chand Jain, as the Insolvency Resolution Professional of the Corporate Debtor from the available list of panel of Resolution Professionals as maintained by IBBI. The registration number of the IRP is IBBI/IPA-002/IP-N00960/2020-2021/13054, the address of the IRP is F-703, Munirka Apartments, Sector-9, Plot-11, Dwarka, New Delhi, Delhi-110075 and the e-mail id of the IRP is mcjain.jmca@gmail.com.


Therefore, the IRP shall file a valid Authorization for Assignment along with Written Consent in Form-2 and Registration Certificate within 3 days of the pronouncement of this order.

Accordingly, Mr. Mukesh Chand Jain is appointed as IRP.

- e)** In pursuance of Section 13(2) of the Code, we direct the IRP, as the case may be to make a public announcement immediately with regard to the admission of this application under Section 9 of the Code. The expression immediately means within three days as clarified by Explanation to Regulation 6(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.



- f)** During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP, in terms of Section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this order, in default of which coercive steps will follow. There shall be no future opportunity given in this regard.
- g)** The IRP is expected to take full charge of the Corporate Debtor's assets, and documents without any delay whatsoever. He is also free to take police assistance and this Court hereby directs the Police Authorities to render all assistance as may be required by the IRP in this regard.
- h)** 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.
- i)** The Operational Creditor shall deposit a sum of Rs. 2,00,000/- (Rupees Two Lakhs only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to the approval of the Committee of Creditors ("CoC").
- j)** In terms of the Code, the Registry is hereby directed to communicate a copy of the order to the Operational Creditor, the Corporate Debtor, the IRP and the Registrar of Companies, NCT of Delhi and Haryana, by Speed Post and by email, at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of the Corporate Debtor and specific mention regarding admission of this petition must be notified.



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

**-SD-**

**(ATUL CHATURVEDI)**  
**MEMBER (TECHNICAL)**

**-SD-**

**(BACHU VENKAT BALARAM DAS)**  
**MEMBER (JUDICIAL)**