

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
COURT - 2

ITEM No.301
CP(IB)/242(AHM)2022

Order under Section 7 IBC

IN THE MATTER OF:

Wrinkle Marketing Pvt Ltd
V/s
Roselabs Bioscience Limited

.....Applicant

.....Respondent

Order delivered on: 05/06/2024

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.

SD/-

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

SD/-

CHITRA HANKARE
MEMBER (JUDICIAL)

**BEFORE THE ADJUDICATING AUTHORITY
NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD
DIVISION BENCH
COURT NO.2**

CP (IB)242(AHM)2022

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016) read with Rule 4 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

In the matter of:

1. Wrinkle Marketing Private Limited
18, Giri Babu Lane,
3rd Floor, Room No. 3C
Kolkata-700012 ..Financial Creditor No. 1
2. Somnath Mechandise Private Limited
36, Ganesh Chandra Avenue, 4th Floor,
Kolkata-700013 .. Financial Creditor No. 2

And

Roselabs Bioscience Limited
having its registered office
At C-1206, Siddhivinayak Towers
B/H Adani Cng Pumb, Off.
S.G.Highway Makarba
Ahemdabad-380051 ... Corporate Debtor

Order pronounced on 05/06/2024

Coram:

Mrs.Chitra Hankare, Member (Judicial)

Dr.Velamur G Venkata chalapathy, Member (Technical)

Appearance:

For the Applicant : Mr. Shaan Munshaw, Adv.
For the Respondent : Mr. Kunal Vaishnav, Adv.

JUDGMENT

1. This Application is filed under section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to “as the code”) by the Financial Creditors/Petitioners for initiation of Corporate insolvency Resolution Process (hereinafter referred to as “CIRP”) against the Corporate Debtor i.e. Roselabs Bioscience Limited for total amount in default for both Applicants is Rs. 18,74,23,136.46 as on 31.07.2022. The date of default is 01.09.2013.
2. The Financial Creditors No.1 has granted financial assistance of Rs. 3,69,00,000/- from 23.07.2013 to 27.08.2013. The Total amount of debt as on 31.07.2022 is Rs. 10,59,91,015.10/- including interest @ 18% pa from 01.09.2013 till 31.03.2014 and thereafter 12% pa from 01.04.2014 till 31.07.2022.
3. The Financial Creditor No. 2 has granted financial assistance of Rs. 2,83,50,000/- on 30.08.2013. The total amount of debt as on 31.07.2022 is Rs. 8,14,32,121.36/- including interest @18% pa from 01.09.2013 till 31.03.2014 and thereafter 12%

pa from 01.04.2014 till 31.07.2022.

4. The Financial Creditors invested substantial funds in the Corporate Debtor as inter Corporate deposits with the coupon rate of 18% pa compounded annually. The said investment was confirmed by the applicant in their board meeting after the investment was completed.
5. The Corporate debtor always acknowledged the deposits and issued a letter certifying the amount as inter corporate deposits (hereinafter referred to as ICDs) and stating the Coupon rate of the deposits as 18% per annum and as a security against the ICDs had given postdated Cheque to both the Financial Creditors. The aforesaid Cheques were stated to have been deposited by the Financial Creditors, but due to insufficient fund in the bank account of the corporate debtor the said cheque dated 15th February 2014 got dishonored. The Applicant thereafter immediately filed a Money Suit before the Hon'ble High Court at Calcutta. The Financial Creditor No. 1 filed C.S No. 120 of 2014 and financial creditor No. 2 filed Money Suit having C.S No. 121 of 2014 on April 2014 to recover the said fund. The Hon'ble High Court after hearing the matter passed the order dated 7th November 2014 and 20th August 2015 respectively in favour of the financial creditor No.

1 and 2 and directed the corporate debtor to pay the amount to the financial Creditor with an interest rate of 18% pa from 01.09.2013 till 31.03.2014 and thereafter 12% pa from 01.04.2014 in case of any delay in payment by the Loan Amount to the financial Creditors till the date of actual payment of the decretal amount by the corporate debtor to the Petitioner.

6. The Financial Creditors thereafter filed an Application under Section 7 of the Insolvency and Bankruptcy code, 2016 (hereinafter referred to as "the code") having C.P.(I.B) No. 571/NCLT/AHB/2019 for initiation of Corporate insolvency Resolution Process (hereinafter referred to as "CIRP") against the Corporate Debtor before this Tribunal, Ahmedabad bench on the basis of decree of the Hon'ble High Court wherein this Tribunal has dismissed the instant petition on 8th January 2021, stating that this tribunal does not pass an Order for execution of decree. After filing the aforesaid C.P.(I.B) No. 571/AHM/2019 the Financial Creditors came to learn that the Corporate Debtor has filed its financial statement with the Ministry of Corporate Affairs till 2018- 2019 and thereafter the Financial Creditor has not filed any Returns with the Ministry of Corporate Affairs. It is further submitted that a fresh cause

of action arose after the acknowledgement of Financial debt in Balance sheet which was filed with the Ministry of Corporate Affairs on 02.07.2020.

7. The FC states that it is a settled Law that the Acknowledgement in Balance sheet can very well considered as the admission of Debt. Accordingly it is apparent from the conduct and the financial status of the Corporate Debtor Company that it is unable to clear its debt and is fit for CIRP under the provisions of the Insolvency and Bankruptcy Code 2016.
8. The Financial Creditors made several requests and sent repeated reminders for repayment of the said loan amounts; however the Corporate Debtor failed and/or neglected to make the repayment of the dues even after extensions provided time and again by the FC to the Corporate Debtor. Hence, this application.
9. On filing of this application Ld. Counsel for the Corporate Debtor appeared and filed its preliminary objection stating that the said Company Petition be dismissed on the grounds of suppression of material facts from this Tribunal. It is submitted that the Petitioners herein have suppressed that the Petitioners had filed the Company Petition No. 571 of 2019

before this Tribunal. This Tribunal vide Order/Judgment pronounced on 10/2/2021 dismissed the said Company Petition No. 571 of 2019. The Petitioners had lost the chance of filing Appeal (due to delay) challenging the Order/Judgment dated pronounced on 10/2/2021 in Company Petition No. 571 of 2019, preferred MA No. 8 of 2021 which was registered on 28/10/2020 challenging the Order/Judgment pronounced on 10/2/2021 dismissing the said Company Petition No. 571 of 2019. The said MA No. 8 of 2021 was dismissed vide Order dated 27/6/2022. It is submitted that the Petitioners have suppressed the said material facts of having filed MA No. 8 of 2021 and that the said MA was dismissed holding the "*We warn the Applicant not to indulge into such practices, wasting judicious time of the Court. Application is dismissed by rejecting all the prayers" and therefore the said Company Petition may be dismissed with cost*".

10. It is submitted that the said Petition is not maintainable on the principles of res judicata. It is submitted that the Hon'ble Apex Court, has held that doctrine of res judicata is applicable to proceedings under IBC. This Company Petition is filed by the Petitioner on the same grounds and based on their claim based on the Judgments passed by the Calcutta High Court dated

7/11/2014 in case filed by the Petitioner No.1 and Judgments passed by the Calcutta High Court dated 20/8/2015 in case filed by the and Petitioner No.2. Therefore, the said Petition may be dismissed on the grounds of Res Judicata.

11. The Corporate Debtor relied upon the judgment of **Raghavendra G. Kundangar Vs Shashi Agarwal** the Liquidator of Bharat NRE Coke Ltd., wherein it was held that *“...the principle laid down in the above judgments, the principle of res judicata, though a part of CPC, it would be applicable to the proceeding of this Tribunal and IBC. Only to prevent the abuse of process of law and give a finality to any proceeding, or orders, and to avoid an endless litigation to frustrate the very object of enacting IBC, the claim of appellants is liable to be rejected.”*
12. In response to the preliminary objections filed by the Corporate Debtor the Financial Creditor had filed its rejoinder stating that all allegations are baseless levied on it. It is submitted that the Corporate Debtor admitted and acknowledge the claim of Financial Creditor and given several cheques to the FC which got dishonoured due to insufficient funds, the said reply is nothing but misconceived and vexatious and are liable to be dismissed in *limini* with exemplary costs. It is stated that the

Corporate Debtor has not only miserably failed to put forth any credible defence to the petition but have also sought to mislead this Tribunal. It is also disputed that the instant petition is not maintainable on the principles of res-judicata. The petitioner has elaborately submitted tabular form declaring dates and events /sequence of cause of action and requesting to grant all reliefs as prayed in instant petition.

13. We have heard Ld. Counsels.
14. This Tribunal had already dismissed a similar application Company Petition No. 571 of 2019 U/s 7 of the IBC, 2016 filed by the same Applicant (Petitioner) and also dismissed MA No. 8 of 2021 on the ground that petitioner has suppressed the facts and the Tribunal warn to the Applicant not to indulge into such practices, wasting judicious time of Court. The order passed by this Tribunal attained finality as it was not challenged in any other forum. The application filed on a decreed unsecured debt by The Hon'ble High Court At Calcutta after hearing the matter on 7th November 2014 and 20th August 2015 respectively in favour of the financial creditor No. 1 & 2 is now beyond the period permissible for filing this application under Section 238 A of IBC, 2016 and IBC is not a forum to execute the unrealized decree by any matter of law

defined under the provisions of IBC with such blatant delay overriding the provisions of limitation Act. The applicant has further violated the provisions of the IBC 2016 by filing another application, concealed the facts of the matter before the same Tribunal which had already rejected the application by way of its order dtd. 8th January 2021.

15. In view of the above, this we pass following order :

ORDER

CP (IB)242(AHM)2022 is rejected and stands disposed of. The Applicants are directed to deposit a penalty of Rs. 5.00 lakhs (Rupees Five Lakhs only) to the PM Relief Fund for filing another application on same cause of action by concealing the facts, when the matter was already decided on same facts under the IBC, 2016 by this Tribunal.

SD/-

SD/-

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

CHITRA HANKARE
MEMBER (JUDICIAL)