

**IN THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD**  
**DIVISION BENCH**  
**COURT - 1**



ITEM No.301  
**CP(IB) 763 of 2019**

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Fritta India Pvt Ltd  
V/s  
Lexus Granito (India) Ltd

.....**Applicant**

.....**Respondent**

**Order delivered on: 31/10/2023**

**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 the open court, vide separate sheet.

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**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

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**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**

**BEFORE THE ADJUDICATING AUTHORITY  
NATIONAL COMPANY LAW TRIBUNAL  
AHMEDABAD BENCH  
COURT-I**

**CP (IB)-763 of 2019**

*(Application Under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)*

In the matter of **M/s. Lexus Granito (India) Limited**

**Fritta India Pvt. Ltd.**

C/o Shivaji Industries,  
Block-C, Opp. Bhagwati Weigh Bridge,  
Lakhdirpur Road, Morbi,  
Rajkot-363642

**.....Operational Creditor**

**VERSUS**

**Lexus Granito (India) Limited**

Survey No. 800,  
Opp. Lakhdirpur Village,  
N.H. 8 A, Morbi,  
Rajkot-363642.

**.....Corporate Debtor**

**Order pronounced on 31.10.2023**

**Coram:**

**Mr. Shammi Khan, Member (Judicial)**

**Mr. Sameer Kakar, Member (Technical)**

**Appearance:**

For Applicant : Mr. Tanmay Bonthia, Adv.

For Respondent : Mr. Vijay Patel, Adv.



**ORDER**  
[Per Bench]

1. The Present Application is filed on 23.10.2019 by Fritta India Pvt. Ltd. (hereinafter referred to as '**Operational Creditor**') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IB Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against Lexus Granito (India) Ltd. (hereinafter referred to as '**Corporate Debtor**') for initiation of Corporate Insolvency Resolution Process (**CIRP**), appoint IRP and declare moratorium for having defaulted payment of its outstanding dues **Rs.2,83,27,304/-**. The affidavit in support of application is affirmed by one Mr. Sanjay Chanan in his capacity as director of the Operational Creditor.
2. A perusal of the Part II of Form-5 reveals that the Corporate Lexus Granito (India) Ltd. is a company incorporated on 08/05/2008 with CIN No. L26914GJ2008PLC053838 and is having its registered office at Survey No. 800, Opp. Lakhdhirpur Village, N.H. 8 A, Morbi, Rajkot-363642, Gujarat.
3. A perusal of the Part-III of the Form-5 reveals that the applicant has not nominated any IRP in the matter and has requested that IRP may be appointed form the panel.
4. A perusal of Part IV of the Form-5 reveals that the operational debt claimed is Rs. 2,83,27,304/- of which Rs.



2,66,78,66/- is the principal amount and Rs. 16,48,638/- is the interest calculated @ 5% p.a.

5. It is stated that the Operational Creditor has supplied various material like compound glazed etc. to the Corporate debtor during the year 2018 for which invoices were issued. Annexure 1 to 31 are invoices, ledger account etc.
6. It is stated that post supply of goods, the Operational Creditor has written several emails to the Corporate Debtor demanding payment, however the Corporate Debtor failed to pay the amount demanded.
7. It is stated that a Settlement Agreement was entered into between the parties on 29/03/2019. As per the agreement Corporate Debtor was to pay the Operational Creditor a sum of Rs. 15,73,700 monthly until total outstanding of Rs.3,46,21,400/- as per the agreement was paid. A copy of such agreement is placed at Annexure-D.
8. It is stated that the Corporate Debtor breached the said settlement agreement. The Operational Creditor sent reminder notice on 19.07.2019 to clear pending instalments within 10 days. However, corporate debtor failed to pay the amount. The Operational Creditor as a last resort, served a Demand Notice to the Corporate Debtor on 14.09.2019 calling upon the Corporate Debtor to clear the outstanding debt of Rs. 2,83,27,304/- (Rupees Two Crore Eighty-Three



Lakh Twenty-Seven Thousand Three Hundred and four only). The Demand Notice was duly served upon the Corporate Debtor on 20.09.2019. However, the Corporate Debtor did not reply to the said demand Notice and hence this petition.

9. Operational Creditor relies upon the following documents :-
- a) Form 3 & 4.
  - b) Ledger Account.
  - c) Tax Invoices.
  - d) Settlement Agreement.
  - e) Email communication.
10. A Reply affidavit was filed on behalf of the respondent under diary No. 2963 dated 02.03.2020 which is affirmed by one Mr. Anil Babubhai Detroja Director of the corporate debtor. The summary of the response is as below:-
- (a) The corporate debtor has not paid the operational creditor since further supplies were stopped. The corporate debtor is undergoing financial constraints. A settlement agreement was executed on 29.03.2019, showing the willingness of the corporate to pay. The corporate debtor has not denied the receipt of goods nor as based any dispute relating to the quality / quantity.
  - (b) In para 6 of the reply the corporate debtor written as “Now, after making payment above to the petitioner and suggest



that the remaining payment can be paid in reasonable time period by equal monthly instalments as it can be decided by the parties and if petitioner may show readiness to accept the amount accordingly as per repayment schedule which can be Rs. 12 to 15 lakhs per months”. Thus, there is clear admission on the part of the corporate debtor.

11. From the various interim orders based on the file, it is seen that vide order dated 16.03.2021, the present CP (IB) 763/2019 on the request of the operational creditor was withdrawn with a liberty to get this application revived, in case, settlement fails.
12. Order dated 21.06.2022 records that on an application being the restoration application 12(AHM)2021 the present CP was restored on the file of this Tribunal.
13. In terms of the order dated 23.08.2023 applicant was directed to file the details of payments receipt post the settlement.
14. In response to order dated 22.08.2023 the applicant has filed an additional affidavit under diary No. D-3384 dated 05.09.2023. Perusal of the additional affidavit reveals that the respondent has made a payment aggregating to Rs.53,00,000/- before signing at the settlement agreement and a sum of Rs.97,77,301.20/- subsequent to the signing of the settlement agreement and a sum of



Rs.1,18,50,234.80/- along with the applicable interest is still remains unpaid.


15. We have heard both the sides and perused the documents available on record. The applicant has proved that they have supplied goods. The settlement agreement and the reply of the corporate debtor proves beyond doubt the debt and default.
16. This application was filed sometime in 2019 and at the relevant point of time the pecuniary limit under Section 4 of IBC, 2016 was Rs. One Lakh. The operational creditor has proved beyond doubt that the total debt is much more than Rs. One Lakh and the said debt is in default by the corporate debtor.
17. Further, the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank Limited***, where it has discussed extensively the scope of the Adjudicating authority under section 7 of the IBC is limited to assessing the records provided by the financial creditor to satisfy itself that the default has occurred.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to



the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

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.


18. The present application is complete in terms of Section 9 of the Code. The Applicant/Operational Creditor is entitled to claim its dues, establishing the default in payment of the Operational Debt beyond doubt. The outstanding Operational Debt is of more than one lakh which meets the threshold limit as per section 4 of the Code and is well within the limitation for filing the present application. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the Respondent/Corporate Debtor deserves to be admitted.

19. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under:-

- (i) The Respondent/Corporate Debtor **M/s. Fritta India Private Limited** is **admitted** in Corporate Insolvency Resolution Process under section 9(5) of the Code.



- (ii) As a consequence thereof, moratorium under Section 14 of Insolvency and Bankruptcy Code, 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.*

- (iii) 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.
- (iv) 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.
- (v) The Operational Creditor has not proposed the name of IRP. Hence, this Tribunal hereby appoints **Truvisory Insolvency Professionals Private Limited**, having Registration No. IBBI/IPA-0103/IPA-2/2022-23/50020 (Email ID:- contactanshulgupta) as per the panel suggested by IBBI for this Bench for the period of July, 1 to December 31, 2023. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.



- (vi) 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.
- (vii) 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.
- (viii) 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.
- (ix) 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.

- (x) 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.
- (xi) The Operational Creditor is directed to pay an advance of **Rs.2,00,000/- (Rupees Two Lakh Only)** to the IRP within a period of 7 days from the date of this order to meet the cost of CIRP arising out of issuing public notice and inviting claims etc. till the CoC decides about his fees/expenses.
- (xii) 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.



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

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

20. Accordingly, **CP (IB) No. 763 of 2019** is allowed. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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**SAMEER KAKAR**  
**MEMBER (TECHNICAL)**

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**SHAMMI KHAN**  
**MEMBER (JUDICIAL)**