



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

Item No.01
IB-1333/ND/2018

IN THE MATTER OF

M/s. Bajaj Rubber Company Ltd. Operational Creditor/Applicant

Versus

M/s. Ace Footmark Ltd. Corporate Debtor/Respondent

SECTION

U/s 9 IBC code 2016

Order pronounced on: 17.08.2023

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-1333/ND/2018 stands ***admitted.***

SD/-

(ATUL CHATURVEDI)
MEMBER (TECHNICAL)

SD/-

(BACHU VENKAT BALARAM DAS)
MEMBER (JUDICIAL)



THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI BENCH

COURT- III

IB-1333/ND/2018

U/S. 9 of the IBC, 2016 and Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rule, 2016.

IN THE MATTER OF:

M/s. BAJAJ RUBBER COMPANY PRIVATE LIMITED

Registered Office: -

C-47, Mayapuri Industrial Area phase - II

New Delhi - 110064

.....Operational Creditor

Versus

M/s. ACE FOOTMARK PRIVATE LIMITED

Registered Office: -

B-253, 2nd Floor, Greater Kailash Part - 1

New Delhi - 110048

..... Corporate Debtor

Order Delivered On: - 17.08.2023

Coram:

Shri Bachu Venkat Balaram Das

Hon'ble Member (Judicial)

Shri Atul Chaturvedi

Hon'ble Member (Technical)

IB - 1333 (ND) 2018

D.O.O - 17.08.2023

**Appearances:****Operational Creditor** : Mr. Shailender Kumar, Advocate**Corporate Debtor** : None**O R D E R****Per: BACHU VENKAT BALARAM DAS, MEMBER (JUDICIAL)**

1. The instant application has been filed under Section 9 of the Insolvency & Bankruptcy Code, 2016 (hereinafter referred as 'IBC, 2016') R/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The Operational Creditor, M/s. Bajaj Rubber Company Private Company is seeking an Order to initiate Corporate Insolvency Resolution Process (hereinafter referred as 'CIRP') against the Corporate Debtor viz., M/s. Ace Footmark Private Limited, to declare moratorium and to appoint Interim Resolution Professional (hereinafter referred as 'IRP'). The Corporate debtor is registered with ROC, NCT of Delhi & Haryana and is therefore, within the jurisdiction of this Adjudicating Authority.

2. The Operational Creditor/Petitioner has averred as follows: -

a) It is submitted that, the Operational Creditor is a company engaged in the business of distribution of chemicals manufactured by world class companies like Nocil Ltd, Godrej Industries Ltd. etc. The Applicant Company also imports raw materials from Korea, Japan. The Corporate Debtor is engaged in the business of manufacturing footwear products based on EVA polymers.

b) The Operational Creditor started supplying raw materials like pigments, Carbon black, Blowing agents, Stearic Acid etc. to the Corporate Debtor. The



Operational Creditor regularly supplied raw materials to the Corporate Debtor and raised the invoices.

c) It is further submitted that, the Corporate Debtor failed to make payments against the invoices raised by the Operational Creditor. The Corporate Debtor assured to the Operational Creditor that it will make regular payments agreed by terms between both parties. Upon the assurance given by the Corporate Debtor, the Operational Creditor continued supply of Eva polymers to the Corporate Debtor.

d) It is averred that, despite all the cooperation accorded to the Corporate Debtor by the Operational Creditor to clear the pending payments on invoices, the Corporate Debtor defaulted in its commitment to regularise their account and failed to pay pending amount towards the raw materials supplied by the Operational Creditor to the Corporate Debtor.

e) It is further averred that, it was also agreed between the parties that Corporate Debtor will pay amount of Rs. 10 Lacks every month to the Operational Creditor. However, the Corporate Debtor only managed to pay only Rs. 2 to 3 Lakhs to discharge the old liability. However, Corporate Debtor stopped paying such amount after August 2017.

f) It is submitted that, on 11.02.2018 the Operational Creditor issued a Demand Notice for Rs. 1,87,09,857/- (Rupees One Crore Eighty Seven Lakh Nine Thousand Eight Hundred Fifty Seven only) to the Corporate Debtor under the provisions of Section 8 of the Insolvency and Bankruptcy Code, 2016, which was delivered to Corporate Debtor as well as its Directors. The Corporate Debtor vide letter dated 22.02.2018 replied to the Demand Notice.

g) The Corporate Debtor has been set *ex parte* vide Order dated 31.08.2022.

3. We have heard the arguments advanced by the Ld. Counsel for the Operational Creditor and also perused the records.



4. It is also pertinent at this stage to mention that, during the pendency of this matter the parties entered into a Settlement Deed. The Applicant has also placed on record the same wherein, it is stated that the Corporate Debtor handed over post-dated cheques to the Applicant and it was mutually decided by the parties that, the Corporate Debtor will pay a sum of Rs. 1,32,29,905/- (One Crore Thirty Two Lakh Twenty Nine Thousand Nine Hundred Five only).

a) On 17.01.2019, both the parties entered into a Settlement Deed. The Applicant/Operational Creditor believing upon the representations and assurances and promises of the Corporate Debtor, withdrew the petition on 08.02.2019 on the belief that Corporate Debtor will adhere to the terms of settlement deed. This Adjudicating Authority allowed the withdrawal of the petition and also granted liberty to the Applicant/Operational Creditor to revive the petition if the corporate debtor fails to comply with the settlement agreement. The Corporate Debtor failed to comply with the Settlement Agreement and this instant Application was restored to its Original position by vide Order dated 19.12.2022.

b) The Corporate Debtor paid Rs. 74,24,780/- out of total settled and agreed amount of Rs. 1,32,29,905/- and failed to pay remaining amount of Rs. 58,05,125/- (Rupees Fifty Eight Lakh Five Thousand One Hundred Twenty Five only). The Operational Creditor further submitted that, now the Corporate Debtor is liable to pay sum of Rs. 70,54,909/- interest amount on the remaining principal amount on Rs. 58,05,125/-. The total outstanding balance payable by the Corporate Debtor is Rs. 1,28,60,034/- (One Crore Twenty Eight Lakh Sixty Thousand and Thirty Four only).



5. It is pertinent to refer to the Settlement Deed executed between the parties. The relevant extracts of the Settlement Deed is reproduced below for reference: -

That the present deed is irrevocable final and binding on both the parties.

That in case M/s Ace Footmark Private Limited fails to get the cheques cleared and paid, M/s. Bajaj Rubber Company Private Limited shall be free to initiate whatever action is deemed best and in such eventuality all the concessions, remissions, adjustments so made in account as above deed shall automatically stand rescinded and withdrawn.

Thus, it is amply clear that it was mutually decided between the parties that in event of the failure of the Corporate Debtor to make payment of the disputed amount, all the concessions, remissions, adjustments so made in the deed shall automatically stand rescinded and it will be considered that same is withdrawn by the parties. As this Adjudicating Authority restored this instant petition to its Original position by vide Order dated 19.12.2022. So, to decide the question of default we will refer to the documents/evidence available on record. In view of the aforementioned Settlement Deed it is amply clear that, the Corporate Debtor has admitted that it is liable to pay Rs. 1,32,29,905 /- and paid only Rs. 74,24,780/- and it is liable to pay the balance amount of Rs. 58,05,125/- to the Operational Creditor. The instant Application is filed on 01.10.2018, therefore the threshold limit of Rs 1 Lakh shall be applicable to it.



6. In the light of the admission made by the Corporate Debtor of more than Rs. 1 Lakh, we are satisfied that there is existence of debt and default. In view of the above we are inclined to admit the Application. Further, we are of the considered view that the law of IBC remains enacted with the roots of default and where the default exists CIRP is initiated.

7. In the light of findings of the present petition, when we consider the submissions of the Operational Creditor for the claims towards the goods supplied to the Corporate debtor it appears to us that the same shall also fall within the ambit of the definition of operational debt and the applicant will qualify as an Operational Creditor in terms of section 5(20) of the Code. The averments of the applicant stating that there is a 'debt' which the corporate debtor was liable to pay but failed to do so have not been rebutted by the Corporate Debtor by placing suitable evidence. Therefore, this Adjudicating Authority admit the Corporate Debtor into CIRP under the provisions of the Code.

8. The Operational Creditor has not proposed the name of the IRP, therefore this Adjudicating Authority hereby appoints Mr. Bimal Kumar Sharma having Regn. No. IBBI/IPA-001/IP-P00542/2017-2018/10967, (email-sharma_bimal@rediffmail.com) as IRP. Consent and valid AoA of the IRP must be filed within three days of passing this order. The said IRP is directed to take charge of the Respondent Corporate Debtor's management immediately. He is also directed to cause public announcement under section 15 of the



IBC, 2016, within three days from date of receiving the copy of this order and call for submissions of claim in the manner as prescribed.

9. The moratorium is declared which shall have effect from the date of this order till the completion of CIRP, for the purposes referred to in section 14 of the IBC, 2016. It is ordered to prohibit all of the following, namely:

- 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's 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 (54 of 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 explanation below section - 14 (1) also stipulates "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”.

10. The supply of essential goods or services of the said project of Corporate Debtor shall not be terminated, suspended or interrupted during moratorium period. However, The provisions of sub-section (1) of section 14 of IBC, 2016 shall not apply to such transactions, as notified by the Central Government.

11. The IRP shall comply with the provisions of Sections 13(2), 15, 17 and 18 of the code. The Directors of the Corporate Debtor, its promoters or any person associated with the management of the Corporate Debtor shall extend all assistance and cooperation to the IRP as stipulated under section 19 for discharging his function under section 20 of the IBC, 2016.

12. The Operational Creditor is directed to send the copy of this order to the IRP with immediate effect, so that he could take charge of the Corporate Debtor’s assets etc., with respect to said project and make compliance with this order as per the provisions of IBC, 2016.

13. The Operational Creditor is directed to communicate this Order to the IRP and the Corporate Debtor with immediate effect. Further, Operational creditor shall provide initial finance to the tune of Rs. 2,00,000/- to the aforesaid Interim Resolution Professional within a weeks’ time from the date of this



order as advance towards initial cost and expenses of CIRP process. The said advance of Rs. 2,00,000/- shall be adjustable as CIRP cost by the Committee of Creditors immediately after its constitution by the IRP.

14. The Registry is directed to send a copy of this order to the Registrar of Companies concerned for updating the status of Corporate Debtor on the MCA-21 site of Ministry of Corporate Affairs for information of all concerned.

15. The application bearing IB – 1333/(ND)/2018 is ***admitted***

SD/-

**ATUL CHATURVEDI
MEMBER (TECHNICAL)**

SD/-

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