



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

ITEM No.301
CP(IB) 847 of 2019

Proceedings under Section 9 IBC

IN THE MATTER OF:

Bansal Industries

.....Applicant

V/s

Manpasand Beverages Ltd

.....Respondent

Order delivered on: 11/09/2023

Coram:

Mr. Shammi Khan, Hon'ble Member(J)

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

PRESENT:

For the Applicant : Mr. Atul Sharma, Advocate

For the Respondent : Mr. Jaimin Dave, Advocate

ORDER

The Ld. Counsel for the applicant as well as Ld. Counsel for the respondent appeared.

Today, the case is for pronouncement of order. However, the Counsel for the respondent has filed a petition mentioning that the last order dated 31.08.2023 was assailed before the Hon'ble NCLAT in Company Appeal (AT) (Ins) No. 1152 of 2023. However, the same was dismissed by the Hon'ble NCLAT vide order dated 05.09.2023 and against the dismissal of the appeal a Civil Appeal has been filed before Hon'ble Supreme Court which is not listed yet. Hence, the Ld. Counsel for the respondent requested to defer the pronouncement of order.

On the other hand, the Ld. Counsel for the applicant submitted that the appeal filed by the respondent before the Hon'ble NCLAT was dismissed with cost.

It is seen today, there is no restraint order from pronouncement of the order which is already fixed for today. Therefore, request for deferment of the pronouncement is rejected accordingly.

The order is pronounced in **CP(IB) 847 of 2019** in open Court, vide separate order sheet.

-Sd-

-Sd-

SAMEER KAKAR
MEMBER (TECHNICAL)

SHAMMI KHAN
MEMBER (JUDICIAL)

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

CP/IB/847/AHM/2019

*(Application for initiation of Corporate Insolvency Resolution Process
U/s 9 of the Insolvency & Bankruptcy Code, 2016 r/w Rule 6 of the
Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules,
2016)*

In the matter of

M/s. BANSAL INDUSTRIES

Plot No. G-30, 31, 40 & 41,
RICCO Industrial Area,
Phase – II, Bagru Extension,
Distt. Jaipur-303007

... Applicant/Operational Creditor

VERSUS

M/s. MANPASAND BEVERAGES LIMITED

1768 & 1774 Patki-1,
Village Manjusar Tal.
Savli, Vadodara-, Gujarat-391775

... Respondent/Corporate Debtor

Order Pronounced on 11.09.2023

CORAM :

SHAMMI KHAN, MEMBER (JUDICIAL)

SAMEER KAKAR, MEMBER (TECHNICAL)

Appearance:

For Operational Creditor : Mr. Atul Sharma, Advocate

For Corporate Debtor : Mr. Arijit Prasad, Sr. Advocate a/w. Mr.
Jaimin Dave, Advocate



ORDER

1. This is an application filed on 02.12.2019 by one **M/s BANSAL INDUSTRIES** (hereinafter referred to as '**Operational Creditor**') under Section 9 of the Insolvency & Bankruptcy Code 2016 (in short, 'I&B Code, 2016') r/w Rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 against **MANPASAND BEVERAGES LIMITED** (hereinafter referred to as '**Corporate Debtor**'). The Application is filed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor ('**CIRP**').
2. Part-I of the Application sets out about the Operational Creditor from which, it is evident that the Operational Creditor is partnership firm.
3. Part-II of the Application gives all the particulars of the Corporate Debtor from which it is evident that the Corporate Debtor is a Limited Company with CIN: L15549GJ2010PLC063283 and was incorporated on 17.12.2010 under the Companies Act, 1956. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at 1768 & 1744 Patki-1, Village Manjusar Tal. Salvi, Vadodara, Gujarat-391775. The Application is signed by one Mr. Avinash Kamani who has been authorized by letter dated 07.09.2019.
4. From Part III of the Application, it is seen that the Operational Creditor has proposed the name of the "Interim Resolution Professional" as one Mr. Ajay Milhotra having Registration No. as IBBI/IPA-001/IP-P-01688/2019-2020/12594.



5. The Affidavit verifying the application is placed at page no's 43. Affidavit u/s 9(3) (b) is placed at page number 41 & 42. Both the affidavits are affirmed by Mr. Avinash Kamani, Partner.
6. From Part-IV of the Application, it is seen that a total sum of Rs.43,28,681/- (Rupees Forty-Three Lakh Twenty-Eight Thousand Six Hundred and Eighty-One Only) is being claimed by the Operational Creditor as the Operational debt. The principal amount claimed is Rs.39,58,720/- and interest @ 18% per annum amounting to Rs.3,69,961/-. In Part IV of the Application, the Operational Creditor has stated the date of default as 28.02.2019.
7. Part – V of the Application discloses about the details of the documents filed by the Operational Creditor in order to prove the 'Operational debt', which are as follows;
 - i. Letters dated 13.06.2019 and 09.07.2019.
 - ii. Demand Notice dated 22.07.2019.
 - iii. Reply to demand notice dated 07.08.2019.
 - iv. Letter dated 16.08.2019 addressed by Applicant to Corporate Debtor.
 - v. Undated letter from Corporate Debtor seeking extension of time.
 - vi. Letter dated 05.11.2019 from Corporate Debtor raising certain disputes.
 - vii. Letter dated 19.11.2019 written by Applicant to Corporate Debtor in reply to letter dated 05.11.2019.
 - viii. Letter dated 30.09.2019 from Corporate Debtor.
 - ix. Copies of 7 invoices of different dates.



- x. Copy of ledger account of Corporate Debtor in books of the Operational Creditor for the period 01.4.2018 to 07.11.2019.
8. It is submitted by the Ld. Counsel for the Operational Creditor that the Applicant is a partnership firm engaged in the business of sales of multilayer shrink films and the Corporate Debtor approached the Operational Creditor for the supply of the multilayer shrink films for packing of the various products manufactured by the Corporate Debtor. The Ld. Counsel for the Operational Creditor submitted that the Applicant had shipped multilayer shrink films (goods) and the same can be evidenced from the various sales invoices as annexed in the Application.
9. The Ld. Counsel for the Operational Creditor submitted that the Corporate Debtor had not raised complaints with regards to the quality of the goods and as per the terms and conditions agreed upon by the Operational Creditor and the Corporate Debtor the payment for the invoices was due within a period of 45 days PDC after receipt of goods as per the Purchase Orders (attached with the rejoinder). The details of the invoices along with the interest as averred in the Application is extracted hereunder:-

Sl. No.	Date	Bill No.	Amount	Date of Default
1	13.1.2019	2018-19/584	150930	28.2.2019
2	13.1.2019	2018-19/585	740221	28.2.2019
3	25.1.2019	2018-19/605	446506	12.3.2019
4	30.1.2019	2018-19/614	1076497	17.03.2019
5	31.1.2019	2018-19/617	348678	18.3.2019



6	31.1.2019	2018-19/618	286754	18.03.2019
7	28.2.2019	2018-19/671	191690	15.4.2019
		Total	3241276	

Ld. Counsel submitted that the Statutory Demand Notice under Form-III was issued by the Operational Creditor to the Corporate Debtor on 22.07.2019.

10. The Ld. Counsel for the Operational Creditor submitted that, Rs. 43,28,681/- along with 18% p.a. is due and payable by the Corporate Debtor. The Ld. Counsel further submitted that as the Corporate Debtor failed to pay the due amount even after repeated reminders, the Operational Creditor left with no other option had approached this Tribunal vide this present Application under Section 9 of the IBC, 2016 seeking commencement of CIRP, appointment of IRP and declaration of moratorium.
11. Reply was filed by the Corporate Debtor on 02.12.2020. In reply the following objections were stated by the Corporate Debtor :-
- i. Applicant is not duly authorized to file the present application.
 - ii. Demand Notice dated 22.07.2019 received from the Operational Creditor was issued without proper authority.
 - iii. Certain documents such as purchase orders and bounced cheques were not attached to the demand notice.
 - iv. The date of default as mentioned in Form 5 (28.02.2019) and Form 3 (19.03.2019) are different.
 - v. Bank account statements not attached.
 - vi. Affidavit u/s 9 (3) (b) is missing.



- vii. There exists prior dispute between the parties.
12. The Operational Creditor filed rejoinder on 09.02.2021. In the rejoinder it is stated as under :-
- i. Application and Demand Notice signed by Mr. Avinash Kamani who is the majority partner having 65% share in applicant firm. The authority letter was attached at Page No. 18 of the application. There is no requirement to attach authority letter along with demand notice and any Partner of a firm under the Indian Partnership Act, 1932 can issue such notice.
 - ii. Applicant has attached copies of Purchase orders, Delivery Challans, Bounced Cheques and GSTR-1 along with the rejoinder.
 - iii. The Applicant states that the payment was due on 45th day from the receipt of goods.
 - iv. The applicant attached the 9 (3) (b) affidavit on page no. 41-42 of the application.
 - v. Applicant maintains a running ledger of the corporate debtor.
 - vi. As regards pre-existing disputes, it is stated that the same were raised only on 5.11.2019 i.e. after issuance of the demand notice. There is no documentary evidence to such disputes. The Applicant questioned the issuance of post dated cheques and states that in case of any dispute, Corporate Debtor could not have issued cheques. The applicant states that the letter of 5.11.2019 is an afterthought.
 - vii. Through Letters dated 09.07.2019 and 07.08.2019 Corporate Debtor has acknowledged the debt.
 - viii. Interest is specifically mentioned in the invoices as 18%.



13. In his rejoinder the applicant has provided the complete details of the various purchase orders, invoices, e way bills and transportation details of the goods supplied by the Applicant to the Respondent.

14. Heard the counsels appearing from both the sides and perused the documents as available in record. Order dated 09.03.2021 records that this application was dismissed as the Corporate Debtor was admitted into CIRP in another CP (IB) 503/2019, liberty was given to revive in case of settlement or otherwise. It is seen that the Applicant has filed IA 488 of 2023 seeking revival of the CP (IB) 847/2019, the said IA was allowed by this Tribunal on 01.05.2023 as 12-A was allowed by Hon. Supreme Court of India in CP (IB) 503/2019. Consequently, the present CP being CP (IB) 847/2019 was revived. The said order dated 01.05.2023 has since assumed finality.

15. It is an admitted fact in the matter that goods were supplied by the Operational Creditor/Applicant herein to the Corporate Debtor on various occasions under the various purchase orders issued by the Corporate Debtor. Pursuant to such supplies made the Corporate Debtor has issued various cheques to the Operational Creditor which bounced. Copies of the bounced cheques are attached at page number 53 & 54 of the rejoinder of the Applicant, which are aggregating to Rs. 11,03,513/-.

16. Reply to demand notice by the Corporate Debtor is placed at page 21 of the Application. The reply is dated 07.08.2019. Corporate Debtor states as under in reply to demand notice :-



*“In reference to the same, we wish to state that due to GST Search and Seizure that has taken place at the Head office and other locations, the authorized person were taken in custody and are now released on Bail. Also that the new management have been appointed who are now looking into settling the accounts and clear the outstanding dues so that the operations can be started in full fledge again.
You are therefore requested to co-operate and arrive for meeting at the head office of the company so that matter can be discussed and settled.”*

From the above, it is clear to us that no dispute was raised by the Corporate Debtor in response to the demand notice.

17. The Corporate Debtor has issued an undated letter on its letterhead addressed to “Whom so ever it may concern” which is attached at page 23 of the application through which it has pleaded that they are not in a position to clear the dues on immediate basis. It is further written that “we affirm to make the payments within a period of 60 days from the receipt of this letter or ledger conciliation whichever is later.” The Corporate Debtor has not denied the issuance of such letter.
18. As regards the disputes, we are of the view that the defence taken by the corporate debtor is nothing but a moonshine.
19. As to the other objections raised by the Corporate Debtor, they have been squarely addressed by the Applicant. In our view demand notice was proper since it was signed by the Partner, Documents such as purchase orders and bounced cheques, bank statements etc. were attached along with the rejoinder. The error regarding date of default was rectified in the application. The affidavit u/s 9 (3) (b) is available on record.



20. Taking into consideration the above, we are of the view that the Applicant has proved that there is a debt and there is default of more than Rs. 1 lakh. The default has occurred much before the advent of Covid-19. It is also seen that this application was filed on 02.12.2019 when the pecuniary limit u/s 4 of the Code was Rs.1Lac and is well within the limitation for filing the present application. Thus, we are of the view that all conditions as laid down u/s 9 of the Code are satisfied by the Operational Creditor and we are left with no other choice than to admit the present application and order for commencement of CIRP on the Corporate Debtor.
21. Further, on perusal of the IBBI site reveals that the AFA of the proposed RP Mr. Ajay Kumar Milhotra is valid till 28/11/2023.
22. In view of the above, we admit this application with the following terms and conditions:-
- (i) The Application bearing **CP(IB) No. 847 of 2019 filed by M/s. Bansal Industries** (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. Manpasand Beverages Ltd.** (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) As proposed by the Operational Creditor, we appoint **Mr. Ajay Kumar Milhotra, having Registration No. IBBI/IPA-001/IP-P-01688/2019-2020/12594**, having address at: C-8, Defence Colony, New Delhi-110024 (Email ID:- ajaymilhotra@gmail.com) as Interim Resolution Professional (“IRP”) of Corporate Debtor, subject to the condition that no disciplinary proceedings are pending against him. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 is filed, which is on record.
- (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 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.

- (ix) The IRP shall be under duty to protect and preserve the value of the property of the Corporate Debtor and manage the operations of the Corporate Debtor as a going concern as a part of obligation imposed by Section 20 of the IBC, 2016.

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

23. Accordingly, **CP (IB) No. 847 of 2019** is allowed. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

-SD-
SAMEER KAKAR
MEMBER (TECHNICAL)

-SD-
SHAMMI KHAN
MEMBER (JUDICIAL)