

**IN THE NATIONAL COMPANY LAW TRIBUNAL**

**AHMEDABAD**

**COURT - 2**

ITEM No.301

**CP(IB)/40(AHM)2023**

**Order under Section 9 IBC**

**IN THE MATTER OF:**

Sicer Inkera Private Limited

.....Applicant

Vs.

Ramos Ceramic Private Limited

.....Respondent

**Order delivered on: 14/02/2024**

**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**  
**THE NATIONAL COMPANY LAW TRIBUNAL**  
**AHMEDABAD BENCH**  
**COURT-II**

**CP(IB)/40(AHM)2023**

[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**

Sicer Inkera Private Limited  
Through its Authorised Signatory  
Mr. Bharatkumar Hargovindbhai Zalariya  
Having its Registered Office at  
S. No. 147, Nr. Varmora Granito,  
Taluka: Wankaner, Dist.: Morbi,  
Dhuva, Rajkot, Gujrata-363621

.... Applicant /Operational Creditor

**VERSUS**

Ramos Ceramic Private Limited  
Having its Registered Office at  
At Sartanpar, Taluka: Wankaner,  
Sartanpar, Rajkot-363621

.... Respondent/Corporate Debtor

**Order pronounced on 14.02.2024**

**CORAM:**

**MRS.CHITRA HANKARE**  
**HON'BLE MEMBER (JUDICIAL)**

**DR. VELAMUR G VENKATACHALAPATHY**  
**HON'BLE MEMBER (TECHNICAL)**

**Appearance:**

For the Operational Creditor: PCS Vinit Nagar

For the Corporate Debtor : Adv. Tirth Nayak

**JUDGEMENT**

1. The Petition is filed by **Sicer Inkera Private Limited** (Operational Creditor) through its authorized signatory Mr. Bharkumar Hargovindbhai Zalariya, under Section 9 of the Insolvency and Bankruptcy Code, 2016 (Code) read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 claiming to be an Operational Creditor for initiation of Corporate Insolvency Resolution Process (CIRP) against **Ramos Ceramic Private Limited** (Corporate Debtor) for making default in payment of outstanding amount of Rs. 1,60,48,191/- (Rupees one crore sixty lacs forty-eight thousands one hundred and ninety one only). The Registered Office of the operational creditor is situated at S. No. 147, Nr. Varmora Granito, Taluka: Wankaner, Dist.: Morbi, Dhuva, Rajkot, Gujrata-363621.
2. The Respondent/Corporate Debtor is a private limited company, incorporated on 03.05.2018 under the provisions of Companies Act, 2013 duly registered with Registrar of Companies, Ahmedabad, Gujarat with CIN: U26990GJ2018PTC102147, having registered office at Sartanpar, Taluka: Wankaner, Sartanpar, Rajkot, Gujarat-363621. Therefore, this Bench has jurisdiction to deal with this petition.
3. Briefly, the facts of the case as mentioned in the Petition and submitted by the Ld. Counsel for the Operational Creditor are summarized as under:

- i. M/s. Sicer Inkera Private Limited (Operational Creditor) has supplied the materials from 18.05.2020 to 03.05.2022 in the nature of Ceramic Ink to Ramos Ceramic Private Limited as per the purchase instructions received from time to time from the Corporate Debtor. Operational Creditor raised the invoices from time to time in respect of all the aforesaid supply of Ink. The Corporate Debtor is into the business of manufacturing and printing of ceramic tiles and therefore it used to purchase the 'ceramic ink' from the applicant from time to time. The supplies against which the invoice raised by the applicant during the period from 5<sup>th</sup> August, 2021 to 3<sup>rd</sup> May, 2022 are stated to have been unpaid and is in default amounting to Rs. 1,60,48,191/-.
- ii. The Operational Creditor (the Applicant) had served the Demand Notice on 09.01.2023 by email and by post pursuant to the requirements of Section 8 of the Insolvency & Bankruptcy Code, 2016 ('the Code') read with Rule 5(1) of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules, 2016 in Form 3 and Form 4 respectively but the same was returned undelivered with remarks item returned addressee left without instructions. The emails were addressed to both the Directors of the Corporate Debtor at their respective e-mail ID harsh@milanopapers.com and info@ramos, but in spite of that, the Corporate Debtor has failed to make any payment of the overdue operational debt and neither it has preferred to respond to that Demand Notice.
- iii. The corporate debtor has made the last payment to the

applicant on 3<sup>rd</sup> May, 2022 and thereafter no amount has been received from the corporate debtor even after the service of demand notice. It is further submitted that the applicant sought a confirmation of the outstanding of Rs 1,60,48,191 from the Corporate Debtor on 15.02.2022 which was confirmed on 04.03.2022.

4. On issuance of notice the Corporate Debtor has filed its reply on 05.06.2023 stating that:
  - i. In his return submission the respondent has mainly questioned the maintainability of the application as being defective on the ground for non compliance of sub rule 2 of Rule 6 of the IBC (AAA)Rules, 2016. Further the applicant has fraudulently claimed the outstanding debt and has not filed in the prescribed format of Form 5 which has been modified. Further, the operational creditor had supplied ceramic ink in lower quantities than the quantities requested by the Corporate Debtor. Owing to the same, he was unable to complete its production and was declared an NPA by its financial creditor. Further he has used this forum as a recovery mechanism.
5. The operational creditor in written submission states that there is no pre existing dispute and the demand and default was appropriately conveyed and further t the copy of the application has been served upon IBBI on 25.01.2023 (Acknowledgement ID: IAAA-0123-003246). Hence, the applicant is in compliance of Rule 6(2) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. He has also stated that the Corporate Debtor had not filed its statutory financial statements and annual return to ROC and his

account has turned in to an NPA with SBI which has created a charge for Rs 29.49 crores on the assets of the company. Further the operational creditor has filed the default with the IU and submitted the form D duly authenticating the default.

6. We have heard the Ld. Counsel for both the parties and perused the material available on record with written submission.
7. The present petition is well within the period of limitation. It is settled position of law that the proceedings under Section 9 of the IBC are governed by Article 137 of the Limitation Act which provides that the period of limitation would commence from the date when the right to apply accrues. It is reflected from the records that the operational creditor has supplied the Ceramic Ink to the corporate debtor and had raised various invoices during the period from 5<sup>th</sup> August, 2021 to 3<sup>rd</sup> May, 2022 for an amount of Rs. 1,60,48,191/- and the same has been acknowledged.
8. The Corporate Debtor raised objection which are technical in nature and not substantiated and that the applicant supplied the lower quantities is not substantiated. There is no communication or documents placed on record by the CD to clarify the above objections hence, these objections are baseless.
9. In view of the above discussion, it is evident that the debt is due and payable and default has occurred. We are of the considered view that the present petition CP(IB)/40(AHM)2023 is maintainable. Accordingly, we accept this present petition and pass the following order:

**ORDER**

- i. Application is Admitted.

- ii. The Corporate Debtor- M/s. Ramos Ceramic Private Limited is admitted in CIRP under section 9 of the IBC, 2016.
- iii. 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 IBC, 2016:
  - 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 Securitization 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.
- iv. The moratorium under section 14 of the Code shall come to 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 the corporate debtor under Section 33 of the IBC 2016, as the case may be.
- v. However, in terms of Section 14(2) to 14(3) of the Code, the

supply of essential goods or services to the corporate debtor as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period.

- vi. As the Operational Creditor has not suggested an Interim Resolution Professional, we hereby appoint Mr. Bhavan Trivedi, Registration no. IBBI/IPA-001/IP-P00335/2017-18/10605, e-mail [bhavant@yahoo.com](mailto:bhavant@yahoo.com) to act as Interim Resolution Professional (IRP) subject to the condition that no disciplinary proceedings are pending against him. He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made there under. Specific consent of the IRP in Form 2 along with disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 to be filed, within a period of one week from the date of this order.
- vii. The IRP so appointed shall make a public announcement of the initiation of Corporate Insolvency Resolution Process and call for submissions of claims under section 15, as required by Section 13(1)(b) of the Code.
- viii. The IRP shall perform all his functions as contemplated, inter-alia, by sections 17, 18, 20 and 21 of the Code. It is further made clear that all personnel connected with the corporate debtor, its promoters, or any other person associated with the management of the corporate debtor are under legal obligation as per section 19 of the Code to extend every assistance and cooperation to the IRP. Where any personnel of the corporate debtor, its promoters, or any other person required to assist or co-operate with IRP, do not assist or cooperate, the IRP is at liberty to make appropriate

application to this Adjudicating Authority with a prayer for passing an appropriate order.

- ix. 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 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.
- x. 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.
- xi. 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.
- xii. We direct the operational creditor to pay IRP a sum of Rs.1,00,000/- as fees and expenses till the COC decides about his fees/expenses.
- xiii. The Registry is directed to communicate this order to the operational creditor, corporate debtor, and to the Interim Resolution Professional and the concerned Registrar of Companies, after completion of necessary formalities, within seven working days and upload the same on the website immediately after pronouncement of the order. A copy of the order may be communicated to the IBBI for their record and for getting the status of the CD updated in the MCA portal.
- xiv. The IRP shall also serve a copy of this order to the various departments such as Income Tax, GST (centre), State Trade Tax, Provident Fund etc. who are likely to have their claim

against Corporate Debtor as well as to the trade unions/employees associations so that they are informed timely of the initiation of CIRP against the Corporate Debtor.

- xv. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.
- xvi. Accordingly CP(IB)/40(AHM)2023 disposed off.

-Sd-

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

-Sd-

**CHITRA HANKARE**  
**MEMBER (JUDICIAL)**