



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

ITEM No.103. **C.P.(IB)/111(AHM)2022** with
ITEM No.104. **Inv.P/5(AHM)2022**
ITEM No. 105. **IA/658(AHM)2022**
ITEM No. 106. **IA/46(AHM)2023**

Proceedings under Section 7 IBC

IN THE MATTER OF:

Shree Nakoda Impex
V/s
Fairdeal Multifilament Pvt Ltd

.....Applicant

.....Respondent

Order delivered on: 21/02/2023

Coram:

Dr. Madan B. Gosavi, Hon'ble Member(J)
Mr.Kaushalendra Kumar Singh, Hon'ble Member(T)

PRESENT:

For the Applicant :
For the Respondent :

ORDER

The case is fixed for pronouncement of order. The order is pronounced in the open court, vide separate sheet.

-SD-

KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-

DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)



**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
COURT-1**

CP (IB) No. 111/NCLT/AHM/ 2022

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

In the matter of:

M/s. Shree Nakoda Impex

Having its registered office at:
C-11, Abhishek 1, Nr. Haripura
Bus Stop Asarwa, Ahmedabad-Gujarat

...Applicant/Financial Creditor

Versus

M/s. Fairdeal Multifilament Pvt. Ltd.

(CIN:U25200GJ2014PTC079367)
Having its registered office at:
Block No. 49, Near Gopinath Industrial
Park Chacharwadi, VasanaSanand,
Ahmedabad, Gujarat-382110

...Respondent/Corporate Debtor

With

In the Matter of :

I.A No. 658 of 2022

(Application filed under Section 60(5)(c) of IBC)

M/s. Shree Nakoda Impex & Others

Office:-C-11, Abhishek 1
Near Haripura Bus Stop
Asarwa-Ahmedabad, Gujarat

Versus



1. Fairdeal Multifilament Pvt. Ltd.

CIN U25200GJ2014PTC079367
Registered Office: Block No. 49,
Near Gopinath Industrial Park
Chacharwadi, Vasana, Sanand
Ahmedabad 382110 (Gujarat)

Respondent 1

2. Manoj Zabbarraj Sanklecha (Director)

Address-801, Rajnigandha Tower,
Near. Sujata Flat, Shahibaug
Ahmedabad-380004, Gujarat

Respondent 2

3. Sneh Subhash Shah (Director)

Address-401, Aaryavrat Residency.
19 Milanpark Society, Navrangpura
Ahmedabad 380009 Gujarat

Respondent 3

4. Khushboo Ronak Modi (Director)

Address-32, Swapnlok Appartment,
Near Law Garden, Elishbridge
Ahmedabad 380006 Gujarat

Respondent 4

5. Saraswat Co-operative Bank Ltd.

Registered Office: Shangrila Arcade,
Near Shyamal Cross Road, 100 Ft
Anand Nagar Road, Anand Nagar,
Ahmedabad-380015 (Gujarat)

Respondent 5

...Respondents

AND

I.A. No. 46 of 2023



(Application filed under Section 60(5)(c) of IBC)

Shree Nakoda Impex

Having Office at:C-11, Abhishek 1
Near Haripura Bus Stop
Asarwa, Ahmedabad, Gujarat-380016

Versus

1. Saraswat Cooperative Bank Ltd.

Having address at: Shangrila Arcade,
near Shyamal Cross Road, 100 ft.
Anand Nagar Road, Anand Nagar
Ahemdabad, 3800015

2. Fairdeal Multifilament Private Limited

Having Address at: Block No. 49,
Nr. Gopinath Industrial Park
Chacharwadi, Vasana, Sanand
Ahmedabad 382110

AND

INV. Petition No. 5 of 2022

(Application under Rule 11 of NCLT Rules, 2016)

1.Sanjay Choudhary,

G-111, Orchid Green
Girdhar Nagar, Sahibaugh
Ahmedabad-380004

With

2. Khushi Mukeshkumar Jain

A-203, Manibhadra Enclave.
Opp. Rajasthan Hospital,Sahibaugh,
Ahmedabad-380004

3. Anandiben Tribhovanbhai Patel

B-304, Ratnam Status, Nr. Funpoint Club,
Sola Road, Ahmedabad-380060

4.Hareshkumar Kanaiyalal-HUF.



Hareshkumar Kanaiyalal Prajapati-Karta
D-146, C/o Dhvani Tenements,
Isanpur, B/h Municipal School,
Nr. Nandanvan Park Ahmedabad-382443

5. Prakashbhai Kanaiyalal Prajapati,

28, Parimal Residency, Nr. Indraprastha
Park Society, Nikol Odhav Road, Nikol
Ahmedabad-382350

6. Prakash Overseas

Dimpalben Prakashbhai Prajapati (Proprietor)

28, Parimal Residency,
Nr. Indraprastha Park Society,
Nikol Odhav Road, Nikol
Ahmedabad-382350

7. Prakashbhai Kanaiyalal-HUF

Prakashbhai Kanaiyalal Prajapati-Karta

28, Parimal Residency,
Nr. Indraprastha Park Society,
Nikol Odhav Road, Nikol
Ahmedabad-382350

8. Tejalben Kanaiyalal Prajapati

28, Parimal Residency,
Nr. Indraprastha Park Society,
Nikol Odhav Road, Nikol
Ahmedabad-382350

9. Manek Textile

Dhaidevi Maloo (Proprietor)

A-82, Om Tower, Nr. Ghoda Camp,
Ahmedabad-380004

10. Nareshkumar Shambhubhai Patel (Bhavani)

58, Tirthbhumi Society,
Opp. Sarswati School, Nikol,
Ahmedabad-382350

11. Surekha Devi Bohra

Village-Post Ranigaaon
Badmer Dist.
Rajasthan-344001



- 12. Kanaiyalal Bhikaji HUF**
Kanaiyalal Bhikaji Prajapati-Karta
28, Parimal Residency,
Nr. Indraprastha Park Society,
Nikol Odhav Road, Nikol
Ahmedabad-382350
- 13. Rekhaben Mohandas Mahant,**
Shri Kabirwadi Mandir,
Opp. Bigbazar Kankaria Road,
Raipur. Ahmedabad-380002
- 14. Rekhaben Piyush Jain,**
2, Bhavi Apartment Dafnala
Road, Shahibaug Ahmedabad-380004
- 15. Shankarlal Panalal-HUF**
Shankarlal Panalal-Karta
Village-Post Ranigaaon
Badmer Dist.Rajasthan-344001
- 16. Chandaben Hareshkumar Prajapati**
60/B, Fulwadi park, Vishalnagar
Isanpur, Ahmedabad-382443
- 17. Narmada**
558, Bus Stand, GUDA Balotan
Ahore, Dist. Jalore
Rajasthan-307030
- 18. Saksham Choudhary,**
G-111, Orchid Green
Girdhar Nagar, Sahibaugh
Ahmedabad-380004
- 19. Sanyam Choudhary,**
G-111, Orchid Green
Girdhar Nagar, Sahibaugh
Ahmedabad-380004
- 20. Sunita Choudhary,**
G-111, Orchid Green
Girdhar Nagar, Sahibaugh



Ahmedabad-380004

21. Kailashben Lakshman Nai

C-208, 2nd floor, Navjivan Flats
Asopalav Society, Vatva
Ahmedabad-382440

22. Lakshmanbhai Ajaji Nai

C-208, 2nd floor, Navjivan Flats
Asopalav Society, Vatva Ahmedabad-382440

23. Kantadevi Mukeshkumar Jain

A-203, Manibhadra Enclave
Opp Rajasthan Hospital
Sahibaugh, Ahmedabad

24. Mukesh Kumar HUF

Mukesh Kumar-Karta
A-203, Manibhadra Enclave
Opp Rajasthan Hospital
Sahibaugh, Ahmedabad

25. Suvadevi Shankarlalji Jain

A-203, Manibhadra Enclave
Opp Rajasthan Hospital
Sahibaugh, Ahmedabad

26. Dipak Ramanbhai Rathod,

B14, Nauttam Nagar Coperative
housing society Opp. Ganpat Society,
Sahibaugh Ahmedabad-380004

27. Shankarlal HUF

Shankarlal Jain-Karta
A-203, Manibhadra Enclave
Opp Rajasthan Hospital
Sahibaugh, Ahmedabad

28. Pratham Export

Shankarlal Jain (Proprietor)
A-203, Manibhadra Enclave
Opp Rajasthan Hospital
Sahibaugh, Ahmedabad



29. Deepika Kumari
Kalyanpura, Shivkar Road
Barmer, Rajasthan-344401

30. Gotam Chand Singhvi
Kalyanpura, Shivkar Road
Barmer, Rajasthan-344401

31. Vipul Singhvi
Kalyanpura, Shivkar Road
Barmer, Rajasthan-344401

...Applicants

Versus

Fairdeal Multifilament Private Limited
CIN U25200GJ2014PTC079367
Registered Office: Block No. 49,
Near Gopinath Industrial Park
Chacharwadi, Vasana, Sanand
Ahmedabad 382110 (Gujarat)

Respondent

Order Pronounced on : 21.02.2023.

**Coram: DR. MADAN B. GOSAVI, MEMBER (JUDICIAL)
KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)**

Present:

Mr. Nipun Singhvi, Adv. a.w. Mr. Vishal Dave, Mr. Mayur Jugtawat,
and Mr. Prassan Sinha, Advocates for the Petitioner.

ORDER

1. The Present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule



4 of the Insolvency and Bankruptcy (application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules') by Mr. Sanjay Choudhary, Partner of M/s. Shree Nakoda Impex, (hereinafter referred to as "Financial Creditor"), against M/s. Fairdeal Multifilament Pvt. Ltd. (hereinafter referred to as 'Corporate Debtor') to initiate Corporate Insolvency Resolution Process (for brevity "CIRP") on the ground that the Corporate Debtor committed default in paying the financial debt of Rs. 1,73,38,298/- (One Crore Seventy Three Lacs Thirty Eight Thousand and Two Hundred Ninety Eight rupees only). The date of default is stated to be 11.04.2022.

2. The Financial Creditor stated that it has disbursed in favour of the Corporate Debtor the unsecured loan of Rs. 1,64,75,000/- on different dates during the period from April 2021 to March, 2022. The loan was repayable on demand. It was carrying the interest (rate of interest is not mentioned). On 12.04.2022, the Financial Creditor called upon the Corporate Debtor to repay the loan along with the interest. However, the Corporate Debtor failed and neglected to pay, hence this application is filed to initiate the CIRP of the Corporate Debtor.

3. The notice of this application is served on the Corporate Debtor. One of its directors, Mr. Sneha Subhad Shah appeared and filed affidavit in reply. We have gone through the reply thereto. In



paragraphs 6 and 7 of the affidavit in reply, the Corporate Debtor raised the defence as follows and denied the existence of any financial debt:

“6. I say and submit that the present application is filed by the Financial Creditor in connivance of one of the directors namely, Mr. Manoj Sanklecha with an ulterior motive to close operations of the company and take over the same by way of applying in Resolution Plan. Therefore, when the present application is filed with ulterior motive, the Application should not be entertained. Thus, the present Petition deserves to be dismissed with heavy cost.

7. At the further outset, it is submitted that the amount paid by the Applicant-Financial Creditor was towards equity contributions for taking over the stakes of the Mr. Sneh Subhad Shah (Shah Group) and Ms. Khusboo Ronak Modi (Modi Group), being the minority shareholders. It is submitted that the debt which the Applicant claims from the Corporate Debtor is, therefore, not a financial debt and consequently, the Applicant is not a financial creditor.”

4. Pending this application for hearing, other 31 persons filed the Intervention Application bearing IA no. 05 of 2022 with the prayer to



allow them to join as Financial Creditor because they have also paid unsecured loan to the Corporate Debtor.

5. IA No. 658 of 2022 is filed by Original Applicant(Financial Creditor) for restraining the Saraswat Co-operative Bank Ltd. (Respondent No. 5) from taking any action against the Corporate Debtor, detrimental to the interest of Unsecured Creditors of the Corporate Debtor, by not disposing of the assets.

6. IA No. 46 of 2023 is filed again by Original Applicant(Financial Creditor) to stay the auction of the assets of the Corporate Debtor being conducted by the Saraswat Co-operative Bank Ltd. This Adjudicating Authority declined to issue any prohibitory order as against Saraswat Co-operative Bank Ltd. holding that moratorium under Section 14 of IBC cannot be issued unless the Corporate Debtor is being admitted in CIRP. That order was challenged by way of an Appeal but Hon'ble NCLAT did not disturb above order by following words:

“This appeal [Company Appeal (AT) No. 1018 of 2022] has been filed against the Order dated 03.08.2022 passed by the Adjudicating Authority in IA. No. 658(AHM)2022. Application has been filed by the Appellant-Financial Creditor seeking an interim injunction against the Corporate Debtor, on which



application, the matter has been adjourned to 14.09.2022. The Adjudicating Authority having already fixed 14.09.2022, we are of the view that there is no ground to entertain this Appeal at this stage. It is open for the Appellant to press his application for Interim Relief before the Adjudicating Authority on next date i.e. 14.09.2022.

With these observations , the Appeal is disposed of.”

In view of the above, we hold that both IAs i.e IA No. 658 of 2022 and IA No. 46 of 2023 stands disposed of.

7. As far as IA 5 of 2022 is concerned, we make it clear that if at all the Applicants are Unsecured Creditors of the Corporate Debtor, they may submit their claims to IRP which may be appointed by this Adjudicating Authority. We do not wish to allow them to act as joint Applicant in original application for a simple reason that each one may be having different claim amount against the Corporate Debtor and the Corporate Debtor may be having different defences against each claim. If we undertake such exercise at this stage, it will be time consuming. Moreover, the default financial debt amount as claimed by the Original Applicant (Financial Creditor) is more than one crore (i.e. more than the threshold limit amount prescribed under Section 4 of IBC). Hence, we disposed of IA No. 5 of 2022 with



liberty to those Applicants/Unsecured Creditors to submit their claims to the IRP and IRP to consider the same as per the rules.

8. Coming back to the main controversy about the defence as raised by the Corporate Debtor, we hold that defence is unsustainable. It is contention of the Corporate Debtor that the amount as claimed by Financial Creditor is in fact accepted by the Corporate Debtor towards equity contribution for taking over stakes of Mr. Sneh S Shah and Ms. Khusboo Ronak Modi, the stakeholders of the Corporate Debtor. Once the Corporate Debtor admitted having accepted the amount, it is for them to establish that it was not towards any debt/loan but towards sale consideration of equities. The Corporate Debtor did not adduce any evidence worth acceptance. As against this, the Financial Creditor produced on record Annexure-B, the Bank Statement showing the debt amount is actually disbursed in favour of the Corporate Debtor by way of NEFT, Annexure-C, the acknowledgement of the debt amount by the Corporate Debtor. The certificate recording default of the debt by the Corporate Debtor issued in favour of the Financial Creditor by NESL is annexed as Annexure-D.

9. All above evidences clearly establish that the financial debt of Rs. 1,73,38,298/- is due and payable by the Corporate Debtor to the Financial Creditor and the Corporate Debtor committed default



in paying the same. The application is defect free and filed within the period of limitation. The RP whose name is recommended for appointment of IRP does not face any disciplinary proceedings.

10. In view of the above, we admit this application and pass the following order as under:

(i) The Corporate Debtor M/s Fairdeal Multifilament Pvt. Ltd. is admitted in CIRP under section 7 of the IBC, 2016.

(ii) 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 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.

(iii) The order of moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the Resolution Plan under section 31(1) or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, 2016, as the case may be.

(iv) We hereby appoint Mr. Sachin Naveen Sinha having registration No. IBBI/IPA-002/IP-N00939/2019-2020/12985 to act as an IRP under section 13(1)(c) of the IBC, 2016. He shall conduct the CIRP as per the provisions of the IBC, 2016 r.w. Regulations made thereunder.

(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 personnels connected with Corporate Debtor, its Promoter or any other person associated with management of the Corporate Debtor are



under legal obligation under section 19 of the IBC, 2016 extending every 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 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 initiation of CIRP and call for submission of claims under section 15 as required by section 13(1)(b) of the IBC, 2016.

(vii) It is further directed that the supply of goods/service to the Corporate Debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period.

(viii) 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. The Financial Creditor is directed to pay an advance of Rs.1,00,000/- (Rupees One 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. Subsequently, IRP may raise further demands for interim funds, which shall be provided as per Rules.

(ix) The Registry is directed to communicate a copy of this order to the Financial 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 website immediately after pronouncement of the order.

11. Accordingly, CP (IB) No. 111 of 2022 stands admitted. I.A No. 658 of 2022, I.A No. 46 of 2023 and I.A No. 05 of 2022 stands disposed of.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

-SD-
DR. MADAN B. GOSAVI
MEMBER (JUDICIAL)

Sapna