

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

ITEM No.301  
**C.P.(IB)/251(AHM)2022**

**Proceedings under Section 9 IBC**

**IN THE MATTER OF:**

Gopal Trading Co.

.....Applicant

V/s

MatrushriFibers Pvt Ltd

.....Respondent

**Order delivered on: 25/09/2023**

**Coram:**

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

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

**PRESENT:**

For the Applicant :

For the Respondent :

**ORDER**

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

-SD-

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

-SD-

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

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

**CP/IB/251/AHM/2022**

*(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

**GOPAL TRADING CO.  
(Through its Proprietor  
Gopalbhai Jayantibhai Selani)  
Shastrinagar, Gondal,  
Rajkot, Gujarat- 360 311.**

**... Applicant/Operational Creditor**

**VERSUS**

**MATRUSHRI FIBERS PVT LTD.  
New Sardar Market,  
Shop No.A-174, Gondal, Rajkot,  
Gujarat, 360 311.**

**... Respondent/Corporate Debtor**

**Order Pronounced on 25.09.2023**

**CORAM :**

**SHAMMI KHAN, MEMBER (JUDICIAL)  
SAMEER KAKAR, MEMBER (TECHNICAL)**

**Appearance:**

For Operational Creditor : Mr. Priyam Shah, Adv.

For Corporate Debtor : Mr. Yuvraj Thakore, Adv.

**ORDER**

1. This is an application filed on 29.08.2022 by Gopal Trading co. through its Proprietor Gopalbhai Jayantibhai Selani as a **Operational Creditor** with a request to initiate Corporate Insolvency Resolution Process against Matrushi Fibers Pvt Ltd (**Corporate Debtor**) under Section 9 of the IBC, 2016 to appoint IRP and to declare moratorium.
2. From the Form-5 part-I, it is evident that the applicant herein is a proprietorship firm under the name M/s. Gopal Trading Co.
3. Part-2 of the application reveals that the Corporate Debtor i.e. Matrushi Fibers Pvt Ltd was incorporated on 04.05.2016 under CIN No.: U01405GJ2016PTC091820 and is having registered office at A-174, Sardar Market, Gondal, Rajkot, Gujarat 360 311.
4. It is seen that the applicant has not proposed any IRP in the matter and has requested that this Tribunal may appoint the IRP.
5. Part-4 of the application reveals that a total amount of Rs.3,90,63,021.53/- is claimed in the default. It is stated that the date of the due is 18.10.2020 and the date of default is same.
6. It is stated that since October, 2019, the Operational Creditor and Corporate Debtor had extensive business transactions with each other. Both debit and credit

transaction were involved in the transactions between the parties, it was their verbal understanding that the value of supplies made by the Operational Creditor to the Corporate Debtor would be set-off against the value of supplies made by the Corporate Debtor to the Operational Creditor. Therefore, it was understood between the parties that the resultant debit balance would be paid by the party who has received higher value of supplies.

7. It is stated that the Corporate Debtor purchased commodity cotton from the Operational Creditor from time to time to the tune of Rs.27,97,80,398.53/-. During the period September, 2019 to March, 2020 for which separate invoices were raised by the Operational Creditor.
8. The Corporate Debtor, in turn, supplied garlic to the Operational Creditor from time to time aggregating to Rs.24,07,17,377/- and raised several invoices from time to time. Between November, 2019 till January, 2020. It is stated that in view of higher value of supplies done by Operational Creditor, an amount of Rs.3,90,63,021.53/- remained undue and payable from the Corporate Debtor.
9. It is stated that despite several requests, the Corporate Debtor has failed and/or neglected to pay the legitimate dues of the Operational Creditor and has thus defaulted in payment of Operational Debt own to the Operational Creditor.

10. It is stated that demand notice dated 14.02.2022 was issued by the Operational Creditor upon the Corporate Debtor under Section 8 of IBC, 2016 read with Rule 5 of the IBBI (Application to Adjudicating Authority) Rules, 2016 in requisite Form No.3. The said demand notice is annexed from page No.26-32.
11. The same demand notice was replied by the Corporate Debtor vide letter dated 25.06.2022 inter-alia admitting its dues towards the Operational Creditor and expressing its inability to pay the same due to financial constraints. And hence, the present application was filed.
12. The Operational Creditor is relying upon the following documents:
  - i. PAN Card and GST Registration Certificate of the Operational Creditor*
  - ii. Company Master Data of Corporate Debtor as available from the official website of Ministry of Corporate Affairs,*
  - iii. Demand Notice issued in Form-3 and reply received from the Corporate Debtor,*
  - iv. Letter of Authority issued by Operational Creditor in favour of signatory of Demand Notice*
  - v. Ledger/ Account Statement of Corporate Debtor maintained by Operational Creditor,*
  - vi. The invoices issued by Operational Creditor upon to Corporate Debtor,*

- vii. Tabular representation showing computation of the outstanding amount till 18.10.2020 i.e., the date of default,*
- viii. Bank certificate of the Operational Creditor for the relevant period,*
13. Affidavit under Section 9(3)(b) is attached at page No.325-327, the invoices are attached from page No.201 to 322. The tabular representation of the various invoices is attached at page No.323.
14. Reply has filed by the respondent under diary No.D1039 dated 21.03.2023. In the para 6 of the reply, the Corporate Debtor has admitted arrangement between the parties so as to mutual trading of commodities and that the difference in the set-off value would be payable by the party who had purchased more commodity from the supplying party.
15. Under para 7 of the reply, the Corporate Debtor has submitted as under:
- “The difference amount of INR 3,90,63,021.53/- was to be paid by the respondent to the Operational Creditor as per the understanding between the parties.”*
16. Under para 8 of the reply, it is submitted by the respondent as under:
- “Owing to adverse market conditions, it was not in position to pay the outstanding dues of the Operational Creditor, however, it was attempting to arrange for funds from different sources to pay off the*

*dues of the Operational Creditor. Accordingly, the respondent had requested for additional time for arranging the requisite funds for making the payment to the Operational Creditor, awaiting which, the present Company Petition has been filed by the Operational Creditor.”*

17. Under para 9 of the reply, the respondent has admitted the receipt of the demand notice and his reply.
18. Written submissions were filed by the applicant under diary No.3520 dated 12.09.2023.
19. Heard the counsels of the both sides and perused the documents. Both the parties have admitted to a common way of doing business. It is seen that the Operational Creditor has certain unpaid invoices, the details of which has been filed along with written submission at Annexure-E(2). All the invoices are prior to period covered under Section 10(A) of IBC, 2016. The first invoice is dated 26.01.2020 and the last invoice is dated 13.03.2020.
20. The Corporate Debtor has in his reply has admitted the total debt of Rs.3,90,63,021.53/-. As such, in our view, the Operational Creditor has proved that there is debt and despite service of notice under Section 8, the same was not paid by the Corporate Debtor. We have also seen that the amount defaulted is more that Rs. 1.00 Cr 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.

21. In view of the above, we admit this application with the following terms and conditions:-

- (i) The Application bearing **CP(IB) No. 251 of 2022 filed by M/s. Gopal Trading Co.**(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. Matrushi Fibers Pvt 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) We appoint **Mr. Ravindra Kumar Goyal, having Registration No. IBBI/IPA-001/IP-P-02019/2020-2021/13098,** (Email ID:- [ravindra1960\\_goyal@yahoo.co.in](mailto:ravindra1960_goyal@yahoo.co.in) ) 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.

22. Accordingly, **CP (IB) No. 251 of 2022** 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)**

Anuj