

IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI

CP/IB/1/CHE/2023

(filed 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 Fair Beat Herbals Cosmetics Private Limited

Ananda Vikatan Productions Pvt Ltd

Represented by its Manager (Accounts) Mr.V.Ganesh,
Having Registered Office at No.757,
Anna Salai, Chennai-600 002.

... Applicant/Operational Creditor

-Vs-

M/s Fair Beat Herbals Cosmetics Private Limited .,

Through its Managing Director Mr.P.B.Jayendran
Having Registered Office at No.71,
Nelson Manickam Road,
(facing Kannappan Street) Aminnjikarai,
Chennai – 600 029.

...Respondent/Corporate Debtor

Order Pronounced on 12th October 2023

CORAM:

SANJIV JAIN, MEMBER (JUDICIAL)

VENKATARAMAN SUBRAMANIAM, MEMBER (TECHNICAL)

For Operational Creditor: TPS Vinayaham, Advocate

For Corporate Debtor : Raghav Menon , Advocate

ORDER

Per: SANJIV JAIN, MEMBER (JUDICIAL)

(Hearing conducted through VC)

Under Adjudication is this Application, filed by Ananda Vikatan
Productions Private Limited (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 Fair Beat Herbals Cosmetics Private Limited (hereinafter referred to as 'Corporate Debtor'). It is prayed to initiate the Corporate Insolvency Resolution Process against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. Part-I of the Application sets out about the Operational Creditor. It is stated that the Operational Creditor is a Private company which was incorporated under the Companies Act, 1956 on 02.08.2012 with CIN No: U22130TN2012PTC087054. Part-II of the Application gives all the particulars of the Corporate Debtor. It is stated that the Corporate Debtor is a Private Limited Company with CIN: U74900TN2013PTC092914 and was incorporated on 10.09.2013 under the Companies Act, 1956. The Registered Office of the Corporate Debtor as per the Application is stated to be situated at No71, Nelson Manickam Road (Facing Kannappan Street) Aminjikarai Chennai- 600 029. In Part III of the application, the Operational Creditor has not proposed the name of the "Interim Resolution Professional" and left it to the discretion of this Tribunal to appoint anyone from the panel of Insolvency professionals maintained by IBBI.



3. The Affidavit verifying the application is placed at Page No- 53-55 of the Application typeset and one Mr.V.Ganesh, Manager (Accounts) of the Operational Creditor has sworn the Affidavit as the authorized signatory of the Operational Creditor. The Power of Attorney authorizing Mr. B. Saravanan is appended as "Annexure-II (2)" of the Application typeset.

4. In Part-IV of the Application, it is stated that a total sum of Rs.1,76,92,720/- (Rupees One Crore Seventy Six Lakhs Ninety Two Thousand Seven Hundred and Twenty only) is being claimed by the Operational Creditor as the Operational debt. The Operational Creditor has mentioned the debt fell due from 23.11.2020 in respect of the entire amounts involved.

5. Part – V of the Application discloses about the details of the documents which have been filed by the Operational Creditor in order to prove the 'Operational debt'

6. It is stated that the Applicant is a production house in Tamil Nadu and produces prime time serials, award functions on television. They conducted "Aval Awards 2018" event through its brand name "Vikatan" at Chennai for the purpose of selecting, recognizing and felicitating women achievers in various fields / categories during 2018 calendar year. It is stated that, the Respondent through its brand name "Jobha" agreed to be the sponsor for the said "Aval Awards 2018" event and entered into



Memorandum of Understanding (MOU) dated 01.11.2018 with the Applicant.

7. It is stated that under the said MOU, it was agreed between the parties that the logo and advertisement contents of brand name "Jobha" shall be advertised by Publication in print media "Aval Vikatan" and other "Vikatan Group Magazines" and digitally aired in Sun TV during telecast of Award event. In return for the advertisement, the Respondent Corporate Debtor agreed to pay a sum of Rs.35,00,000 /-(Rupees Thirty Five Lakhs only) Plus GST to the Operational Creditor/Applicant. In accordance with MOU, the respondent issued Release-order/Purchase order dated 31.10.2018 to the Applicant.

8. It is stated that the Respondent/Corporate Debtor through its brand name "Jobha" agreed to be the Sponsor for the said award event and entered into Memorandum of Understanding (MOU) dated 12.11.2018 with the Applicant/Operational Creditor. Under the said MOU, it was agreed that the logo and advertisement contents of brand name "JOBHA" shall be advertised by publication in print media Ananda Vikatan and other Vikatan Group Magazines aired in SUN TV during telecast of Award event and also digitally as agreed in MOU. The respondent company had undertaken to pay a sum of Rs.77,00,000/- (Rupees Seventy Seven Lakhs) Plus GST. In



accordance with MOU, the respondent issued Release-order/Purchase order dated 12.11.2018 to the Applicant.

9. It is stated that, the Respondent's brand "JOBHA" was given ample importance, the brand name was exhibited in physical form and awards were given in the name of "JOBHA" as the powered by sponsor. The Petitioner Company had performed the agreed terms and conditions religiously as per the MOU stated *Supra*.

10. It is stated that the amount due and payable by the Respondent as per the MOU's dated 01.11.2018 & 12.11.2018 amounted to Rs. 1,32,16,000 (Rupees One Crore Thirty two lakh sixteen thousand only). Admittedly, the Respondent Corporate Debtor has only paid a sum of Rs. 29,70,000/- (Rupees Twenty Nine Lakh Seventy Thousand) towards the pending dues.

11. It is stated that the Respondent has to pay invoice amount of INR 1,02,46,000/- (Rupees One Crore Two lakhs Forty Six Thousand) along with interest of INR 74,46,720/- (Rupees Seventy Four Lakhs Forty Six Thousand Seven hundred and Twenty) charged at @ 24% simple interest as stipulated in the invoice i.e. INR 1,76,92,720/- (Rupees One Crore Seventy Six Lakhs and Ninety Two Thousand and Seven Hundred and-Twenty) after considering the payment of INR 29,70,000 (Twenty Nine Lakhs and Seventy thousand) received from the respondent. The Applicant has attached the



invoices dated 16.12.2018 & 09.01.2019 in the Application typeset in Annexure II (7) & II (8). The invoices fell due on 14.02.2019 & 10.03.2019 respectively and taking into consideration the Hon'ble SC suo motto limitation extension orders in Writ petition (Civil) No 3 of 2020, this Application falls well within limitation.

12. It is stated by the Ld Petitioner counsel that after repeated telephonic reminders to repay the pending dues, the Respondent gave an Axis Bank Cheque of Rs. 2,50,000 to the Petitioner. However the cheque was returned owing to insufficient funds in the account.

13. It is stated that in spite of several reminders, the Respondent failed to make any payment towards the outstanding. Having no other alternative, the Petitioner sent the Demand Notice dated 20.09.2022 as per Section 8 (1) of the IBC, 2016. The said notice was sent to Corporate Debtor's registered office as per the Registrar of Companies and address of the respondent Purchase order and Branch office and all were returned. In this regard, the Applicant has filed AOS (Affidavit of Service) before this Tribunal along with the return cover of the demand notice.

14. Subsequently, the demand notice was sent to the company through e-mail and to its Director, Mr.P.B. Jayendran via Whatsapp and same were



duly served. No reply to the said demand notice was received by the Corporate Debtor.

15. The Petitioner counsel stated that the Corporate Debtor has not honoured the terms of the MOU dated 01.11.2018 & 12.11.2018. Irrespective of repeated reminders sent by the Operational Creditor to the Corporate Debtor, the Corporate Debtor defaulted in the payment of outstanding dues to the Operational Creditor. Left with no other remedy, the petitioner has filed this Application under Section 9 of the IBC, 2016. It is prayed that, this Tribunal may be pleased to admit the Corporate Debtor to Corporate Insolvency Resolution Process and appoint an Interim Resolution Professional from the IBBI panel of Insolvency Professionals.

16. The Corporate Debtor in this matter has filed a reply/ Counter statement in SR No. 2940 dated 14.07.2023 before this Tribunal.

17. It is stated in the reply that, the business of the Corporate Debtor was severely hit during the COVID period. Thus, owing to COVID-19 pandemic the Corporate Debtor was unable to pay the outstanding dues of the Operational Creditor and other creditors.

18. In para 9 of the reply, it is stated as follows

“...the Respondent attempted to get new investors to pump in investment to run the company after the pandemic and settle the debt of the



Applicant and other creditors. The Respondent does not deny the fact that there is debt due and liable to be paid to the Applicant.”

19. Heard the submissions of both the parties. From the factual statements made above, this Tribunal is of the considered opinion that there is a clear case of admission of ‘debt’ and ‘default’ in para 9 of the reply statement filed by the Corporate Debtor. As a consequence thereof the Corporate Debtor viz., *Fair Beat Herbals Cosmetics Private Limited* is admitted to Corporate Insolvency Resolution Process under Section 9 of the IBC, 2016.

20. It is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic. Hence the Corporate Debtor cannot seek shelter under Section 10A of IBC, 2016. Under the said circumstances, this Tribunal is left with no other option than to proceed with the present case and initiate the Corporate Insolvency Resolution Process in relation to the Corporate Debtor.

21. In continuum, the Hon’ble Supreme Court in various landmark judgements has reiterated that, the adjudicating authority is merely to see the records and other evidence produced and satisfy itself that a default has occurred in IBC cases relating to Section 7 and Section 9.



22. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between **July 2023 – December 2023** appoints **Ms. R. Lalitha** with **Reg No: IBBI/IPA-001/IPP00779/2017-2018/11352** (e.mail: lalitharca@gmail.com) as the “Interim Resolution Professional” subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15,17,18 of the Code and file his report within 20 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

23. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:



- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified 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 or a similar grant or right during moratorium period;



24. However, during the pendency of the moratorium period in terms of Section 14(2) (2A) and 14(3) as extracted hereunder:

(2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

(3) The provisions of sub-section (1) shall not apply to

(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;

(b) a surety in a contract of guarantee to a corporate debtor.



25. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

(4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process:

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the 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, the moratorium shall cease to have effect from the date of such approval or Liquidation Order, as the case may be.

26. The Operational Creditor is directed to pay a sum of **Rs.2,00,000 /-** (*Rupees Two lakhs only*) to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of



this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

28. Accordingly CP/IB/1/CHE/2023 stands **allowed**.



— Sd —

VENKATARAMAN SUBRAMANIAM
MEMBER (TECHNICAL)



— Sd —

SANJIV JAIN
MEMBER (JUDICIAL)

Vinita Varshini.K