

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

ITEM No.145 CP (IB) 451 of 2018
ITEM No.146 IA 726 of 2022

Order under Section 9 and 60(5) of IBC r.w. Rule 11 of NCLT Rules

IN THE MATTER OF: CP (IB) 451 of 2018

Mohini Health & Hygiene Ltd

.....Applicant

V/s

Shree Ram Proteins Ltd

.....Respondent

IN THE MATTER OF: IA 726 of 2022

Shree Ram Proteins Ltd

.....Applicant

V/s

Mohini Health & Hygiene Ltd

.....Respondent

Order delivered on: 11/01/2023

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 cases are 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)**

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

**CP (IB) No.451/NCLT/AHM/2018 with
IA 726/NCLT/AHM/2022**

CP (IB) No.451 of 2018

(An application for initiation of Corporate Insolvency Resolution Process under section 9 of the Insolvency & Bankruptcy Code, 2016)

In the matter of:

Mohini Health & Hygiene Limited

(CIN: L17300MP2009PLC022058)

Having office at;

Plot no. 109, Sector 3,

Industrial Area, Pithampur,

Dhar, Madhya Pradesh, 454774

...Operational Creditor

Versus

Shree Ram Proteins Limited

(CIN: U01405GJ2008PLC054913)

Having office at;

Imperial Heights Tower- B,

Second floor, office no. B – 206,

150 Ft. Ring road, opposite Big Bazar,

Rajkot, Gujarat, 360005

...Corporate Debtor

IA 726 of 2022

(An Application under section 60(5) of the Insolvency & Bankruptcy Code,
2016 read with Rule 11 of NCLT Rules)

In the matter of:

Shree Ram Proteins Limited

(CIN: U01405GJ2008PLC054913)

Having office at;
Imperial Heights Tower- B,
Second floor, office no. B – 206,
150 Ft. Ring road, opposite Big Bazar,
Rajkot, Gujarat, 360005

....Applicant

Versus

Mohini Health & Hygiene Limited

(CIN: L17300MP2009PLC022058)

Having office at;
Plot no. 109, Sector 3,
Industrial Area, Pithampur,
Dhar, Madhya Pradesh, 454774

....Respondent

Order pronounced on 11.01.2023

Coram: Dr. Madan B. Gosavi (Member Judicial)

Kaushalendra Kumar Singh (Member Technical)

Appearance:

Ld. Counsel Mr. Rajat Lohia appeared for the Operational Creditor

Ld. Counsel Mr. Bharat Rao appeared for the Corporate Debtor

ORDER

1. This application has been filed on 30.07.2018 by M/s Mohini Health & Hygiene Limited, the Operational Creditor under section 9 of the Insolvency and Bankruptcy Code, 2016 (**IBC, 2016**) for initiation of Corporate Insolvency Resolution Process (**CIRP**) against the Corporate Debtor i.e. Shree Ram Proteins Limited. The amount claimed as debt in default is stated to be Rs. 4,82,95,171/- [outstanding amount against invoices of Rs. 1,21,82,419/- with 18% interest of Rs. 3,61,12,752/-].
2. The application was disposed of for non-prosecution with liberty to revive vide order dated 04.08.2020 as no one appeared on behalf of Operational Creditor and Corporate Debtor on several prior hearings.
3. On 17.08.2020, learned counsel Mr. Rajat Lohia appeared for the Operational Creditor and filed speaking to minutes for restoration of the Company Petition. The speaking to minutes was disposed of vide order dated 17.08.2020 by this Adjudicating Authority. Further, this Adjudicating Authority passed an order on 17.08.2020 stating that restoration can only be done by way of an application.
4. On 24.03.2021, restoration application bearing number Rst.A/6 of 2021 was filed by Chartered Accountant Jayesh Shah for restoration of the Company Petition.
5. This Adjudicating Authority vide order dated 25.10.2021 allowed and disposed of the application for restoration of the Company Petition at its original number i.e. CP (IB) 451 of 2018. Thereafter, the application of Operational Creditor was restored at its original number i.e. CP (IB) 451 of 2018.

6. The facts in brief are that the Corporate Debtor and Operational Creditor were in a business relationship. The Operational Creditor had supplied cotton bales to the Corporate Debtor. There were business relations in between the Operational Creditor and the Corporate Debtor. The Operational Creditor has rendered its service to the Corporate Debtor. The Operational Creditor has raised various invoices between the period of 01.09.2014 to 24.02.2015. The outstanding amount receivable against invoices is Rs. 1,21,82,419/. The Operational Creditor has also included interest of 18% of Rs. 3,61,12,752/- which is mentioned below in terms and conditions of invoices. Hence, the total amount claimed by the Operational Creditor is Rs. 4,82,95,171/-.

7. The Operational Creditor submitted that demand notice dated 09.06.2018 was issued to the Corporate Debtor in Form 3 under section 8(1) of IBC, 2016 for the payment of debt of Rs. 4,82,95,171/- which was delivered at the registered address of the Corporate Debtor on 12.06.2018. Proof of the same is placed on record.

8. The Corporate Debtor failed to reply the demand notice dated 09.06.2018 of the Operational Creditor. Since the Corporate Debtor has failed to repay the default amount to the Operational Creditor, the Operational Creditor filed this present application before this Authority for initiation of CIRP.

9. The counsel for the Operational Creditor submitted that the Corporate Debtor has availed the services from the Operational Creditor. The Operational Creditor had raised various invoices between the period of 01.09.2014 to 24.02.2015. The outstanding amount receivable against invoices is Rs. 1,21,82,419/. The Operational Creditor has also included interest of 18% of Rs. 3,61,12,752/- Hence, the total amount claimed by the Operational Creditor is Rs. 4,82,95,171/-.

10. The counsel for the Corporate Debtor submitted that the claim raised by the Operational Creditor is false, frivolous and bogus. It is submitted that the material was sold elsewhere and the default amount is shown outstanding in the account of the Corporate Debtor. It is also submitted that the Operational Creditor has produced invoices showing sales of goods to the Corporate Debtor which were never received by the Corporate Debtor. Further, it is submitted that the invoices are raised in form of VAT Returns. Therefore, the sales does not become genuine in absence of any document showing the receipt of the goods by the Corporate Debtor.

11. We have heard the learned counsel of the Operational Creditor as well as the Corporate Debtor and perused the material on record. It has been noted that 123 invoices have been raised against the Corporate Debtor. The Operational Creditor has raised invoices starting from 01.09.2014 till 24.02.2015 for the outstanding amount against invoices of Rs. 1,21,82,419/-. The Operational Creditor has also attached VAT Form – 201A showing details of tax invoices issued for the sales along with the application. The attached VAT Form – 201A clearly shows the name and RC No. of the Corporate Debtor to whom the goods were sold by the Operational Creditor. Thereafter, the Operational Creditor has also attached a balance confirmation letter dated 12.04.2017 showing balance amount of Rs. 2,71,82,419/- payable to the Operational Creditor as per the books of accounts on 31.03.2017 which is duly signed by the Corporate Debtor. Hence, the present application is not barred by limitation as the balance confirmation letter dated 12.04.2017 clearly shows the balance amount of Rs. 2,71,82,419/- due as on 31.03.2017 which is duly signed by the Corporate Debtor.

12. It is also observed that the date of default is not mentioned in the application by the Operational Creditor. As per section 3(12) of IBC, 2016, if the amount of debt is due and payable and is not paid then it is

sufficient for proving the default under section 3(12) of IBC, 2016. For benevolent reference section 3(12) of IBC, 2016 is reproduced below:

“Default” means non-payment of debt when whole or any part or installment of debt has become due and payable and is not paid by the debtor or corporate debtor.”

The balance confirmation letter dated 12.04.2017 clearly shows the balance amount of Rs. 2,71,82,419/- due as on 31.03.2017 which is duly signed by the Corporate Debtor. Therefore, it is sufficient to take into consideration that default has occurred on part of the Corporate Debtor.

13. The present application is defect-free and complies with all the relevant provisions of the IBC, 2016. The Operational Creditor has proposed the name of Mr. Rajesh Lohia bearing registration number IBBI/IPA-002/IP-N00049/2016-17/10093 as Interim Resolution Professional (**IRP**) in the application. In view of the above observations the present application is allowed with the following directions;

ORDER

I. The Corporate Debtor Shree Ram Proteins Limited is admitted in CIRP under section 9 of IBC, 2016. The moratorium is declared for prohibiting all of the following in terms of section 14(1) of 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.*

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

III. The Operational Creditor has proposed the name of Mr. Rajesh Lohia bearing registration number IBBI/IPA-002/IP-N00049/2016-17/10093 and registered mail ID rlohiaandcompany@gmail.com as IRP in the application. We accordingly appoint Mr. Rajesh Lohia as IRP.

IV. The IRP shall perform all functions as contemplated, *inter-alia*, by sections 17, 18, 20 and 21 of IBC, 2016. It is further made clear that all personnels connected with the Corporate Debtor, its Promoter, or any other person associated with management of the Corporate Debtor are under a legal obligation under section 19 of IBC, 2016 to extend 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 the IRP, do not assist or co-operate, IRP is at liberty to make the appropriate application to this Adjudicating Authority with a prayer for passing an appropriate order.

V. This Adjudicating Authority directs the IRP to make a public announcement for initiation of CIRP and call for submission of claims under section 15 as required by section 13(1)(b) of IBC, 2016.

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

VII. The IRP shall be duty-bound 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 an obligation imposed by section 20 of IBC, 2016.

VIII. The Operational Creditor is directed to pay an advance of Rs. 50,000/- 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.

IX. The Registry is directed to communicate a copy of this order to the Operational Creditor, Corporate Debtor, and 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 pronouncement of the order.

X. Accordingly, **CP (IB) No.451 of 2018** is admitted and disposed of. In view of this, **IA 726 of 2022** which was filed by Shree Ram Proteins Limited to recall order dated 01.08.2022 and give an opportunity of hearing to the Corporate Debtor stands disposed of.

-SD-
KAUSHALENDRA KUMAR SINGH
MEMBER (TECHNICAL)

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

Shweta Desai