

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD

COURT - 2

ITEM No.301

CP(IB)/16(AHM)2023

Order under Section 9 IBC

IN THE MATTER OF:

Haresh Anantrai Mody Proprietor of Mody Chem

.....Applicant

V/s

Ambition Mica Limited

.....Respondent

Order delivered on: 06/03/2024

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.

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

-sd-

**CHITRA HANKARE
MEMBER (JUDICIAL)**

IN THE NATIONAL COMPANY LAW TRIBUNAL

AHMEDABAD (COURT - II)

C.P. (IB) No. 16 of 2023

(Filed under Section 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 BETWEEN

MR. HARESH ANANTRAI MODY

PROPRIETOR OF M/S. MODY CHEM ... Operational Creditor

Vs.

AMBITION MICA LIMITED

... Corporate Debtor

Order pronounced on 06.03.2024

Coram:

MRS. CHITRA HANKARE

HON'BLE MEMBER (JUDICIAL)

MR. VELAMUR G VENKATA CHALAPATHY

HON'BLE MEMBER (TECHNICAL)

MEMO OF PARTIES

MR. HARESH ANANTRAI MODY

PROPRIETOR OF M/S. MODY CHEM

Having registered office at:
401, Faiz-E-Qutbi (Exim House)
375, Narashi Natha Street
Masjid Bunder (W) Mumbai- 400009

Also at Address for Correspondence:
5th Floor, Om Chamber,
TPS Road, Opp. Veer Savarkar Garden,
Boriwali (W), Mumbai – 400 092.

...Applicant/Operational Creditor

Versus

AMBITION MICA LIMITED

Anand Timber Mart Compound,
Behind Karnavati Hospital,
Opp. Saijpur Tower,
Saijpur Bogha,
Ahmedabad 382 345, Gujarat.
ambitionmica@gmail.com

.....Respondent/ Corporate Debtor

Present:

For the Applicant : Mr. Manit Wadhwa, Adv. for Ms. Prachiti
Shah, Adv.

For the Respondent : Mr. Sandeep Bhatt, Adv.

JUDGEMENT

1. Under consideration, is an application filed by the
Operational Creditor viz. Mr. Haresh Anantrai Mody Sole

Proprietor of M/S. Mody Chem under Section 9 of Insolvency and Bankruptcy Code 2016 (hereinafter referred to as "IBC, 2016") against the Corporate Debtor viz. Ambition Mica Limited seeking thereof to initiate Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

2. In Part II of the application it is stated that the Corporate Debtor was incorporated on 19.03.2010 with the Authorised Share capital of Rs.16,00,00,000/- and the paid up share capital of Rs.14,92,20,000/-.
3. In Part IV of the application the default amount is stated to be Rs.3,97,14,069/- (Rupees Three Crore Ninety-Seven Lakhs Fourteen Thousand Sixty Nine Only) which includes the principal amount payable of Rs 2,90,65,714 against invoices along with interest of Rs.1,06,48,355 at the rate of 21% and date of default is 03.11.2022 when the sum fell due..
4. Applicant submitted that Corporate Debtor (Formerly known as Ambition Mica Private Limited) is engaged in the business of manufacturing and selling of laminate and door skins. The Corporate Debtor offers colour laminate,

textures, metals, and wood grains for use in sales counters, reception desks, furniture, and interiors. Applicant is engaged in the business of importing and dealership of wide range of industrial solvent & chemicals. It further submitted that Corporate Debtor issued various Purchase Orders and the Applicant, in pursuance of the said Purchase Orders, had sold and supplied industrial solvent & chemicals to the Corporate Debtor between the years 2014 and 2021. Accordingly, the Applicant raised invoices which were duly forwarded to the Corporate Debtor from time to time. No grievances or objections pertaining to the same were raised by the Corporate Debtor at any point in time. The Corporate Debtor has received and accepted the delivery of products supplied by the Applicant without any complaints and made the payments from time to time; the last payment received by the Applicant from the Corporate Debtor was on 31.08.2021 against the invoices raised.

5. The Corporate Debtor has not raised any dispute till 21.06.2021 with regards to the quality or quantity of the products supplied by the Applicant and the Corporate Debtor has consumed the products without any complaints.

The Corporate Debtor has also obtained tax credits under various taxation Statutes (The GST Act, VAT Act, etc.) applicable at the relevant time. As per the understanding between the Corporate Debtor and the Applicant, also recorded in the Purchase Orders and invoices raised by the Applicant, the payment for the products supplied by the Applicant to the Corporate Debtor was required to be made by the Corporate Debtor within a period of 90 days from the date of the respective invoices.

6. The applicant has enclosed copies of all the invoices outstanding issued by the applicant to the CD against products supplied along with list of outstanding invoices, debit and credit notes along with purchase orders issued to the applicant by the CD during the years 2018-19 to 2021-22. Copies of statement of account of the applicant maintained with Union Bank of India was also enclosed.
7. However, the Corporate Debtor has failed to abide by the said payment terms and defaulted in making payment against various invoices, raised by the Applicant between the years 2019 and 2021. Even after several reminders given by the Applicant vide emails, letters, calls, and over

whatsapp, the Corporate Debtor has failed to make payment against the outstanding invoices. There has not been any payment by the Corporate Debtor after 31.08.2021 when the last payment was received from the Corporate Debtor through RTGS. Every year the Corporate Debtor has confirmed the outstanding balance payable to the Applicant in the books of accounts of the Corporate Debtor. Lastly, vide email dated 06.10.2021, the Corporate Debtor has confirmed that as on 30.09.2021, the outstanding amount of Rs.2,90,65,714/- is payable by the Corporate Debtor to the Applicant. The Corporate Debtor has also provided 18 (eighteen) signed cheques amounting to a total of Rs.1,82,57,942/- to the Applicant against the outstanding invoices issued by the Applicant from time to time. However, the said cheques were returned unpaid by the banker of the Applicant with the remark "Account Closed". However, despite the acknowledgement of debt by the Corporate Debtor vide its emails dated 16.03.2017, 26.06.2021, 12.08.2021 and 06.10.2021 confirming the outstanding balance payable by the Corporate Debtor to the Applicant and even sharing with the Applicant the records of

accounting vouchers in books of accounts of the Corporate Debtor, the Corporate Debtor has failed to clear the outstanding dues payable to the Applicant in spite of repeated follow-ups reminders. The Corporate Debtor has acknowledged the outstanding liability of Rs.2,90,65,714/- towards the Applicant on several occasions. After meeting with the Applicant on 20.06.2021, the Corporate Debtor has, for the first time on 21.06.2021, raised frivolous and baseless allegations about the quality of the product supplied by the Applicant which were already consumed by the Corporate Debtor and requested the Applicant for adjustment in the books of accounts of the Applicant to reflect the material allegedly short received. The Applicant vide its email and letter dated 27.06.2022 denied all the false and baseless allegations raised by the Corporate Debtor and provided a detailed response to the email dated 21.06.2021 of the Corporate Debtor. It is submitted that against the detailed response submitted by the Applicant in the said email and letter dated 27.06.2022, the Corporate Debtor has never raised any dispute. The Applicant, after serving detailed response dated 27.06.2022, sent reminder

emails to the Corporate Debtor on numerous occasions and requested it to clear the outstanding amount at the earliest. However, the Corporate Debtor has still not cleared the outstanding amount of Rs.2,90,65,714/- payable to the Applicant as per the terms and conditions of the Purchase Orders and Invoices. It is stated that since the Corporate Debtor has not cleared the payment within the stipulated time frame of 90 days from the date of the respective invoices, the Corporate Debtor is liable to make the payment of interest at the rate of 21% p.a. as per the terms and conditions of the Purchase Orders and Invoices. The applicant also filed the default with NESL on 21.12.2023 and filed form D to this tribunal on 11.1.2024.

8. The Applicant thereafter issued Statutory Demand Notice dated 07.12.2022 under Section 8 of the Insolvency and Bankruptcy Code, 2016 calling upon the Corporate Debtor to pay an Outstanding Principal Amount of Rs.2,90,65,714/- (Rupees Two Crore Ninety Lakhs Sixty-five Thousand Seven Hundred Fourteen only) for the Invoices issued by the Applicant to the Corporate Debtor from time to time along with Interest at the rate of 21% p.a.

amounting to Rs.1,06,48,355/- (Rupees One Crore Six Lakh Forty-Eight Thousand Three Hundred Fifty-Five Only) calculated from due dates of invoices till 30.11.2022, totaling to Rs. 3,97,14,069/- (Rupees Three Crore Ninety-Seven Lakh Fourteen Thousand Sixty-Nine Only). Applicant submitted that the said Demand Notice dated 07.12.2022 was delivered at the registered address of the Corporate Debtor on 09.12.2022. However, till date, the Corporate Debtor has not made any payment of outstanding amount to the Applicant within 10 days from the receipt of the said Notice nor has the Corporate Debtor specifically responded to the said Demand Notice within the prescribed time limit.

9. The applicant issued statutory demand notice as per Section 8(2) of the Insolvency and Bankruptcy Code, 2016 on 17.12.2022 for payment of principal along with interest. The date of first default is stated to be as 03.12.2020 when the payment to be made on the invoice within 90 days (dated 04.09.2020). However, vide email dated 26.12.2022, the legal representative of the Corporate Debtor has generally denied the contents of the Demand Notice seeking further time to reply. It is submitted that the said email was

received beyond the statutory period of 10 days from the receipt of the Statutory Notice under Section 8 of the Insolvency and Bankruptcy Code, 2016. Hence this present application.

10. Respondent submitted that the quantity of the goods, which are mentioned in the invoices, were not received by the respondent and against every purchaser order, there was short fall in the goods for an amount of Rs.43,34,606/-. When, the respondent came to know about the short supply of goods by applicant on 21.06.2021, it was immediately informed to the applicant, therefore, applicant had returned an amount of Rs.29,97,000/- to respondent on 12.08.2021 and Rs.30,03,000/- on 13.08.2021 in the account of answering respondent with the Axis bank bearing no. 918020025979068. It is stated that an amount of Rs.87,65,934/- is due and payable by the applicant to answering respondent and the present petition is filed by the applicant to runaway of that liability. Respondent further stated that the email dated 27.06.2022 was duly replied by the answering respondent by giving reference to the email dated 21.06.2022 issued by answering respondent

and informed applicant to make the necessary changes in the books of account and inform the same.

11. Respondent stated that the 18 cheques were given to the applicant in the year 2016-2017 for the security purpose, when answering respondent was maintaining the account with the Ahmedabad Mercantile Co Op. Bank Ltd. It is submitted that the said account was closed way back and thereafter answering respondent was maintaining the account with the Axis Bank Ltd., which was well within the knowledge of the applicant and when answering respondent had demanded the said cheques back, it was informed by the applicant that the same was destroyed and believing the words of applicant, the answering respondent had accepted its version, but since now applicant had misused the said cheques, the answering respondent reserve its right to take suitable legal action against the applicant including filing criminal complaint in accordance with law. Respondent stated that it replied the notice dated 07.12.2022 as per provisions of IB Code, 2016 as well as the notice dated 24.12.2022 under Section 138 of NI Act. Further the respondent has stated that while they had got the

consignments but they were short supplied or defects and an amount of Rs.29.97 lakhs and Rs.30.03 lakhs were repaid. Further, they have filed an application to recover an amount of Rs.87.65 lakhs along with interest for which a commercial civil suit No..418/2023 ha been filed before the Hon'ble Commercial Court, Ahmedabad and the said matter is pending adjudication.

12. On a perusal of the documents submitted by the applicant, the invoices initiated date from 01.09.2020 with the last invoice on 29.07.2021 for various amounts totalling to Rs.3,23,24,810/- has been raised on the respondent and an amount of Rs.2,99,53,567/- is shown as pending amount from the ledger sheet and after adjusting certain credits an amount of Rs.2,74,37,167/- is shown as outstanding. The invoices also show a due date which is 90 days from invoice and an additional condition that on non-payment the default amount would be charged at 21% p.a. as interest. Various purchase orders have been issued by the respondent on various dates against which goods were supplied and invoices raised.

13. The stated civil suit or arbitration is for the amount stated to be due from the applicant on certain shortages or other reasons, which is a separate matter. But from the documents produced and letter dated 27.06.2022 by the applicant an amount after adjusting credits as given in the application is considered due and payable. The cheques issued are undated and there is a letter issued demanding payment under Form 3 on 07.12.2022. Emails dated 26.26.2021, 12.08.2021 and 06.10.2021 of the CD has confirmed the balances as an acknowledgment. The stand of the CD of any dispute is frivolous and not substantiated as it is found from the invoices that the respondent has been paid of credits and adjustments and he has also availed GST and other credits while acknowledging the dues by email.
14. In Company Appeal (AT) (Insolvency NO.841 of 2022, the Hon'ble NCLAT upheld the orders of the NCLT ND bench in CP IB No.139/ND/2021 and stated that the alleged disputes claimed by the CD to be feeble, as it is not supported by credible evidence.

15. Hence, in the given facts and circumstances, the Applicant/Operational Creditor has established the operational debt and default in payment against the Respondent/Corporate Debtor. Therefore, present application deserves to be admitted against the Respondent/Corporate Debtor in terms of Section 9(5)(i) of the IBC, 2016. In view of the above and after hearing submissions of both the parties, we are passing the following order:

ORDER

- I. Application is allowed.
- II. The Corporate Debtor- M/s. Ambition Mica 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 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.
- 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 appoint Gautam Deswal having Registration Number IBBI/IPA-001/IP-P-02111/2020-2021/13395 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 thereunder.
- 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 financial creditor to pay IRP a sum of Rs.2,00,000/- as fees and expenses till the COC decides about his fees/expenses.
- XIII. The Registry is directed to communicate this order to the financial 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 timely.
- XV. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

XVI. Accordingly, the present application i.e., CP (IB)/16(AHM)2023 stands admitted. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

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DR. V. G. VENKATA CHALAPATHY

CHITRA HANKARE

MEMBER (TECHNICAL)

MEMBER (JUDICIAL)