



NATIONAL COMPANY LAW TRIBUNAL BENCH AT INDORE
COURT NO. 1

[An application filed under section 9 of the Insolvency and Bankruptcy Code 2016, for initiation of CIRP]

CP(IB)/86(MP)2023

Proceedings under Section 9 IBC

IN THE MATTER OF:

Rakesh Kumar Goyal,
Proprietor of M/s Mohini Food Product
Purana Bus Stand Near
Primary School, Kirawali, Agra
Uttar Pradesh – 283122

.....Applicant

V/s

Shri Paramsukh Edible Foods Pvt Ltd

CIN: U51909MP20PTC050852

In Front of IITM College Near Hazira Station,
Morena Link Road,
Gwailior – 474015

.....Respondent

Order delivered on:

Coram:

Mohan P. Tiwari, Hon'ble Member(J)
Sanjeev Sharma, Hon'ble Member(T)

PRESENT:

For the Applicant: Dr. Hiten Parikh a.w. Vivek Zalavadiya, PCAs
For the Respondent: Mr. Sanjeev Chaudhary, Adv

ORDER

Per: Mohan Prasad Tiwari Member Judicial

1. The Petition was filed by Mr. Rakesh Kumar Goyal, Proprietor of M/s Mohini Food Product under Section 9 of The Insolvency and Bankruptcy Code, 2016 [hereinafter referred to as "the Code"] read with Rule 6 of





The Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 [hereinafter referred to as "the Rules"], as operational creditor/applicant.

2. The Applicant/Operational creditor, Proprietor of the concern M/s Mohini Food Product is having PAN AJYPG4276H and GST No. 09AJYPG4276H1ZK and having registered office at Agra, Uttar Pradesh is in the business of supplying Various Agriculture related products like Mustard Seeds.
3. The respondent/corporate debtor is a private limited company incorporated under the provisions Companies Act, 2013 on 3rd February, 2020 and having identification No. U51909MP2020PTC050852 and having registered office at Gwalior, Madhya Pradesh State. Authorised share capital of the respondent company is Rs. 1,00,00,000/- and paid-up share capital is Rs. 54,99,990/-.
4. It is stated by the applicant that, he had supplied Mustard Seeds to the respondent and had raised invoices from time to time. It is further stated 8 (eight) invoices raised during the period from 05.08.2021 to 31.08.2021 remained unpaid as unpaid operational debt. Copy of invoices and E-Way bills are annexed to the application. The applicant has annexed to the application detailed computation of the outstanding invoices as well as part payment received. According to the applicant, net amount of Rs. 1,42,46,178/- (Rupees One Crore Forty-Two Lakh Forty-Six Thousand One Hundred Seventy-Eight Only) along with interest thereon amounting to 28,58,480/- (Rupees Twenty-Eight





Lakhs Fifty-Eight Thousand Four Hundred and Eighty Only) calculated @ 12% p.a. for the period from the due date of invoice till 10.05.2023 (i.e. date of demand notice) is due and payable by the respondent towards supply of goods during the period from 05.08.2021 to 31.08.2021. The Applicant has submitted copy of the ledger account of the Corporate Debtor from the books of the Operational Creditor to substantiate the claim. Transaction between parties were continuous and the corporate debtor has made few partial payments with respect to the invoices raised by the Operational Creditor for the Goods delivered. Thereafter the operational creditor has requested corporate debtor on various occasions for the payment of outstanding dues.

5. The applicant has further submitted that having failed to receive the operational debt due and payable by the respondent, the petitioner was compelled to Issue notice to the respondent under section 8 in form No. 3 & 4 dated 10.05.2023 (page 496-500). The applicant filed application supported with affidavit, affidavit in compliance of section 9(3)(b) of the IB Code, unpaid/part paid invoices, E-Way Bills, Computation of the outstanding invoices, Ledger Account, GST Returns and Bank Account of the petitioner and demand notice in form 3 & 4.

6. On perusal of the records it is found that the instant petition filed on 20th July, 2023 was notified for the first time on 13.10.2023 wherein PCA Vivek Zalavadiya had appeared and this Tribunal directed the applicant to issue notice to the respondent. Thereafter, upon direction of this Tribunal, applicant filed one interlocutory Application bearing IA





307 (MP) of 2024 to take on record the name of the Applicant as Rakesh Kumar Goyal, proprietor of M/s Mohini Food Product which was allowed by our order dated 14.06.2024 and the Applicant was again directed to serve the amended copy to the respondent.

7. Thereafter, despite giving number of opportunities, the respondent appeared through counsel on 05.11.2024 and filed reply on 22.10.2024. However, vide our order dated 10.12.2024, Respondent was served the copy of the reply to the counsel for the Applicant since it was pointed out by the counsel for the applicant that the respondent has served their reply to the incorrect email ID of the Applicant's counsel.
8. In the reply affidavit of the corporate debtor, the defense raised by the CD is as under-
 - i) alleged debt amount is not in default because there was no actual/complete supply being made to the Respondent and there is no agreement in writing on interest payment
 - ii) there is neither any agreement nor any purchase order nor any acceptance nor any acknowledgement which shows whether goods were actually supplied to the Respondent
 - iii) the very address mentioned in the e-way bill is incorrect which shows no supply being made.
 - iv) there is no agreed timeline between the parties on 15 days. The NCLT's judgment mentioned in the Petition has no application to this case.





v) GST returns for august 2021 relied upon by Petitioner no-where clarify or segregate the supply. and

vi) The petition involved disputed questions of fact.

9. The Applicant filed following grounds in the rejoinder

i) Formal acceptance of supply is not required because documents submitted by petitioner are as per terms of trade

ii) Respondent has itself deducted TDS u/s 194Q of the Income Tax Act, 1961 which mandates receipt of the goods to deduct TDS for purchases exceeding 50 lakhs. This itself shows acceptance of goods by the corporate debtor

iii) In absence of time line / due date mentioned in the invoice then it means that no credit is given to the Buyer / CD and hence due date is always deemed to be the invoice date. However, the OC has taken 15 days as due date as per the oral terms agreed between the parties. Reliance is placed on the judgement of Hon'ble NCLT, Mumbai bench in case of OM Industries Vs. Birla Precision Technologies Ltd [Citation: Case Citation: (2023) ibclaw.in 397 NCLT]

iv) The Petitioner is an MSME therefore it is entitled to an interest

10. Thereafter, both parties were heard and vide order dated 25.04.2025, directed the Corporate debtor to explain and provide the following information & documents by way of additional affidavit:

(i) Whether the TDS was deducted by them under Section 194 Q of the Income Tax Act, 1961 at 0.1% on purchases in question from the OC?





(ii) Whether the buyer/CD claimed the GST on the goods in question supplied as an input tax credit, reducing their own GST liability. Provide the proof.

(iii) Provide a ledger copy of the Supplier/Operational Creditor, if any, appearing in the books of account of the CD for the relevant period referred by the OC.

The Respondent had sought and granted two weeks' time to file the same. The applicant was also directed to file the rebuttal affidavit if any within one week thereafter.

11. Thereafter, the Corporate Debtor sought another opportunity to file the same and was granted another opportunity vide order dated 16.06.2025.

12. Thereafter, vide our order dated 30.06.2025, it is recorded that CD has filed affidavit on 20.06.2025 and the applicant has filed rebuttal affidavit on 26.06.2025 which were taken on record.

13. In the affidavit filed by the Respondent Corporate debtor on 20.06.2025, the CD has submitted following

- i) The CD has deducted TDS @0.1% u/s 194Q of the Income Tax Act, 1961 after 1st July, 2021 on the Purchases made from OC amounting to total of Rs. 3,61,86,685/-
- ii) Corporate Debtor admitted to have claimed Input Tax Credit of GST paid by the Supplier i.e. OC





iii) Corporate Debtor has submitted ledger Account from the books of the CD in which the outstanding as on the date of filing application was Rs. 1,29,33,407/- as against the o/s amount of Rs. 1,42,46,179/- stated in the Application filed by OC.

14. The Applicant submitted following in their rebuttal affidavit dated 26.06.2025

i) CD has admitted to have accepted the supply by deducting the TDS on purchases made from the Applicant OC. As per section 194Q TDS to be deducted at the earlier of Purchase date of payment date. Out of above, total outstanding amount as on the date of application is Rs. 1,42,46,179/-

ii) Corporate Debtor admitted to have claimed Input Tax Credit of GST paid by the Supplier i.e, OC

iii) Corporate Debtor has submitted ledger Account from the books of the CD in which the outstanding as on the date of application was Rs. 1,29,33,407/- as against the o/s amount of Rs. 1,42,46,179/- Reconciliation of the amount as per ledger produced by CD and as appearing in the books of the applicant is submitted by the Applicant in rebuttal affidavit wherein the Applicant is stating that CD has allegedly passed some fictitious entries without any basis in order to conveniently reduce the o/s amount slightly below the threshold limit in order to try to make argument on the basis of threshold limit





15. It is argued by the Applicant that threshold limit under section 4 of the Code is to be considered as on the date of filing Application before the Adjudicating Authority. Reliance is placed on the following judgements.

- I. NCLT Delhi - Udit Jain (Sole Proprietor of M/s U. J. Trading Co.) Vs Apace Builders and Contractors Pvt. Ltd. in IB 894 (ND) 2020 dated 14-09-2022
- II. NCLAT - Jumbo Paper Products v. Hansraj Agrofresh Pvt. Ltd., (2021) ibclaw.in 497 dated 25th October, 2021
- III. NCLT Allahabad Bench in case of Mosco International Commodities Private Limited Vs SBEC Sugar Limited dated 2nd February, 2024 in CP (IB) No.83/ALD/2022
- IV. Metal's & Metal Electric Pvt. Ltd. vs. Goms Electricals Pvt. Ltd. (Company Appeal (AT) (CH) (INS) No.243 of 2021) dated 24-02-2022.

16. This tribunal is inclined to agree with the arguments advanced by the Applicant that the threshold limit is to be checked as on the date of filing application by the Operational Creditor or the financial credit as the case may be. As admitted by the corporate debtor, total outstanding debt as on the date of filing the Application was Rs. 1,29,33,407/- against the o/s amount of Rs. 1,42,46,179/- stated by the Applicant.

17. At this stage, we are not inclined to enter into the issue of reconciliation statement highlighting the alleged fictitious entries passed by the corporate debtor to conveniently try to reduce the





outstanding amount slightly below threshold limit to avoid CIRP as submitted by the Applicant as **even otherwise the principal amount outstanding as on the date of filing application by the Applicant as per the ledger statement submitted by the Corporate debtor is more than threshold limit of 1 crore.**

18. On perusal of the record, It Is found that the demand notice issued by the applicant under section 8 of the I & B Code on 10.05.2023 has been served upon the corporate debtor and no dispute has been raised by the corporate debtor.
19. On perusal of the record, it is also found that the Instant petition filed by the applicant is well within limitation and there is no denial of the operational debt or any pre-existing dispute regarding the operational debt from the side of the corporate debtor.
20. In the instant application, from the material placed on record by the Applicant, this Authority is satisfied that the application is complete in all respect and the Corporate Debtor committed default in paying the operational debt due and payable to the Applicant.
21. The documents produced by the operational creditor clearly establish the 'debt' and there is default on the part of the Corporate Debtor in payment of the 'operational debt'.
22. It has been observed in **Mobilox Innovative Private Limited vs. Kirusa Software Private Limited [2017] 1 IBJ(JP) 2 SC** that while examining an application under Section 9 of the Act, will have to determine the following: -





(i) Whether there is an "operational debt" as defined exceeding Rs. 1.00 lac (See Section 4 of the Act)?

(ii) Whether the documentary evidence furnished with the application shows that the aforesaid debt is due and payable and has not yet been paid? and

(III) Whether there is existence of a dispute between the parties or the record of the pendency of a suit or arbitration proceeding filed before the receipt of the demand notice of the unpaid operational debt in relation to such dispute?

If any of the aforesaid conditions is lacking, the application would have to be rejected.

23. Thus, under the facts and circumstances and as discussed herein above, In the light of the Hon'ble Supreme Court Judgement and the provisions thereof as enshrined In Insolvency & Bankruptcy Code, this adjudicating authority is of the considered view that operational debt is due to the Applicant and it fulfilled the requirement of I & B Code. That, service is complete and no dispute has ever been raised by the respondent at any point of time. That, Applicant is an Operational Creditor within the meaning of Section 5 sub-section 20 of the Code. From the aforesaid material on record, petitioner is able to establish that there exists debt as well as occurrence of default and the amount claimed by operational creditor is payable in law by the corporate debtor as the same is not barred by any law of limitation and/or any other law for the time being in force. The debt and default being established, the application under Section 9 is admissible. Consequently, a moratorium





under Section 14 of the Insolvency and Bankruptcy Code, 2016, is to be declared, prohibiting the institution or continuation of suits, execution of judgements, transfer of assets, and enforcement of security interests.

24. The Operation Creditor proposes Mr. Chirag Rajendrakumar Shah as the Interim Resolution Professional having **Registration No. IBBI/IPA-001/IP-P01169/2018-19/11837** whose consent and valid registration are provided. The Tribunal finds no impediment to his appointment.

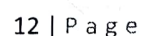
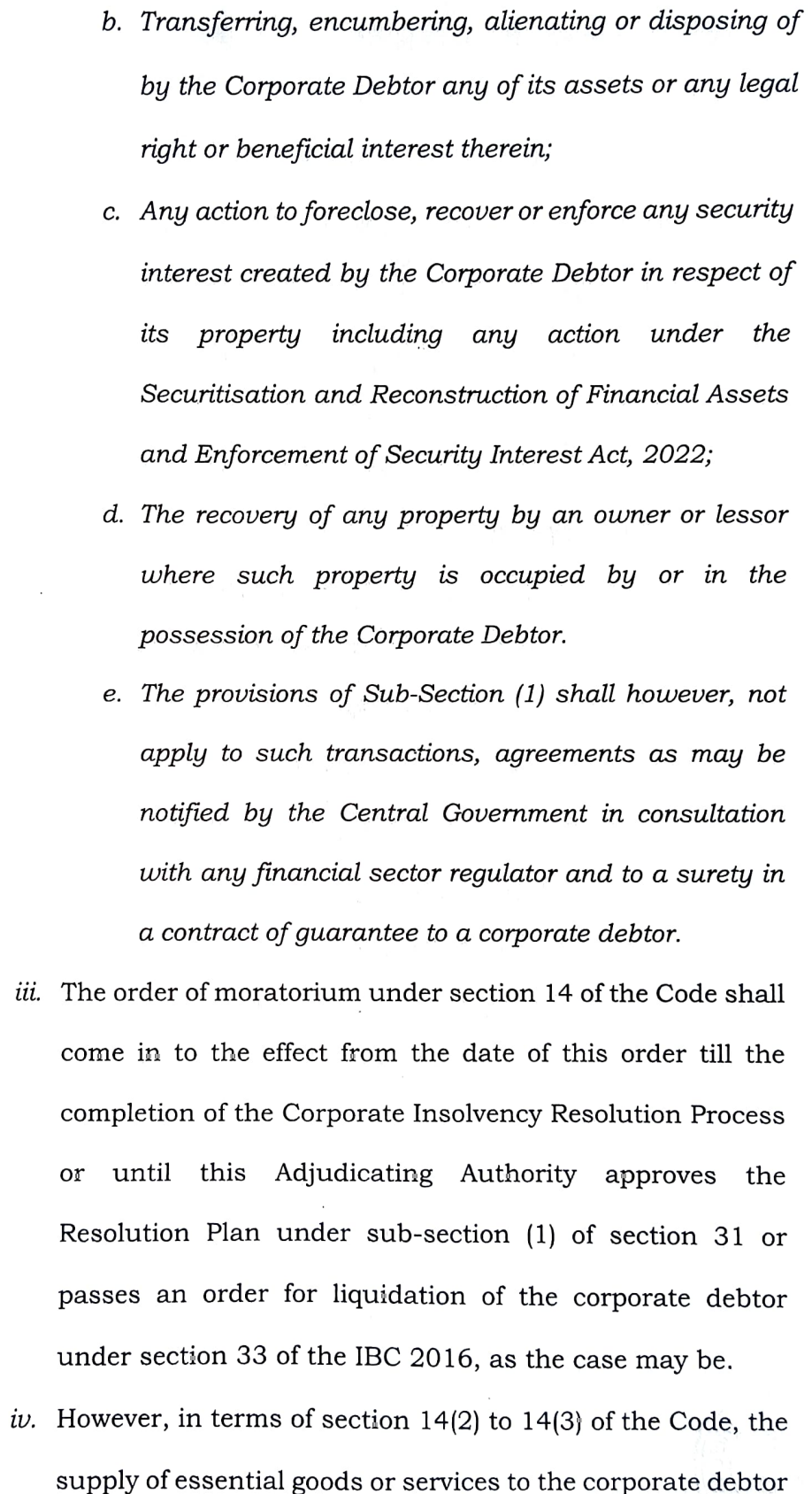
25. Accordingly, in light of the above facts and circumstances, it is, **hereby ordered** as under: -

i. The Corporate Debtor Shri Paramsukh Edible Foods Pvt Ltd is admitted in Corporate Insolvency Resolution Process (CIRP) under section 9 of the IBC, 2016.

ii. As a consequence, thereof, a moratorium under Section 14 of the Insolvency and Bankruptcy Code, 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 judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*







as may be specified, if continuing, shall not be terminated or suspended, or interrupted during the moratorium period. The corporate debtor to provide effective assistance to the IRP as and when he takes charge of the assets and management of the corporate debtor.

- v. As proposed by the Operation Creditor, we appoint **Mr. Chirag Rajendra Kumar Shah** having **Registration No. IBBI/IPA-001/IP-P01169/2018-19/11837** under section 13(1)(c) of the code to act as Interim Resolution Professional (IRP). He shall conduct the Corporate Insolvency Process as per the Insolvency and Bankruptcy Code, 2016 r.w. Regulations made thereunder.
- vi. 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.
- vii. 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.

- viii. 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.
- ix. 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 obligation imposed by Section 20 of the code.
- x. 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.
- xi. We direct the Operational Creditor to pay IRP a sum of **Rs. 5,00,000/- (Rupees Five Lakh Only)** in advance exclusive of applicable taxes, within 7 days from date of this order to meet the initial costs of the CIRP, including issuing public notice and inviting claims, as per Regulation 33(1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. This amount shall be adjustable against the IRP's fees and expenses as





approved by the Committee of Creditors (CoC) under Regulation 33(3), with any excess refundable to the Operational Creditor or shortfall recoverable from the Corporate Debtor's estate as CIRP costs.

- xii. The Registry is directed to communicate this order to the Operational Creditor, Corporate Debtor, and to the Interim Resolution Professional, the concerned Registrar of Companies and the Insolvency and Bankruptcy Board of India after completion of necessary formalities, within seven working days, and upload the same on the website immediately after pronouncement of this order. The Registrar of Companies shall update the Corporate Debtor's Master Data on the MCA portal to reflect its status as 'under Corporate Insolvency Resolution Process' within 7 working days of receiving this order and submit a compliance report to the Registrar, NCLT, within 14 working days.
- xiii. The public announcement under Regulation 6(2) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, shall be published in at least one English (national edition) and one vernacular newspaper with wide circulation in the state of the Corporate Debtor's registered office (Indore) and on the Corporate Debtor's website, if any, as per Form A of the said Regulations.





xiv. The commencement of the Corporate Insolvency Resolution Process shall be effective from the date of this order.

26. Accordingly, this application **CP(IB)/86(MP)2023** is hereby **admitted**. A certified copy of this order may be issued, if applied for, upon compliance with all requisite formalities.

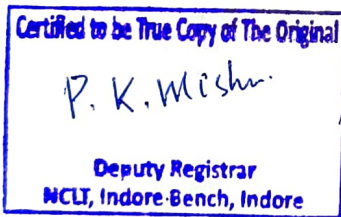
Sd/-

SANJEEV SHARMA
MEMBER (TECHNICAL)

Abhijit - PS

Sd/-

MOHAN P. TIWARI
MEMBER (JUDICIAL)



Date of Pronouncement of Order 11. 09. 2025
Date on Which Application for Certified Copy was Made 12. 09. 2025
Date on Which Certified Copy Was Ready 15. 09. 2025
Date on Which Certified Copy Delivered 15. 09. 2025

