

IN THE NATIONAL COMPANY LAW TRIBUNAL

NEW DELHI (COURT NO. IV)

Company Petition No. IB-717/ND/2018

(Under Section 9 of the Insolvency and Bankruptcy Code, 2016 Read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

IN THE MATTER OF:

MR. SANJAY KUMAR JAISWAL

...Applicant/

Operational Creditor

VERSUS

M/S AMIRA PURE FOODS PRIVATE LIMITED

...Respondent/

Corporate Debtor

Pronounced on: 08.10.2018

CORAM:

DR. DEEPTI MUKESH

HON'BLE MEMBER (Judicial)

For the Applicant : Ms. Anusha Nagarajan, Advocate

: Mr. Rahul Ranjan, Advocate

For the Respondent : ---

MEMO OF PARTIES**Mr. Sanjay Kumar Jaiswal,**

C-2/212, Janakpuri, New Delhi

New Delhi-110058

...Applicant/**Operational Creditor****VERSUS****M/S Amira Pure Foods Private Limited****Registered office at:**

B-1/E-28,

Mohan Co-operative Industrial Estate,

Mathura Road,

New Delhi-110044

...Respondent/**Corporate Debtor****ORDER**

1. The present application is filed under section 9 of Insolvency and Bankruptcy Code, 2016 (for brevity 'IBC, 2016') read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for

brevity 'the Rules') by Mr. Sanjay Kumar Jaiswal (for brevity 'Applicant') with a prayer to initiate the Corporate Insolvency process against M/S Amira Pure Foods Private Limited (for brevity 'The Company').

2. The Applicant was appointed as Sr. Executive- Accounts in the company on 01.12.2008 at monthly salary of Rs. 22,920/- as per the appointment letter annexed in application. Upon reviewing the performance of the Applicant from 01.12.2008 to 31.05.2009, the Applicant's employment was confirmed with effect from 16.06.2009 as Deputy Manager- Accounts. The latest salary drawn by the applicant was Rs. 68,356/- per month with designation of Deputy Manager- Accounts as per the bank statement annexed with the application which shows the entry of payment of Rs. 68,356/- as salary from Corporate debtor.
3. The Company, the Corporate Debtor namely M/S Amira Pure Foods Private Limited is the company incorporated on 20.12.1993 under the provisions of Companies Act, 1956 with CIN No. U74899DL1993PTC056536.

4. The company is having its registered office at B-1/E-28, Mohan Co-operative Industrial Estate, Mathura Road, New Delhi-110044.
5. The Authorised Share Capital of the company is Rs. 1,55,00,00,000/- and Paid Up Share Capital of the company is Rs. 66,08,24,750/- as per Master Data of the company.
6. It is the case of the Applicant that the Applicant was an employee of the company and the company did not pay any salary to the Applicant for more than two months i.e. for the months October 2017 (partly unpaid), November 2017, December 2017 and 11 days in January 2018. Due to non-payment of employment dues by company, the Applicant gave his resignation vide email dated 11.01.2018 which was accepted by the company by letter of even date.
7. The applicant has submitted that the Corporate Debtor has also issued a certificate of service to the Applicant on 18.01.2018. However, the Applicant has not received the full and final settlement of his dues.

8. The applicant has stated that total debt due and payable by the Corporate Debtor to the applicant is Rs. 5,17,233.09/- inclusive of interest at the rate 18% per annum as on 21.05.2018.
9. In spite of various requests made and reminders sent to the Corporate Debtor by the Applicant by way of e-mails dated 03.03.2018, 06.03.2018, 08.03.2018, 22.03.2018, 26.03.2018, 02.04.2018, 09.04.2018, 11.04.2018, 01.05.2018 and 09.05.2018, the Company has neither paid nor responded to the applicant.
10. The Applicant from time to time requested the Corporate Debtor to clear the outstanding amount, however, Corporate Debtor neglected and failed to pay the unpaid debt of the Applicant. Since no payment was forthcoming hence a notice under Section 8 of the Insolvency and Bankruptcy Code was issued on 24.05.2018 to the Corporate Debtor.
11. Despite the demand notice sent u/s 8 of the Code, the Corporate Debtor has failed to pay the amount demanded nor has replied to the demand notice raising any dispute,

hence this application, seeking to unfold the process of CIRP.

12. This Tribunal is constrained to proceed with the matter *exparte* in relation to the Corporate Debtor since the section 8 notice and the present application duly served on the Corporate Debtor and proof of service along with service affidavit is filed by the applicant making the service complete.
13. An affidavit u/s 9(3)(b) is filed by the Applicant to that extent. The applicant has attached the bank statement copy of his Bank account with YES bank. Relying on the order dated 15.12.2017 passed by Hon'ble Supreme Court in the matter of Macquarie Bank Limited Vs. Shilpi Cable Technologies Ltd the requirement of Section 9(3)(c) can be dispensed.
14. The registered office of corporate debtor is situated in New Delhi and therefore this Tribunal has jurisdiction to entertain and try this application.
15. The amount of default exceeds Rs. 1,00,000/- as per the requirement under section 4 of the Code, 2016. Hence,

this application is within the purview of section 9 of the IBC, 2016.

16. In the given facts and circumstances, the present application is complete and the Applicant is entitled to claim its dues, establishing the default in payment of the operational debt beyond doubt, and fulfillment of requirements under section 9(5) of the Code. Hence, the present application is admitted.
17. As a consequence of the application being admitted in terms of Section 9(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor prohibiting all of the following:
 - 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 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 corporate debtor.

However, during the pendency of the moratorium period in terms of Section 14(2) 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.

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

a. such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

b. a surety in contract of guarantee to a Corporate Debtor.

(4) The order of moratorium shall have effect from the date of this 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.

In terms of above order, the Application stands admitted in terms of Section 9(5) of IBC, 2016.

18. The Operational Creditor has not proposed the name of any Interim Resolution Professional. In view of the same, this Bench appoint Mr. Lekhraj Bajaj having registration

no. IBBI/IPA-002/IP-N00039/2016-17/10078 having email address lekhrajbajaj@rediffmail.com as the IRP of the Corporate Debtor. The IRP is directed to take all such steps as are required under the statute, more specifically in terms of Sections 15,17,18,20 and 21 of the Code.

19. The IRP is directed to file his report within the statutory period as required under Insolvency and Bankruptcy Code, 2016
20. A copy of the order shall be communicated to the Applicant as well as to the Corporate Debtor above named by the Registry. Further the IRP above named be also furnished with copy of this order forthwith by the Registry. In addition, a copy of the order shall also be forwarded to IBBI for its records.

Sd/-

(DR. DEEPTI MUKESH)

MEMBER (JUDICIAL)