

**THE NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
(Exercising powers of Adjudicating Authority under
the Insolvency and Bankruptcy Code, 2016)
(through web-based video conferencing platform)**

CP (IB) No.150 /Chd/Pb/2023

**Under Section 9 of the
Insolvency & Bankruptcy Code,
2016**

In the matter of:

**Sandeep Kaur, Sole Proprietor
M/s Josan Enterprises, a Proprietorship Firm,
Having its office at Mandi Ladhuka,
Tehsil Jalalabad, Dist. Ferozpur (Punjab)-151123**

....Petitioner-Operational Creditor

Vs.

**M/s Josan Foods Pvt. Ltd.
Having a registered office at Gumani Wala Road,
Jalalabad, Distt. Ferozpur-152024
CIN No.U15142PB2000PTC023351**

...Respondent-Corporate Debtor

Judgment delivered on: 20 .07.2023

**Coram: HON'BLE MR. HARNAM SINGH THAKUR, MEMBER (JUDICIAL)
HON'BLE MR. SUBRATA KUMAR DASH, MEMBER (TECHNICAL)**

Present through Video Conferencing : -

For the Petitioner-Operational Creditor : Mr. Mohinder Singh, Advocate

For the Respondent-Corporate Debtor : Mr. Devis, Advocate.

PER: HARNAM SINGH THAKUR, MEMBER (JUDICIAL)

JUDGMENT

The present petition has been filed by **M/s Josan Enterprises, a Proprietorship Firm**, (hereinafter referred to as '**Petitioner/Operational Creditor**') through **Sole Proprietor, Sandeep Kaur**, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'Code') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 to initiate the Corporate Insolvency Resolution Process ('CIRP') against **M/s Josan Foods Pvt. Ltd.** (hereinafter referred to as '**Respondent/Corporate Debtor**'). The petition is signed by Sandeep Kuar, duly authorized, with the affidavit verifying the contents of the petition.

2. The Corporate Debtor is stated to be incorporated on 08.02.2000 incorporated under the Companies Act. The company is having its Registered Office at: Gumani Wala Road, Jalalabad, Distt. Ferozepur-152024,CIN No.U15142PB2000PTC023351. Therefore, the jurisdiction lies with this Bench of the Tribunal.

3. The brief facts of the case as stated in the petition are that the petitioner operational creditor is engaged in trading of paddy, rice, and other pulses. The petitioner/operational creditor and corporate debtor are trading with each other for many years. there was a running account between the petitioner operational creditor and corporate debtor and rice paddy used to be supplied by the petitioner operational creditor to the corporate debtor on verbal orders placed by it for which the petitioner operational creditor used to raise 1-form against which the corporate debtor used to make by way of electronic transfer or through cheques. However, the corporate debtor has failed to make payment against the supply of paddy through I-form from dates 19.09.2015 to 19.11.2015, and as such the corporate

debtor has defaulted in payment of Rs.3,06,10,978.29/- towards the petitioner/operational creditor from the first date of Default.

4. It is stated in Part-IV of Form No.1 that the total amount claimed to be in default is Rs.3,06,10,978.29/- (Rupees Three Crores Six Lakhs Ten Thousand Nine Hundred Seventy-Eight and Twenty-Nine Paisa Only) and date of default is 19.09.2015 i.e. the date from debt falling due. Copy of Details of the transactions/I-form on account of which debt fell due (Annexure-4), Ledger (Annexure-6), Bank Statement (Annexures-7), balance sheet (Annexure-10), and statement of dues (Annexure-12) evidencing the default of debt are attached with the main petition.

5. A demand notice was issued on 10.03.2023 by the operational creditor and the same has been delivered to the corporate debtor as the corporate debtor gave a reply through email dated 15.04.2023 to demand wherein it is stated that the amount due towards Josan Enterprises is different in our records form. It is also submitted that they are making their best efforts to clear the dues and requesting some more time for clearing the same. They are ready to meet and come down to a mutual settlement if the same is agreeable.

6. The notice of this petition was issued to the respondent corporate debtor to show cause as to why this petition be not admitted. An affidavit has been filed on behalf of Hakam Chand Josan, Director/Authorized Representative of the respondent/corporate debtor vide Diary No.01642/01 dated 17.07.2023 wherein, it has been deposed that due to huge losses in business and due to financial crunches, they are unable to pay the outstanding dues of Rs.3,06,10,978.29/- (Rupees Three Crores Six Lakhs Ten Thousand Nine Hundred Seventy-Eight and Twenty-Nine Paisa Only). Moreover, it is stated that he has no objection if the

present application filed under Section 7, IBC by Sandeep Kaur, Sole Proprietor of M/s Josan Enterprises is admitted and the Corporate Insolvency Resolution Process is initiated qua the respondent-corporate debtor.

7. We have heard the learned counsel for the petitioner and have also perused the record carefully.

8. Section 7(5)(a) of the Code is as follows:-

*“5) Where the Adjudicating Authority is satisfied that—
(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application.”*

9. The issue for consideration is whether the present application is filed within limitation. The date of default is stated to be 19.09.2015 i.e. the date from debt falling due. The petitioner has also attached the balance sheets up to the financial year 2019-2020 in which liability is acknowledged by the respondent/corporate debtor. Reliance may be placed on **Hon’ble Apex Court titled Asset Reconstruction Company (India) Limited Versus Bishal Jaiswal and another** In **Civil Appeal No.323 of 2021 decided on 15.04.2021**, wherein it has been held that entries made in the company’s balance sheets amount to acknowledgment of debt for the purpose of extending limitation under Section 18 of the Limitation Act, 1963. It can be seen from the records that the present petition is filed vide diary No.01642 dated 26.05.2023. Hence, the present petition is well within the period of limitation of three years.

10. Another issue for consideration is whether there is a default in payment or not. It is observed from the record that in the present case, the default is evidenced by the Details of the transactions/I-form on account of which debt fell due (Annexure-4), Ledger (Annexure-6), Bank Statement (Annexures-7), balance

sheet (Annexure-10), and statement of dues (Annexure-12) which are attached with the main petition. As per the financial records read with financial statements, it is evident that an amount of Rs.3,06,10,978.29/- (Rupees Three Crores Six Lakhs Ten Thousand Nine Hundred Seventy-Eight and Twenty-Nine Paisa Only) is still pending which amounts to default when corporate debtor avoided the payment of outstanding amount despite repeated requests by the petitioner-Operational creditor. Moreso, default is admitted by the corporate debtor in their affidavit vide Diary No.01642/01 dated 17.07.2023. Moreover, in the affidavit, it is deposed that the corporate debtor company suffered huge losses due to lack demand of the services and products and financial crunches, the respondent/corporate debtor is unable to repay the amount to the extent of Rs.3,06,10,978.29/- (Rupees Three Crores Six Lakhs Ten Thousand Nine Hundred Seventy-Eight and Twenty-Nine Paisa Only).

11. In Part-III of Form No. 1, Mr. Harsh Garg, Interim Resolution Professional (IRP) has been proposed by the petitioner. The form-2 along with certification of registration issued by the Insolvency and Bankruptcy Board of India is submitted with the main petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Harsh Garg, there is nothing adverse against him. In view of the above, we appoint Mr. Harsh Garg, Registration No.IBBI/IPA-001/IP-P00243/2017-18/10472, Email: harsh.garg81@gmail.com, Mobile No. 9815343200, the Interim Resolution Professional with the following directions: -

The term of appointment of Mr. Harsh Garg shall be in accordance with the provisions of Section 16(5) of the Code;

- i.) In terms of Section 17 of the Code, from the date of this appointment, the powers of the Board of Directors shall stand suspended and the management of the affairs shall vest with the Interim Resolution Professional and the officers and the managers of the Corporate Debtor shall report to the Interim Resolution Professional, who shall be enjoined to exercise all the powers as are vested with Interim Resolution Professional and strictly perform all the duties as are enjoined on the Interim Resolution Professional under Section 18 and other relevant provisions of the Code, including taking control and custody of the assets over which the Corporate Debtor has ownership rights recorded in the balance sheet of the Corporate Debtor, etc. as provided in Section 18 (1) (f) of the Code. The Interim Resolution Professional is directed to prepare a complete list of the inventory of assets of the Corporate Debtor;
- ii.) The Interim Resolution Professional shall strictly act in accordance with the Code, all the rules framed thereunder by the Board or the Central Government and in accordance with the Code of Conduct governing his profession and as an Insolvency Professional with high standards of ethics and moral;
- iii.) The Interim Resolution Professional shall cause a public announcement within three days as contemplated under Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 of the initiation of the Corporate Insolvency Resolution Process in terms of

Section 13 (1) (b) of the Code read with Section 15 calling for the submission of claims against Corporate Debtor;

- iv.) It is hereby directed that the Corporate Debtor, its Directors, personnel and the persons associated with the management shall extend all cooperation to the Interim Resolution Professional in managing the affairs of the Corporate Debtor as a going concern and extend all cooperation in accessing books and records as well as assets of the Corporate Debtor;
- v.) The Suspended Board Of Directors is directed to give complete access to the Books of Accounts of the corporate debtor maintained under section 128 of the Companies Act. In case the books are maintained in the electronic mode, the Suspended Board of Directors are to share with the Resolution Professional all the information regarding Maintaining the Backup and regarding Service Provider kept under Rule 3(5) and Rule 3(6) of the Companies Accounts Rules, 2014 respectively as effective from 11.08.2022, especially the name of the service provider, the internet protocol of the Service Provider and its location, and also address of the location of the Books of Accounts maintained in the cloud. In case accounting software for maintaining the books of accounts is used by the corporate debtor, then IRP/RP is to check that the audit trail in the same is not disabled as required under the notification dated 24.03.2021 of the Ministry of Corporate Affairs. A reference is made to the provisions of Section 128(5) of the Companies Act 2013,

whereby every company should maintain its books of accounts for not less than 8 financial years immediately preceding a financial year. Minutes and statutory records are the principal documents of the company that should be maintained and preserved since inception.

“As per Rule 7 (f) of Companies (Registered Valuers and Valuation) Rules, 2017, Registered Valuer shall maintain records of each assignment undertaken by him for at least three years from the completion of such assignment;”

As per the Standard of Auditor (SA-230)

“The retention period for audit engagements is ordinarily no shorter than seven years from the date of auditor's report, or, if later, the date of the group auditor's report.”

In view of the above mandatory provisions, the suspended directors of the board will ensure that the books of accounts for the eight previous financial years preceding the date of this order be made available to the IRP/RP within 15 days of the initiation of the CIRP order. The statutory auditor is also directed to share the records maintained by him in the course of the audit of the accounts of the corporate debtor for the period of three years prior to the date of initiation of this CIRP order within the same period of 15 days.

- vi.) In case of any non-cooperation by the Suspended Board of Directors or the statutory auditors, he may take the help of the police authorities to enforce this order. The concerned police authorities are directed to extend help to the IRP/RP in implementing this order for retrieval of relevant information from the systems of the corporate debtor, the IRP/RP may take the assistance of Digital Forensic Experts empanelled with this Bench for this purpose. The Suspended Board

of Directors is also directed to hand over all user IDs and passwords relating to the corporate debtor, particularly for government portals, for various compliances. The Interim Resolution Professional is also directed to make a specific mention of non-compliance, if any, in this regard in his status report filed before this Adjudicating Authority immediately after a month of the initiation of the CIRP.

- vii.) The Resolution Professional is directed to approach the Government Departments, Banks, Corporate Bodies and other entities with request for information/documents available with those authorities/institutions/others pertaining to the corporate debtor which would be relevant in the CIR proceedings. The Government Departments, Banks, Corporate Bodies and other entities are directed to render the necessary information and cooperation to the Resolution Professional to enable him to conduct the CIR Proceedings as per law.
- viii.) The Interim Resolution Professional shall after collation of all the claims received against the Corporate Debtor and the determination of the operational position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days of filing the report of constitution of the Committee; and

ix.) The Interim Resolution Professional is directed to send a regular progress report to this Tribunal every fortnight.

12. In the given facts and circumstances, the present petition being complete and having established the default in payment of the Financial Debt for the default amount being above the threshold limit, the petition is admitted in terms of Section 7(5) of the IBC and accordingly, also direct moratorium in terms of sub-section (1) of Section 14 of the code to take effect as below:

- 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 Operational Assets and Enforcement of Security Interest Act, 2002; and
- 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.
- e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period. The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any operational sector regulator and to a surety in a contract of guarantee to a corporate debtor.

- f) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be.

13. We direct the Operational Creditor to deposit a sum of ₹1,00,000/- (Rupees One Lakh Only) with the Interim Resolution Professional, to meet out the expense to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

14. A copy of the order shall be communicated to both parties. The learned counsel for the petitioner shall deliver a copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a copy of this order to the Interim Resolution Professional at his email address forthwith.

15. The petition is admitted accordingly.

sd/-
(Subrata Kumar Dash)
Member (Technical)

sd/-
(Harnam Singh Thakur)
Member (Judicial)

July 20 , 2023

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