

IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-VI

IB-469/(ND)/2020

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

In the matter of:

M/s FONTAL FLEXIPACK LTD.

Registered office at:

SF-204, Harsha Corner Complex,
Ghaziipur, New Delhi- 110096

... Operational Creditor/ Applicant

Versus

M/s ADITYASAMRAJ NATURAL FOODS PRIVATE LIMITED

Registered office at:

Hn. 224, KH.No. 108/224, Ground Floor,
Village Khera Kalyan, Landmark Back Side Bhudpur,
Delhi- 110082

Address Also At:

A-10, Maherndru Enclave,
Delhi- 110033

...Corporate Debtor/ Respondent

Coram:

SH. P.S.N. PRASAD, Hon'ble Member (Judicial)

DR. BINOD KUMAR SINHA, Hon'ble Member (Technical)

Counsel for Operational Creditor: Mr. Ranjit Khatri, Advocate
Counsel for Corporate Debtor:



IB- 469(ND)/2020

M/s Fontal Flexipack Ltd. vs M/s Aditya Samraj Natural Foods Pvt. Ltd.

ORDER

Per P.S.N. PRASAD, MEMBER (JUDICIAL)

Date: 13.10.2021

1. This is an application filed by the Operational Creditor, 'M/s Fontal Flexipack Ltd.' through its Authorized Representative, Mr. J.S. Pandey seeking to initiate corporate insolvency resolution process ("CIRP") under Section 9 of the Insolvency and Bankruptcy Code 2016 ("the Code") of the Corporate Debtor, 'M/s Aditya Samraj Natural Foods Pvt. Ltd.' for the alleged default on the part of the Corporate Debtor in clearing the debt of Rs. 4,17,878/- (Rupees Four Lakhs Seventeen Thousand Eight Hundred Seventy-Eight only), as alleged by the Operational Creditor, towards the goods supplied. The details of transactions leading to the filing of this application as averred by the Operational Creditor are as follows:

- i. That the Operational Creditor is engaged in the business of Article of Plastic, Printed film for packaging of goods bag. The Operational Creditor submitted that during the period of April 2016 to May 2019 the Corporate Debtor placed orders and upon the orders of the Corporate

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Debtor the Operational Creditor supplied the Article of Plastic, Printed film for packaging of goods bag from time to time. The Operational Creditor further submitted that the Corporate Debtor made part payments from April 2016 to July 2019 whereas, the Corporate Debtor as per the statement of account maintained by the Operational Creditor in the due course of business is liable to pay the Operational Creditor an outstanding sum of Rs. 4,17,878/-exclusive of interest.

- ii.* The Operational Creditor stated that repeated requests and reminders were sent to the Corporate Debtor however, the Corporate Debtor neither replied nor paid the amount due to the applicant.
- iii.* That on 24.07.2019 the Operational Creditor sent a reminder letter to the Corporate Debtor thereafter, an email dated 19.09.2019 was also sent to the Corporate Debtor demanding the outstanding amount.

2. The Operational Creditor submitted that a Statutory Demand Notice under section 8 of IBC, 2016 dated 24.10.2019 was

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issued vide Post through the Operational Creditor's Counsel on 25.10.2019. The Operational Creditor further submitted that the said Demand Notice has been 'Refused' at Mahendru Enclave, Delhi Address and has returned from the Registered Address as 'Left Without Address'. The Operational Creditor submitted that a soft copy through E-mail of the said Demand Notice was also sent on 13.02.2020 upon the Email Id of the Corporate Debtor as given on the Company Master Data, which was also not responded to by the Corporate Debtor.

3. Since the application filed by the Operational Creditor fulfilled all the conditions required under Section 9 of the Code, this Tribunal ordered issue of notice to the Corporate Debtor by all modes. However, despite service of notice by all modes, none appeared on behalf of the Corporate Debtor and as a result the Corporate Debtor was proceeded ex-parte on 07.01.2021 and the same is reiterated vide order dated 10.03.2021.

4. We have heard the arguments advanced by the counsel for the Operational Creditor and perused the documents filed by him.



The Operational Creditor annexed the invoices dated 30.03.2019, 04.04.2019 and 02.05.2019 in the present application along with the Reminder Letter dated 23.07.2019 and a Reminder email dated 19.09.2019 requesting the Corporate Debtor to clear the dues. A Certificate dated 24.01.2020 Under Section 9(3)(c) of IBC, 2016 issued by the Axis Bank stating that no credits from Corporate Debtor were observed during the period from 13.07.2019 to 23.01.2020 in the account of Operational Creditor has also been filed. The Operational Creditor has clearly established the existence of debt and default on the part of the Corporate Debtor. The Corporate Debtor, on the other hand, chose neither to appear nor to contest the instant application filed under section 9 of the IB Code, 2016. In light of the above said facts after giving careful consideration to the entire matter, hearing the arguments of the Operational Creditor and upon appreciation of the documents placed on record to substantiate the claim, this Tribunal **admits** this petition and **initiates CIRP** on the Corporate Debtor with immediate effect.



5. This Adjudicating Authority, hereby appoints Mr. Sunil Kumar Gupta, (Email -caskg82@gmail.com, (Mobile No.- 9953999077) Reg. No: IBBI/IPA-001/IP-P00205/2017-2018/10394 to act as Insolvency Resolution professional. He shall take such other and further steps as are required under the statute, more specifically in terms of Section 15, 17 and 18 of the Code and file his report within 30 days before this Bench.
6. The Applicant shall deposit a sum of Rs. 2 lakhs to enable the IRP to meet the immediate expenses. The same shall be accounted for by the IRP and shall be reimbursed to the Applicant to be recovered as costs of the CIRP.
7. In pursuance of Section 13 (2) of the Code, we direct that public announcement shall be made by the Interim Resolution Professional, immediately (3 days as prescribed by Explanation to Regulation 6(1) of the IBBI Regulations, 2016) with regard to admission of this application under Section 9 of the Insolvency & Bankruptcy Code, 2016.

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8. We also declare moratorium in terms of Section 14 of the Code.

The necessary consequences of imposing the moratorium flows from the provisions of Section 14 (1) (a), (b), (c) & (d) of the Code. Thus, the following prohibitions are imposed:

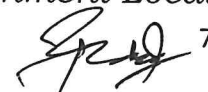
“(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(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.

9. It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government Local



Authority, Sectoral Regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of Insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period.

10. It is made clear that the provisions of moratorium shall not apply to transactions which might be notified by the Central Government or the supply of the essential goods or services to the Corporate Debtor, as may be specified, are not to be terminated or suspended or interrupted during the moratorium period. In addition, as per the Insolvency and Bankruptcy Code (Amendment) Act, 2018, which has come into force w.e.f. 06.06.2018, the provisions of moratorium shall not apply to the surety in a contract of guarantee to the corporate debtor in terms of Section 14 (3) (b) of the Code.

11. The Interim Resolution Professional shall perform all his functions contemplated, inter-alia, by Sections 15, 17, 18, 19, 20 & 21 of the Code and transact proceedings with utmost



dedication, honesty and strictly in accordance with the provisions of the Code, Rules and Regulations. It is further made clear that all the personnel connected with the Corporate Debtor, its promoters or any other person associated with the Management of the Corporate Debtor, are under legal obligation under Section 19 of the Code to extend every assistance and cooperation to the Interim Resolution Professional, as may be required by him, in managing the day-to-day affairs of the 'Corporate Debtor'. In case there is any violation committed by the ex-management or any tainted/illegal transaction by ex-directors or anyone else, the Interim Resolution Professional would be at liberty to make appropriate application to this Tribunal with a prayer for passing an appropriate order. The Interim Resolution Professional shall be under duty to protect and preserve the value of the property of the 'Corporate Debtor' as a part of his obligation, imposed by Section 20 of the Code and perform all his functions strictly in accordance with the provisions of the Code, Rules and Regulations.



12. The office is directed to communicate a copy of the order to the Financial Creditor, the Corporate Debtor, the Interim Resolution Professional and the Registrar of Companies, NCT of Delhi & Haryana, at the earliest possible but not later than seven days from today. The Registrar of Companies shall update its website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified to the public at large.

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(DR. BINOD KUMAR SINHA)
MEMBER (TECHNICAL)

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(SH. P.S.N. PRASAD)
MEMBER (JUDICIAL)

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