

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 166/(KB)/2022

*An application 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:**

**Victoria International Pvt. Ltd.**

**[CIN: U15317WB1999PTC089601]**                      ... *Operational Creditor/ Petitioner*

*Verses*

**Snehtango Food Products Pvt. Ltd**

**[CIN: U15400WB2020PTC236073]**                      ... *Corporate Debtor/  
Respondent*

**Date of Hearing: 21.08.2023**

**Date of Pronouncement:20.10.2023**

**CORAM:**

**Hon'ble Smt. Bidisha Banerjee, Member (Judicial)**

**Hon'ble Shri. D. Arvind, Member (Technical)**

**ORDER**

**Per Bidisha Banerjee, Member (Judicial):**

1. This Court is congregated through hybrid mode.
2. That Mr. Sourav Ganguly, Adv. (Proxy counsel for Mr. Vijay Nath Jha, Adv.) for the Operational Creditor was present on 24<sup>th</sup> April 2023. On that day it was recorded that the Corporate Debtor had already been set ex-party and it was put for further consideration. Further, on 17<sup>th</sup> July

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 166/(KB)/2022

2023, parties were ordered to furnish written notes of arguments on the next date, failing which, appropriate orders were to be passed on the next date i.e 21.08.2023. As none appeared for applicants on 21<sup>st</sup> August 2023, in terms of Sec-48(1) of the Code and matter was considered on the basis of pleadings and oral arguments advanced earlier and order was reserved.

3. This instant petition is filed by Victoria International Pvt. Ltd., Operational Creditor, hereinafter referred to as “Petitioner” against Snehtango Food Products Pvt. Ltd., Corporate Debtor, hereinafter referred to as “Respondent” seeking to initiate Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor, Snehtango Food Products Pvt. Ltd. under Section 9 of IBC seeking initiation of Corporate Insolvency Resolution Process (“CIRP”) of the Corporate Debtor, Snehtango Food Products Pvt. Ltd. under section 9 of the Insolvency and Bankruptcy Code, 2016 (“IBC”).

Total amount claimed to be in default as in Part IV is Rs. 1,74,57,573/- and the Date of Default is claimed as of 27/12/2021.

Further, the Corporate Debtor was incorporated on 23/01/2020 having Nominal Share Capital of Rs. 15,00,000/- and Paid-up Share Capital of Rs. 10,00,000/-.

4. **Briefs facts of the case:**

- a) It is a case of the applicant that the Corporate Debtor has failed to pay Rs.1,66,05,895/- against the supply of goods made from 8<sup>th</sup> September 2021 to 27<sup>th</sup> December 2021. The applicant claimed that they had been supplying goods for a long time to the Corporate Debtor and maintaining a running and continuous account. Supplies were made against GST Tax Invoices from time to time.
- b) It is a case of the applicant that Rs.1,66,05,895/- is due against the last 28 unpaid tax invoices, which have been listed in Annexure “C” on page 60 of the application. The applicant also claimed that there are interest components at the rate of 24% per annum of overdue payment which comes to Rs.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 166/(KB)/2022

8,51,678 which takes the total amount to Rs.1,74,57,573. This according to them is as per the clause contained in every tax invoice. The applicant sent a statutory demand notice on 15/03/2022, which was duly served on 16/03/2022 in compliance of rule 5 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. The applicant also based on the order of this Adjudicating Authority dated 29/08/2022, caused service of notice for appearance under rule 38 of the NCLT Rules, 2016 by way of Speed Post with A/D, with e-mail and Dasti Service. The said notice has been duly served on the Corporate Debtor by 3 modes of service. The applicant also uploaded an affidavit of service in the NCLT e-filing portals. The applicant claimed that no reply has been received from the Corporate Debtor till date. The Corporate Debtor never appeared before this Adjudicating Authority as directed on several occasions. Therefore, the applicant is seeking initiation of CIRP under section 9 of the IBC forthwith.

**5. Per contra, Ld. Counsel for the Petitioner submits that:**

Ld. Counsel for the applicant produced copy of invoices, ledger account of the Corporate Debtor, the efforts taken by the applicant in ensuring the presence of the Corporate Debtor apart from issuing notice under section 8 of the IBC, without any response. Therefore, he pleaded that this application may be admitted and CIRP of the Corporate Debtor is initiated.

**6. Analysis and Findings: -**

- a) We have perused all the invoice copies placed by the applicant in this application, and the ledger account of the Corporate Debtor in the books of the applicant. We have also perused the affidavit of service placed on record by the applicant. On several occasions, this matter was posted before us and in spite of notice to the Corporate Debtor several times, the Corporate Debtor neither filed a reply affidavit to the application nor appeared before us. On the last occasion when the matter was posted on 17/07/2023, we recorded that the appropriate order would be passed on the next date. When the matter came up before us on 21/08/2023, we reserved it for orders.

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 166/(KB)/2022

- b) We find that the applicant's claim of the principal amount due is in order, based on the records furnished by the applicant. However, we do not agree with the claim of interest, as a mere clause in the invoices will not be sufficient to claim interest from the defaulting buyer. Hon'ble NCLT has held in several matters, one of which is in **Company Appeal (AT) (Insolvency) No. 144 of 2018** in the case of **Krishna Enterprises vs. Gammon India Ltd.**
- c) Considering the principal amount is beyond the threshold limit of Rs.1 Crore, the date of default is well within the period of limitation, Section-8 notice has not been responded and, therefore, we only can come to the conclusion that there was no pre-existing dispute and the application under Section 9 of IBC is complete in order. Therefore, we admit this application filed under Section 9 and order for initiation of CIRP.
7. In light of the above facts and circumstances, it is, hereby ordered as follows:-
- a. The application bearing **CP (IB) No. 166/KB/2022** filed by Victoria International Private Limited, the Operational Creditor, under section 9 of the Code read with rule 6(1) of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against Snehtango Food Products Private Limited, the Corporate Debtor, is **admitted**.
  - b. There shall be a moratorium under section 14 of the IBC.
  - c. The moratorium shall have effect from the date of this order till the completion of the CIRP or until this Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 of the IBC or passes an order for liquidation of Corporate Debtor under section 33 of the IBC, as the case may be.
  - d. Public announcement of the CIRP shall be made immediately as specified under section 13 of the Code read with regulation 6 of the Insolvency &

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 166/(KB)/2022

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- e. **Mr. Vaibhav Khandelwal**, registration number IBBI/IPA-001/IP-P-02157/2020-2021/13348, **email:** [vaibhavkkhandelwal@gmail.com](mailto:vaibhavkkhandelwal@gmail.com), **Mobile No:** 9331689378 is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor to carry out the functions as per the Code subject to submission of a valid Authorisation of Assignment in terms of regulation 7A of the Insolvency and Bankruptcy Board of India (Insolvency Professional) Regulations, 2016. The fee payable to IRP or the RP, as the case may be, shall be compliant with such Regulations, Circulars and Directions as may be issued by the Insolvency & Bankruptcy Board of India (IBBI). The IRP shall carry out his functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the Code.
- f. During the CIRP period, the management of the Corporate Debtor shall vest in the IRP or the RP, as the case may be, in terms of section 17 of the IBC. The officers and managers of the Corporate Debtor shall provide all documents in their possession and furnish every information in their knowledge to the IRP within one week from the date of receipt of this Order, in default of which coercive steps will follow. There shall be no future opportunities in this regard.
- g. The Interim Resolution Professional is expected to take full charge of the Corporate Debtor, its assets and its documents without any delay whatsoever. He is also free to take police assistance in this regard, and this Court hereby directs the concerned Police Authorities to render all assistance as may be required by the Interim Resolution Professional in this regard.
- h. The IRP/RP shall submit to this Adjudicating Authority periodical report with regard to the progress of the CIRP in respect of the Corporate Debtor.
- i. The Operational Creditor shall deposit a sum of **Rs 3,00,000/- (Rupees Three Lakhs only)** with the IRP to meet the expenses arising out of issuing

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
DIVISION BENCH, COURT NO. II  
KOLKATA**

Company Petition (IB) No. 166/(KB)/2022

public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors (CoC).

- j. In terms of section 7(5)(a) of the Code, Court Officer of this Court is hereby directed to communicate this Order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post, email and WhatsApp immediately, and in any case, not later than two days from the date of this Order.
  - k. Additionally, the Operational Creditor shall serve a copy of this Order on the IRP and on the Registrar of Companies, West Bengal, by all available means for updating the Master Data of the Corporate Debtor. The said Registrar of Companies shall send a compliance report in this regard to the Registry of this Court within seven days from the date of receipt of a copy of this order.
- 8. CP (IB) No. 166/KB/2022** to come up on **30.11.2023** for filing the periodical report.
- 9.** A certified copy of this order may be issued, if applied for, upon compliance with all requisites.

**D. Arvind**  
**Member (Technical)**

**Bidisha Banerjee**  
**Member (Judicial)**

Order signed on the 20<sup>th</sup> Day of October 2023

A.S. LRA