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**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH – I, CHENNAI**

CP(IB)/317(CHE)/2021

*(filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 r/w
Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating
Authority) Rules, 2016)*

In the matter of **KHADYOTA KISHAN FOUNDATION (KISHAN RESEARCH AND
DEVELOPMENT CENTRE)**

JYOTHY LABS LIMITED

'Ujala House' Ramakrishna Mandir Road,
Kondivita, Andheri (East),
Mumbai – 400 059 Maharashtra

... Operational Creditor

Vs.

**KHADYOTA KISHAN FOUNDATION (KISHAN RESEARCH AND
DEVELOPMENT CENTRE),**

242/1,3rd Sundaram Street, Nalvar Layout,
Rathinapuri, Coimbatore – 642 027

... Corporate Debtor

Order Pronounced on **09th November 2022**

CORAM:

**Justice (Retd.) RAMALINGAM SUDHAKAR, PRESIDENT
SAMEER KAKAR, MEMBER (TECHNICAL)**

*For Operational Creditor : R. Vidhya Shankar, Advocate
For Corporate Debtor : Ex-parte*

ORDER

Per: SAMEER KAKAR, MEMBER (TECHNICAL)

This Application has been filed by one **JYOTHY LABS LIMITED** (hereinafter referred to as 'Operational Creditor') on 29.11.2021 under Section 9 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **KHADYOTA KISHAN**

FOUNDATION (KISHAN RESEARCH AND DEVELOPMENT CENTRE)

(hereinafter referred to as 'Corporate Debtor').The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).

2. From Part-I of the Application, it is seen that the Operational Creditor is a Public Limited Company incorporated under the Companies Act, 1956 on 15.01.1992 having its registered address as per the MCA website is at Ujala House, Ram Krishna Mandir Road, Kondivita, Andheri (East), Mumbai -400 059.

3. Part II of the Application lays down the details of the Corporate Debtor. It can be seen that the Corporate Debtor is a private limited company incorporated under the Companies Act, 2013 on 28.02.2018 with CIN: U01110TZ2018NPL030079 registered office of the Corporate Debtor is situated at 242/1 3rd Sundaram Street, Nalvar Layout, Near Lala Mahal, Rathinapuri, Coimbatore -641 027.

4. From Part-III of the Application, it is seen that the Operational Creditor has not proposed the name of the Interim Resolution Professional (IRP).

5. From Part-IV of the Application, it is seen that the Operational Creditor has claimed a sum of Rs.2,66,41,078/- (Rupees Two Crores Sixty-Six Lakhs Forty-One Thousand and Seventy-Eight only) being the aggregate of principal amount Rs. 1,94,62,946/- and interest Rs. 71,78,133/- calculated at the rate of 18% per annum till 30.09.2021 are due and payable by the Corporate Debtor.

6. Part-V of the application discloses the details of the documents filed along with the application in order to prove the operational debt and it contains

- a) Demand Notice in Form 3 dated 20.04.2021 served on the Corporate Debtor on 23.04.2021 and Postal acknowledgement.
- b) Copy of Tender dated 09.08.2018 (Exhibit A-1)
- c) Tabulation of outstanding invoices (Exhibit A-2)
- d) Tax Invoices dated 31.01.2019, 14.02.2019, 20.02.2019, 28.02.2019, 07.03.2019, 11.03.2019, 19.03.2019, 08.08.2019, 14.08.2019, 21.08.2019, 28.08.2019, 30.11.2019 along with relevant acknowledgement for receipt of goods by the Corporate Debtor. (Exhibit A-3 series)
- e) Emails of the Operational Creditor dated 20.11.2020, 04.12.2020, 15.12.2020, 04.01.2021 and 05.03.2021 to the Corporate Debtor to make the payments. (Exhibit A-4 series)
- f) NeSL Record of Default dated 09.08.2021 (Exhibit A-5)
- g) Interest Calculation statement up to 01.10.2021 (Exhibit A-6)

FACTS OF THE CASE :

7. It was submitted by the Learned Counsel for the Applicant that The CD issued a Tender No. TERM/TNKRS/Tender/2018-2019/TR986TN01CS1 dated 09.08.2018 calling for supplies of various civil goods on the basis that the Corporate Debtor runs multiple retail stores styled as "Kisan Ration Shops" and Kishan Ration Mart'. The Operational Creditor participated in the Tender and deposited Rs. 51,54,713 on 13.09.2019 as Earnest Money Deposit (EMD). Thereafter, the Operational Creditor was accepted as the Successful bidder and the contract was awarded to the Operational Creditor for supply of their products to the Corporate Debtor outlets.

8. It was further submitted by the Learned Counsel for the Applicant that OC made supplies of various goods from January 2019 to November 2019 aggregating to invoice value of Rs. 1,43,08,233/- and the tabulation of invoices is at page nos. 64 and 65 of the application typeset. The invoices and the corresponding lorry receipts with detailed description of product supplied under each invoice is available at page nos. 66 to 275 of the application typeset. Further, no payment was realized. Total outstanding is the invoice value of supplies, plus the security deposit, plus interest



(per calculation sheet at page 300 of the application typeset) aggregates to Rs. 2,66,41,078/-.

9. From the aforesaid sum, the Earnest Money Deposit of Rs. 51,54,713/ is due as on 09.02.2019 being six months from the date of opening of the Tender as per Point 9(vi) of Section II of the Tender. Further, Rs. 24,50,536/- interest on Earnest Money Deposit calculated at 18% p.a. for the period from 10.0.2019 to 30.09.2021. It is further averred that for supplies made by the Operational Creditor to the Corporate Debtor, payment is due immediately on supply of the goods.

10. It is further averred in the application that in any event all the supplies were made between January 2019 to November 2019, the remaining sum of Rs.1,43,08,233/- was due and payable not later than 30.11.2019 and Rs.47,27,597/- is the interest on supplies made calculated at 18% p.a. from 01.12.2019 till 30.09.2021.

11. Despite several emails dated 20.11.2020, 04.12.2020, 15.12.2020, 04.01.2021 and 05.03.2021 reminding the Corporate Debtor to pay the outstanding payments but no payment has been made by the Corporate Debtor so far.



12. It was submitted by the Learned Counsel for the Operational Creditor that since no payment was forthcoming from the Corporate Debtor, the Operational Creditor has issued a Demand Notice under Section 8 of IBC, 2016 to the Corporate Debtor on 20.04.2021, which was delivered to the Corporate Debtor on 23.04.2021. Further, the Operational Creditor has also filed an Affidavit as mandated under Section 9(3)(b) of IBC, 2016 stating that the Corporate Debtor after the receipt of the Demand Notice has failed to pay the unpaid 'operational debt' and not replied to the demand notice. Under such circumstances, the Operational Creditor has filed the present Application before this Tribunal on 29.11.2021 seeking initiation of CIRP as against the Corporate Debtor.

13. In relation to the Corporate Debtor, it is seen from the record of proceedings that when the matter was came up for hearing on 17.02.2022, there was no representation on behalf of the Corporate Debtor and this Tribunal has recorded that:

"The Petitioner is represented by Mr. Vidhya Shankar, Advocate through video conferencing platform.

It is seen that notice sent by the Registry has been received by the Respondent.

However, there is no representation for the Respondent.

The Respondent is called absent, Respondent set ex-parte."

FINDINGS OF THIS TRIBUNAL:

14. Heard the submissions of the Learned Counsel for the Operational Creditor. At the outset, it is pertinent to point out that the proceedings of this Tribunal dated 17.02.2022 wherein it was recorded that the Corporate Debtor was set ex-parte on 17.02.2022 and hence in the interest of justice, we have decided to hear the matter on merits. This Tribunal after comprehensively hearing the said matter is of the view that, the debt and default had been proven beyond reasonable doubt.

15. Further, it can be seen from the list of invoices filed which has been annexed to the application, it is evident that the claim as raised by the Operational Creditor is within the prescribed period of limitation of 3 years and in relation to the Corporate Debtor the registered office of which is situated within the State of Tamilnadu, amenable to its territorial jurisdiction, this Authority has no hesitation in admitting this Petition and initiating the Corporate Insolvency Resolution Process (CIRP) as against the Corporate Debtor.

16. In order to prove the debt and default the applicant had placed the Record of Default of NeSL issued on 02.05.2022 which



is placed by way of a memo dated 18.05.2022, from which it is clear that the Corporate Debtor has committed default in repayment of its payments availed from the Operational Creditor. The record produced by the applicant received from the NeSL shows as "Deemed to be Authenticated".

17. Further, it is also pertinent to note that the default arising in the present Application is much prior to the advent of the Covid-19 pandemic and hence the Corporate Debtor also cannot seek shelter under Section 10A of IBC, 2016.

18. As a consequence of the Application being admitted in terms of Section 9 (5) of the Code, the moratorium as envisaged under the provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor:

- a. The institution of suits or continuation of pending suits or proceedings against the respondent 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 respondent 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 respondent 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 respondent.

Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance 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 or a similar grant or right during moratorium period;

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

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the Corporate Debtor and manage the operations of such Corporate Debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such Corporate Debtor has not paid dues arising from such

supply during the moratorium period or in such circumstances as may be specified.

- (3) The provisions of sub-section (1) shall not apply to
- (a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;
 - (b) a surety in a contract of guarantee to a corporate debtor.

20. The duration of the period of moratorium shall be as provided in Section 14(4) of the Code and for ready reference reproduced as follows:

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

21. Since the Operational Creditor has not named the Insolvency Resolution Professional, this Tribunal based on the latest list furnished by Insolvency and Bankruptcy Board of India applicable for the period between July 2022 – December 2022 appoints

Ms. Usha Gayathri Kavi, having registration number **IBBI/IPA-001/IP-P02639/2022-2023/14100** (**E-mail Id: ca.usthagayathrik@gmail.com**) as the "Interim Resolution Professional" subject to the condition that no disciplinary proceedings are pending against such an Interim Resolution Professional named and disclosures as required under IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are made within a period of one week from the date of this order.

22. The IRP is directed to take charge of the Corporate Debtor's management immediately. The IRP is also directed to cause public announcement as prescribed under Section 15 of the IBC, 2016 within three days from the date the copy of this Order is received, and call for submissions of claim by the creditors in the manner as prescribed under Regulation 6 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

23. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Section 15, 17, 18 of the IBC, 2016 and file his report within 30 days before this Bench. The powers of the Board of Directors of the Corporate Debtor shall stand superseded as a

consequence of the initiation of the CIRP in relation to the Corporate Debtor in terms of the provisions of IBC, 2016.

24. The IRP shall comply with the provisions of Sections 13 (2), 15, 17 & 18 of the Code. The Directors of the Corporate Debtor, its Promoters or any person associated with the management of the Corporate Debtor are/is directed to extend all assistance and cooperation to the IRP as stipulated under Section 19 of IBC, 2016 for the purpose of discharging his functions under Section 20 of IBC, 2016.

25. The IRP shall conduct the Corporate Insolvency Resolution Process in respect of the Corporate Debtor as stipulated under Chapter VIII of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

26. The Operational Creditor is directed to pay a sum of **Rs.2,00,000 /-(Rupees Two Lakhs Only)** to the Interim Resolution Professional upon the Interim Resolution Professional filing the necessary declaration form as required under the provisions of the Code to meet out the expenses to perform the functions assigned to her in accordance to Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

27. Based on the above terms, the Application stands **admitted** in terms of Section 9(5) of IBC, 2016 and the moratorium shall come in to effect as of this date. A copy of the Order shall be communicated to the Operational Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the Interim Resolution Professional above named who is figuring in the list of Resolution Professionals forwarded by IBBI be also furnished with copy of this Order forthwith by the Registry, who will also communicate the initiation of the CIRP in relation to the Corporate Debtor to the Registrar of Companies concerned.

28. The IRP is directed to file the 1st Progress Report before this Tribunal on or before the 45th day of initiation of CIRP by this Adjudicating Authority.

29. Accordingly, the present petition stands **admitted**.



SAMEER KAKAR
MEMBER (TECHNICAL)



JUSTICE RAMALINGAM SUDHAKAR
PRESIDENT

Sriram Ananth V