

**NATIONAL COMPANY LAW TRIBUNAL
KOCHI BENCH, KERALA
IBA/08/KOB/2020**

(Under Section 9 of IBC 2016)

Order delivered on: 09.03.2020

Coram:

Hon'ble Mr. Ashok Kumar Borah, Member (Judicial)

Hon'ble Mr. Veera Brahma Rao Arekapudi (Technical)

In the matter of:

Team Foods,
Represented by its proprietor
K.A. Ismail Manoj,
23/684, M.C.Road, Palluruthi,
Kochi 682 006.

.... Applicant

Vs.

Delsea Exports Pvt Ltd.,
19/2055a, Nambiapuram Road,
Palluruthy,
Kochi 682 006.

.... Respondent

Appearance:

For applicant/s
For Respondent

... Shri Faisal P.P., Advocate
... Shri V.A.Ajmal, Advocate

1. This application has been filed by TEAM FOODS (hereinafter referred as 'Operational Creditor') under Section 9 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as the 'I & B Code') for initiating Insolvency Resolution Process against DELSEA EXPORTS PRIVATE LIMITED (hereinafter referred as 'Corporate Debtor'). The Operational Creditor is a proprietary concern of K.A. Ismail Manoj, who was one of the regular suppliers of fishes to the Corporate Debtor. The Corporate Debtor is a fish exporting company having seafood processing, packing and exporting factory at Kochi, which was incorporated on 24.04.2012 and continues now its existence with CIN No. U51223KL2012PTC031076 and has its registered office at 19/2055a, Nambiapuram Road, Palluruthy, Cochin-



- 682 006, which is in the State of Kerala and therefore, the matter falls within the territorial jurisdiction of this Tribunal.
2. The Operational Creditor filed this application to realize the trade dues arising out of its usual course of business on account of sale of raw materials such as fresh squid, octopus etc during the period from 06.07.2019 to 02.12.2019. As on 18.12.2019, the Corporate Debtor is liable to pay a sum of ₹ 22,34,394/- (Rupees Twenty-Two Lakhs Thirty-Four Thousand Three Hundred and Ninety-Four Only) during the period from 06.07.2019 to 02.12.2019.
 3. The learned counsel representing the Operational Creditor submitted that they have made several requests to the Corporate Debtor to make timely payments as they are unable to procure fish without making payment to fishermen and fishing boats and delay in payments from the Corporate Debtor badly affected their procurement and the entire business.
 4. The counsel further submitted that the Corporate Debtor has admitted the debt and issued a balance confirmation statement for ₹ 22,34,294/- to the applicant. However, the Corporate Debtor has conveyed to the applicant that presently they are not in a position to make the payments as it is facing financial difficulty in view of the slowdown in their business.
 5. The applicant stated that they have issued a demand notice under Section 8 of the I & B Code on 31.12.2019 and it was delivered on 01.01.2020. Even after that the Corporate Debtor has neither paid dues nor issued any notice of dispute within 10 days from the date of receipt of the notice. Therefore, the Operational Creditor filed this application and pleaded for admitting and initiating the Corporate Insolvency Resolution Process.



6. The corporate Debtor in the reply affidavit stated that the company is taking all measures to increase the sales, however due to non-availability of funds, the company is not in a position to make enough procurements.
7. The counsel for the Corporate Debtor further admitted the due amount which is payable on the purchase bills raised by the Operational Creditor. The Corporate Debtor pleaded for minimum six months' time to resolve the dues of the applicant. However, the Operational Creditor is not agreeable for the timeline and prayed for admission of this application.

Findings:

8. We have gone through the pleadings on record and perused the submissions made by learned counsel for both sides.
9. It is evident that the Corporate Debtor has admitted and acknowledged the debt, wherein the Corporate Debtor has stated that the Balance outstanding due shall be paid out in six months' time, which was rejected by the Operational Creditor and prayed for orders in the application. The Corporate Debtor has failed to reply to the Demand Notice issued under Section 8 of the I & B Code and has not raised any disputes against the filing of the present Application.
10. The Application is complete and has been filed in the prescribed form. Copy of the Demand Notice in Form 3, dated 31.12.2019 along with the postal proof of service, reflecting the due receipt of the Notice by the Corporate Debtor, Affidavit in compliance of section 9(3)(b) dated 16.01.2020 stating that the Applicant has not received any notice of dispute from the Corporate Debtor have been filed by the Operational Creditor in support of its claim.

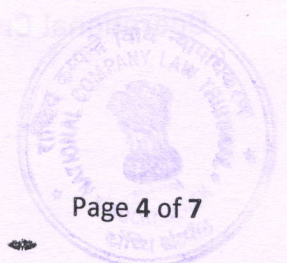


11. The Operational Creditor, having supplied goods to the Corporate Debtor for which the Corporate Debtor has failed to make payments, is an Operational Creditor as per the provisions of the I & B Code, 2016. The Corporate Debtor has not raised any dispute in respect of the goods and the amount to be paid to the Applicant. The Corporate Debtor has acknowledged its liability to repay a sum of ₹ 22,34,394/- (Rupees Twenty-Two Lakhs Thirty-Four Thousand Three Hundred and Ninety-Four Only).
12. From the above findings, we find that the application made by the Operational Creditor is complete in all respects as required under Section 9 Sub-Section 5, Sub Clause (i) of I & B Code, 2016. It clearly shows that the Corporate Debtor is in default of a debt due and payable, and the default is in excess of minimum amount of one lakh rupees stipulated under section 4(1) of the IBC. Therefore, the default stands established and there is no reason to deny the admission of the Petition. Accordingly, the Application filed under section 9 of the Insolvency and Bankruptcy Code for initiation of corporate insolvency resolution process against the corporate debtor deserves to be admitted.

ORDER

13. It is, accordingly, hereby ordered as follows: -

- (a) The petition filed by Team Foods under Section 9 of the IBC read with rule 6 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 for initiating CIRP against the Corporate Debtor i.e. Delsea Exports Private Limited, is admitted.



(b) There shall be a moratorium under section 14 of the IBC, in regard to the following:

(i) 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;

(ii) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(iii) 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 Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (SARFAESI) Act, 2002;

(iv) The recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

(c) Notwithstanding the above, during the period of moratorium, -

(i) The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated, suspended or interrupted during the moratorium period;

(ii) The provisions of sub-section (1) of section 14 of the IBC shall not apply to such transactions as may be notified by the Central Government in consultation with any sectoral regulator.



- (d) 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.
- (e) Public announcement of the CIRP shall be made immediately as specified under section 13 of the IBC read with regulation 6 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
- (f) As the Operational Creditor has proposed the name of an Insolvency Resolution Professional, whose consent is on record along with the application. Therefore, we hereby appoint Mr. Vinod Padinhare Veetil, Registration No. IBBI/IPA-002/IP-N00203/2017-18/10657, having address at 66/1058, First Floor, Veekshanam Road, Ernakulam North, Cochin, Kerala, 682018, Email Id: vinodpv@gmail.com, is hereby appointed as Interim Resolution Professional (IRP) of the Corporate Debtor, to carry out the functions as mentioned under IBC. The IRP shall carry out functions as contemplated by sections 15, 17, 18, 19, 20 and 21 of the IBC. The fee payable to IRP/RP shall be in compliance with Regulations, Circulars and Directions issued by the Insolvency & Bankruptcy Board of India (IBBI) as may be applicable. The IRP is directed to submit the copy of AFA (Authorisation for Assignment) issued by Insolvency Professional Agency within two days from the date of receipt of this Order.



- (g) During the CIRP period, the management of the Corporate Debtor shall vest in the IRP/RP 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 a period of one week from the date of receipt of this Order, in default of which coercive steps will follow.
- (h) The Registry is directed to communicate this order to the Operational Creditor, the Corporate Debtor and the IRP by Speed Post and email within two days from the date of this Order.
- (i) A copy of this Order be also sent to the Registrar of Companies, Kerala, for updating the Master Data of the Corporate Debtor, who shall send a compliance report in this regard to the Registry within seven days.

Dated this the 9th day of March, 2020.

Sd/-

Veera Brahma Rao Arekapudi
Member (Technical)

Sd/-

Ashok Kumar Borah
Member (Judicial)

Certified to be True Copy-

Shankar Menon
Deputy Registrar
National Company Law Tribunal
Kochi Bench

11/03/2020

Memo No. IBA/8/KOB/2020/.....

Date: 11.3.2020

1. Advocate Faisal PP, 4C, MJ Kutticaren Residency, K.K. Padmanabhan Road, Ernakulam, Kerala. (Counsel for the applicant)
2. Advocate V.A.Ajmal, Ashirwad, M.M.Road, Kochi-682018 (Counsel for respondent)
3. Mr, Mr. Vinod Padinhare Veetil, Registration No. IBBI/IPA-002/IP-N00203/2017-18/10657, having address at 66/1058, First Floor, Veekshanam Road, Ernakulam North, Cochin, Kerala, 682018, Email Id: vinodpv@gmail.com (Interim Resolution Professional).
4. The Registrar of Companies, Company Law Bhawan, BMC Road, Thrikkakara, Kakkanad, Kochi-682021.

